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	U·S· DEPARTMENT OF THE INTERIOR **OFFICE OF SURFACE MINING** **RECLAMATION AND ENFORCEMENT** **DIRECTIVES SYSTEM**	**Subject Number:** EEO-1 **Transmittal Number:** 789 **Date:** JUL 9 1993

Subject: Equal Employment Opportunity

Approval: [signature] **Title:** Acting Director

1. Purpose. This directive establishes policy direction and procedures for the Equal Employment Opportunity (EEO) Program within the Office of Surface Mining Reclamation and Enforcement (OSM).

2. Summary of Changes. This directive is being issued to incorporate changes as a result of updates to public laws and regulations. Explanations of changes follow:

a. Incorporate EEO 1 dated July 7, 1986, and EEO 2, dated July 7, 1986.

b. Incorporate the changes of 29 C.F.R. Part 1614 relating to the administration of the discrimination complaints process.

3. Definitions.

a. Affirmative Actions are results oriented actions taken to increase employment opportunities for qualified women, minorities and the disabled, at all grade levels and in all job categories where they are underrepresented.

b. Affirmative Employment Program Plan(s) (AEPP) are formal plans tailored to remedy the underrepresentation of identified groups (e.g., Hispanics, Blacks, Women) within a specific organization. Such plans have a 5 year life span and contain analysis of barriers which prevent full representation of particular groups and corresponding objectives and actions that are expected to eliminate those barriers.

c. Allegation means a statement by a party to an action made in a pleading setting forth what is expected to be proved; a claim, assertion or declaration.

d. Appeal means to resort to a superior administrative body or court to review the decision of an administrative agency or lower court.

e. Applicant means a person who files a formal application for employment, promotion, transfer, detail, etc.

f. Class means a group of employees, former employees, and/or applicants for employment on whose behalf it is alleged they have been, are being, or may be, discriminated against on the basis of their race, color, religion, sex, national origin, age and/or physical or mental disability.

g. Complaint is the formal filing of an allegation of discrimination by which an action is commenced.

h. Complainant is one who applies for legal redress by filing a complaint.

i. Color is an unalterable physical characteristic which may or may not be specifically associated with race; i.e., skin color or complexion.

j. Day(s) means generally a calendar day(s), unless otherwise specified.

k. Disabled Veteran a person entitled to compensation for disability under laws administered by the Veterans Administration, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

l. Disabled Individual is any person who: (1) has a physical or mental impairment that substantially limits one or more of his or her major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

m. Discrimination is illegal treatment of a person or group based on race, color, sex, national origin, age, mental/physical disability, religion and/or reprisal.

n. EEO Counselor is an employee designated to play a key role in the pre-complaint processing stage in an effort to bring about an informal resolution of EEO problems.

o. EEO Investigator is an individual given authority to gather and report all pertinent facts related to a complaint of discrimination.

p. EEOC is the Equal Employment Opportunity Commission. This agency is charged with enforcing equal employment opportunity.

q. Employee as used in this directive, means anyone employed by OSM.

r. Goals and Timetables are qualitative and/or quantitative objectives fixed realistically in terms of the number of vacancies expected and the number of qualified applicants available, which are anticipated within a specific timeframe. Goals are targets for achievement, not requirements.

s. Protected Class means classification of individuals or groups of individuals, against whom it is a violation of the law to discriminate against, on the basis of their protected group (race, color, religion, sex, national origin, age, physical or mental disability).

t. Mixed Case Complaint is a case in which one alleges discrimination in connection with a matter which is also appealable to the Merit Systems Protection Board (MSPB).

u. National Origin is an individual's his or her ancestor's place of origin or physical, cultural or linguistic characteristics of a national origin group.

v. Race means an ethnical stock, having in common certain distinguishing physical characteristics constituting a comprehensive class appearing to be derived from a distinct geographical source.

w. Remedy means mechanism by which a right is enforced or the violation of a right is prevented, redressed or compensated.

x. Representative means an individual designated by a complainant to act as an official agent for the person.

