

**ORDER**

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EQUAL OPPORTUNITY IN FAA EMPLOYMENT



June 18, 1979

**DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION**

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FOREWORD

This order prescribes policy, delegates authority, assigns responsibility, and establishes procedures and guidance for promoting an affirmative program for achieving equality of opportunity in all aspects of FAA employment and related activity.

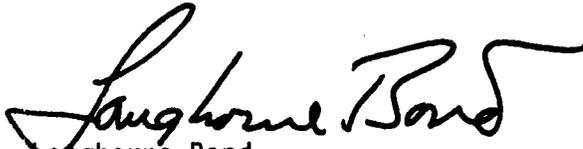
  
Langhorne Bond  
Administrator



TABLE OF CONTENTS

	<u>Page No.</u>
CHAPTER 1. GENERAL.	1
100. Purpose.	1
101. Distribution.	1
102. Cancellation.	1
103. Explanation of Changes.	1
104. Delegation of Authority.	1
105. Definitions of Terms Used in this Order.	1
106. Forms and Reports.	2
107. Policy.	2
108. Resources.	4
109. Privacy and Freedom of Information Acts.	5
110. The Administrator.	5
111. Responsibilities of the Equal Employment Opportunity Office.	5
112. Responsibilities of the Associate Administrator for Administration.	6
113. Responsibilities of Associate Administrators, Assistant Administrators, Regional and Center Directors and Offices and Service Heads.	6
114. Responsibilities of the Director of Personnel and Training.	6
115. Responsibilities of the Field Equal Employment Opportunity Officer.	7
116. Responsibilities of the Personnel Management EEO Staff.	9
117. Responsibilities of Personnel Officers.	9
118. Responsibilities of Special Emphasis Program Coordinators.	10
119. Responsibilities of all Managers and Supervisors.	10
120. Responsibilities of Employees.	11
121. Responsibilities of Military Personnel Assigned to FAA.	11
122.-199. RESERVED.	11
CHAPTER 2. MINORITY GROUP STATISTICS.	13
200. General.	13
201. Responsibilities.	13
202. Minority Data Control.	14
203. Minority Group Designation (MGD).	14
204. Minority Group Identification.	15
205. Recurring Reports.	15
206. Ad Hoc Reports.	15
207. Issuance of Reports.	15
208. Delegation of Authority.	16
209. PMIS Process Development.	16
210. Reports With Employees' Names and MGD's.	17
211. Employee Notification.	17
212. Security of MGD Records.	17

	<u>Page No.</u>
213. Review Procedures.	18
214.-299. RESERVED.	18
 CHAPTER 3. EMPLOYMENT PROGRAMS.	 19
300. General.	19
301. Special Recruitment Programs.	19
302. Merit Promotion and Internal Placement Programs.	20
303. The Handicapped Employee's Program.	20
304. Local Programs for the Handicapped.	20
305. Upward Mobility Programs.	20
306. Incentive Awards Program.	21
307. Evaluating EEO Performance of Supervisors and Managers.	21
308.-399. RESERVED.	21
 CHAPTER 4. EEO PLANS.	 23
400. General.	23
401. The FAA EEO Plan.	23
402. Each Regional, Center and Washington Headquarters Plan.	23
403. Timely Preparation and Submission.	23
404. Implementation.	23
405. Reports.	23
406. Local Plans.	23
407.-499 RESERVED.	23
 CHAPTER 5. SPECIAL EMPHASIS PROGRAMS.	 25
500. General.	25
501. Goals.	25
502. Program Administration.	25
503. The Federal Woman's Program Coordinator (FWPC).	25
504. The Hispanic Employment Program Coordinator (HEPC).	25
505. Special Emphasis Program Functions.	26
506.-599. RESERVED.	27
 CHAPTER 6. EMPLOYEE GROUPS AND COMMITTEES.	 29
600. General.	29
601. Ad Hoc Committees.	29
602. Management Advisory Groups.	29
603.-699. RESERVED.	29
 CHAPTER 7. COMMUNITY OUTREACH.	 31
700. Purpose.	31
701. General.	31
702. Objectives.	31
703. Implementation.	31

	<u>Page No.</u>
704. Community Outreach Activities.	32
705. Help Improve Local Conditions and Attitudes which Adversely Affect Employment and Placement of Minority and Women Applicants and Employees.	32
706. Fair Housing.	32
707.-799. RESERVED.	32
CHAPTER 8. PROCESSING DISCRIMINATION COMPLAINTS.	33
800. Coverage.	33
801. Exclusions.	33
802. Right to Representation.	33
803. Representation by an Organization.	33
804. Participation of Union Officials.	33
805. Representatives Who Are FAA Employees.	33
806. Complainants, Representatives and Witnesses.	34
807. Employees Who May Not Represent Complainants.	34
808. Representatives Who Are Not FAA Employees.	34
809. Freedom from Reprisal.	34
810. Required Consultation with EEO Officer.	34
811. Requirement to Consult with an EEO Counselor.	35
812. Right to Confidentiality.	35
813. Factfinding Inquiry.	35
814. Discussion of Findings.	36
815. Resolution Agreement.	36
816. Extension of Counseling.	36
817. Termination of Counseling.	37
818. Upon Termination of Counseling.	37
819. EEO Counselor's Report.	37
820. Filing a Complaint.	37
821. Forwarding a Complaint.	38
822. Avoidance of Delay.	39
823. Acceptance or Rejection.	39
824. Investigation.	40
825. Informal Resolution and Proposed Disposition.	40
826. Review of the Proposed Disposition.	41
827. Offer of Proposed Disposition.	42
828. Absence of Informal Resolution or Proposed Disposition.	42
829. Failure to Respond.	42
830. Acceptance of Proposed Disposition.	42
831. Request for Departmental Decision.	42
832. Request for a Hearing.	42
833. Identification of Agency Representative.	42
834. Selection of Agency Representative.	43
835. Role of Agency Representative.	43
836. EEO Complaints Examiner's Findings and Recommended Decision.	43
837. Departmental Decision.	43
838. Implementation of the Decision.	44

	<u>Page No.</u>
839. Disciplinary Action.	45
840. Appeals to the Equal Employment Opportunity Commission.	45
841. Appeals to the U. S. Courts.	45
842. Relationship to Other Appellate Procedures.	46
843. Relationship to Adverse Actions.	46
844. Consolidation of Complaints.	47
845. Joint Processing of Complaints.	47
846. Allegations of Reprisal.	47
847.-899. RESERVED.	47
 CHAPTER 9. ALLEGATIONS OF DISCRIMINATION ON ACCOUNT OF AGE.	 49
900. Purpose.	49
901. Choice of Procedures.	49
902. Time Limits.	49
903. Notice of Intent to File a Civil Action.	49
904. Concurrent Action Prohibited.	49
905.-999. RESERVED.	50
 CHAPTER 10. NONDISCRIMINATION BASED ON HANDICAP.	 51
1000. Purpose.	51
1001. A Handicapped Person.	51
1002. A Qualified Handicapped Person.	51
1003. Physical or Mental Impairment.	51
1004. Major Life Activities.	52
1005. Has a Record of Such Impairment.	52
1006. Is Regarded as Having Such an Impairment.	52
1007. Reasonable Accommodation.	52
1008. Employment Tests.	53
1009. Test Selection.	53
1010. Preemployment Prohibitions.	53
1011. Preemployment Inquiries.	53
1012. Conditions of Employment.	53
1013. Use of Medical Information.	54
1014. Physical Access to Buildings.	54
1015. Allegations of Discrimination.	54
1016.-1099. RESERVED.	54
 CHAPTER 11. CLASS COMPLAINTS.	 55
1100. General.	55
1101. A Class.	55
1102. Class Complaint.	55
1103. Agent of the Class.	55
1104. Counseling Responsibility.	55
1105. Counseling Requirement.	55

	<u>Page No.</u>
1106. Counseling Process.	56
1107. Termination of Counseling.	56
1108. Upon Termination of Counseling.	57
1109. Cooperation.	57
1110. Corrective Action.	57
1111. Filing a Class Complaint.	57
1112. Forwarding of Class Complaint.	52
1113.-1199. RESERVED.	57
CHAPTER 12. SECURITY OF DISCRIMINATION COMPLAINT MATERIALS.	59
1200. General.	59
1201. Scope.	59
1202. Material in Use.	59
1203. Material in Transit	59
1204. Containers.	60
1205. Storage Container Controls.	60
1206. Protection During Report Preparation and Processing.	60
1207. Material on Loan.	60
1208. Reproduction.	61
1209. Destruction.	61
1210. Assistance.	61
1211.-1299. RESERVED.	61
CHAPTER 13. PROGRAM EVALUATION.	63
1300. General.	63
1301. Field EEO Programs.	63
1302. Objectives.	63
1303. Field Level Evaluations.	63
1304. Conduct of Evaluations.	64
1305. Specific Areas for Evaluation.	64
1306. Findings and Recommendations.	65
APPENDIX 1. FORMS AND REPORTS REFERRED TO IN THIS ORDER (1 page).	1
APPENDIX 2. GUIDELINES FOR EEO COUNSELING IN FAA (8 pages).	
1. General.	1
2. Purpose of EEO Counseling.	1
3. Role of EEO Counselor.	1
4. Access to Documents.	1
5. Responsibilities of EEO Counselors.	2
6. Role of the Field EEO Officer.	4
7. Selecting and Appointing EEO Counselors.	4
8. Assignment of Counselors.	6
9. Terms of Counselors.	6
10. Evaluation of EEO Counselors.	6
11. Collateral Duty Status and Supervision of Counselors.	6
12. EEO Counselor Training.	7
13. Monthly Report of Counseling Activity.	8

	<u>Page No.</u>
APPENDIX 3. NOTICE OF RIGHT TO FILE A DISCRIMINATION COMPLAINT (SAMPLE FORMAT) (1 PAGE).	8
APPENDIX 4. NOTICE OF FINAL INTERVIEW WITH EEO COUNSELOR (SAMPLE FORMAT) (1 PAGE).	1
APPENDIX 5. FORMAT FOR EEO COUNSELOR'S REPORT (1 PAGE).	1
APPENDIX 6. FORMAT FOR REPORT OF FIELD LEVEL INFORMAL RESOLUTION ATTEMPT AND PROPOSED DISPOSITION (1 PAGE).	1
APPENDIX 7. FORMAT FOR FAA'S PROPOSED DISPOSITION (1 PAGE).	1
APPENDIX 8. CLASS COMPLAINT COUNSELOR'S REPORT (1 PAGE).	1
APPENDIX 9. PARTICIPATION IN THE DISCRIMINATION COMPLAINT PROCESS OF PERSONS NAMED AS "ALLEGED DISCRIMINATING OFFICIALS" (5 PAGES).	1
APPENDIX 10. PRECOMPLAINT COUNSELING MONTHLY REPORT.	1
* APPENDIX 11. ALLEGATIONS OF DISCRIMINATION BY AIR TRAFFIC CONTROL SPECIALIST ACADEMY TRAINING FAILURES (2 PAGES).	1

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## CHAPTER 1. GENERAL

100. PURPOSE. This order sets forth the Federal Aviation Administration's continuing affirmative program for equal opportunity in employment and personnel operations without regard to race, color, religion, sex, national origin, age, or physical or mental handicap. This order also establishes procedures for this agency's responsibilities in responding to complaints from employees and applicants for employment who feel that they have been discriminated against on the grounds cited above.

101. DISTRIBUTION. This order is distributed to the supervisory level in FAA headquarters, regions, centers, and overseas area offices, and maximum distribution is made to all field offices and facilities.

102. CANCELLATION. Order 3300.6B, Equal Opportunity in FAA Employment, May 25, 1973, is canceled.

103. EXPLANATION OF CHANGES. This order reflects changes which update FAA's equal employment opportunity (EEO) program and FAA's procedures for processing discrimination complaints. Some of the specific changes are as follows:

a. The Special Emphasis Programs for women and for Hispanic Americans are more clearly defined.

b. Reference is made to the use of employee committees and groups in furthering the objectives of the EEO program.

c. Security standards for protecting discrimination complaint records have been added.

d. Nondiscrimination on account of age has been defined.

e. Nondiscrimination based on handicap has been included.

f. Class complaints of discrimination have been included.

104. DELEGATION OF AUTHORITY. The Administrator reserves the authority to approve changes to chapter 1 or any changes in policy, delegation of authority or assignment of responsibility. The Director of Civil Rights is authorized to approve all other changes.

105. DEFINITIONS OF TERMS USED IN THIS ORDER.

a. EEO Officer. Director of Civil Rights, ACR-1, Federal Aviation Administration.

b. Field EEO Officer. Chief, Civil Rights Staff in an FAA region, the Aeronautical Center, or the National Aviation Facilities Experimental Center (NAFEC). The Director of Civil Rights, ACR-1, serves as the field EEO officer for the Washington headquarters element.

c. Director of EEO. The Director of Civil Rights, S-30, Department of Transportation.

d. Personnel Officer. Chief, Personnel Management Division in an FAA region, the Aeronautical Center or NAFEC and the Chief, Personnel Management Operations Division in the Washington headquarters.

e. Facility Chiefs. Chiefs or managers of FAA field elements, such as air carrier district offices, airport district offices, airport traffic control towers, air route traffic control centers, airway facility sector field offices, flight inspection field offices, flight service stations, etc.

f. Center. The Aeronautical Center or NAFEC.

106. FORMS AND REPORTS. See appendix 1 for a listing of forms and reports referred to in this order.

107. POLICY. It is the policy of the Department of Transportation, Federal Aviation Administration, that every aspect of its program for equal employment opportunity, in all phases of employment and related activities, be planned, developed, implemented, and maintained in full accord with the spirit and letter of the Constitution and other pertinent laws, policies, rules, and regulations in such an affirmative manner as to assure equality of opportunity for all employees and applicants for employment, bearing in mind that even the appearance of unlawful discrimination because of race, color, religion, sex, national origin, age, or physical or mental handicap must be avoided.

a. Use of Federal Aviation Administration Name or Facilities. Federal Aviation Administration approval to make use of the name or sponsorship of the FAA or FAA facilities not available to the general public, shall be denied to or withdrawn from any organization which practices discrimination against any person because of race, color, religion, sex, national origin, age, or physical or mental handicap. Approval granted to an organization to make use of the FAA name, sponsorship, or facilities shall be withdrawn if the organization conducts any of its events, meetings, or activities at restaurants, clubs, hotels, or other facilities, public or nonpublic, which refuse service or otherwise discriminate against any person because of race, color, religion, sex, national origin, age, or physical or mental handicap.

(1) These provisions shall apply, for example, to organizations using the FAA name, sponsorship, or facilities which are formally or informally organized for social, recreational, welfare or service purposes.

(2) Neither FAA nor any employee shall sponsor social affairs, involving reference to FAA, at clubs or facilities where there is any question as to that club's policy of nondiscrimination in its membership application.

b. Leases. Leases for use of FAA property or facilities shall be denied to or withdrawn from any organization that practices discrimination based on race, color, religion, sex, national origin, age, or physical or mental handicap, and FAA shall not rent property or facilities from an organization that so discriminates.

c. Attendance at Segregated Facilities for Meetings Prohibited. An FAA employee shall not knowingly attend or participate, as a representative of the agency, or authorize another to so act as a representative, in any event, meeting, or organized activity conducted at a public or nonpublic facility if the facility or sponsoring organization practices discrimination based on race, color, religion, sex, national origin, age, or physical or mental handicap.

d. Labor-Management Relations Program. To qualify for recognition by the FAA, an employee organization must not discriminate with regard to the terms or conditions of membership because of race, color, religion, sex, national origin, age, or physical or mental handicap. Recognized employee groups must be kept advised of FAA's EEO policy as well as other grounds for their continued recognition under Executive Order 11491. In addition to the required minimum compliance with the agency EEO policy, agency negotiators must require inclusion of an affirmative EEO statement in contracts, and a positive approach to equal opportunity by the union requesting recognition.

e. Policy Regarding Discrimination Complaints. It is FAA policy that all employees and applicants for employment shall be treated fairly and equitably and that all FAA personnel practices shall be free of discrimination or the appearance of discrimination. When situations arise, however, which cause employees or applicants to believe that they have been discriminated against because of their race, color, religion, sex, national origin, age, or physical or mental handicap, such matters shall be acted upon in full conformance with the provisions set forth in this order. All managers, supervisors, and other employees shall cooperate to the fullest extent with EEO officials and all other officials listed in this order assuring that the requirements of these provisions are effectively met.

(1) Informal resolution of complaints. Although this procedure requires that attempts at informal resolution be carried out in connection with specific steps in the complaints process, it is important, nevertheless, that all managers, supervisors and EEO officials make conscious and consistent efforts to identify and act upon opportunities for informal resolution whenever they exist during all phases of the procedure.

(2) Individuals filing complaints shall be accorded full rights under the provisions of this order and shall not be subjected to reprisal, harassment, coercion, discrimination or restraint as a result of their filing a discrimination complaint.

f. Policy Regarding Age. It is the policy of FAA to prohibit discrimination in employment on account of age to assure that all personnel actions affecting employees or applicants for employment are free from discrimination on account of age. It is recognized, however, that reasonable exemptions to the provisions of nondiscrimination on account of age may be established by appropriate Federal authority for each position for which that authority establishes a maximum age requirement on the basis of a determination that age is a bonafide occupational qualification necessary to the performance of the duties of the position.

g. Policy Regarding Handicapped Persons. FAA shall give full consideration to the hiring, placement and advancement of qualified mentally and physically handicapped persons, shall assume its full responsibility in the Federal Government's role to become a model employer of handicapped individuals, and shall not discriminate against a qualified physically or mentally handicapped person.

h. Cross-Training Policy. Because of the indivisible relationship between good personnel management and equal employment opportunity, it is the policy of the FAA to encourage mutually beneficial cross-training for personnel specialists and equal opportunity specialists. Such cross-training includes formal career development plans for employees engaged in EEO work, stressing meaningful on-the-job training in operating personnel offices as well as onsite working experience in EEO for personnel specialists.

