

**Forest Service Handbook
National Headquarters (WO)
Washington, DC**

Forest Service Handbook 1709.11 – Civil Rights Handbook

Chapter 80 - Direct Programs

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Duration: This amendment is effective until superseded or removed.

Superseded Directive: 1709.11, 80 thru 81.5

Approved by: Mike Dombeck, Chief

Date approved:

Responsible Staff:

Explanation of changes: Following is an explanation of the changes throughout the directive by section.

Posting Instructions: Amendments are numbered consecutively by Handbook number and calendar year. Post by document; remove the entire document and replace it with this amendment. Retain this transmittal as the first page(s) of this document. The last amendment to this Handbook was 1709.11-2000-10 to FSH 1709.11,80 Contents.

80.1: Adds a cross-reference to authorities set out in FSM 1780.1.

80.2: Adds a cross-reference to the objective set out in FSM 1780.2.

80.3: Moves policy to FSM 1780.3 and adds a cross-reference.

80.4: Adds a cross-reference to the responsibility set out in FSM 1780.4

80.5: Clarifies and expands the definitions for complaints, complainants, beneficiaries/participants, conducted programs and activities, and discrimination.

81.2: Adds the requirement of a program-specific communication plan for each program with a goal to increase awareness and participation.

81.3: Adds persons with disabilities, the socially and economically disadvantaged, and underserved communities to those individuals and groups to be assisted in accessing opportunities for assistance, benefits, and services through Forest Service programs. Removes the requirement for preparation of orientation packages.

82: Changes the name of the Department's office receiving program complaints from the former Office of Advocacy and Enterprise, Office of Equal Opportunity, to the current Office of Civil Rights. Clarifies the program discrimination complaint process.

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This chapter provides direction on program administration for the programs and services administered directly by the Forest Service. Further direction is in FSM 1780. For direction on Title VI, Federal Financial Assistance programs, see chapter 70 of this Handbook.

80.1 - Authority

(See FSM 1701, sec. 01 of this Handbook).

80.2 - Objective

(See FSM 1780.2).

80.3 - Policy

(See FSM 1780.3).

80.4 - Responsibility

(See FSM 1780.4).

80.5 - Definitions

Beneficiaries/Participants. A person or group of persons with an entitlement to receive or enjoy the benefits, services, resources, or information, or to participate in the activities and programs conducted by the Forest Service.

Complainant. A person, group, organization, or business that alleges discrimination in the delivery of programs, assistance, benefits, or services by a primary or secondary recipient.

Complaint. A verbal or written allegation of discrimination, which indicates that a Forest Service program is administered or operated in such a manner that it results in the alleged provision of disparate treatment, benefits, or services to persons or groups of persons because of their race, color, religion, sex, age, national origin, disability, political beliefs, sexual orientation, or marital or family status.

Conducted Programs and Activities. Solitary (one time) or continuing decisions, efforts, policies, procedures, and practices of the Forest Service, a corporation, committee, or other instrumentality that result in, or that otherwise contribute to, the availability or delivery of services, benefits, or resources for the use, enjoyment, or consumption by a member or members of the public.

Coverage.

- a. Use by the general public of National Forest System lands, improvements, or facilities without a permit. Examples are hunting, picnicking, hiking, and general enjoyment of an area.

b. Permitted use to an individual for personal or family use of the land resources, facilities, or improvements under Forest Service control regardless of whether a charge is made. Examples are burning permits, free-use timber, grazing permits, and special-use authorizations.

Discrimination. Different treatment or denial of benefits, services, rights, or privileges to a person or persons because of race, color, religion, sex, age, national origin, disability, political beliefs, sexual orientation, or marital or family status by the Forest Service or instrumentality in conjunction with any USDA-conducted program or activity.

Parity. A point reached when participation in Forest Service programs reflects the demography of the geographical area served.

Program. Any project, activity, or facility that provides services, benefits, or other assistance to individuals.

Service Delivery Point. Any Forest Service or primary recipient, facility, office, station, campground, or designated meeting places where program information is either posted or provided, and where Forest Service activities and goods and services are provided to the public and beneficiaries.

81 - Program Administration

81.1 - Determining Eligible Population

For each service delivery point, identify the population eligible to participate in each Forest Service program by racial/ethnic/persons with disabilities categories. Use standard statistical sources to obtain the information, such as U.S. Census data; population and housing; survey of population; Forest Service records; data or information collected by other Federal agencies; and data or documented estimates from valid applicable source documents.