4. Policy/Procedures.

a. General Policy.

It is the policy of OSM to provide equal opportunity in employment for all persons and prohibit discrimination in employment because of race, color, religion, national origin, sex, age, and mental or physical disability. It is also the policy of OSM to establish, maintain and carry out a continuing Affirmative Action Program (AAP) designed to eliminate underrepresentation of minorities, women and disabled individuals. OSM will provide a work environment free of sexual harassment or reprisal and provide and maintain a system for prompt processing of allegations and complaints of discrimination.

b. Responsibilities.

(1) The Director and Deputy Director

(a) will ensure that a policy of equal opportunity applies to and is an integral part of every aspect of OSM policy and practices in employment, development and treatment of employees.

(b) will exercise personal leadership in establishing, maintaining, and carrying out a continuing affirmative program designed to promote equal opportunity.

(c) will ensure that sufficient resources are provided to administer the EEO Program on an Agency-wide basis in a positive and effective manner.

(d) will ensure that a system is maintained for the prompt, fair and impartial processing of complaints of discrimination.

(e) will ensure that managers and supervisors are held accountable for accomplishing affirmative action objectives and promoting equal opportunity as an integral part of OSM's mission.

(f) will meet with the Assistant Director, Human Resources Management(AD/HRM), Equal Opportunity Officer (EOO) and other OSM officials for open discussions on EEO progress and problems.

(2) Assistant Directors

are responsible for ensuring continuing affirmative application and vigorous enforcement of the policy of equal opportunity within their installations or units.

(3) Assistant Director, Human Resources Management

(a) Is responsible to the Director for promoting equal opportunity throughout OSM and ensuring organization-wide compliance with Affirmative Employment Program (AEP) requirements, including Federal Equal Opportunity Recruitment Program (FEORP) instructions;

(b) will ensure that OSM-wide AEPP objectives are developed, resources are provided for the accomplishment of program objectives, monitoring and evaluation systems are established and maintained on program effectiveness, and multi-year AEPP, accomplishment reports and updates are prepared for timely submission;

(c) will ensure that a system is in place for

holding managers and supervisors accountable for the achievement of AEP requirements and objectives;

(d) will ensure that the workforce is educated and kept current on new regulatory changes and rules governing equal opportunity.

(e) will represent OSM at all levels, inside and out of the Federal government on Bureau issues of human resources management, including equal opportunity;

(f) will ensure the accuracy of employment data submitted to the Department's payroll/personnel information system which feeds data to the Office of Personnel Management's Central Personnel Data File (CPDF).

(4) Equal Opportunity Officer

The EO Officer is responsible for the planning and implementation of the OSM-wide EEO Program. Management Officials will be consulted on an on-going basis. His/Her responsibilities include:

(a) Developing and interpreting EEO policies, procedures, and guidelines for OSM within the framework of EEO laws, regulations, and Departmental and EEOC directives;

(b) Providing staff guidance and direction to field Equal Opportunity managers;

(c) Ensuring that OSM's multi-year AEPP, updates, and accomplishment reports are developed and submitted in a timely manner;

(d) Administering a review and monitoring process OSM-wide that determines the success of program accomplishments;

(e) Ensuring that the workforce is properly trained and made aware of policy rules and regulations in areas of equal opportunity;

(f) Administering OSM's Discrimination Complaint System, which includes:

- Ensuring pre-complaint counseling and technical guidance to EEO counselors is provided;

- Ensuring investigation of complaints of discrimination filed by employees and applicants for employment is provided;

- Ensuring resolutions on complaints of discrimination filed against OSM are negotiated; and

- Ensuring an analysis and draft recommended finding is provided for each issue in the complaint filed against OSM.

(g) Representing OSM at Civil Rights Conferences meetings, etc;

(h) Maintaining liaison with other public and private sector employees, groups and organizations concerned with taking cooperative action to improve EEO for all groups, including minorities, women, and disabled individuals within OSM.