108. RESOURCES. All regions, centers, and responsible Washington headquarters organizations will make necessary resources available to assure implementation of provisions of this order. Additional funding requirements resulting from the implementation of this order shall be justified and requested in accordance with existing budgetary procedures.

109. PRIVACY AND FREEDOM OF INFORMATION ACTS. These Acts place certain restrictions on the collection, maintenance, use, and dissemination of information. (See Order 1350.22, Protecting Privacy of Information About Individuals, June 27, 1977, and Order 1200.23, Public Availability of Information, November 1, 1977.) These requirements must be applied, when appropriate, to the provisions of this order.

110. THE ADMINISTRATOR is responsible for establishing, maintaining, and directing an affirmative program of equal employment opportunity throughout the Federal Aviation Administration.

111. RESPONSIBILITIES OF THE EQUAL EMPLOYMENT OPPORTUNITY OFFICER. The Director of Civil Rights has been designated as the FAA Equal Employment Opportunity (EEO) Officer. The Director is delegated authority to act for, to represent, and to speak for the Administrator on all equal opportunity and civil rights matters. The Director's responsibilities include, but are not limited to:

- a. Providing input into all agency policies and practices which impact on employment.
- b. Maintaining the FAA minority group designation data jointly with the Director of Personnel and Training.
- c. Developing short-range and long-range objectives to guide headquarters, regions, and centers in the preparation of EEO plans for measuring progress and establishing goals in the Equal Employment Opportunity Program.
- d. Monitoring implementation of headquarters, regional, and center EEO plans.
- e. Assuring that the Federal Women's Program and the Hispanic Employment Program are integral parts of the overall EEO program.
- f. Monitoring merit promotion plan selections, and participating in the selection process for key positions.
- g. Monitoring implementation and effectiveness of FAA's special hiring programs.
- h. Monitoring implementation and effectiveness of FAA's upward mobility programs and job restructuring efforts.
- i. Monitoring agency training programs and policies to insure support of EEO goals and objectives, and providing input and guidance into EEO training.

j. Monitoring overall EEO program implementation, including EEO performance ratings assigned to supervisors and managers, and advising the Administrator on accomplishments and deficiencies, along with appropriate recommendations:

k. Ensuring that sufficient numbers of EEO counselors are appointed, trained, and made available to employees and applicants who wish to consult with them.

l. Publicizing the identity and function of EEO counselors, Federal Women's Program Coordinator, and Hispanic Employment Program Coordinator in a manner that will assure maximum availability of this information to employees and applicants. As a minimum, the names, locations, and telephone numbers of EEO counselors shall be posted on official agency bulletin boards or in other conspicuous places frequented by employees.

m. Informing employees and employee organizations of the agency's policy and seeking their cooperation in providing equal employment opportunity.

n. Administering FAA's discrimination complaints system.

112. RESPONSIBILITIES OF THE ASSOCIATE ADMINISTRATOR FOR ADMINISTRATION. The Associate Administrator for Administration is responsible for providing advice and assistance to the Director of Civil Rights in undertaking activities required by the EEO program. He or she is responsible, also, for ensuring, through the Office of Personnel and Training, that the FAA personnel management program fully meets all Federal equal employment opportunity policies, laws, regulations, and guidelines.

113. RESPONSIBILITIES OF THE ASSOCIATE ADMINISTRATORS, ASSISTANT ADMINISTRATORS, REGIONAL AND CENTER DIRECTORS, AND OFFICE AND SERVICE HEADS. In addition to the specific assignments made in this order, they are responsible for assuring that the goals and objectives of the EEO program are achieved within their respective jurisdictions and for making recommendations for increasing the effectiveness of the program.

114. RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF PERSONNEL AND TRAINING. The Director of Personnel and Training is responsible for developing and implementing of agencywide programs and procedures designed to execute FAA's internal EEO policy, and of training plans and programs essential to its accomplishment. His or her responsibilities include but are not limited to:

a. Monitoring staffing and position management practices to ensure adherence to Departmental and agency EEO policies.

b. Establishing guidelines for career development and upward mobility programs which support EEO objectives.

- c. Communicating the Department of Transportation's and FAA's policies and programs to minority and women recruitment sources.
- d. Encouraging FAA management at all levels to become involved in the local community in an effort to improve opportunities and conditions affecting the employability of minorities and women.
- e. Participating in the development of agencywide and Washington headquarters EEO plans, in coordination with the EEO Officer, reviewing implementation of action items for which the Office of Personnel and Training has prime responsibility, and preparing recommendations to the Administrator for improving managerial performance in this regard.
- f. Implementing special hiring programs in coordination with the EEO Officer.
- g. Maintaining the FAA minority group designation data file jointly with the EEO Officer.
- h. Developing and implementing national plans and programs essential to accomplishing the internal EEO program including those items assigned in the approved agencywide EEO plan.
- i. Developing policies and procedures related to implementation of the above responsibilities.

115. RESPONSIBILITIES OF THE FIELD EQUAL EMPLOYMENT OPPORTUNITY OFFICER.  
The field EEO officer's responsibilities include but are not limited to:

- a. Serving as advisor to, acting for, and reporting directly to the regional or center director, as appropriate, in developing and appraising the overall EEO program within the region or center. The Director of Civil Rights, who is field EEO officer for FAA headquarters, serves as advisor to, acts for, and reports directly to the Administrator in developing and appraising the overall EEO program for FAA headquarters and the European Region.
- b. Serving as the focal point for equal employment opportunity activities and advising field division and staff chiefs, field office chiefs, office and service heads in headquarters, and supervisors on all matters relating to EEO programs.
- c. Monitoring and annually appraising the total EEO program, including preparation and implementation of EEO plans, with input from the personnel officer.

- d. Providing for selection of EEO counselors, who are made available to employees or applicants for employment who wish to consult with them.
- e. Maintaining a system for receipt and appropriate processing of discrimination complaints which are not informally resolved at the EEO counseling stage.
- f. Informing field level employees and employee organizations of the agency's policy and seeking their cooperation in providing equal employment opportunity.
- g. Maintaining close liaison with the personnel offices, in order to exchange EEO information and to coordinate activities, as appropriate.
- h. Maintaining the regional, center, or headquarters minority groups designation data file jointly with the personnel officer to ensure compliance with all pertinent Federal regulations and analyzing such data, as appropriate, to increase the effectiveness of the EEO program and to identify problem areas requiring immediate attention.
- i. Establishing liaison with community groups to further EEO for minorities and women.
- j. Reviewing supervisory and managerial performance in EEO, including monitoring supervisory or managerial awards which are based, in part, on exceptional EEO performance.
- k. Providing input concerning all regional or center policies and practices which impact on the employment of minorities and women.
- l. Monitoring implementation and effectiveness of regional, center, and headquarters upward mobility programs and job restructuring efforts, including participating in assessment centers.
- m. Reviewing and monitoring merit promotion plan selections, and participating in the selection process for key positions.
- n. Making recommendations concerning employee training in EEO, including, but not limited to, supervisors, managers, equal opportunity specialists, EEO counselors, and personnel specialists.
- o. Monitoring regional and center participation in FAA special hiring programs.
- p. Monitoring selections for hiring, reassignments, details, and training programs to insure against discrimination in any form and to recommend or to take any corrective action needed.

q. Assuring that EEO counselors are advised and kept current with respect to discrimination complaint policies, procedures, guidelines, and reporting requirements.

r. Evaluating the effectiveness of EEO counselors and making recommendations for required and other appropriate training.

s. Recommending appropriate corrective action concerning matters pertaining to allegations and complaints of discrimination.

116. RESPONSIBILITIES OF THE PERSONNEL MANAGEMENT EEO STAFF. The Chief, EEO Staff, within the Office of Personnel and Training is responsible for advising and acting for the Director of Personnel and Training in monitoring all agency personnel programs, policies, procedures, and hiring, promotion, training, and award practices to ensure conformance with EEO goals and objectives. The Chief, EEO Staff, will develop appropriate national guidelines and implement such special hiring programs as the Predevelopmental Programs for Air Traffic Control Specialists and Electronic Technicians, the Developmental Program for Flight Standards Inspectors, the Summer Aid and Stay-in-School Programs, the Cooperative Education Program and the Handicapped Program. Additionally, the Chief, EEO Staff, will develop appropriate national guidelines to implement placement programs, such as the Upward Mobility Program.

117. RESPONSIBILITIES OF PERSONNEL OFFICERS.

a. Providing input into the preparation of regional, center, or headquarters EEO plans.

b. Maintaining close liaison with field EEO officers to exchange information and to coordinate activities.

c. Implementing special hiring programs in coordination with the field EEO officer.

d. Appraising job structuring and classification to insure adherence to Departmental and agency EEO policies.

e. Establishing positive job redesign and upward mobility programs, with input from the field EEO officer.

f. Maintaining the regional, center, or headquarters minority group data file jointly with the field EEO officer.

g. Developing and implementing training plans and programs essential in accomplishing the internal EEO program.

- h. Encouraging managers and supervisors at all levels to become involved in the local community in an effort to improve opportunities and conditions affecting the employability of minorities and women.
- i. Acquainting minorities and women in local communities with career information and employment opportunities.
- j. Assuring that all regional, center, and headquarters personnel policies, practices, or actions provide full equal employment opportunity.
- k. Establishing liaison with minority and women's organizations and other Federal agencies on the recruitment of minorities and women for regional, center, or headquarters employment.
- l. Participating in the development of regional, center, or headquarters upward mobility and cooperative education programs, and recruiting and processing employees for the Predevelopment Air Traffic Control Specialist and Electronic Technician Programs.

118. RESPONSIBILITIES OF SPECIAL EMPHASIS PROGRAM COORDINATORS. Federal Women's Program Coordinators and Hispanic Employment Program Coordinators are responsible to the EEO Officer or field EEO officer, as appropriate, for development and implementation of their respective Special Emphasis Programs (chapter 5) within the total EEO effort based upon continual assessment of FAA personnel policies and practices as they impact on equal employment opportunity for their respective target populations.

119. RESPONSIBILITIES OF ALL MANAGERS AND SUPERVISORS.

- a. Exercising personal leadership in day-to-day activities to ensure that all actions are consistent with FAA's EEO goals and objectives.
- b. Periodically reviewing organizational and job structures to determine areas in which positions can be restructured to provide increased opportunities for employment of underutilized employees.
- c. Taking affirmative outreach action to identify to the personnel officer qualified minority and women candidates for consideration in filling positions, particularly key positions at the GS-13 level and above.
- d. Including in the performance standards of all supervisory personnel, a provision for evaluating equal employment opportunity performance, as indicated on Form DOT F 3430.1, Performance Evaluation Record, March 8, 1972.
- e. Recommending appropriate recognition and awards for subordinates whose performance have resulted in significant contributions to the EEO program, in accordance with FAA Order 3450.7C, Incentive Awards Program, August 29, 1975.

- f. In accordance with Order 3750.4, Conduct and Discipline, June 10, 1969 (reprinted July 1, 1974), taking appropriate disciplinary measures against subordinates whose actions deprive employees or applicants for employment of their rights under the equal employment opportunity program.
- g. Providing a climate that fosters and supports the career growth and development of women and minority group employees.
- h. Taking appropriate action to assure support to EEO counselors and to informally resolve complaints of discrimination, whenever possible.
- i. Properly advising their employees of the right to use the discrimination complaints procedure described in this order.
- j. Implementing other responsibilities outlined in this order and in related directives concerning the EEO program.

120. RESPONSIBILITIES OF EMPLOYEES. Each employee is responsible for complying with the spirit and intent of FAA's EEO policies and programs.

121. RESPONSIBILITIES OF MILITARY PERSONNEL ASSIGNED TO FAA. In accordance with the provisions of section 9(c) of the Department of Transportation Act of 1966 (49 U.S.C. 1657(c)), military personnel are subject to the same equal employment opportunity commitments as civilian employees.

122.-199. RESERVED.



## CHAPTER 2. MINORITY GROUP STATISTICS

200. GENERAL. Minority group designation data is stored in FAA's Personnel Management Information System (PMIS). No other system of records containing minority group designations shall be maintained by any person or organization in FAA without the express written permission of the EEO Officer.

201. RESPONSIBILITIES. In addition to those responsibilities included in chapter 1, certain specific responsibilities relating to minority group designation (MGD) data are listed below:

a. The EEO Officer shall be responsible for:

(1) The minority group designation (MGD) portion of the PMIS and all minority data generated therefrom.

(2) Controlling all MGD data not stored in the PMIS.

b. Field EEO officers shall be responsible for:

(1) Control and management of regional and center MGD data in the PMIS.

(2) Security and accuracy of regional, center, and headquarters MGD data in the PMIS and reports issued therefrom.

(3) Timely entry of appropriate MGD data into the PMIS.

c. Personnel officers shall assist field EEO officers in obtaining accurate and timely data and in the maintenance of MGD data in the PMIS.

d. Regional, center, and headquarters PMIS managers shall:

(1) Provide technical support to the field EEO officer in the development and execution of PMIS computer processes.

(2) Provide for the timely entry of MGD data into the PMIS and for the timely production of EEO reports.

(3) Periodically provide training on the capabilities of the PMIS to the Civil Rights Staff.

e. Facility Chiefs shall:

(1) Make a visual minority group identification of new employees to FAA.

(2) Transmit to a person designated by the field EEO officer or personnel officer the minority codes of employees who report directly to a facility.

f. Director of Personnel and Training shall provide support to the EEO Officer in the entry, maintenance, and extraction of MGD data in the PMIS.

g. Data Processing Center (AMS-350) shall provide technical support to the EEO Officer in preparing minority and female employment statistical summaries from System 193/194 magnetic tapes prepared and submitted by the Office of Personnel and Training.

202. MINORITY DATA CONTROL. All data containing minority group designators will be under the control of the EEO Officer and the field EEO officers in the regions and centers. The authority to access PMIS for MGD data may be delegated only after written request is made and approved by the EEO Officer or the appropriate field EEO officer. The written request must state the name of the requester, purpose, organization, title, date of the request, and the proposed disposition of any minority information.

203. MINORITY GROUP DESIGNATION (MGD). The PMIS data element "MINORITY" contains the minority group designation of present and past FAA employees. Listed below are the eight acceptable categories for minority group designations that may be used with the data element "MINORITY." Following each minority group designation is a corresponding numerical code in parenthesis:

a. Black (1). Persons having origins in any of the Black racial groups of Africa.

b. Hispanic (2). Persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

c. American Indian (3). Persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.

d. Asian or Pacific Islander (4). Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

e. Aleut (In Alaska Only) (5). Persons who are regarded as members of this group in the establishment where they work or community where they live.

f. Eskimo (In Alaska Only) (6). Persons who are regarded as members of this group in the establishment where they work or community where they live.

g. None of these (7). Persons not otherwise included in the above designations.

h. Unidentified (8). A minority code (8) will be recorded when an employee has not been identified. This code may only be used as a temporary measure until a 1 through 7 code is assigned through visual identification.

204. MINORITY GROUP IDENTIFICATION. The identification will be made by visual observation only. The category which appears to most closely reflect the individual's recognition in his or her community should be used when identifying persons who are of mixed racial and/or ethnic origins. Absolutely no questions will be asked of the employee about his or her racial or ethnic background. Visual observation of an employee's minority group category may be made as a result of a pre-employment interview and it need not wait until the employee enters on duty.

a. Facility Identification. When an employee has to report for duty directly to a facility, the facility chief or designee must transmit the minority code before the close of business on the day of the employee's entrance on duty.

b. Personnel Office Identification. Employees who report for entrance-on-duty processing in the personnel office will be identified at that time.

205. RECURRING REPORTS. All statistical reports utilizing MGD data which are to be generated on a recurring basis (i.e., more than once a year) must be authorized by the EEO Officer, ACR-1. The EEO Officer may delegate to the regional and center directors the authority to obtain approved reports via PMIS Predefined Processes (PDP's) at their regional/center location.

206. AD HOC REPORTS. Regional and center directors have the authority to produce one-time ad hoc reports to answer questions not covered by either the regular EEO summary reports issued by the EEO Officer or the approved recurring PMIS reports which regional and center directors have the authority to produce at their discretion. Regional and center directors should be extremely careful to insure that their authority to produce ad hoc PMIS reports is not abused.

207. ISSUANCE OF REPORTS. No reports based on MGD data will be disseminated to FAA organizations, employees, or the public without the prior approval of the EEO Officer or field EEO officer. Any reports containing totals for all FAA employees should be coordinated with the Personnel Management Information and Analysis Staff, APT-20, prior to release.

208. DELEGATION OF AUTHORITY.

a. Field EEO officers may delegate to personnel officers, PMIS managers, or chiefs, management systems divisions, the authority to develop, test, and execute computer processes utilizing MGD data for the civil rights staff. Field EEO officers may also delegate to personnel officers the authority to execute specified PDP's and utilize the reports that are produced for internal evaluation (i.e., within the personnel office) of regional/center employment programs.

b. The EEO Officer may authorize the Director of Personnel and Training and the Chief of the Personnel Management Information and Analysis Staff the authority to develop, test, and execute computer processes utilizing MGD data for the Office of Civil Rights. The EEO Officer may also delegate to the Director of Personnel and Training the authority to execute specified PDP's and utilize the reports that are produced for internal (i.e., within the Office of Personnel and Training only) evaluation of employment programs.

c. The EEO Officer may authorize the Director of Management Systems and the Chief of the Data Processing Center the authority to develop, test, and execute computer processes utilizing MGD data for the Office of Civil Rights.

209. PMIS PROCESS DEVELOPMENT. The number of processes maintained in the PMIS is limited and the development of additional processes may create an excessive number in the system. As a means of eliminating duplication of work effort and to provide maximum information exchange on the minority process available, the following procedures for control shall be implemented:

a. All processes which are stored in the PMIS and utilize minority data will be assigned the following categories (PDP CAT):

(1) LIST-CR shall be the category under which any PMIS computer process will be stored that produces a report with a present or former employee's name and minority group designation. See paragraph 210 below for restrictions on LIST-CR reports.