81.2 - Informing Beneficiaries/Participants

(See DR-4300, 4360-1). The Forest Service officer responsible for administering the program or activity shall ensure that beneficiaries/participants eligible to receive assistance, benefits, or services directly through Forest Service programs are informed of each such program and its benefits.

1. Make special efforts to inform minorities, persons with disabilities, the socially and economically disadvantaged, and underserved communities of the availability of these programs using techniques and media best suited to the situation to obtain increased awareness and participation. A program-specific communication plan is required for each program (FSH 1709.11, chapter 20).

2. Ensure through normal distribution and review processes that notice of the USDA nondiscrimination statement are prominently posted in Forest Service public reception areas. In general, the USDA poster "And Justice For All" shall be used for this purpose, except for suitable substitutes in outdoor areas where necessary. Units shall post the nondiscrimination statement in languages appropriate to the local population.

3. Ensure that the USDA nondiscrimination statement for conducted programs (Departmental Regulation (DR) 4300-3, Equal Opportunity Public Notification Policy) is included, in full, on all materials produced by the Forest Service for public information, public education, or public distribution. The statement specifically lists all the prohibited bases for discrimination contained in the USDA Civil Rights Policy Statement. The statement shall be in English and in languages appropriate to the local population.

If the material is too small to permit the full statement to be included, the material shall, at a minimum, include the statement in print size no smaller than the text: "The USDA is an equal opportunity provider and employer." A rule of reason shall be applied as to the need for the statement in specific situations on a case-by-case basis.

4. Provide materials in alternative formats (Braille, large print, audiotape, and so on) upon request.

81.3 - Establishing Viable Opportunities for Services and Benefits

The unit responsible for the applicable program areas shall:

1. Assist women, minorities, persons with disabilities, and socially and economically disadvantaged contractors in accessing invitation-for-bid lists available for small and disadvantaged businesses for the Minority Enterprise Program and other Socioeconomic Programs (FSM 1790; chapter 90; and Federal Acquisition Regulations (FSH 6309.32-FAR, chapter 19)).

2. Provide information to minority communities, women, persons with disabilities, the socially and economically disadvantaged, and underserved communities about all assistance, benefits, and services available through Forest Service programs; for example, the Landowner Assistance Program, Senior Community Service Employment Program (SCSEP), range management program (grazing), and so on.

3. Determine what special outreach efforts have been conducted for each program area in an effort to involve previously excluded women, minorities, persons with disabilities, socially and economically disadvantaged individuals, or underserved communities.

81.4 - Collecting and Reporting Participation Data

The Forest Service shall establish and maintain systems for collecting and reporting racial/ethnic/persons with disabilities participation. Such systems shall ensure:

1. The collection and retention of data at the service delivery point for each program and the submission of the data as requested to Forest Service Regional Offices, Stations, the Area, the Institute, and program divisions.
2. The maintenance of data-based or reviewable records of the last 3 years.
3. The maintenance of data under safeguards to prevent its use for discriminatory purposes. Such safeguards include: restricting access to records to authorized personnel; coding to signify racial/ethnic identification; and use of only aggregate data (not broken down to such numbers that permit the identification of individuals) in official reports to the public.

81.5 - Review

See FSM 1410 for basic review guidelines. The following areas of inquiry should be covered in the review of the program, participation, and data/records:

1. For all programs for which data are available, obtain and review records and data on the:
 - a. Number of persons, by race, availing themselves of assistance, benefits, and services for each program.
 - b. Number of persons, by race and sex, participating in each program,
2. Review records of the number and types of special use authorizations.
3. Examine the data collection records available at the site.
 - a. Determine whether actual counts of participants are made and whether all the reported data are based on sound backup records.
 - b. If data are not available, determine what methods and efforts have been attempted to obtain sufficient data by race/sex/persons with disabilities.
 - c. Review complaints and the manner in which they are handled.

82 - Complaints of Discrimination

(See ex. 01 for a summary of the steps in the Title VI Program Complaint Process.) Process complaints of discrimination in direct programs in accordance with Departmental Regulation 4330-3.

1. A discrimination complaint may be filled within 180 days of the date that the person knew or should have known of the action or inaction by the Forest Service or one of its employees that may have been discriminatory. All such discrimination complaints are to be filed directly with the USDA Office of Civil Rights in Washington, DC.

2. A discrimination complaint received from a customer or user by a Forest Service office or employee must be forwarded directly to the USDA Office of Civil Rights within 5 days.