(i) Providing the Personnel Officer with prompt notice of personnel actions challenged in EEO complaints, in order that the appropriate personnel records may be maintained.

(5) Alternate Equal Opportunity Officer

The Assistant Secretary for Land and Minerals Management is designated the Alternate Equal Opportunity Officer and is responsible for processing complaints filed against the Director, Deputy Director, AD/HRM, and EOO.

(6) Personnel Officer and Chiefs Servicing Personnel Offices East and West

The Personnel Officer and Chief Servicing Personnel Officers are responsible for the following:

(a) Assuring that personnel policies, procedures and programs are free from discriminatory practices and facilitating the achievement of AEP objectives by establishing Personnel/EO related programs such as Selective Placement for the Disabled Program, Disabled Veterans Affirmative Action Program, and the Federal Equal Opportunity Recruitment Program;

(b) Identifying and eliminating barriers to the employment, advancement, retention and equal opportunity of minorities, women and the disabled;

(c) Participating in ensuring continuous implementation, monitoring and evaluation of the AEP throughout OSM;

(d) Developing and implementing a continuing recruitment program to locate, identify and assist in the employment of applicants of underrepresented groups in OSM's work force;

(e) Cooperating with EEO Counselors, investigators, and EEO officials in providing information and access to records necessary to investigate and resolve allegations of discrimination; and

(f) Ensuring that a fair and equitable merit promotion plan is in place and followed.

(g) Ensuring that all personnel records pertinent to allegations in complaints of discrimination are maintained until final disposition of the complaint.

(7) Assistant Directors, Eastern/Western Support Centers and Field Office Directors will ensure that:

(a) The names, phone numbers, mailing addresses and work locations of EEO Counselors and Field EO Managers will be posted on bulletin boards at each field installation for which they are responsible;

(b) The size of the EEO counseling staff is sufficient to meet all established timeframes in the counseling process;

(c) EEO counselors are provided office space where conversations can be conducted in private with the person being counseled, and his or her representative, in order to comply with a person's right to anonymity;

(d) Assistant Directors, Eastern and Western Support Centers in addition to 4 b.(2) will oversee the work and maintain supervisory control over the EEO manager within their respective Centers.

(8) Equal Opportunity (EO) Managers for the Eastern and Western Support Centers are functionally responsible to the EO Officer in the technical aspects of their positions. The specific responsibilities include:

(a) Participating in the development and implementation of OSM's AEPP;

(b) Providing technical guidance to and reviewing the program activities of Field EO officials within the Center's area of service, such as Field Hispanic Employment Program Managers (HEPM), Federal Women's Program Managers (FWPM) and EEO counselors;

(c) Providing AEP advice, technical guidance and periodic briefings to the Installation Heads and other managers and supervisors in the areas serviced;

(d) Promoting EEO Affirmative action goals and objectives by maintaining regular contacts with local communities and OSM's local workforce concerning various aspects of the EEO Program;

(e) Providing required reports and workplans to the OSM EO Officer;

(f) Participating in program reviews;

(g) Assisting in the processing of discrimination complaints activities in the areas serviced.

(9) Supervisors and Managers

Each supervisor and manager is responsible for supporting and contributing to the OSM EEO program. This may include the following:

(a) Achieving full integration and greater utilization of minorities, women and disabled persons in their organizational units at all grade levels;

(b) Ensuring that actions are free from discrimination based on race, color, religion, sex, national origin, age, disabling conditions, or reprisal because of involvement with a discrimination complaint;

(c) Ensuring equality in determining qualifications, selections, promotions, training, work assignments, discipline and the distribution of awards;

(d) Taking action to ensure a diverse workplace free from a hostile and offensive environment, including sexual harassment;

(e) Cooperating with EEO program officials, counselors, and investigators, and designated management representatives;

(f) Seeking reasonable resolution of potential complaints at the earliest stage possible, and cooperating with efforts to settle formal complaints; and

(g) Ensuring that counselors in collateral duty assignments are allowed sufficient time to complete a counseling assignment and that complainants have a reasonable amount of time to present a complaint.