(2) CNT-CR shall be the category under which all other PMIS computer processes utilizing MGD data are stored.

b. The EEO Officer, assisted by the Office of Personnel and Training, will periodically review all PMIS processes utilizing MGD data. Duplicate processes will be eliminated, as will processes not deemed supportive of FAA's EEO program by the EEO Officer.

c. A summary of recurring computer processes which the field EEO officer may execute will be provided to all regions and centers at least annually by the EEO Officer.

210. REPORTS WITH EMPLOYEES' NAMES AND MGD'S. No reports shall be produced when the employee names and minority codes are shown except for:

- (1) EEO program usage by the EEO Officer or field EEO officers.
- (2) Compliance with the Privacy Act.
- (3) Specific circumstances approved by the CSC.
- (4) When authorized in writing by the EEO Officer.

211. EMPLOYEE NOTIFICATION.

a. Annually, the EEO Officer shall inform all employees that a minority group designation is recorded in the PMIS data file and shall provide instructions and procedures to any employee who desires to review the assigned racial designation.

b. Upon request, minority group designation data concerning an employee or former employee shall be disclosed to the individual to whom the data pertains in accordance with the procedures specified in paragraphs 203 and 204 of Order 1350.22, Protecting Privacy of Information About Individuals, June 27, 1977. Request should be submitted in person or via mail to the appropriate field EEO officer. If the individual cannot provide suitable identification, he or she will be required to sign a statement asserting his or her identity and attesting that he or she understands that knowingly and willfully seeking or obtaining access to records about another individual under false pretense is a misdemeanor punishable by a fine up to \$5,000. A signed notarized statement of identity may be required.

c. Employees may request a correction of their minority group designation. Requests for correction should be sent to the appropriate field EEO officer.

d. Information requested will be sent to the individual via sealed envelope marked "TO BE OPENED BY ADDRESSEE ONLY."

212. SECURITY OF MGD RECORDS. The requirements for responsible personnel to assure the confidentiality and integrity of minority group designation records of the Office of Civil Rights result from a variety of legal, administrative and moral obligations which necessitate the creation of a comprehensive security program to safeguard these records against accidental or deliberate destruction, modification, or disclosure. The goal of such a security program is to minimize, through the use of appropriate physical safeguards, the occurrence of any event that would result in the compromise of the confidentiality or integrity of this sensitive information entrusted to the custody of civil rights personnel.

a. Privacy Act Requirements. FAA Order 1350.19, Protecting Privacy of Information About Individuals, September 26, 1975, prescribes policy and procedures necessary for compliance with the Privacy Act.

b. Manual Records System Security. Chapter 5 of Order 1350.22, Protecting Privacy of Information About Individuals, June 27, 1977, establishes basic security standards for the protection, storage, transmission, reproduction, destruction, and inspection of manually kept records.

c. Automated Data Processing Security. FAA Order 1370.47A, Control and Handling of Sensitive Data in Automated Data Processing Organizations, March 17, 1976, prescribes policy and procedures necessary for compliance with the Privacy Act and Federal Information Processing Standards (FIPS) Publication 41 guidelines relating to ADP management responsibilities.

213. REVIEW PROCEDURES. Methods and procedures used in the collection, processing, and maintenance of MGD data in the PMIS will be periodically reviewed by the Office of Civil Rights with assistance of representatives from APT, ASE, and AMS as required. Procedural changes will be recommended as necessary to maintain adequate safeguards.

214.-299. RESERVED.

## CHAPTER 3. EMPLOYMENT PROGRAMS

300. GENERAL. In accordance with existing Federal guidelines FAA shall take affirmative actions to ensure equality of employment opportunity for all persons.

301. SPECIAL RECRUITMENT PROGRAMS. The development and implementation of special recruitment and hiring programs designed to increase opportunities for employment of minority group persons and women within the agency as a whole or within certain agency occupations is a step that should be taken whenever appropriate authority has determined that the required increases cannot be achieved through regular hiring processes. While such special recruitment programs will, by necessity, be directed toward persons who are members of the group or groups targeted for special emphasis, selection under these programs must, nevertheless, be made on the basis of individual qualifications as opposed to race, sex, national origin, or other non-merit factors. Special recruitment programs currently being used by the agency to support the accomplishment of EEO goals are listed as follows:

- a. Air Traffic Control Specialist (ATCS) and Electronics Technician (ET) Predevelopmental Training Programs. These programs (formerly known as the "150" Program) are designed to permit candidates to enter ATCS and ET occupations at lower grades commensurate with their level of experience. Candidates hired under this program must meet all agency and OPM requirements established for such positions.
- b. Cooperative Education Program. The FAA Cooperative Education Program is designed to recruit, hire, and develop two-year and four-year college students to assist in meeting current and future employment and staffing needs in such occupational categories as: Security Specialist, Equal Opportunity Specialist, Air Traffic Control Specialist, Computer Programmer, Engineer (civil, electronics, electrical, aerospace), Electronics Technician, Accountant, and Mathematician. The program is built around providing college students with related work experiences in coordination with their academic training. Upon completion of all academic requirements and upon completing a minimum period of full-time employment with the FAA, the student may be noncompetitively appointed to the entry level position related to his/her major field of study.
- c. Youth Oriented Employment Programs. These programs, which consist primarily of hiring carried out under our Summer Aid, Summer Employment Examination, and Stay-in-School programs, are designed primarily to (1) provide temporary employment to youth, many of whom are minorities and women and (2) provide youth with a positive orientation to FAA employment opportunities.

302. MERIT PROMOTION AND INTERNAL PLACEMENT PROGRAMS. Promotions and placements effected in the FAA shall be free of any discrimination based upon non-merit factors. At the same time promotion and placement programs should be fully responsive to those EEO goals and objectives designed to increase the representation of minorities and women within those grade level ranges and occupations where they are inadequately represented. In order to ensure that this twofold objective is met, it is imperative that promotion and placement programs be monitored to ensure that minorities and women receive adequate consideration for promotion and placement opportunities. In meeting this responsibility managers, supervisors, and personnel officers shall ensure that the criteria used to effect promotions and placements is job related and responsive to EEO objectives and requirements set forth in the EEO Action Plan and other appropriate directives. As deemed necessary, field EEO officers should designate appropriate EEO representatives to participate in merit promotion rating panel activities.

303. THE HANDICAPPED EMPLOYEE'S PROGRAM. This is a special hiring effort carried out in accordance with FAA's policy of nondiscrimination on account of mental or physical handicap and in response to the Federal Government's commitment to:

a. Assist the physically impaired (including disabled veterans) who are not occupationally handicapped when assigned to the right job.

b. Consider the mentally restored for employment. (Mentally restored are persons whose mental or emotional illness was severe enough to require hospitalization.)

c. Employ the mentally retarded who have demonstrated the ability to perform certain tasks.

304. LOCAL PROGRAMS FOR THE HANDICAPPED. Regions and centers may implement special programs designed to resolve recruitment and employment problems which may be unique to the geographical area covered by the jurisdiction.

305. UPWARD MOBILITY PROGRAMS. In accordance with Order 3330.36, Upward Mobility Program, March 6, 1978, employing jurisdictions shall implement programs designed to provide specific career opportunities for lower-graded employees (below GS-9 or non-GS equivalent) who are in positions or occupational series which do not enable them to realize their full work potential. Selections shall be made in accordance with applicable merit promotion program regulations. However, a major emphasis underlying this upward mobility concept is the development of advancement opportunities for groups that are underrepresented in occupations that offer advancement potential beyond GS-7. Therefore, employing jurisdictions shall ensure that this emphasis is given proper recognition in the design and implementation of upward mobility selection programs.

306. INCENTIVE AWARDS PROGRAM. When a manager's, supervisor's, or employee's performance or action results in significant contribution to the EEO program, consideration shall be given to recommending appropriate recognition based upon the criteria provided in Order 3450.7C, Incentive Awards Program, August 29, 1975. All recommendations for awards based upon EEO contributions should be coordinated with the appropriate field EEO officer.

307. EVALUATING EEO PERFORMANCE OF SUPERVISORS AND MANAGERS. In accordance with Order 3430.3A, Evaluating and Improving Employee Performance, October 29, 1973, and FAA performance evaluation program requirements, each manager and supervisor shall be assigned a rating in the area of equal employment opportunity as a major job assignment. Ratings assigned should be supportable in terms of the criteria outlined in position performance standards.

308.-399. RESERVED.



## CHAPTER 4. EEO PLANS

400. GENERAL. In accordance with existing Federal guidelines the FAA, each of its regions and centers, and the Washington headquarters shall implement a new or revised Equal Employment Opportunity (EEO) Plan at the beginning of each fiscal year.

401. THE FAA EEO PLAN is the responsibility of the EEO Officer, with the assistance and cooperation of the Director of Personnel and Training.

402. EACH REGIONAL, CENTER, AND WASHINGTON HEADQUARTERS PLAN is the responsibility of the appropriate field EEO officer, with the assistance and cooperation of the appropriate personnel officer.

403. TIMELY PREPARATION AND SUBMISSION. EEO plans shall be issued and submitted to the appropriate Federal reviewing authority not later than October 1 of each year. Five (5) copies of the regional, center, and Washington headquarters EEO plan shall be also forwarded to the Director of Civil Rights, ACR-1, not later than October 1.

404. IMPLEMENTATION. All regions, centers, and responsible Washington headquarters organizations will review the FAA plan and will make necessary resources available to assure implementation of all its provisions which pertain to their employing jurisdictions. The EEO Officer and field EEO officers will be held accountable for monitoring enactment of the plan and for preparation of all necessary reports in conjunction with the plan.

405. REPORTS. Each region, center, and Washington headquarters shall forward Quarterly EEO Plan Reports (RIS: CR-1400.2) in duplicate to the Director of Civil Rights, ATTN: ACR-3, within 20 calendar days following the end of the quarter for which the report is made. Quarterly EEO Plan Reports (RIS: CR-1400.2) are narrative reports. Each report must describe the extent to which specific affirmative actions of the FAA plan and the regional, center, or headquarters plan have been accomplished.

406. LOCAL PLANS. Each region, center, and the Washington headquarters element may require EEO plans from their subordinate organizations.

407.-499. RESERVED.



## CHAPTER 5. SPECIAL EMPHASIS PROGRAMS

500. GENERAL. The Federal Women's Program (FWP) and the Hispanic Employment Program (HEP), formerly the 16 Point Program and the Spanish Speaking Program, are integral parts of the FAA's continuing affirmative program for equal opportunity in employment. The FWP is designed to give special attention to matters affecting the employment and advancement of women. The HEP is designed to give special attention to resolving those problems of employment which are peculiar to Hispanic Americans.

501. GOALS. The goals of the Federal Women's Program and the Hispanic Employment Program are to achieve and maintain a distribution of women and Hispanics in the FAA work force in each occupation, at each grade level, and in policymaking bodies which reasonably will reflect the availability of women and Hispanics for such positions and for similar positions in the U. S. work force.

502. PROGRAM ADMINISTRATION. The Federal Women's Program and the Hispanic Employment Program shall be administered by the EEO Officer and, in the regions and centers, by the field EEO officer.

503. THE FEDERAL WOMEN'S PROGRAM COORDINATOR (FWPC). The EEO Officer shall designate a full-time equal opportunity specialist to serve as the Federal Women's Program Coordinator at the national level. Each field EEO officer shall designate an FWPC at the field level and report the designation to the EEO Officer. Whenever possible, the field FWPC shall be a full-time equal opportunity specialist on the Civil Rights Staff. The FWPC shall assist the EEO Officer or field EEO officer in affirmative programs to meet the goals and objectives of the FWP.

504. THE HISPANIC EMPLOYMENT PROGRAM COORDINATOR (HEPC).

a. Designation. The EEO Officer shall designate a full-time equal opportunity specialist to serve as the Hispanic Employment Program Coordinator at the national level and, because of significant concentrations of Hispanic populations, each field EEO officer in Eastern, Southern, Great Lakes, Southwest, Western, Rocky Mountain, and Central Regions shall designate a HEPC at the field level. Whenever possible, the field HEPC in each of the regions listed above, shall be a full-time equal opportunity specialist on the Civil Rights Staff. In other regions and centers, the designation of a part-time or collateral duty HEPC will suffice. The HEPC shall assist the EEO Officer or field EEO officer in affirmative programs to meet the goals and objectives of the HEP. In the Alaskan Region, as an alternative HEPC, an Alaskan Native Program Coordinator shall be designated to deal with the special employment problems of Alaskan Natives.

b. Bilingual and Cultural Consideration. For the purposes of this order, bilingual is the ability to communicate in Spanish and in English. Bilingual ability, while not required, could significantly enhance the successful implementation of the program. Cultural consideration refers to familiarity with and understanding of Hispanic lifestyle, customs, traditions, aspirations, and economic and social problems, and an ability to communicate, establish rapport, and work harmoniously and efficiently with Hispanic group members. Since cultural factors are defined in terms of knowledges and abilities, simply being a member of a Hispanic group does not in itself indicate possession of these factors.

505. SPECIAL EMPHASIS PROGRAM FUNCTIONS.

a. Ensure that the Federal Women's Program and the Hispanic Employment Program are implemented as integral parts of the total EEO program.

b. Coordinate with Personnel Management Divisions to make positive outreach efforts to recruit women and Hispanics into technical and professional occupations as well as other occupations including FAA sponsored economic opportunity programs.

c. Encourage and assist women and Hispanic employees and applicants to achieve their highest career potential consistent with merit principles and individual ambition and abilities.

d. Develop liaison with schools and universities to promote and assist in the development of curricula related to agency programs which will enhance the opportunities for employment of women and Hispanics.

e. Develop policies and procedures that prevent systemic discrimination against women and against Hispanics.

f. Develop programs which improve the employment status of women or Hispanics.

g. Participate in activities with other Government agencies and community organizations that will further the goals and objectives of the Federal Women's Program and the Hispanic Employment Program.

h. Work with other Government agencies and community organizations to provide information regarding services, such as job and housing referrals and child care centers which can be used by persons who need assistance to obtain or continue employment.

i. Analyze exit interviews of women and Hispanic employees to determine methods FAA may utilize to decrease their attrition rate.

j. Insure that special EEO groups, such as EEO counselors and EEO ad hoc committees, include a representative number of women and Hispanics and monitor composition of other groups (merit promotion panels, policy making bodies, etc.) for the inclusion of women and Hispanics and other minorities.

k. Assure FWP and HEP input into the formulation of EEO plans.

l. Review merit promotion lists to determine any trends toward non-selection of women or Hispanics in non-traditional occupations in which they are underrepresented.

m. Assure adequate publicity of the FWP and HEP including display on appropriate agency bulletin boards of the names, addresses, and telephone numbers of the headquarters, regional, and center FWPC and HEPC.

n. Review training, position descriptions, work facilities, work duties, selection criteria, performance standards, and performance rating to determine whether or not there are any disparities because of sex or national origin.

o. Develop, monitor, prepare and analyze statistics on employment of women and Hispanics as compared to others in the various grade levels and occupations with FAA, the Federal service as a whole, and the work force in the geographic area being measured. Statistics should include, but not be limited to significant measurement of employment status, such as total number of employees, grade levels, time in grade, training, developmental opportunities, supervisory positions and attrition rates.

p. Assure that supervisors and managers participate in training and other activities designed to increase their knowledge and understanding of the goals of the FWP and HEP and their participation in achievement of the goals of their programs.

q. Evaluate the adequacy of agency activities in assuring EEO for women and Hispanics.

r. Provide that superior performance of supervisors in implementing the FWP and HEP is recognized and publicized, and that inadequate performance is appropriately counseled for improvement.

s. Publicize successful achievement of women and Hispanics in aviation related activities.

t. Coordinate activities of committees concerned with EEO for women and Hispanics.

506.-599. RESERVED.



## CHAPTER 6. EMPLOYEE GROUPS AND COMMITTEES

600. GENERAL. Employee groups can be effective in furthering the objectives of the equal employment opportunity program, including the Federal Women's Program and the Hispanic Employment Program. In lieu of establishing new employee groups, the EEO Officer and field EEO officers may chose to utilize normal organizational channels and authority, staff action, liaison, and informal meetings and procedures to carry out their day-to-day responsibilities and specific tasks. However, if an employing jurisdiction determines that ad hoc committees, or management advisory groups or organizations, may serve more effectively in accomplishing EEO goals and objectives, such entities may be established in accordance with Order 1110.30A, Committee Management, April 21, 1972.

601. AD HOC COMMITTEES may be appointed under the authority of the EEO Officer or field EEO officer on an as needed basis, for a specified period of time, to help carry out specific tasks. Supervisors are encouraged to make designated employees available for committee assignments. Employees should be allowed official time to perform committee business.

602. MANAGEMENT AND ADVISORY GROUPS. The Administrator and regional and center directors may appoint management advisory groups to provide for the successful implementation of the Equal Employment Opportunity Program.

603.-699. RESERVED.



## CHAPTER 7. COMMUNITY OUTREACH

700. PURPOSE. This chapter describes and sets forth FAA's community outreach effort.

701. GENERAL. FAA's community outreach effort is essentially a public relations approach to the achievement of the agency's EEO goals and objectives. Community outreach differs from EEO recruiting to meet specific staffing objectives, although at times community outreach may be accomplished concurrently with EEO recruiting. Each region, center, and FAA headquarters shall develop and implement a continuing community outreach program with planned goals and objectives at various organizational levels including the local facility level. Community outreach will be a coordinated effort in each community or locality. This may be accomplished through a coordinated FAA community EEO plan or by other means determined by the employing jurisdiction involved. In any case a coordinated "one agency" approach to the community outreach effort will be implemented.