3. The USDA Office of Civil Rights completes intake/establishment of jurisdiction within 30 days.

a. When the intake/jurisdiction process is complete, the USDA Office of Civil Rights sends a Complete Complaint Acknowledgment Letter to the complainant. This letter includes the date the complaint was received, the case number assigned, and a statement that the complaint is being reviewed to determine the USDA Office of Civil Rights jurisdiction (valid basis, connection with USDA Forest Service, and so on). The letter advises the complainant to consult "an attorney regarding other legal rights that are unaffected by the filing of the complaint." The USDA Office of Civil Rights contact name and number also is included. A Complainant Consent/Release Form is included in the letter. Resolution (voluntary compliance) is "strongly encouraged" throughout this process.

Simultaneous with sending the Complete Complaint Acknowledgment Letter, the USDA Office of Civil Rights Intake Unit sends an "Agency Transmittal" to the Forest Service Director, Civil Rights Staff, Washington Office. The Agency Transmittal informs the Forest Service of the following:

(1) The USDA Office of Civil Rights acceptance of a complaint for investigation.

(2) The name of the complainant, if releasable.

(3) The issues and bases raised in the complaint.

(4) The USDA Office of Civil Rights' jurisdiction to investigate and resolve the complaint.

(5) Statement of prohibition against harassment and/or retaliation, as follows:

"No person shall be subjected to reprisal or harassment because he or she filed a discrimination complaint, participated in or contributed to

the identification, investigation, prosecution, or resolution of civil rights violations in or by a USDA agency, or otherwise aided or supported the enforcement of Federal or USDA civil rights laws, rules, regulations or policies."

(6) Request that an Agency Position Statement (APS) be submitted to the USDA Office of Civil Rights within 15 days from the date of the Forest Service Agency Transmittal.

b. If the USDA Office of Civil Rights needs additional information from the complainant, a 15-day "Incomplete Complaint Acknowledgment Letter" is sent.

4. If the complainant does not reply, the case is closed. If the case is closed, the Forest Service and the complainant are notified of the closure. If the case is referred to another Federal, State, or local Forest Service office, the complainant is notified.

5. Upon receipt of the Agency Transmittal from the USDA Office of Civil Rights, the Forest Service Director, Civil Rights Staff, Washington Office, or designee, shall notify the Region, Station, Area, or Institute Civil Rights Program delivery manager requesting a completed Agency Position Statement be transmitted to the Forest Service Director, Civil Rights Staff, Washington Office, or designee, within 10 days. Upon receipt of the completed Agency Position Statement, the Forest Service Director, Civil Rights Staff, Washington Office, or designee, shall review, amend as needed, sign, and transmit the Agency Position Statement, to the USDA Office of Civil Rights within the 15-day timeframe.

6. All cases are investigated unless they are resolved or settled prior to investigation. The USDA Office of Civil Rights has the responsibility to complete all investigations within 120 days after the intake of the complaint.

7. The "Final Agency Decision" (FAD) from the USDA Office of Civil Rights may find: No violation; a corrected violation (the violation was corrected during the processing of the complaint); a violation and requirement for remedial action "Correction Action Plan" (CAP), including damages; or an offer of a settlement to the complainant.

8. If the Forest Service disagrees with the FAD finding of noncompliance or the CAP, the Forest Service may submit a "rebuttal" to the FAD or CAP within 15 days of the receipt of the FAD or CAP from the USDA Office of Civil Rights.

9. The USDA Office of Civil Rights responds to the rebuttal within 5 days.

10. The USDA Office of Civil Rights advises the Chief of the Forest Service of responsible officials found to have engaged in discrimination, including any recommendations for "taking appropriate disciplinary action."

11. The Chief takes action.

12. The USDA Office of Civil Rights monitors the resulting action taken by the Chief of the Forest Service and any remedial action, payment of damages, or settlement.

13. The case is closed when corrective actions have been completed.

14. If the Forest Service fails or refuses to correct the noncompliance, the USDA Office of Civil Rights notifies the USDA Assistant Secretary for Administration who directs the Forest Service to comply.

15. The Forest Service's failure to comply is noted on subsequent agency accountability reports until the Forest Service is in compliance.