(h) Attending and encouraging staff to participate in special emphasis programs

(10) Employees, Unions and Other Employee Groups

(a) Employees

All employees of OSM share the responsibility of ensuring that discrimination because of race, color, religion, sex, national origin, age, and/or physical or mental disability is not a factor in their working relationships with other persons while carrying out their official duties. Specific responsibilities include:

1 Treating other employees with respect;

2 Refraining from making comments or taking actions that suggest or imply discriminatory attitudes;

3 Cooperating with managers, supervisors, and EEO officials in carrying out their EEO responsibilities;

4 Keeping informed of goals, objectives, and principles of EEO, and actively supporting and promoting them; and

5 Working to achieve resolution of discrimination complaints at the earliest stage possible.

(b) Unions and Other Employee Officials

Unions and other employee groups, consistent with their charters and/or agreements are expected to cooperate with OSM management and EEO officials in support of the goals and objectives of the EEO Program.

c. Special Emphasis and Affirmative Employment Program Plans, Reports, and Updates

Special Emphasis Programs will be integrated into the overall EEO program covering at a minimum the Federal Women's and Hispanic Employment Programs. Programs covering other groups will be at the discretion of the EO Officer and Eastern and Western EO Managers.

(1) The EO Officer will appoint the Bureau Federal Women's and Hispanic Employment Program Managers.

(2) The Eastern and Western EO Managers in consultation with AD's and FOD's will designate collateral duty Special Emphasis Program Managers for the Support Centers and Field Offices as needed.

AEPP, annual accomplishment reports, and updates will be prepared reflecting progress toward meeting OSM's objectives for the given fiscal year. Reports will be submitted to the EEOC as required.

(1) The Eastern and Western EO Managers will prepare AEPP, annual accomplishment reports and updates as needed. These documents will be used in developing the OSM-wide AEPP submissions.

(2) Management officials will be actively involved in the development of AEPP, accomplishment reports and updates.

d. Section 504 of the Rehabilitation Act of 1973 as amended

(1) No qualified disabled person shall be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance disbursed by a Department of the Interior (DOI) Component.

(2) No qualified person with disabilities shall, on the basis of their disability, be excluded from participation in, or denied the benefit of, or otherwise be subjected to discrimination under any program or activity conducted at OSM. Employees and citizens who are disabled will have the opportunity to participate in or benefit from the aid, benefits or services equal to that afforded others. All such employees and citizens will enjoy the rights and privileges, advantages or opportunities granted to others.

(3) Continuous assessments of Bureau programs, activities and structures will be conducted and an annual Disability Rights Implementation Plan will be prepared by the EEO Office at Headquarters for submittal to the DOI.

e. Processing Individual Complaints of Discrimination

EEO regulations, laws and statutes provide for the prompt, fair and impartial review of complaints of discrimination through pre-complaint counseling and formal complaint processing for employees and applicants for employment with OSM (Executive Order 11478, Public Law 92-261, 29 CFR 1614). The steps involved in this process are at Attachment A.

f. Representation and Official Time

(1) At any stage in the processing of a complaint, including the counseling stage, the complainant has the right to be accompanied, represented and advised by a representative of his/her choice.

(2) EEO counselors, EEO Officials/Program Managers and Personnel Officials have vital roles in the resolution of discrimination complaints. To operate effectively, they must have the confidence of both management and employees. Therefore, these officials cannot serve as representatives for management or a complainant in connection with the processing of discrimination complaints.

(3) If the complainant is an employee of OSM, he/she will have a reasonable amount of official time, if on duty, to prepare the complaint and to respond to requests for information from OSM, Departmental Office for Equal Opportunity (OEO) and the EEOC. "Reasonable" is defined as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information. The actual number of hours to which a complainant and his/her representative are entitled will vary, depending on the nature and complexity of the complaint. Consideration must also be given to the work needs of the office when allowing a complainant official time from his or her duties. The complainant must obtain the supervisor's concurrence before using official time. When an agreement on reasonable time cannot be determined, the matter can be brought to the attention of the EO Officer, by the management official, who will provide guidance.