702. OBJECTIVES. The objectives of community outreach are to:

- a. Inform women and minority organizations and referral sources of job opportunities within FAA.
- b. Establish and maintain good working relations with leaders of women and minority organizations, community leaders, officials of schools, colleges, and technical institutions; and state, local, and Federal officials involved in EEO program activities.
- c. Encourage women and minority students to prepare themselves for jobs in FAA.
- d. Project an image of FAA as an equal opportunity employer.
- e. Actively support public transportation, day care centers, and other community services when lack of availability, or a shortage of any of these services offer a barrier to the hiring and the upward movement of women and minorities.

703. IMPLEMENTATION.

- a. The field EEO officer assisted by the personnel officer will be responsible for implementing the community outreach effort.

b. Local facility chiefs at field office level and subordinate supervisors as required will be responsible, in duty status, for planning and participating in the community outreach program in fulfillment of their EEO performance standards. Managers and supervisors are encouraged to involve women and minority employees in community outreach.

c. EEO specialists, EEO recruiters, the FWPC, HEPC, and others involved in the EEO program shall participate in community outreach efforts. Employees who attend such meetings as official FAA representatives will normally be in a pay status.

704. COMMUNITY OUTREACH ACTIVITIES. Community outreach may include a wide variety of activities among which may be considered the following examples:

a. Visitation at local schools, colleges, and technical institutes; attendance at job fairs and career days; or speaking at these institutions about FAA, Federal, or other job opportunities.

b. Visitation of individuals and groups, including women and minorities, to FAA facilities.

c. Visitation to women and minority organizations, community centers, tribal councils, women and minority leaders, and others involved in seeking to further the EEO program.

d. Attendance at meetings, conventions, seminars, training sessions, and conventions of women and minority organizations.

e. Active involvement in carrying out aviation education programs.

705. HELP IMPROVE LOCAL CONDITIONS AND ATTITUDES WHICH ADVERSELY AFFECT EMPLOYMENT AND PLACEMENT OF MINORITY AND WOMEN APPLICANTS AND EMPLOYEES. In all contacts with community leaders local FAA managers shall exercise positive influence and persuasion to correct practices of discrimination or otherwise remove barriers which affect the employability of employees within their local jurisdiction.

706. FAIR HOUSING. Local coordinators, managers, and supervisors shall work with community groups, realty boards, church groups, etc., on a planned basis and in cooperation with other local Federal Government organizations, such as Federal Executive Boards, in making open occupancy housing available for minority employees or prospective employees. In view of the close relationship between availability of suitable housing and minority recruitment, local FAA officials must maintain close coordination with field EEO officers and personnel officers involving housing problems.

707.-799. RESERVED.

## CHAPTER 8. PROCESSING DISCRIMINATION COMPLAINTS

800. COVERAGE. The provisions of this order apply to all employees of the FAA and applicants for employment with the FAA who believe that they have been discriminated against, in connection with the FAA's employment practices, on the basis of race, color, religion, sex, national origin, or physical or mental handicap. This chapter also provides guidelines for the processing of complaints of employees and applicants who are at least 40 years of age who believe that they have been discriminated against on the basis of age.

801. EXCLUSIONS. Excluded from coverage under this order are the following

a. Complaints or allegations of discrimination based upon factors other than race, color, religion, sex, national origin, age or physical or mental handicap.

b. Complaints or allegations of discrimination based upon age from employees and applicants who were not at least 40 years of age at the time that the discriminatory action is alleged to have occurred.

c. Complaints or allegations of discrimination from foreign nationals employed or seeking employment in overseas locations.

802. RIGHT TO REPRESENTATION. A complainant has the right to be accompanied, represented, and advised by a representative of his or her choosing at any stage of the complaints procedure, including the counseling stage. The person chosen, if an FAA employee, must be willing to represent the complainant. The representative shall be designated in writing and the designation shall be signed by the complainant and made a part of the complaint file.

803. REPRESENTATION BY AN ORGANIZATION. A complainant may be represented by an organization provided that one individual within the organization is identified as the person who will serve as representative.

804. PARTICIPATION OF UNION OFFICIALS. Union officials normally shall not participate in the adjudication of individual discrimination complaints, unless a union official or member is serving as the complainant's representative.

805. REPRESENTATIVES WHO ARE FAA EMPLOYEES. Any complainant's representative who is an employee of the FAA, including attorneys, shall be provided a reasonable amount of official time during normal duty hours to represent the complainant in discussions and meetings involving the complainant and the EEO counselor, except when it is operationally impracticable for the representative to be released from his or her official duties. Official time shall also be provided during normal duty hours to assist the complainant in preparing a written discrimination complaint when the complaint is being submitted in accordance with the requirements of this order.

a. This provision shall apply only when the complainant has presented a written and signed statement designating the representative by name to the field EEO officer or other official receiving the complaint.

b. When the complainant's designated representative is required to travel in order to represent the complainant, the FAA is not obligated to pay travel costs or provide official time for travel associated with his or her participation.

806. COMPLAINANTS, REPRESENTATIVES, AND WITNESSES who are FAA employees shall make appropriate arrangements with their supervisors when they wish to be released from their duties to consult with EEO counselors during normal duty hours. Such employees shall be provided a reasonable amount of official time to consult with the EEO counselor, except when it is operationally impracticable to be released from official duties.

807. EMPLOYEES WHO MAY NOT REPRESENT COMPLAINANTS are EEO specialists, EEO counselors, personnel specialists, Federal Women's Program Coordinators, Hispanic Employment Program Coordinators, and any other persons whose designation as representative might result in a conflict of interest or conflict of position.

808. REPRESENTATIVES WHO ARE NOT FAA EMPLOYEES. The FAA shall not be responsible for the participation of and the FAA shall not in any way compensate any representative who is not an FAA employee.

809. FREEDOM FROM REPRISAL. EEO counselors, complainants, complainant's representatives and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal as a result of their participation in the discrimination complaint process.

810. REQUIRED CONSULTATION WITH EEO OFFICER. Any decision which constitutes an adverse or disciplinary action or any change in duty station, or job assignment, or supervision of an employee who has contacted an EEO counselor or who has filed a discrimination complaint must be coordinated with the EEO Officer, through the field EEO officer, prior to being effected. When advised that such action is proposed, the EEO Officer shall review the proposed action and the recommendation of the field EEO officer and determine whether the action should be taken as proposed. Consultation is required on all such actions which are initiated after the employee has contacted an EEO counselor. Temporary changes to meet emergency needs of FAA are exempted from the requirement for prior consultation. In such cases, the responsible management official shall consult with the field EEO officer at the first opportunity.

811. REQUIREMENT TO CONSULT WITH AN EEO COUNSELOR. Any employee or applicant who believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age or physical or mental handicap must consult with an EEO counselor when he or she wishes to resolve the matter through procedures set forth in this order. The EEO counselor has 21 calendar days to attempt an informal resolution of the matter. (See paragraph 817.) The consultation with an EEO counselor must take place within 30 calendar days of the date of the matter causing the employee or applicant to believe that he or she has been discriminated against. When the matter involves a personnel action, consultation must take place within 30 calendar days of its effective date.

a. Extenuating circumstances. In cases in which extenuating circumstances may have prevented the complainant from contacting the counselor in a timely manner, the EEO Officer may grant a waiver of the time limits.

(1) Requests for waivers must be made through the field EEO officer who will forward the request to the EEO Officer.

(2) EEO counseling may continue while a request for a waiver of the time limits is being processed, provided that the complainant is informed that a formal discrimination complaint, if filed at a later date, may not meet the requirements for acceptability if the waiver is not granted.

812. RIGHT TO CONFIDENTIALITY. The EEO counselor shall inform the complainant of his or her right to remain anonymous during the precomplaint counseling process. During precomplaint counseling, the EEO counselor shall not reveal the complainant's name to anyone without the complainant's permission to do so.

813. FACTFINDING INQUIRY. The EEO counselor shall conduct a factfinding inquiry into the allegations of discrimination in accordance with the guidelines provided in Appendix 2, Guidelines for EEO Counseling in FAA.

a. EEO counselors perform their duties in an official capacity, and in that capacity, they shall have access to all pertinent information and records including official personnel folders, promotion and hiring lists, training records, and any other related documentation whenever required.

b. The scope of the inquiry shall be limited to the issues in the complainant's allegation of discrimination. The counselor shall not develop or review information pertaining to any individuals unless the information is relevant to the allegation of discrimination. Reviews of personnel records and other employee files should, therefore, be conducted only when the counselor has reason to believe that the information in such records will have a direct bearing upon the outcome of the inquiry.

c. When the complainant has named or otherwise identified an individual as being responsible for an alleged act of discrimination, the EEO counselor must solicit the views of that alleged discriminating official (ADO) unless the counselor otherwise obtains and provides information which exonerates the ADO to the clear satisfaction of the complainant.

(1) Prior to the counselor's interview with the ADO, the ADO must be advised that he or she has been named or identified by a complainant, must be informed of the nature of any accusations made, and must be advised of the right to have a representative present during the interview to provide advice on how to respond to any questions the counselor may ask.

(2) The EEO counselor must be careful not to reveal the identity of the complainant when the complainant has not authorized the EEO counselor to do so.

814. DISCUSSION OF FINDINGS. The EEO counselor shall discuss the findings of factfinding inquiry with the complainant and appropriate management officials, separately or together, in an effort to determine whether the allegation can be resolved on an informal basis.

a. In conducting these discussions, the counselor shall not comment on the merits of the allegation but should present the results of the factfinding inquiry for consideration.

b. The counselor shall assist the complainant and management officials in identifying possible approaches to informal resolution.

815. RESOLUTION AGREEMENT. Managers and supervisors shall make conscious and constant efforts to identify and act upon opportunities for informal resolution whenever a resolution agreement is considered possible. The EEO counselor shall assist in developing the terms of the agreement.

a. The counselor shall provide a written summary of the informal agreement if any of the parties involved request it or if the counselor feels that it would be beneficial to the resolution.

b. The counselor shall inform the complainant of his or her right to file a discrimination complaint if the resolution agreed upon is not carried out.

816. EXTENSION OF COUNSELING. When the complainant and counselor have agreed to an extension of the 21 day counseling period until an agreed upon date pending informal resolution of the allegation, the counselor shall at the time of the extension present the complainant with a written Notice of Right to File a Discrimination Complaint (appendix 3).

a. If the complainant wishes to file a formal discrimination complaint prior to termination of counseling, he or she may do so after 21 calendar days following the first contact with an EEO counselor.

b. The notice shall include the titles of appropriate officials with whom a complaint may be filed.

817. TERMINATION OF COUNSELING. The EEO counselor shall conduct a final counseling interview when the 21 day period for EEO counseling or any extension thereof (paragraph 816) has expired and informal resolution has not been achieved, or when the counselor has determined that counseling should be terminated at an earlier time during that period. During the final interview, the counselor shall provide the complainant with written Notice of Final Interview with the EEO Counselor (appendix 4).

a. If the complainant wishes to file a formal discrimination complaint after termination of counseling, he or she must do so within 15 calendar days of the date of the final counseling interview.

b. The notice shall include the date of the final counseling interview, and titles of the appropriate officials with whom a complaint may be filed.

818. UPON TERMINATION OF COUNSELING. The EEO counselor shall neither restrain nor encourage the complainant with regard to his or her decision to pursue the matter further through the formal discrimination complaint procedure. EEO counselors shall not mail or deliver complaints for complainants.

819. EEO COUNSELOR'S REPORT. When the counselor is advised by the field EEO officer that a formal discrimination complaint has been submitted, the counselor shall forward a written report summarizing his or her activities in connection with the complaint to the field EEO officer. A copy of the report shall also be forwarded to the complainant by the field EEO officer.

a. This report should be forwarded to the field EEO officer within three working days of the date that the counselor is notified that a discrimination complaint has been filed.

b. The report shall be written in accordance with the format provided in appendix 5.

820. FILING A COMPLAINT. A complainant may file a formal discrimination complaint only if paragraph 811 has been complied with, the allegations in the complaint and the basis for the complaint are identical to those brought to the attention of the EEO counselor, and the complaint is:

a. In writing.

b. In accordance with the time limits specified in paragraphs 816a and 817a. The complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark or if delivered in person, on the date it is delivered to the receiving official.

c. Signed by the complainant.

d. Submitted to the field EEO officer or other official designated to receive complaints. Officials designated to receive complaints include the following:

- (1) Field EEO Officer.
- (2) Regional or Center Federal Women's Program Coordinator.
- (3) Regional or Center Hispanic Employment Program Coordinator.
- (4) Regional or Center Director.
- (5) FAA Director of Civil Rights, ACR-1.
- (6) FAA Federal Women's Program Coordinator, ACR-3.
- (7) FAA Hispanic Employment Program Coordinator, ACR-3.
- (8) Federal Aviation Administrator, AOA-1.
- (9) Departmental Director of Civil Rights, S-30.
- (10) Departmental Federal Women's Program Coordinator, S-32.
- (11) Departmental Hispanic Employment Program Coordinator, S-32.
- (12) Secretary of Transportation, S-1.

821. FORWARDING A COMPLAINT. When an official other than the field EEO officer receives a discrimination complaint, that official shall forward the complaint immediately to the appropriate field EEO officer. The field EEO officer must within five (5) working days of receipt of the complaint:

a. Obtain the report of the EEO counseling and a copy of the Notice of Final Interview with the EEO Counselor.

b. Review the complaint, the EEO counselor's report, and a copy of the Notice of Final Interview with the EEO Counselor to determine whether the filing requirements listed in paragraph 820 of this order have been met.

c. Forward the following information to the EEO Officer in a sealed opaque envelope with a transmittal letter providing any appropriate comments:

- (1) Name, office address, and telephone number of complainant.
- (2) Date on which most recent alleged discrimination took place.
- (3) Basis of complaint.
- (4) Issue(s)/allegation(s) defined.
- (5) Recommendation to accept/reject.
- (6) Date of initial contact with counselor.
- (7) Date of final interview with counselor.
- (8) Date complaint signed.
- (9) Resolution desired by complainant.
- (10) Original and one copy of complaint.
- (11) Original and one copy of counselor's report (report to be signed and dated).
- (12) Two copies of the Notice of Final Interview with EEO Counselor.

d. Notify the complainant or his or her representative in writing that the correspondence has been received and forwarded.

e. Advise the head of the organizational element and the personnel officer in the jurisdiction in which the complaint arose that a discrimination complaint has been filed and that paragraph 810 must be adhered to. This notification shall be in writing.

822. AVOIDANCE OF DELAY. It is important that delays in the forwarding of complaints and related correspondence to the EEO Officer not be permitted to occur at any point once a complaint has been received.

a. Efforts to Resolve the Complaint. If the field EEO officer determines that further efforts to resolve the complaint on an informal basis should be carried out, he or she shall direct that these efforts be taken although the complaint is being forwarded to the EEO Officer. The fact that further attempts at informal resolution are being carried out shall be stated in the letter transmitting the complaint.

b. Discrepancies noted in connection with the filing of a complaint shall be stated, along with appropriate recommendations, in the letter transmitting the complaint.

823. ACCEPTANCE OR REJECTION. When a complaint is forwarded to the EEO Officer, it will be reviewed to determine whether or not the complaint meets the requirements for acceptability.

a. A complaint will be accepted if the filing requirements listed in paragraph 820 have been met. Any issue that sets forth identical matters as contained in a previous complaint filed by the same complainant which is pending in the Department or which has been decided by the Department will be rejected.

b. The EEO Officer will notify the complainant in writing as to whether the complaint has been accepted or rejected, or which issues in the complaint have been accepted or rejected. In the case of rejection, the complainant will also be informed of his or her right of administrative appeal and the right to file a civil action if the complaint is not based on age or on physical or mental handicap. The right to file a civil action based on alleged age discrimination is covered in chapter 9 and the right to file a civil action based on alleged mental or physical handicap discrimination is covered in chapter 10.

(1) The EEO Officer will forward a copy of the notice of acceptance or rejection to the appropriate field EEO officer. Whenever a complaint is rejected, a copy of the rejection letter will be forwarded to each alleged discriminatory official named in the complaint.

(2) The field EEO officer shall advise the head of the organizational element in which the complaint arose of the acceptance or rejection of the complaint.

824. INVESTIGATION. Upon notification by the EEO Officer of acceptance of a complaint, the Director of EEO will assign the complaint to an EEO investigator for investigation.

a. The field EEO officer will notify appropriate management officials of the dates established for the investigation, determine the availability of individuals requested by the investigator, and assure that requested information and materials are made available.

b. Upon completion of the investigation, the Director of EEO, in accordance with Departmental regulations will forward copies of the investigator's report to the complainant or the complainant's representative, to the appropriate regional or center director, and to the EEO Officer. In Washington headquarters, the EEO Officer shall forward a copy of the investigator's report to the appropriate office or service head.

825. INFORMAL RESOLUTION AND PROPOSED DISPOSITION. Upon receiving the investigative report, the field EEO officer shall coordinate efforts toward informal resolution of the complaint. In doing so, the field EEO officer shall consult with the complainant, appropriate management officials, and, at his or her discretion with the alleged discriminating official, regarding the terms under which the complaint can be resolved informally.

a. When agreement is reached within 10 calendar days, and an informal resolution is agreed upon:

(1) The terms of the resolution shall be stated specifically, in writing, and signed by the complainant, an appropriate management official, and the field EEO officer. The signed agreement shall include a statement advising the complainant of his or her right to reinstate the complaint if the terms of the agreement are rescinded or are not implemented for any reasons not attributable to acts or conduct of the complainant. Any reinstatement request must be in writing to the Director of EEO.

(2) The field EEO officer shall assure that the alleged discriminating official is informed of the terms of the resolution.

(3) The field EEO officer shall forward the original copy of the signed agreement to the EEO Officer within 10 days of his or her receipt of the investigative report. The EEO Officer shall forward the agreement to the Director of EEO.

b. When 10 calendar days have passed, and there is no informal resolution:

(1) The field EEO officer shall make a determination as to whether or not the findings of the investigative report support the complainant's allegations of discrimination.