82 - Exhibit 01

Summary of Steps in Title VI Program Complaint Process (In accordance with Department Regulation 4330-3)

<u>Action/Step</u>	<u>Lead Responsibility</u>	<u>Time Frame*</u>
1. File complaint directly with USDA Office of Civil Rights (USDA-CR).	Complainant (customer or National Forest user).	Within 180 days of when the person knew or should have known of an action or inaction by the FS or one of its employees that may have been discriminatory.
2. If a Forest Service (FS) office or employee receives a program discrimination complaint from the customer/user, it must be forwarded directly to USDA-CR.	FS office or employee.	Within 5 days of receipt by the FS office or employee.
3. Complaint intake and establishment of jurisdiction.	USDA-CR.	Within 30 days of receipt of complaint by FS office or employee.
3a. When the intake/jurisdiction process is complete, a "Complete Complaint Acknowledgment Letter" is sent to the complainant and an "Agency Transmittal" is sent to the FS Director, Civil Rights Staff, Washington Office.	USDA-CR.	
3b. If USDA-CR needs additional information from the complainant, an "Incomplete Complaint Acknowledgment Letter" is sent within 15 days.	USDA-CR.	Within 15 days of intake and establishment of jurisdiction of complaint.
4. If the complainant does not respond, USDA-CR closes the complaint and notifies the FS and the complainant of the closure.	Complainant. USDA-CR closes the complaint.	

82 - Exhibit 01--Continued

<u>Action/Step</u>	<u>Lead Responsibility</u>	<u>Time Frame*</u>
5. Upon receipt of the Agency Transmittal from USDA CR, FS notifies the Civil Rights Program Delivery Manager at the Region, Station, Area, or Institute (R/S/A/I) where the alleged discrimination occurred to prepare an Agency Position Statement.	FS Civil Rights Program Delivery Manager in the R/S/A/I where the alleged discrimination occurred.	R/S/A/I has 10 days to prepare this statement and send it to the FS Director, Civil Rights Staff, Washington Office. This statement must be returned to USDA-CR within a total of 15 days.
6. All cases are investigated, unless resolved or settled prior to investigation. USDA-CR is responsible for completing all investigations.	USDA-CR.	Within 120 days after intake of the complaint.
7. When the investigation is completed, USDA-CR issues a "Final Agency Decision" (FAD). There may be a requirement for remedial action set out in a "Correction Action Plan" (CAP).	USDA-CR.	At completion of investigation.
8. If FS disagrees with FAD or CAP, FS submits a rebuttal to USDA-CR.	FS.	Within 15 days of the receipt of the FAD/CAP from USDA-CR.
9. USDA responds to the rebuttal in 5 days.	USDA-CR.	Within 5 days.
10. USDA-CR advises the Chief of responsible officials found to have been engaged in discrimination, including any recommendations for appropriate disciplinary action.	USDA-CR.	
11. Chief takes action.	FS - Chief.	

82 - Exhibit 01--Continued

<u>Action/Step</u>	<u>Lead Responsibility</u>	<u>Time Frame*</u>
12. USDA-CR monitors actions taken by the Chief and any remedial actions, including payment of damages or a settlement.	USDA-CR.	
13. The case is closed when the corrective actions have been completed.	USDA-CR.	
14. If FS fails or refuses to correct noncompliance, USDA-CR notifies the USDA Assistant Secretary for Administration, who directs the Forest Service to comply.	USDA-CR.	
15. Failure is noted on subsequent agency accountability reports until FS is in compliance.	USDA-CR.	

* All steps and time frames are general in nature. Time frames are in calendar days, including weekends; however, time frames may vary depending on specific circumstances applicable to an individual complaint. Class complaint time frames are not shown. For more information on class complaint processing procedures, contact the unit Civil Rights Staff.

82.1 - Contents of Agency Position Statement

The Forest Service Agency Position Statement shall include:

1. Admission of all statements/allegations in the complaint with which the Forest Service agrees.
2. Denial of all statements/allegations in the complaint with which the Forest Service disagrees, including an explanation of all denials.
3. Where the Forest Service is unable to admit or deny a statement of allegation in the complaint, a statement to that effect, including an explanation.
4. Explanation from the Forest Service's perspective of the event(s) that led to the filing of the complaint. Include an explanation of any possible misunderstanding/miscommunication that may have occurred.
5. A statement of the law, policy, or other basis on which the Forest Service relied to justify the decision, action, or inaction.
6. The Forest Service's interpretation of such pertinent law, policy, or other basis.
7. Comparative data/information, if available, relating to situations similar to the complainant's that involved other customers of the Forest Service.
8. Additional material facts not mentioned in the complaint.
9. Other documentation related to the complainant's allegations; signed statements from Forest Service personnel may be included.

82.2 - Forest Service Resolution Efforts

1. The Forest Service should attempt to resolve the complaint.
2. If the complainant refuses such contact or attempt, the Forest Service shall not persist.
3. If a resolution is reached, the Forest Service shall promptly forward the resolution to the USDA Office of Civil Rights for review.