(4) If the complainant is an employee of OSM and he/she designates another employee of OSM to serve as his/her representative, the representative will have a reasonable amount of official time, if on duty status, to prepare the complaint and respond to requests for information from OSM, OEO and EEOC. Employees serving as representatives must obtain approval from their supervisor prior to using official time. The complainant and representative, if employed by OSM, will have official time, regardless of the tour of duty, when their presence is authorized or required during the investigation, informal resolution attempt, or hearing on the complaint.

(5) Witnesses who are Federal employees, regardless of whether they are employed by OSM or some other Federal agency, shall be in a duty status when their presence is authorized or required by the EEOC, OEO or OSM officials in connection with the complaint.

g. Use of Government Resources

A complainant is not entitled to use Government resources, such as typing assistance, word processing equipment, supplies and materials in preparing the complaint. Penalties are listed in the Department Manual 370 DM 752 Apendix A, Part A.

h. Attorney Fees

(1) Reasonable attorney's fees and costs may be provided to a complainant as part of a settlement or a finding in a complaint of discrimination. Attorney's fees are allowable only for the services of:

-members of the Bar
-law clerks and paralegals; and
-law students under the supervision of members of the Bar.

Interest is not payable on fees incurred in connection with the processing of an administrative complaint.

(2) All attorney fee request will be reviewed by the Office of the Solicitor for approval of payment. OSM will not pay attorney's fees before the filing of a formal complaint and before the complainant has notified OSM (in writing) that he/she is represented by an attorney. Preparation of a formal complaint is considered part of the formal process and, therefore, attorney fees may be allowable.

(3) When complaints are filed solely on the basis of Age, complainants are not entitled to attorney's fees during the administrative process.

i. Appointment,Evaluation and Recognition of Equal Employment Opportunity Counselors

(1) The EOO in consultation with AD's will select and appoint EEO Counselors at headquarters. EO Managers at the Eastern and Western Support Centers will in consultation with AD's and FOD's select and appoint EEO Counselors for field locations as needed.

(2) EEO Counselors will be critiqued on an annual basis by the EO Office. The critique will encompass only the EEO Counselor's collateral duty assignments and will focus on enhancing the EEO Counselor's skills, recognizing outstanding Counselor performance and identifying training needs. Exemplary performance by an EEO Counselor may be recognized and awarded by the EO Officer/EO Managers. The recognition may be in the form of a Letter of Commendation, Certificate of Appreciation, Monetary Award and/or other appropriate methods.

j. Pre-Complaint Processing (Informal Stage)

An employee or applicant who believes that he/she has been discriminated against on the basis of race, color, religion, sex, age, national origin, physical or mental disability, and/or reprisal must first contact an EEO Counselor within 45 calendar days from the date the alleged event, act, incident or personnel action occurred, or within 45 calendar days after he/she became aware or should have been aware of the action. If resolution fails the EEO Counselor will provide the complainant with a Notice of Right to File. The steps involved in this process are at Attachment A.

k. Filing and Presentation of Formal Complaints

(1) The complainant has the right to file a formal complaint of discrimination within 15 calendar days of receipt of the Notice of Right to File. The complaint must be written and signed by the complainant or that person's attorney. The written complaint must describe the action or practice that forms the basis of the complaint. Formal complaints are submitted to one of the following:

-Equal Opportunity Officer, Office of Surface Mining Reclamation and Enforcement;

-Director, Office of Surface Mining Reclamation and Enforcement;

-Director, Office for Equal Opportunity, Department of the Interior;

-Secretary of the Interior.