(2) Within 10 days of the date that the investigative report is received by the field EEO officer, he or she shall prepare a proposed disposition for the approval and signature of the regional or center director, or office or service head in headquarters. The responsibility for approving and signing the report may be delegated to the field EEO officer. The proposed disposition, which shall be forwarded to the EEO Officer, shall be written in accordance with the format provided in appendix 6 and shall state:

(a) A finding on the issue of discrimination.

(b) Any actions taken or recommended as a result of the investigative report review and/or attempt at informal resolution. All actions recommended must be ones which, the regional or center director, or office or service head is willing and able to carry out.

(c) Any further attempts which are in progress to resolve the complaint.

826. REVIEW OF THE PROPOSED DISPOSTION. Upon receipt of the proposed disposition, the EEO Officer shall:

a. Review the proposed disposition in conjunction with the investigative report to determine whether the allegations of discrimination are sustained by the findings of the investigation and whether the proposal is appropriate.

(1) Any disagreement between the regional or center director or office or service head and the EEO Officer over the proposed disposition, shall be resolved at a higher management level.

(2) Any problems relating to the adequacy of the field EEO officer's review and subsequent attempts at informal resolution shall be resolved at this time.

b. Forward the final FAA proposed disposition of the complaint to the Director of EEO within 15 days of the date that the investigative report is received.

(1) This proposed disposition will state FAA's findings with respect to the complaint and the specific actions, if any, that have been taken or proposed with respect to the findings.

(2) FAA's proposed disposition will be written in accordance with the format given in appendix 7.

827. OFFER OF PROPOSED DISPOSITION. The Director of EEO will forward FAA's proposal for disposition of the complaint to the complainant with a notice advising him or her of:

a. The right to accept the proposed disposition as the final decision in the complaint matter.

b. The right to reject the proposed disposition and request a Departmental decision on the complaint without a hearing.

c. The right to reject the proposed disposition and request a formal hearing conducted by a complaints examiner designated by the Equal Employment Opportunity Commission prior to the issuance of a Departmental decision.

d. The requirement to respond in writing to the notice within 15 calendar days of its receipt.

828. ABSENCE OF INFORMAL RESOLUTION OR PROPOSED DISPOSITION. If FAA fails to submit an informal resolution or a proposed disposition to the Director of EEO within 15 calendar days of receipt of the investigative report by the field EEO officer, the Director of EEO may make the proposal for disposition of the complaint based on the existing record.

829. FAILURE TO RESPOND. If the complainant fails to respond to the offer of proposed disposition within 15 calendar days, the Director of EEO may adopt the proposed disposition and issue a final Departmental decision based on the existing record.

830. ACCEPTANCE OF PROPOSED DISPOSITION. When the complainant accepts the proposed disposition, the proposal will be considered the final decision in the complaint matter.

831. REQUEST FOR DEPARTMENTAL DECISION. When the complainant requests a Departmental decision without a hearing, the Director of EEO, in accordance with Departmental regulation, will render a final Departmental decision upon the record that exists at that time.

832. REQUEST FOR A HEARING. When the complainant elects to have a hearing prior to the issuance of a Departmental decision, the Director of EEO will make arrangements with the Equal Employment Opportunity Commission for a hearing to be conducted by an EEO complaints examiner appointed by the Commission.

833. IDENTIFICATION OF AGENCY REPRESENTATIVE. When the Director of EEO advises the EEO Officer that the complainant has requested a hearing, the EEO Officer will coordinate with the appropriate region, center, or headquarters element to assure that an agency representative is identified.

a. The EEO Officer will transmit the name, title, organization, mailing address, and telephone number of the agency representative to the Director of EEO, who will in turn forward it to the Equal Employment Opportunity Commission.

b. The agency representative will provide for a suitable hearing room, and availability of any witnesses or materials requested by the EEO complaints examiner. The employing jurisdiction is responsible for the payment of all costs connected with the hearing, including the costs of recording the hearing.

834. SELECTION OF AGENCY REPRESENTATIVE. With the exception of EEO officials, any agency official who, in the judgement of the regional or center director, has sufficient knowledge of FAA policies and practices to represent the FAA in an effective manner, may be designated as the agency representative for the region or center. This qualification is often found in the staff of the regional or center counsel. The appointment of agency representatives need not, however, be restricted to persons in that office. The Chief Counsel shall designate the agency representative for Washington headquarters.

835. ROLE OF AGENCY REPRESENTATIVE. The primary role of the representative during the hearing is to provide direct support and assistance to the EEO complaints examiner in determining whether there is a basis for the complaint. In this capacity the agency representative does not defend the agency or any of its officials or policies, but aids in the process of obtaining the truth by bringing forth any information, whether helpful to the FAA's position or not, which will assist the EEO complaints examiner in fairly deciding the issues.

836. EEO COMPLAINTS EXAMINER'S FINDINGS AND RECOMMENDED DECISION. Upon completion of the hearing, the EEO complaints examiner will provide the Director of EEO with a report setting forth findings, analysis, and a recommended decision, along with a verbatim transcript of the hearing.

837. DEPARTMENTAL DECISION. The Department of Transportation renders its final decision in the complaint matter based upon the total existing complaint record.

a. When a hearing has been conducted, the findings, analysis, and recommended decision of the EEO complaints examiner will be considered in the Departmental decision.

(1) When the final Departmental decision rejects or modifies the recommendation of the EEO complaints examiner, the specific reasons for rejection or modification will be stated in detail.

(2) When the complaints examiner has submitted a recommended decision finding discrimination and the Department has not issued a final decision within 180 calendar days after the date the complaint was filed, the complaints examiner's recommended decision automatically becomes the final Departmental decision 30 calendar days after the recommended decision has been submitted to the Department.

b. When a hearing has not been conducted, the decision will be based only upon information in the complaint file.

c. The decision will be in writing. The Director of EEO will forward copies of the Departmental decision to the complainant or his or her representative, the EEO Officer, and any alleged discriminating officials, as appropriate. The EEO Officer shall transmit a copy of the decision to the field EEO officer.

d. The decision may require any remedial action authorized by law and determined to be necessary or desirable to resolve the issue of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination.

e. The letter transmitting the decision to the complainant will state the complainant's right to appeal the decision.

f. If the Departmental decision, either directly through a finding of discrimination or indirectly through a finding of error, concludes or implies impropriety on the part of the alleged discriminating official, the entire complaint file, with names and identifying information deleted where appropriate, must be made available for his or her review.

838. IMPLEMENTATION OF THE DECISION. The EEO Officer shall transmit the decision along with any implementing instructions to the appropriate region, center, or headquarters office or service director. Discussion of the decision involving these officials will be conducted when deemed necessary by any of the officials involved.

a. Upon receipt of the decision, the region, center, or headquarters element involved will make arrangements to discuss the decision with any management officials who are affected by the decision to assure that the decision and the terms governing its implementation are understood.

b. The region, center, or headquarters element involved will also provide the complainant with an opportunity to discuss the decision and its implementation if he or she wishes to do so.

839. DISCIPLINARY ACTION. If the Director of EEO deems that disciplinary action may be appropriate, he or she will recommend by memorandum that action be initiated and will set forth the reasons for the recommendation.

a. The memorandum shall be forwarded by the EEO Officer to the regional or center director or office or service head in Washington headquarters for appropriate response. The regional or center director or office or service head shall respond in writing to the EEO Officer within 30 days of receipt of the Departmental recommendation. His or her response shall state in detail the basis for the decision to initiate or not to initiate disciplinary action.

b. Differences of opinion between the EEO Officer and the regional or center director or office or service head shall be referred to the Administrator for resolution.

c. If the agency takes or proposes adverse action or other disciplinary action against the alleged discriminating official (ADO) based on evidence developed in connection with the processing of the complaint, such action shall be taken in accordance with Order 3450.4, Conduct and Discipline, June 10, 1969, reprinted July 1, 1974, paragraph 62. In addition, the entire complaint file - without deletion - must be made available by the field EEO officer for the ADO's review. For this purpose, "disciplinary action" includes any action (e.g., a requirement that the official undergo equal employment opportunity training) which would constitute censure of the alleged discriminating official's conduct or competence.

840. APPEALS TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. If the final Departmental decision in a discrimination complaint does not resolve the complaint to the complainant's satisfaction, the complainant may appeal the decision to the Equal Employment Opportunity Commission, Office of Appeals and Review.

a. The appeal must be filed in writing within 15 calendar days of the date that the decision is received by the complainant. The appeal shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by the Equal Employment Opportunity Commission.

b. Allegations of discrimination which are being considered in connection with any other appeal by the complainant may not be appealed to the Commission under this authority. (See paragraph 841 b and 843.)

841. APPEALS TO THE U. S. COURTS. This paragraph shall apply to discrimination complaints based on race, color, religion, sex, and national origin. Appellate procedures for discrimination complaints based on age or physical or mental handicap are discussed in chapters 9 and 10 respectively.

a. When the complaint is not resolved to the complainant's satisfaction and the complainant does not appeal to the Equal Employment Opportunity Commission, he or she may file a civil action in an appropriate U. S. District Court within 30 calendar days of the date that the Departmental decision is received.

b. When the complainant has submitted an appeal to the Equal Employment Opportunity Commission and has received a decision by the Commission that does not resolve the complaint to his or her satisfaction, the complainant may file a civil action in an appropriate U. S. District Court within 30 calendar days of receiving the Commission's decision.

c. When 180 calendar days have elapsed since the date that the complaint was filed and the Department has not issued a decision, the complainant may file a civil action in an appropriate U. S. District Court.

#### 842. RELATIONSHIP TO OTHER APPELLATE PROCEDURES.

a. Allegations of Discrimination in Connection with a Grievance. When an employee alleges discrimination on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap in connection with a grievance, the allegations of discrimination must be referred to the EEO Officer for processing under the procedures set forth in this order.

(1) Any allegation of discrimination will be processed as a complaint of discrimination independent of the grievance.

(2) The grievance procedure will not be delayed or modified while a complaint is being processed under these procedures.

b. Allegations of Discrimination in Connection with an Appeal.

(1) Whenever an employee makes a timely allegation of discrimination based upon race, color, sex, religion, national origin, or physical or mental handicap in connection with an appeal to the Merit Systems Protection Board the employee shall be advised of his or her right to select one of the following procedures:

(a) Have the matter processed as a complaint of discrimination under the provisions of this chapter.

(b) Have the allegation of discrimination referred to the Director of EEO for investigation while the appeal is in process.

(2) Whenever the Merit Systems Protection Board refers an allegation of discrimination in connection with an appeal to the FAA, the matter will be forwarded immediately to the Director of EEO through the EEO Officer.

843. RELATIONSHIP TO ADVERSE ACTIONS. Whenever an employee makes a timely allegation of discrimination based on race, color, religion, sex, national

origin, age, or physical or mental handicap in connection with an adverse action directed against him or her, the appropriate personnel office must be informed. The personnel office will advise the employee in writing, of his or her right to pursue the discrimination complaint either under this order or, in connection with an appeal of the adverse action, to the Merit Systems Protection Board. He or she may not pursue his or her complaint under both avenues.

844. CONSOLIDATION OF COMPLAINTS. Two or more discrimination complaints filed by different employees or applicants consisting of substantially similar allegations of discrimination may, with the written permission of the complainants, be consolidated by the Director of EEO or by the Equal Employment Opportunity Commission (EEOC).

845. JOINT PROCESSING OF COMPLAINTS. Two or more discrimination complaints filed by the same employee or applicant may, at the discretion of the Director of EEO or of the EEOC, be joined for processing after notifying the complainant that his or her complaint will be processed jointly.

846. ALLEGATIONS OF REPRISAL. Whenever a complainant, complainant's representative, witness, or EEO counselor believes that he or she has been subjected to acts of reprisal or unfair treatment as a result of his or her involvement in a discrimination complaint (current or closed), or his or her participation in the complaint's process wishes to resolve the matter under the discrimination complaints procedure, the party alleging reprisal may:

a. Have the matter processed as an individual discrimination complaint subject to paragraph 820.

b. Have the matter processed as a charge of reprisal. In such a case the charge must be submitted in writing to one of the officials listed in paragraph 820 within 15 calendar days of the matter giving rise to the charge of reprisal. In such cases, the Director of EEO will direct the EEO Officer to conduct an inquiry into the charge within 15 calendar days. The EEO Officer will forward to the Director of EEO a report of the findings of the inquiry. The Director of EEO will provide a copy of the report to the person making the charge and a copy of the report to the EEOC for review.

847.-899. RESERVED.



## CHAPTER 9. ALLEGATIONS OF DISCRIMINATION ON ACCOUNT OF AGE

900. PURPOSE. This chapter describes the provisions under which employees or applicants may file allegations of discrimination based on age. Reasonable exemptions to the provisions of nondiscrimination on account of age are discussed in paragraph 107f.

901. CHOICE OF PROCEDURES. Any employee or applicant who believes that he or she has been discriminated against based on age and was at least 40 years of age at the time of the alleged discriminatory act may follow either of two procedures.

- a. The procedure described in chapter 8 may be followed.
- b. A civil action may be filed in an appropriate U. S. District Court without following the procedure described in chapter 8.

902. TIME LIMITS. If the procedure described in chapter 8 is followed, the complainant must consult with an EEO counselor within 30 calendar days of the alleged discriminatory act. If the complainant chooses to file a civil action he or she must furnish the Equal Employment Opportunity Commission with an intent to file a civil action within 180 days after the alleged discriminatory act. The notice of intent must be filed 30 days before a civil action is commenced.

903. NOTICE OF INTENT TO FILE A CIVIL ACTION. The notice of intent to file a civil action should be dated, signed by the complainant, and addressed to the Director of Field Services, Attention: Technical Guidance Division, Equal Employment Opportunity Commission, Washington, D. C. 20506. The notice should contain the following information:

- a. Statement of intent to file a civil action under section 15(d) of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a(d)).
- b. Name and address of designated representative, if any.
- c. Name and address of employee or applicant.
- d. Name and location of Federal agency or installation where alleged discriminatory act occurred.
- e. Date the alleged discriminatory act occurred.
- f. Nature of the alleged discriminatory act.

904. CONCURRENT ACTION PROHIBITED. If an employee or applicant alleges age discrimination and files a formal discrimination complaint, he or she may not concurrently file a civil action. The complaint will be processed through

the administrative procedures up to and including the right to file a civil action in an appropriate U. S. District Court.

905.-999. RESERVED.

## CHAPTER 10. NONDISCRIMINATION BASED ON HANDICAP

1000. PURPOSE. This chapter sets forth guidelines under which FAA shall carry out its policy of nondiscrimination on account of physical or mental handicap as described in paragraph 107g and the provisions under which employees or applicants may file allegations of discrimination based on a physical or mental handicap.

1001. A HANDICAPPED PERSON is defined as a person who:

- a. Has a physical or mental impairment which substantially limits one or more of such person's major life activities, or
- b. Has a record of physical or mental impairment, or
- c. Is regarded as having a physical or mental impairment.

1002. A QUALIFIED HANDICAPPED PERSON means, with respect to employment, a handicapped person who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others and who, depending upon the type of appointing authority being used:

- a. Meets the experience and/or education requirements (which may include passing a written test) of the position in question.
- b. Meets the criteria for appointment under one of the special appointing authorities for handicapped persons.

1003. PHYSICAL OR MENTAL IMPAIRMENT means any one or a combination of the following:

a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:

- (1) Neurological.
- (2) Musculoskeletal.
- (3) Special sense organs.
- (4) Cardiovascular.
- (5) Reproductive.
- (6) Digestive.
- (7) Genito-Urinary.
- (8) Hemic and Lymphatic.
- (9) Skin.
- (10) Endocrine.

b. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

1004. MAJOR LIFE ACTIVITIES means functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

1005. HAS A RECORD OF SUCH IMPAIRMENT means has a history of, or has been classified (or misclassified) as having a mental or physical impairment that substantially limits one or more major life activities.

1006. IS REGARDED AS HAVING SUCH AN IMPAIRMENT means any of the following:

a. Has a physical or mental impairment that does not substantially limit major life activities but is treated by an employer as constituting such a limitation.

b. Has a physical or mental impairment that substantially limits major life activities only as a result of the attitude of an employer toward such impairment.

c. Has none of the impairments defined in paragraph 1003 but is treated by an employer as having such an impairment.

1007. REASONABLE ACCOMMODATION shall be made to the known physical or mental limitations of a qualified handicapped applicant or employee unless FAA can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

a. Reasonable accommodation may include, but shall not be limited to, making facilities readily accessible to and usable by handicapped persons and job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions.

b. The following factors should be considered in determining accommodations:

(1) The scope of the program i.e., the number of employees, number and types of facilities, and budget factors.

(2) The program environment, including the composition and structure of the work force.

(3) The nature and cost of the accommodation.

1008. EMPLOYMENT TESTS. No employment test or other selection criterion that screens out or tends to screen out qualified handicapped persons of any class of handicapped persons shall be used unless both of the following factors are satisfied.

a. The test score or other selection criterion, as it is used in FAA must be shown to be job-related for the position in question, and

b. Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons must not be shown by the Office of Personnel Management's Director of Personnel Research and Development Center to be available.

1009. TEST SELECTION. Tests concerning employment shall be selected and administered so as to insure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual or speaking skills, the test results accurately reflect the applicant's or employee's ability to perform the position or type of positions in question rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

1010. PREEMPLOYMENT PROHIBITIONS. Except as provided for in paragraph 1012, no preemployment medical examination may be conducted, and no preemployment inquiry may be made of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap.

1011. PREEMPLOYMENT INQUIRIES. FAA may make preemployment inquiry into an applicant's ability to meet the medical qualification requirements, with or without reasonable accommodation, of the position in question, i.e., the minimum abilities necessary for safe and efficient performance of the duties of the position in question. The Office of Personnel Management may also make an inquiry as to the nature and extent of a handicap for the purpose of special testing.

1012. CONDITIONS OF EMPLOYMENT. Nothing in this chapter shall prohibit conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty provided that:

a. All entering employees are subjected to such an examination regardless of handicap or when the preemployment medical questionnaire used for positions which do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition, and

b. The results of such an examination are used only in accordance with the requirements of this order. Nothing in this chapter shall be construed to prohibit the gathering of preemployment medical information for the purposes of special appointing authorities for handicapped persons.

1013. USE OF MEDICAL INFORMATION. Information obtained in accordance with this chapter as to the medical condition or history of the applicant shall be collected and maintained according to the existing maintenance, use and disposition schedules for medical records, contained in Order 1350.15A, Records Organization and Destruction Standards, March 29, 1978, and Order 1350.22, Protecting Privacy of Information About Individuals, June 27, 1977, except that:

a. Supervisors and managers may be informed regarding necessary accommodations.

b. First-aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment.

1014. PHYSICAL ACCESS TO BULDINGS. No FAA unit shall discriminate against qualified handicapped applicants or employees due to inaccessibility of its facility. For the purpose of this paragraph, a facility shall be deemed accessible if it is in compliance with the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 et seq).

1015. ALLEGATIONS OF DISCRIMINATION based on physical or mental handicap shall be processed in accordance with the procedures set forth in chapter 8 except that paragraph 840, Appeals to the U. S. Courts, does not apply. There is no specified statutory authority governing lawsuits involving discrimination because of a handicap. For this reason, any such court action would necessarily have to proceed under general jurisdictional statutes, without regard to the time limits described in paragraph 840.

1016.-1099. RESERVED.

## CHAPTER 11. CLASS COMPLAINTS

1100. GENERAL. This chapter covers procedures for processing class complaints of discrimination.

1101. A CLASS is a group of FAA employees, former FAA employees, and/or applicants for employment with FAA on whose behalf it is alleged that they have been, are being, or may be adversely affected by an FAA personnel management policy or practice which FAA has authority to rescind or modify, and which discriminates against the group on the basis of their common race, color, religion, sex, national origin, physical or mental handicap, and/or age. "Age" is an inclusive term which means ages 40 and above for applicants and employees at the time it is alleged that they were adversely affected.

1102. CLASS COMPLAINT. This is a written discrimination complaint filed on behalf of a class by the agent of the class alleging that:

a. The class is so numerous that a consolidated complaint of the members of the class is impractical.

b. There are questions of fact common to the class.

c. The claims of the agent of the class are typical of the claims of the class.

d. The agent of the class, or his/her representative, if any, will fairly and adequately protect the interests of the class.

1103. AGENT OF THE CLASS. An agent of the class is a class member who acts for the class during the processing of the class complaint.

1104. COUNSELING RESPONSIBILITY. The field EEO officer shall provide EEO counseling to persons who file class complaints of discrimination. This responsibility may be delegated to a staff EEO specialist at the GS-12 or higher grade level. In no case will this responsibility be delegated to EEO counselors who provide counseling on individual discrimination complaints.

1105. COUNSELING REQUIREMENT. Any employee or applicant who wishes to be an agent of a class and believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap must consult with a designated EEO specialist (paragraph 1104) when he or she wishes to resolve the matter through procedures set forth in this order. The consultation with the EEO specialist must take place within 90 calendar days of the matter giving rise to the allegation of individual discrimination or 90 calendar days of its effective date if the matter is a personnel action.

1106. COUNSELING PROCESS. The designated EEO specialist shall:

- a. Advise the agent of the class of:
  - (1) The discrimination complaint procedures.
  - (2) His or her right to representation throughout the complaint process, including the counseling stage.
  - (3) The right to anonymity only during the counseling process. The EEO specialist shall not reveal the identity of the agent of the class during the period of consultation except when authorized to do so by the agent of the class.
- b. Make whatever inquiry is believed necessary. The EEO specialist shall have access to agency records necessary in the performance of counseling responsibilities (see paragraph 813).
- c. Attempt informal resolution through discussion with appropriate officials.
- d. Counsel the agent concerning the issues involved.
- e. Inform the EEO Officer and other appropriate officials through the field EEO officer, when corrective action is believed necessary.
- f. Keep a record of all counseling activities.
- g. Summarize the actions and advice in writing, through the field EEO officer, both to the EEO Officer and to the agent.

1107. TERMINATION OF COUNSELING. The designated EEO specialist shall conduct a final interview and terminate counseling with the agent of the class not later than 30 calendar days after the date on which the allegation of discrimination was called to the attention of the designated specialist. During the final interview, the EEO specialist shall inform the agent in writing that counseling is terminated and that he or she has the right to file a class complaint of discrimination with the field EEO officer or other appropriate official(s) of the agency, designated to receive class complaints including the following:

- a. Field EEO Officer.
- b. Regional or Center Director.
- c. FAA Director of Civil Rights, ACR-1.
- d. Federal Aviation Administrator, AOA-1.
- e. Departmental Director of Civil Rights, S-30
- d. Secretary of Transportation, S-1.

1108. UPON TERMINATION OF COUNSELING the EEO specialist shall not attempt in any way to restrain the agent of the class from filing a complaint nor to encourage the agent to file a complaint.

1109. COOPERATION. All FAA employees shall cooperate fully with EEO specialists in performance of their counseling duties under this chapter.

1110. CORRECTIVE ACTION. Corrective measures should be taken where the need is recognized whether or not EEO counseling results in the resolution of the complaint.

1111. FILING A CLASS COMPLAINT. A complainant who is an agent for a class may file a class complaint only if the counseling requirements in paragraph 1105 have been met and the complaint:

a. Is submitted in writing by the agent or his or her representative and signed by the agent.

b. Sets forth specifically and in detail:

(1) A description of the FAA personnel policy or practice giving rise to the complaint.

(2) A description of the resultant personnel action or matter adversely affecting the agent.

c. Is filed not later than 15 calendar days after the termination of counseling and the agent's receipt of written notice from the EEO specialist that counseling is terminated. A complaint shall be deemed filed on the date it is postmarked, or, in the absence of a postmark, on the date it is received by an official with whom complaints may be filed.

d. Is filed with one of the agency officials listed in paragraph 1107.

1112. FORWARDING OF CLASS COMPLAINT. Upon receipt of a class complaint, the official receiving it shall forward the complaint along with a copy of the report of EEO counseling (appendix 8) and any other information pertaining to timeliness or other relevant circumstances related to the complaint to the EEO Officer within five (5) calendar days. Upon receipt of the complaint and counseling report the EEO Officer will forward the material to the appropriate Federal employee appeals authority.

1113.-1199. RESERVED.



## CHAPTER 12. SECURITY OF DISCRIMINATION COMPLAINTS MATERIALS

1200. GENERAL. This chapter sets forth basic security standards for the protection of manually prepared records pertaining to discrimination complaints. Because the loss, theft or unauthorized release of these records could result in harm, embarrassment or unfairness to individuals involved in discrimination complaints, the safeguards outlined in this paragraph are established to insure the security and confidentiality of complaint material.

1201. SCOPE. All discrimination complaints, investigative reports, correspondence and related materials including drafts, informal notes of EEO counselors, and working papers shall be afforded safeguards as outlined in this chapter.

1202. MATERIAL IN USE. EEO officials and others authorized by the field EEO officer to have access to records, correspondence or any other material pertaining to a discrimination complaint, are responsible for taking appropriate measures to prevent loss, theft or unauthorized access of these documents. Accordingly, these individuals must assure that:

- a. Such material is not left unattended outside the authorized storage area or container.
- b. Such material is concealed from observation by unauthorized persons.
- c. Verbal discussions are conducted in such a manner as to prevent deliberate or inadvertent acquisition of the information by unauthorized individuals.

1203. MATERIAL IN TRANSIT. Methods utilized for transmitting discrimination complaint material must protect the information from unauthorized disclosure. The method selected by the transmitter must be commensurate with the protection requirements of the individual file.

- a. Routine internal material transmitted via FAA mail channels shall be appropriately addressed, sealed in an opaque envelope that is marked "To Be Opened By Addressee Only," before it is placed in a standard internal messenger envelope.
- b. Transmitted through U. S. Mail. When transmitted via U. S. Mail channels, the material will be processed as described in paragraph 1203 a. The inner envelope will then be placed in a second envelope appropriate for use in the U. S. Mail. If the official having responsibility for distributing the material determines that such material is highly sensitive, the material may be prepared as above, and sent by U. S. Certified Mail.

1204. CONTAINERS. When records of files are not in use or under the direct control of an authorized person, complaint records, notes, etc., shall be placed in locked storage container or area suitable for personnel records. The EEO counselor shall be afforded access to an approved safe storage container or area at a locality convenient to the counselor. Any counseling materials placed there shall be enclosed in an opaque envelope which shall be signed and sealed by the EEO counselor.

1205. STORAGE CONTAINER CONTROLS.

a. Responsibility for supervising discrimination complaint storage containers shall be assigned to one or more individuals (custodians) by the field EEO officer.

b. Combinations to padlocks and storage containers shall be protected from unauthorized release and changed at least annually or when it is believed that a possible compromise of the combination has occurred, or upon the resignation, reassignment, or transfer of the custodian(s).

c. Keys to containers shall be controlled and afforded sufficient protection to prevent unauthorized duplication or use.

d. Form DOT F 1600.33, Safe Check Record, or equivalent shall be used on storage containers for the purpose of recording when the container is opened and closed, and to serve as a means of verifying that the container is secured at the end of the business day.

1206. PROTECTION DURING REPORT PREPARATION AND PROCESSING. Sufficient precautions will be observed by personnel involved in the data collection report writing and administrative processing phases of handling discrimination complaints to prevent the loss or unauthorized release of sensitive, personal information obtained during a complaint inquiry.

a. Interview notes, draft reports and working papers shall be safeguarded by placing them in a locked container when not in use. When retention is no longer required, these materials will be destroyed as specified below in paragraph 1209.

b. Carbons and typing residue. Paper byproducts resulting from the preparation of working drafts or final reports shall be destroyed as specified below in paragraph 1209.

1207. MATERIAL ON LOAN. Material provided to authorized individuals for review or other purposes must be recorded in a control log or equivalent which will reflect the date of transmittal, the name of the person receiving the material, and the date of return. Personnel in receipt of such material should be advised of the safeguards to be afforded the information while it is in their custody.

1208. REPRODUCTION. Materials pertaining to discrimination complaints shall be reproduced only as necessary by authorized holders. Appropriate measures shall be undertaken to preclude exposure of the material during the reproduction process and all residual material shall be retrieved and destroyed as outlined below.

1209. DESTRUCTION. The office or individual having custody of discrimination complaint material is responsible for its destruction. Such material cannot be released for destruction to anyone outside the office authorized to maintain it. All material designated for destruction must be destroyed in such a manner that reconstruction or recovery of the data from the residue is not possible. The following methods are authorized for destruction:

- a. Burning.
- b. Pulping, pulverizing, chopping, or shredding.

1210. ASSISTANCE. Supporting FAA security elements should be contacted when assistance and security guidance on specific record protection problems is needed.

1211.-1299. RESERVED.



## CHAPTER 13. PROGRAM EVALUATION

1300. GENERAL. The EEO officer shall review and evaluate equal opportunity in FAA program operations periodically, obtain such reports as he or she deems necessary, and report to the Administrator on overall progress. Evaluations at the national level shall include the results of all pertinent findings made by the Office of Civil Rights and the Office of Personnel and Training.

1301. FIELD EEO PROGRAMS. The Office of Civil Rights periodically conducts on-site evaluations of the operations of the field EEO programs in accordance with Order 1800.42, Evaluation of Civil Rights and Equal Employment Opportunity Programs, March 30, 1976, and coordinates in the conduct of such evaluations with the Departmental Office of Civil Rights. As a prelude to an evaluation, the field office will be furnished a questionnaire for review and completion in order to expedite the conduct of the evaluation when the visit is made. Exhibit material responsive to the questionnaire should be prepared beforehand or arrangements made to have it available without delay at the time of the evaluation.

1302. OBJECTIVES. The major objectives of the EEO evaluation are to assess the effectiveness of management in identifying the factors and problems bearing on equal employment opportunity, and developing and implementing action programs to meet and overcome obstacles to full equality of opportunity. Another objective is to provide agency management with any needed recommendations or directions.

1303. FIELD LEVEL EVALUATIONS. Each field EEO officer shall evaluate the EEO program within his or her assigned area of responsibility. Evaluations of EEO program effectiveness shall be made in all staffs and operating divisions and field installations at least periodically and whenever the field EEO officer believes it is necessary to do so. On-site or records-review evaluations shall be conducted as follows:

- a. Air route traffic control centers, on-site at least once every two years.
- b. Level I and Level II air traffic control (ATC) terminals, records-review at least once every two years.
- c. Level III and Level IV ATC terminals, on-site at least once every three years.
- d. Level V ATC terminals, on-site at least once every two years.
- e. Level I and Level II flight service stations (FSS), records-review at least once every four years.
- f. Level III FSSs, on-site at least once every two years.

- g. Other air traffic field elements, records-review at least once every four years.
- h. Airway facility sectors, on-site at least once every three years.
- i. Airway facility sector field offices and units, records-review at least once every six years.
- k. Flight standards field elements, on-site at least once every three years.
- l. Air transportation security field offices, records-review at least once every six years.
- m. Airport district offices, records-review at least once every six years.
- n. Other regional and center field elements, records-review at least once every six years.
- o. Regional and center divisions and staffs, on-site at least once every two years.
- p. Offices and services, on-site at least once every two years.

1304. CONDUCT OF EVALUATIONS. In conducting the evaluations, the field EEO officer shall be guided by the provisions of Part 713 of the Civil Service Regulations. Of primary importance, is determining the extent to which the head of the unit being evaluated has accomplished the objectives of the EEO action plan for which he or she has responsibility. The evaluation shall also identify and give consideration to existing reports on pertinent findings resulting from the most current EEO or personnel management evaluations. The evaluation shall ascertain by observation, interview, examination of personnel records, and staffing patterns whether or not the requirements of the FAA EEO policy and objectives are being implemented in every employment situation.

1305. SPECIFIC AREAS FOR EVALUATION. Listed below are major program areas, many of which are specified in action plans, which should be considered in developing comprehensive EEO program evaluations. The evaluation should not be limited to the examples cited. The list is not intended to be all encompassing in program coverage nor to specify order of priority in the report.

a. To what extent is there active support of community efforts directed toward fair housing where needed, and assistance in finding suitable housing if difficulty in obtaining housing acts as a barrier to recruitment of qualified women and minority persons?

b. To what extent have sufficient resources been assigned and organized to administer and carry out the program in an effective manner?

- c. To what extent have recruitment efforts been designed to reach all sources of job candidates, with special emphasis on the identification and development of sources of minority group members and women for meaningful positions?
- d. To what extent are employees with underutilized skills being systematically identified in the work force and channeled into available job opportunities both outside and within the installation?
- e. To what extent are opportunities being made available to employees for enhancement of skills, performance at their highest potential, and advancement in accordance with their capabilities?
- f. To what extent do communications, training, incentives, and performance evaluation actually motivate supervisory and management efforts to achieve program objectives?
- g. To what extent does the installation initiate, support, and cooperate with community efforts to eliminate long-range and short-range barriers to equal employment opportunity?
- h. To what extent is there participation in Stay-in-School, Summer Hire, and other economic opportunity programs?
- i. To what extent are there cooperative efforts of local coordinators, facility chiefs, or their designees with local authorities to provide more effective transportation when the lack of adequate public transportation prevents minorities, women, or other disadvantaged persons from taking full advantage of agency employment opportunities?
- j. To what extent is there cooperation with community groups and organizations to establish and support child day care centers which can be used by persons who need child care assistance to get or keep employment?

1306. FINDINGS AND RECOMMENDATIONS. A summary of significant findings and recommendations, over the signature of the field EEO officer, shall be furnished to the organization evaluated, to the responsible director, and to the EEO Officer. Civil rights status reports and evaluations are permanent records and shall be retained by the responsible civil rights staff in accordance with guidelines for retention stated in Order 1350.15A, Records Organization, Transfer and Destruction Standards, March 29, 1978.



APPENDIX 1. FORMS AND REPORTS REFERRED TO IN THIS ORDER

1. Quarterly EEO Plan Report (RIS: CR-1400.2).
2. Notice of Final Interview with EEO Counselor (sample format).
3. Notice of Right to File a Discrimination Complaint (sample format).
4. EEO Counselor's Report.
5. Report of Field Level Informal Resolution Attempt and Proposed Disposition.
6. FAA's Proposed Disposition.
7. Class Complaint Counselor's Report.
8. Form DOT F 1600.33, Safe Check Record.
9. Precomplaint Counseling Monthly Report (RIS: CR-1000-10).



APPENDIX 2. GUIDELINES FOR EEO COUNSELING IN FAA

1. GENERAL. This appendix provides guidelines for the implementation of the EEO counseling stage of the discrimination complaints procedure. The contents of this appendix supplement those requirements and procedures set forth in chapter 8.
2. PURPOSE OF EEO COUNSELING. The basic purpose of the EEO counseling stage is to provide the complainant with an opportunity to discuss problems relevant to the complainant's allegations of discrimination, obtain whatever factual answers and information that may be required, and whenever possible, to resolve the complainant's problems on an informal basis. In accordance with the purpose of EEO counseling, it is imperative that this important stage of the complaints procedure be effected in an objective manner with a view toward resolving problems within a short period of time and at the lowest appropriate level of management or supervision. All supervisors, managers, and other employees who may become involved in this stage of the complaints procedure will be expected to provide their full support to the accomplishment of its purpose.
3. ROLE OF THE EEO COUNSELOR. EEO counselors are FAA employees who are appointed as FAA officials responsible for receiving allegations of discrimination from complainants, conducting factfinding inquiries into the issues connected with the allegations, and conducting discussions with complainants and appropriate supervisors and managers in an effort to resolve the issues informally. In carrying out these basic responsibilities EEO counselors shall conduct their activities in accordance with the purpose of EEO counseling as stated in paragraph 2 of this appendix and in accordance with the procedures set forth in chapter 8. Additionally, counselors will be expected to take appropriate measures to assure that they maintain an objective role at all times and do not in any way attempt to influence, encourage, or restrain a complainant with respect to the filing of a discrimination complaint.
4. ACCESS TO DOCUMENTS. EEO counselors perform their duties in an official capacity, and in that capacity, they shall have access to all pertinent information and records including official personnel folders, promotion and hiring lists, training records, and any other related documentation whenever required. Material in the official personnel folder shall not be removed or reproduced without consultation with the appropriate records custodian. Counselors shall be afforded appropriate privacy for the examination of pertinent documents.
  - a. Access to personnel records is permitted only when the counselor is performing official duties as an EEO counselor. The counselor may not relay privileged information from the personnel records to the person counseled. The counselor is required to protect the complainant's rights as well as the right to privacy of other employees whose records the counselor might see in the course of performing official duties.

- b. Occupational health records and related medical data are NOT accessible to the EEO counselor. When necessary, the counselor may obtain pertinent medical information through discussions with doctors.

5. RESPONSIBILITIES OF EEO COUNSELORS. In accordance with the requirements set forth in chapter 3, EEO counselors shall be responsible for carrying out the following basic responsibilities:

a. Conducting an initial counseling interview with the complainant. This interview should be conducted as soon as it is possible to do so after the complainant has made contact with the counselor. In conducting this interview the counselor shall:

(1) Inform the complainant of his or her right to representation and provide an opportunity to discuss the allegations of discrimination in an appropriate location and in an atmosphere that will be conducive to an open and free discussion of the matters related to the allegations of discrimination. On the basis of this discussion the counselor shall identify the following basic information in addition to other pertinent data related to the allegation.

(a) The name, organization, and phone number of the complainant.

(b) The basis for the allegation(s) of discrimination stated in terms of race, color, sex, religion, national origin, age, or physical or mental handicap.

(c) The specific issues in the allegation stated in terms of the actions, events, or circumstances giving rise to the allegation.

(d) The dates when the above mentioned actions or events occurred.

(e) The corrective remedies sought by the complainant.

(2) Providing the complainant with an explanation of the EEO counseling procedure including the following rights:

(a) The right to not have his or her name revealed to anyone during the EEO counseling stage. In stating this right, the counselor should inform the complainant of any limitations that may be placed upon the counselor in conducting further inquiries.

(b) The right to file a complaint of discrimination, if the allegation is not resolved informally, or after 21 calendar days have passed since the date of the initial contact with the counselor.

b. Soliciting the views of each alleged discriminating official. If the complainant names or otherwise identifies an individual as being responsible for an alleged act of discrimination, the EEO counselor must solicit the views of that alleged discriminating official (ADO) unless the counselor otherwise obtains and provides information which exonerates the ADO to the clear satisfaction of the complainant.

(1) Preliminary to the interview, the EEO counselor must advise the ADO of the following:

(a) That the ADO has been named or identified by the complainant.

(b) The right to have a representative present during the interview to provide advice on how to respond to any questions the EEO counselor may ask.

(2) The EEO counselor must be careful not to reveal the identity of the complainant when the complainant has not authorized the counselor to do so.

c. Conducting a Factfinding Inquiry Into the Issues in the Allegation. In conducting this inquiry the counselor shall attempt to develop factual information pertinent to the issues which have been presented by the complainant. The counselor should conduct this inquiry in as informal a manner as he or she considers appropriate, through the use of interviews, record reviews, and any follow-up discussions with the complainant which may be required. With the exception of those restrictions stated in paragraph 813, the counselor may conduct whatever inquiry he or she believes to be appropriate provided that the inquiry bears a direct relationship to the complainant's allegations.

d. Discussing the Findings of the Inquiry with the Complainant and Appropriate Supervisors, Managers, or Officials. These discussions are to be conducted in a manner that will provide all parties involved with a full understanding of the findings of the counselor's inquiry. The counselor may conduct these discussions individually or with any or all involved parties together depending upon the counselor's assessment of the situation. In conducting these discussions, the counselor should assure that all pertinent issues and possibilities for informal resolution are taken into consideration. The counselor shall not make any judgement on the merits of the allegation(s) that could be interpreted as a finding of discrimination or no discrimination.

e. Attempting to Resolve the Problem on an Informal Basis. In connection with the above discussions, the counselor shall assist the complainant and other parties involved in identifying and acting upon appropriate measures to assure that no improper influence, encouragement, or restraint is exercised with respect to the acceptance or rejection of any resolution proposals which may be offered.

f. Advising the Complainant of the Right to File a Discrimination Complaint. If the counselor has determined that informal resolution cannot be effected or when 21 days have passed since the complainant's first contact with the counselor and no resolution has taken place, the counselor shall provide the complainant with written Notice of Right to File a Discrimination Complaint in accordance with paragraph 817.

g. Submitting a Report of EEO Counseling to the Field EEO Officer. Upon being notified that the complainant has filed a discrimination complaint the counselor shall immediately forward a report of his or her counseling activities to the appropriate field EEO officer with a copy to the complainant. The report shall be prepared in accordance with the format provided in appendix 5.

h. Maintaining Appropriate Records. Throughout all phases of the EEO counseling stage the counselor shall maintain informal records of his or her counseling activities and any agreements or resolutions which have been effected. These informal notes shall be maintained, safeguarded, and destroyed in accordance with the provision of chapter 12 of this order. Such materials may be destroyed 60 days after the EEO counselor's report has been submitted provided a discrimination complaint has not been filed. At the end of the counseling stage, the EEO counselor may transmit, in accordance with paragraph 1203, all pertinent materials, such as interview notes, copies of drafts, and working papers, to the field EEO officer for safe storage. Whenever this is done, the EEO counselor shall list the contents and provide a summary of his or her counseling efforts.

6. ROLE OF THE FIELD EEO OFFICER. In connection with their ongoing responsibility to ensure that EEO counseling requirements are carried out, field EEO officers should provide EEO counselors with whatever technical assistance and support that may be required. Field EEO officers should provide this assistance, however, in a manner that is in keeping with the informal character of the counseling stage. The level of involvement by the field EEO officer should, therefore, be limited to direct assistance to the EEO counselor. This involvement should not be extended to a point of interaction with the complainant or other parties which would result in an abridgement of the counselor's role.

When a discrimination complaint has been filed, the field EEO officer shall ensure that the EEO counselor's report is submitted in a timely and proper manner. He or she should provide the counselor with any assistance or guidance that may be required in connection with the development of the report.

7. SELECTING AND APPOINTING EEO COUNSELORS. In view of the vital role played by the EEO counselor, it is essential that individuals selected for these positions are fully capable of carrying out the responsibilities set forth in this appendix and in chapter 8. Final selection and appointment of EEO counselors is a management responsibility.

a. Guidelines for Selection. As a general guideline, it is suggested that counselor selections be based upon the following characteristics and abilities:

(1) Personal characteristics.

(a) Emphathy for the problems of others.

(b) Maturity

(c) Honesty in dealing with other persons.

(d) Personal commitment to the FAA's policy of assuring that all persons are treated in a fair and equitable manner and that FAA employment practices are free of discrimination.

(2) Abilities.

(a) Ability to communicate effectively with employees and managers at all levels.

(b) Ability to exercise mature judgment under pressure and in the face of highly sensitive or emotionally laden situations.

(c) Ability to effectively gather and analyze information pertinent to a complaint matter.

(d) Ability to identify practices and patterns indicative of discriminatory treatment.

(e) Ability to write accurate and concise reports summarizing complaint issues, actions taken, and recommendations.

b. Persons Who Should Not Serve as EEO Counselors, regardless of their qualifications, include the following:

(1) EEO Officer, field EEO officers, EEO specialists, and Special Emphasis Program Coordinators.

(2) Persons who are in operating personnel management positions or who normally perform operating personnel management functions.

(3) Persons in labor management relations positions.

(4) Persons who serve as labor union representatives.

(5) Persons who are working as or who have worked as discrimination complaint investigators.

(6) Persons in management positions.

(7) Supervisory personnel who, because of the supervisory span of control, may be called upon to counsel persons under their jurisdiction.

(8) Any person who, because of workload, travel, or other circumstances, cannot be readily available to perform counseling duties.

(9) Any person who, in being selected as a counselor, might be placed in a position of real or apparent conflict of functions.

(10) Persons who are not employees of the FAA.

8. ASSIGNMENT OF COUNSELORS. All regions, centers, and the Washington headquarters shall assure that adequate numbers of EEO counselors are assigned to the various locations within the employing jurisdiction and that are readily available for counseling upon request.

a. Since the number of counselors needed will vary according to the counseling workload, EEO related problems and other factors, each region, center, and the Washington headquarters should periodically make a determination as to how many counselors are needed for their various offices, services, facilities, and installations.

b. As a minimum requirement, there should be at least one EEO counselor available in locations with 50 or more employees with an overall ratio of at least one counselor for 500 employees.

c. When it is not practicable to assign a counselor to a specific installation or facility, counselors should be made available within the commuting area of the facility in keeping with the above 1 to 50 ratio.

9. TENTURE OF COUNSELORS. Counselors should normally be selected to serve for at least a one-year period with the option of serving an additional one year, up to four years, when recommended by the field EEO officer.

a. Counselors should not in any case serve more than four consecutive one-year terms.

b. Counselors should be removed whenever they indicate an unwillingness to continue serving as counselors, request to be relieved of their counseling duties, become identified in one or more of the categories listed in paragraph 7b of this appendix, or fail to perform their counseling duties in an acceptable manner.

10. EVALUATION OF EEO COUNSELORS. Field EEO officers shall evaluate the performance of EEO counselors on a continuing basis and shall make appropriate recommendations as required. When the counselor has completed a one-year term, the field EEO officer shall evaluate the counselor's overall performance for that period.

11. COLLATERAL DUTY STATUS AND SUPERVISION OF COUNSELORS. Since EEO coun-

selors normally serve on a collateral duty basis, it is essential that the counselor's supervisors and managers are aware of the requirement that counselors be readily available and accessible to complainants.

a. In order to assure understanding and awareness, field EEO officers should advise managers and supervisors of their responsibilities as stated in paragraph 119.

b. EEO counselors shall be under the jurisdiction of the field EEO officer when performing official counseling duties. Counselors are expected, however, to make necessary arrangements with their immediate supervisors before leaving their normal work assignments to perform their counseling duties.

c. EEO counseling duties and responsibilities assigned to employees on a collateral basis must be described in the Official Position Description that covers the position the employee occupies.

12. EEO COUNSELOR TRAINING. Immediately upon appointment to the position of EEO counselor, counselors shall be briefed on counseling procedures and the role and duties of the EEO counselor.

a. Initial Training. Prior to being assigned to EEO counseling duties, and within thirty days of their appointment date, counselors must successfully complete an initial training course.

(1) Office of Personnel Management (OPM), Basic EEO Counseling course. This course is offered on a continuing basis by the OPM's central and regional office training centers.

(2) As an alternative to the above training the region, center, or Washington headquarters may provide initial training for its counselors in accordance with the following minimal requirements:

(a) Length of training - 20 hours.

(b) Content.

1 Role and functions of the counselor.

2 Complaint regulations and procedures.

3 Interviewing techniques.

4 Information gathering and factfinding techniques.

5 Techniques for effecting informal resolution.

6 Explanation of merit promotion and labor relations

programs.

7 Explanation major civil rights and EEO program areas.

b. Advanced Training. Within six months of their appointment date EEO counselors shall successfully complete the EEO Counselor Effectiveness Training course (EEOCET) conducted by the FAA Management Training School (MTS) at Lawton, Oklahoma.

c. Additional Training. The following courses and subject areas are offered as suggestions for additional counselor training:

(1) Advanced EEO Counseling course, OPM.

(2) Personnel Management for EEO Specialists, OPM.

(3) Labor Relations for EEO Specialists, OPM.

(4) The Supervisory Initial (SI) course, MTS.

(5) Any training which promotes the effective implementation of the EEO counselor function.

13. MONTHLY REPORT OF COUNSELING ACTIVITY. At the end of each month, as prescribed by the field EEO officer, the EEO counselor shall make a statistical report on his or her counseling activity. FAA Form 1000-18, Precomplaint Counseling Monthly Report (appendix 10), or equivalent may be used for this purpose.

APPENDIX 3. NOTICE OF RIGHT TO FILE A DISCRIMINATION COMPLAINT (SAMPLE FORMAT)

Date :

Subject: Notice of Right to File a Discrimination Complaint

From : EEO Counselor (name and installation)

To : (name of person counseled)

This is to inform you that although counseling on the matter you brought to the attention of the EEO counselor has not been completed, 21 calendar days have gone by since you first contacted the counselor and you are now entitled, if you want to do so, to file a discrimination complaint if you believe you have been discriminated against on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap.

If you do not file a complaint at this time, counseling will continue and your right to file a complaint will also continue until 15 calendar days AFTER RECEIPT OF NOTICE OF FINAL INTERVIEW with the counselor. The counselor will inform you in writing when the final counseling interview is conducted.

If you file a complaint, it must be in writing and be filed in person or by mail with the field EEO officer (provide specific mailing address), or any of the following officials authorized to receive discrimination complaints:

- Regional or Center Director as applicable (provide address)
- Federal Women's Program Coordinator (provide address)
- Hispanic Employment Program Coordinator (provide address)
- FAA Director of Civil Rights (provide address)
- Federal Aviation Administrator (provide address)
- Departmental Director of Civil Rights (provide address)
- Secretary of Transportation (provide address)

You will receive a notice of receipt of your discrimination complaint from the Equal Employment Opportunity Officer.

NOTE TO EEO COUNSELOR: A copy of this notice should be kept by the counselor. If a complaint is filed, the copy should accompany the counselor's report on his or her counseling activities and be made a part of the complaint file. This notice should be given by the counselor to the person counseled 21 calendar days after the counselor was first consulted on the matter by the employee or applicant.



APPENDIX 4. NOTICE OF FINAL INTERVIEW WITH EEO COUNSELOR (SAMPLE FORMAT)

Date :

Subject: Notice of Final Interview with EEO Counselor

From : EEO Counselor (name and address)

To : (name of person counseled)

This is notice that on the above date the final counseling interview was held in connection with the matter you presented to the EEO counselor.

If you believe you have been discriminated against on the basis of race, color, religion, sex, national origin, age, or physical or mental handicap, you have the right to file a COMPLAINT OF DISCRIMINATION WITHIN 15 CALENDAR DAYS AFTER RECEIPT OF THIS NOTICE.

The complaint must be in writing and may be filed in person or by mail with the field EEO officer (provide specific mailing address), or any of the following officials authorized to receive discrimination complaints:

- Regional or Center Director as applicable (provide address)
- Federal Women's Program Coordinator (provide address)
- Hispanic Employment Program Coordinator (provide address)
- FAA Director of Civil Rights (provide address)
- Federal Aviation Administrator (provide address)
- Departmental Director of Civil Rights (provide address)
- Secretary of Transportation (provide address)

NOTE TO EEO COUNSELOR: This notice is to be given to the person counseled at the time of the final interview. A copy of this notice should be kept by the counselor. If a complaint is filed, the copy should accompany the counselor's report on his or her counseling activities and be made a part of the complaint file.



APPENDIX 5. FORMAT FOR EEO COUNSELOR'S REPORT1. Complainant

- a. Name
- b. Grade, job title, job series
- c. Organization name and location

2. EEO Counselor

- a. Name
- b. Organization
- c. Address

3. Summary of Complaint

- a. Date of initial contact with EEO counselor.
- b. Basis for complaint, i.e., race, color, religion, sex, national origin, age, physical or mental handicap, or any combination of the preceding.
- c. Issue(s) in complaint. Give specific details concerning action or actions giving rise to the complaint. Specify dates, names, etc., including last instance of alleged discrimination and the date on which it occurred.
- d. Complainant's desired resolution.
- e. Date of final counseling interview.

4. Summary of Counselor's Efforts to Informally Resolve the Complaint

Include specifics of efforts to resolve complaint, e.g., persons interviewed and content of conversations.

5. Facts

This section must be limited to a report of facts uncovered with no judgments or conclusions included.

6. Disposition

Indicate whether and to what extent, any or all of the issues were resolved. In instances in which resolutions were reached, provide details of the terms of the resolutions.

7. Attachments

Copy of Notice of Final Interview with EEO Counselor and copy of any documents which provide any facts about the discrimination allegations.



APPENDIX 6. FORMAT FOR REPORT OF FIELD LEVEL INFORMAL RESOLUTION  
ATTEMPT AND PROPOSED DISPOSITION

Date :

Subject: Informal Resolution Attempt and Proposed Disposition of Discrimination Complaint Filed by (name of complainant), Complaint Number (number of complaint)

From : (Regional or Center Director)

To : Director of Civil Rights, ACR-1

This constitutes a report of finding and activities in connection with the review of the investigative report on the subject complaint.

Background. (Give a brief background statement, including the name, job title, and grade of the complainant and date, location, and basis of the complaint).

Issue(s) in the Complaint. (List the complainant's allegations of discrimination in terms of actions, events, and circumstances giving rise to each allegation).

Efforts to Resolve the Complaint. (State in detail all efforts to resolve the complaint informally. Give dates of consultations with the complainant, all offers made, and specific response or reaction to each offer).

Finding on Issue of Discrimination. (Based on the review of the investigative report, specify whether or not the region or center finds support for the complainant's allegation(s) of discrimination).

Action Taken or Recommended. (State all actions taken by the region or center resulting from review of the investigative report or attempt(s) at informal resolution, whether or not there was a finding of discrimination. Also state actions recommended to be taken by FAA).

Informal Resolution Attempts in Progress. (State whatever further attempts are in progress (if any) to resolve the complaint informally).



APPENDIX 7. FORMAT FOR FAA'S PROPOSED DISPOSITION

Date :

Subject: FAA Review of Investigative Report and Proposed Disposition on the Discrimination Complaint of (name of complainant), Complaint Number (number of complaint)

From : Director of Civil Rights, ACR-1

To : Departmental Director of Civil Rights, S-30

Background. (Give a brief background statement, including the name, job title, and grade of the complainant and date, location, and basis of the complaint).

Issue(s) in the Complaint. (List the complainant's allegations of discrimination in terms of actions, events, or circumstances giving rise to each allegation).

Review of the Investigative Report and Finding. (State that the investigative report was reviewed by the region or center, as well as by the FAA Office of Civil Rights. State the finding of discrimination or no discrimination resulting from that joint review).

Efforts to Resolve Complaint Informally. (Specify the date(s) on which the complainant was provided with an opportunity to discuss the investigative report with an appropriate official in an effort to resolve the complaint informally. Give the results of the discussion(s) and whether or not it is felt that that the complaint can be resolved informally).

Proposed Disposition. (State what actions are recommended to be taken by FAA as a result of the review of the investigative report or attempt(s) at informal resolution, whether or not this is a finding of discrimination. All actions recommended must be ones which FAA is willing and able to carry out).



APPENDIX 8. CLASS COMPLAINT COUNSELOR'S REPORT

As a minimum, the EEO counselor's report in a class complaint shall include the following:

1. Name of the person who wishes to be the agent of the class (including job title, office, home address, etc.).
2. Name of representative, if any.
3. Nature of the class.
4. Agency policy or practice giving rise to the allegation of discrimination.
5. Nature of the act(s) giving rise to the agent's belief that he or she was discriminated against (including dates).
6. Reason why the agent of the class believes that a number of other persons were similarly affected by said policy or practice.
7. Efforts of EEO counselor to resolve the matter affecting the agent as well as the class, including names of persons contacted and documents reviewed.



United States Civil Service Commission

FPM Letter 713-42

**Federal Personnel Manual System**

FPM Letter 713-42

Published in advance  
of incorporation in FPM  
chapter 713**RETAIN UNTIL SUPERSEDED****SUBJECT: Participation in the Discrimination Complaint Process  
of Persons Named As "Alleged Discriminating Officials"**Washington, D. C. 20415  
March 13, 1978

Heads of Departments and Independent Establishments:

Introduction

1. The purpose of this letter is to set forth general guidance concerning the participation, in the discrimination complaint process outlined in Part 713 of the Commission's regulations, of persons named by complainants as "alleged discriminating officials." This letter supersedes all written and oral instructions which in the past have served as guidance on this matter.
2. The primary focus of previous discussions and guidance related to this matter has been on creating and maintaining a positive environment for the use of the complaint process by aggrieved individuals, and on insulating complainants (and witnesses) from the possibility of reprisal or harassment based on their participation in the complaint process. The participation of supervisors and others who may have been named by complainants as "alleged discriminating officials" has been essentially limited to their serving as witnesses who provide sworn testimony regarding complaints and the situations from which they arise. In practice, agencies have on some occasions so limited this participation that alleged discriminating officials have sometimes been required to furnish testimony without having even been informed that complainants have implicated them personally in allegedly discriminatory acts, or without knowing the exact nature of charges which have been made against them.
3. It is vital, of course, that aggrieved employees and applicants continue to feel free to avail themselves of the full due process afforded by the discrimination complaint procedures without fear of reprisal for having done so. However, the assurance of full due process to complainants should not and need not be accomplished at the expense of the rights of those individuals against whom accusations of discrimination have been made. It has become clear that, in the interest of fairness, persons named as alleged discriminating officials should have more clearly defined rights and a more significant role in the complaint process and that this can be accomplished without undermining the integrity of the complaint process.
4. There is in fact no regulatory requirement that a complaint of discrimination include identification of an "alleged discriminating official." Moreover, a complainant cannot always reasonably be expected to know which individual, if any, might have been responsible for the occurrence of a specific action or the promulgation of a particular policy. Complainants should not, therefore, be given the impression that they are required to identify "alleged discriminating officials" in complaints of discrimination. It is suggested that spaces included for this purpose on complaint forms (including forms reproduced from CSC Form 894) be obliterated on existing forms and omitted from future printings. Complainants who believe particular individuals have discriminated against them may, of course, identify those individuals in their complaints if they wish to do so; and this aspect will in any case be explored by investigators in those complaints which are accepted for processing.

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**Inquiries:** Office of Federal Equal Employment Opportunity, Discrimination Complaints and Enforcement Section, (202) 632-7642
**CSC Code:** 713, Equal Employment Opportunity**Distribution:** FPM

FPM Letter 713-42 (2)

5. The principal purpose of the discrimination complaint procedure is to determine whether in fact discrimination has occurred, so that remedial action can be taken as appropriate. Investigations and hearings in discrimination complaint cases are essentially fact-finding processes which have as their purpose the development and recording of evidence on which an informed and impartial decision can be based. It is not the purpose of the complaint procedure to indict or try individual officials; complaints are lodged "against" agencies, and not "against" individuals.

6. Nevertheless, agencies may properly decide to take disciplinary action against officials who are shown by the evidence compiled in connection with a discrimination complaint to have in fact been culpable of discrimination or other improper actions. Grievance or appeal channels are, of course, available to officials who wish to contest such action.

7. There are many cases, however, in which disciplinary action is determined to be unwarranted because the evidence does not support the allegations made against individuals, or in which the evidence clearly establishes that a person alleged to have discriminated against a complainant has in fact not been culpable. In either of these situations, unless the "alleged discriminating official" has had an opportunity to know precisely what has been alleged, and has been afforded a full and fair opportunity to present evidence, the official may justifiably feel unfairly burdened with the stigma often associated with having been named as an alleged discriminator. Under these circumstances, moreover, an alleged discriminating official might understandably be concerned about possible adverse effects on his or her career.

8. In the interest of fairness to all persons involved in the processing of discrimination complaints, and of assuring that the evidence compiled at various stages in the complaint process is complete in terms of presenting all relevant views on contentious matters, agencies should assure that persons named as "alleged discriminating officials" are adequately informed of any charges made against them, and are afforded a full and fair opportunity to respond to such charges.

#### Counseling

9. When, at the informal counseling stage, an aggrieved employee or applicant has named or otherwise identified an individual as being responsible for an alleged act of discrimination, the EEO counselor must solicit the views of that "alleged discriminating official" unless the counselor otherwise obtains and provides information which exonerates the official to the clear satisfaction of the aggrieved person. Preliminary to the counselor's interview with the official, the latter must be advised that he or she has been named or identified by a potential complainant, must be informed of the nature of any accusations made, and must be advised of the right to have a representative present during the interview to provide advice on how to respond to any questions the counselor may ask. The EEO counselor must be careful, however, not to reveal the identity of the aggrieved individual when the individual has not authorized the EEO counselor to do so.

#### Investigation

10. An alleged discriminating official, whether identified at the time a formal complaint is filed or during the course of the investigation, must be given an opportunity to respond to any and all allegations made against him or her. In

this respect, the investigator should interview and receive information from the alleged discriminating official as many times as may be necessary to assure that the official has an opportunity to respond to all of the allegations. Pertinent documents (i.e. documents in which the official is identified and charged with discrimination or other wrongdoing) intended for inclusion in the investigative file, including the EEO counselor's report, the complaint, the complainant's affidavit, and other affidavits in which the alleged discriminating official is named, must be made available to the official for this purpose. Names of and identifying information on persons other than the complainant and the alleged discriminating official should be deleted from copies of the documents shown to the alleged discriminating official, to protect such persons from unwarranted invasion of privacy.

11. The alleged discriminating official must be given full opportunity to state the facts as he or she sees them, in affidavit form, for inclusion in the investigative file. The official should also be given an opportunity to suggest witnesses who might be contacted for corroborating testimony, but should be informed (as should complainants under similar circumstances) that only those witnesses whose testimony is considered necessary to the investigation will be interviewed, and that the only testimony that will be obtained in affidavit form and included in the investigative file is that determined to be relevant and necessary.

12. The agency official who is overseeing the processing of the complaint (usually the equal employment opportunity officer) should keep an alleged discriminating official informed of the progress of the investigation in approximately the same manner in which the complainant is kept informed. When the investigation is completed, the EEO officer should review the investigative file to determine whether or not it contains information relevant to all of the allegations. If the EEO officer finds that there are allegations against the alleged discriminating official in the investigative report on which no opportunity was given the official to provide his or her version of the facts, then the EEO officer should require such additional investigation as may be needed for that purpose.

#### Informal Adjustment and Proposed Disposition

13. The EEO officer or other agency official responsible for attempting informal adjustment of a complaint may, at his or her discretion, consult with the alleged discriminating official regarding the terms under which the agency will attempt to resolve the complaint informally. If an informal adjustment is agreed upon, the agency must inform the alleged discriminating official of the terms of the agreement. If no agreement is reached, a copy of the agency's proposed disposition of the complaint must be provided to the alleged discriminating official.

#### Hearing

14. The alleged discriminating official would normally be expected to have personal knowledge of facts bearing on the complaint, and his or her testimony at a hearing, if one is conducted, would ordinarily be considered necessary by the parties to the complaint. However, if the official is not called to testify by either the complainant or the agency, the complaints examiner assigned to conduct the hearing in the case must assure that the alleged discriminating official is informed of the hearing and given an opportunity to testify if he or she wishes to do so. The examiner must make sure that the alleged discriminating official has an opportunity to comment for the record regarding any new allegations of wrongdoing on the official's part which are brought by other witnesses during the course of the hearing.

FPM Letter 713-42 (4)

15. The alleged discriminating official has a right to have a representative present to provide advice at any time the official is asked for testimony during the complaint process, including the investigative and hearing stages. However, the representative's role at a hearing is limited to advising the alleged discriminating official on how to respond to questions. The presence of the alleged discriminating official and his or her representative at a hearing will be limited to the time the official appears as a witness. The representative does not have the right to examine and cross-examine witnesses. Only the complaints examiner and the representatives of the complainant and the agency may examine and cross-examine witnesses.

#### Final Decision

16. The agency must provide the alleged discriminating official a copy of the agency's final decision on the complaint.

- a. If the clear effect of the agency decision is to deny or reject the complainant's allegations against the alleged discriminating official, the latter should not be given access to the entire complaint file.
- b. If the agency decision, either directly through a finding of discrimination or indirectly through a finding of error, concludes or implies impropriety on the part of the alleged discriminating official, the entire complaint file--with names and identifying information deleted where appropriate as in paragraph 10 above--must be made available for his or her review.
- c. If the agency takes or proposes adverse action or other disciplinary action against the alleged discriminating official based on evidence developed in connection with the processing of the complaint, the entire complaint file--without deletions--must be made available for his or her review. For this purpose, "disciplinary action" includes any action (e.g., a requirement that the official undergo equal employment opportunity training) which would constitute censure of the alleged discriminating official's conduct or competence.

#### Appeals to the Commission

17. If a complainant appeals an agency decision to the Civil Service Commission's Appeals Review Board, the agency must provide a copy of the Board's decision to the alleged discriminating official. If the decision of the Board reverses or modifies that of the agency in such a manner as to affect the alleged discriminating official, the agency should apply the instructions outlined in paragraph 16 above as appropriate.

#### General Guidance

18. These instructions contemplate increased access for alleged discriminating officials to information contained in complaint files, which are subject to the provisions of the Privacy Act (5 U.S.C. § 552a). Disclosures to alleged discriminating officials will be made consistent with the foregoing instructions as a routine use. If alleged discriminating officials make requests pursuant to the Freedom of Information Act (5 U.S.C. § 552) for information contained in complaint files, disclosures also will be made, consistent with the foregoing instructions. To the extent that disclosures of information contained in complaint files would

not be consistent with the foregoing instructions, disclosures should be refused under exemptions (b)(5), (b)(6) and (b)(7)(A) and (C) of the Freedom of Information Act, 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(A), (C).

19. Complainants, of course, receive copies of the investigative file, the hearing transcript, etc. While statements included in complaint files are obtained without a pledge of confidence (5 CFR 713.216(a)), those statements, as well as other documents in the files, frequently include information of a personal and sensitive nature. All persons given access to this information, including complainants and alleged discriminating officials, should be advised of the need to exercise discretion with regard to its use. In this regard, the regulatory prohibition (at 5 CFR 735.206) against use of certain official information for private purposes would have general applicability. In addition, Privacy Act restrictions against improper disclosure are binding on agency employees.

20. It is essential to the integrity of the complaint system that complainants, their representatives, and witnesses be free from restraint, interference, coercion, discrimination or reprisal at any stage of the complaint process. In view of the broadened role for alleged discriminating officials provided for in these instructions, it is imperative that agencies ensure, through training and other means of communication, that supervisory and management personnel are knowledgeable about the regulatory provisions in this regard (at 5 CFR 713.261), and understand the need to observe the spirit as well as the letter of the regulations.

21. The procedures outlined above relate specifically to the processing of individual complaints of discrimination under Sections 713.211 through 713.222 of the Commission's regulations. The principles reflected in these procedures, however, i.e., assuring that persons named as alleged discriminating officials are informed regarding any allegations made against them, are given a full and fair opportunity to respond for the record and are kept informed as to the progress and outcome of cases, should also be guiding in connection with the processing of class complaints of discrimination under Sections 713.601 through 713.614 of the regulations.



Raymond Jacobson  
Executive Director



PRECOMPLAINT COUNSELING MONTHLY REPORT						RIS: CR1000-10			
TO: (Routing Symbol)	FROM: (BEO Counselor)					PERIOD COVERED			
	TELEPHONE NO. (Include Area Code)					JURISDICTION			
TYPE COMPLAINT	NUMBER OF PERSONS ALLEGING DISCRIMINATION-BASIS								
	RACE (A)	COLOR (B)	RELI- GION (C)	SEX (D)		NAT'L ORIGIN (E)	AGE (F)	OTHER (G)	TOTAL (H)
				Male (1)	Female (2)				
1. INITIAL APPOINTMENT									
2. PROMOTION									
3. REASSIGNMENT									
4. SEPARATION									
5. SUSPENSION									
6. REPRIMAND									
7. DUTY HOURS									
8. JOB TRAINING									
9. DETAIL									
10. OTHER (Specify)									
<b>TOTALS</b>									
<b>CORRECTIVE ACTION TAKEN</b>									
11. PERSONNEL PRACTICES IMPROVED									
12. PROMOTION RECEIVED									
13. TRAINING OPPORTUNITY RECEIVED									
14. REAPPOINTMENT OR REASSIGNMENT									
15. REQUESTED ASSIGNMENT RECEIVED									
16. ADVERSE ACTION REDUCED OR RESCINDED									
17. OTHER DISCIPLINARY ACTION REDUCED OR RESCINDED									
18. PRIORITY CONSIDERATION FOR NEXT PROMOTION									
19. OTHER (Specify)									
<b>TOTALS</b>									



APPENDIX 11. ALLEGATIONS OF DISCRIMINATION BY AIR TRAFFIC CONTROL  
SPECIALIST ACADEMY TRAINING FAILURES

1. GENERAL. This appendix explains how the agency's discrimination complaint process shall be applied to employees who allege discrimination in connection with their failure to successfully complete developmental air traffic control specialist (ATCS) training at the FAA Academy. This appendix supplements requirements and procedures contained in Chapter 8.

a. Relationship to negotiated grievance procedure. When a developmental ATCS trainee is in a bargaining unit, such allegations of discrimination may be processed under the negotiated grievance procedure in the labor agreement applicable to the trainee's bargaining unit or under the agency's discrimination complaint process, but not both. This Appendix does not affect or modify the time limits or processing provisions contained in negotiated procedures.

b. Relationship to basic rights and time limits. This appendix does not alter basic rights or reduce the legal time limits for consulting an EEO counselor or for filing a complaint as specified in paragraphs 811 and 820 respectively. The purpose of this appendix is to provide a mechanism that will enable developmental ATCS trainees to receive EEO counseling, to have their complaints investigated, and to obtain an order denying or granting recycling in an expeditious manner.

2. JURISDICTION. The organization (region, center, etc.) in which the alleged discriminatory act occurred is responsible for field level processing of the discrimination complaint. Therefore, the Aeronautical Center shall have jurisdiction in the discrimination complaint process as it applies to developmental ATCS Academy training failures and for ensuring that the process at the field level proceeds in a proper and timely manner.

3. EEO COUNSELING STAGE. When an employee alleges discrimination in connection with his or her failure to successfully complete ATCS Academy training and wishes to resolve the matter through procedures set forth in this order, he or she must consult with an Aeronautical Center EEO counselor. When an EEO counselor other than an Aeronautical Center EEO counselor is contacted in such cases, that EEO counselor shall refer the employee to the Aeronautical Center for counseling. EEO counseling procedures applicable to all employees are covered in paragraphs 811 through 819.

a. The Aeronautical Center EEO Counselor shall notify the Aeronautical Center Civil Rights Staff, AAC-9, as soon as the employee waives his or her right to remain anonymous.

b. The Aeronautical Center Civil Rights Chief, AAC-9, shall:

(1) Assure that pertinent Academy records are preserved.

(2) Review the EEO counselor's report for completeness and make a recommendation to the Aeronautical Center Director as to whether or not the employee should be recycled through training to resolve the allegation of discrimination.

c. The Aeronautical Center Director shall order or deny recycling and notify the director of the employee's parent region of the decision.

4. FORMAL COMPLAINT. When an official other than the Aeronautical Center Civil Rights Chief, AAC-9, receives a discrimination complaint from an ATCS Academy training failure, that official shall forward the complaint immediately to the Aeronautical Center Civil Rights Chief, AAC-9. (See paragraphs 820-823.)

5. INVESTIGATIVE REPORT. Upon receiving the investigative report when a discrimination complaint filed by an ATCS Academy training failure has been accepted and formally investigated, the Aeronautical Center Civil Rights Staff Chief, AAC-9, shall coordinate efforts toward informal resolution of the complaint. (See paragraphs 824-825.)

6. AGENCY REPRESENTATION AT EQUAL EMPLOYMENT OPPORTUNITY COMMISSION HEARINGS shall be provided by the Aeronautical Center. (See paragraphs 833-835.)