(2) Complaints filed against the Equal Opportunity Officer, Assistant Director, Human Resources Management and the Director or Deputy Director will be processed by the Alternate Equal Opportunity Officer, Assistant Secretary for Land and Minerals Management.

l. Joint Processing and Consolidation of Complaints

Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter, or two or more complaints of discrimination from the same complainant, may be consolidated by the EO Officer for joint processing after appropriate notification to the parties.

m. EEO Evaluation System

The Headquarters EO Office will conduct formal reviews of the EEO program at all locations within OSM on a rotational cycle. The AD/HRM will determine team composition. Eastern and Western EO Managers should conduct informal EEO evaluations at their Centers at least annually. Management Control and Alternative Management Control Reviews will be conducted as required by the OSM Management Control Staff or DOI.

n. Prevention of Sexual Harassment

1. It is the policy in OSM that sexual harassment in any form will not be tolerated. Sexual harassment interferes with a productive environment and infringes on an individual's right to work in an environment free of discrimination. Moreover, sexual harassment violates Title VII of the Civil Rights Act of 1964, as amended.

2. This prohibition applies to all OSM employees, managers and supervisors. OSM will take prompt and effective action, which may include disciplinary action, against those who violate the policy. Additional guidance can be found in the OSM Sexual Harassment Handbook.

o. Mixed Case Complaints

A mixed case complaint may contain only an allegation of employment discrimination or it may contain additional non-discrimination allegations that the MSPB has jurisdiction to address. Steps involved in this process are at Attachment A.

5. Reporting Requirements. None

6. Effect On Other Documents. This Directive supersedes Directive EEO 1, Transmittal Number 265, dated July 25, 1986 and EEO 2, Transmittal Number 266, dated July 26, 1986.

7. References.

a. 29 CFR 1614, effective October 1, 1992
b. EEOC Management Directive 110, dated October 22, 1992
b. Title VII of the Civil Rights Act of 1964, as amended
c. Federal Equal Opportunity Recruitment Program, dated April 13, 1979
d. Sections 501 and 504 of the Rehabilitation Act of 1973, as amended
e. Civil Service Reform Act of 1978, dated October 13, 1978
f. The Age Discrimination in Employment Act, dated April 9, 1974

8. Effective Date. Upon Issuance.

9. Contact. Equal Opportunity Office.

10. Keywords. Equal Opportunity, Affirmative Employment, Discrimination.

11. List of Appendices.

Attachment A. Processing Complaints of Discrimination.

PROCESSING COMPLAINTS OF DISCRIMINATION Attachment A

1. Pre-complaint Processing

An employee or applicant who believes that he/she has been discriminated against on the basis of race, color, religion, sex, age, national origin, physical or mental disability, and/or reprisal must first contact an EEO Counselor within 45 calendar days from the date the alleged event, act, incident or personnel action occurred, or within 45 calendar days after he/she became aware or should have been aware of the action. Names and addresses of EEO Counselors are posted on bulletin boards in OSM office locations. An EEO Counselor can be contacted directly or the employee or applicant can contact the EEO Office to request a Counselor.

The EEO Counselor has 30 calendar days from the date of the initial contact to conduct the counseling inquiry and attempt to informally resolve the matter. The counseling period can be extended up to an additional 60 calendar days with the written agreement of the complainant and the OSM EO Officer/EO Manager.

During the informal stage, the EEO Counselor will interview the complainant to determine the issue(s) and basis(es) of the problem. If the Counselor determines that the problem, as stated, does not involve an allegation of discrimination or reprisal, the Counselor will direct the complainant to the appropriate forum for addressing the concern;

Conduct an inquiry for the purposes of providing information for settlement efforts and determining jurisdictional questions if a formal complaint is filed;

Seek a resolution or/advise the complainant of his/her right to file a formal discrimination complaint if resolution fails; prepare a written report of inquiry sufficient for the Equal Opportunity Officer to determine what required counseling actions have been taken and resolve any jurisdictional questions that may arise.

2. Filing and Presentation of Formal Complaints

The complainant has the right to file a formal complaint of discrimination within 15 calendar days of receipt of the Notice of Right to File. The complaint must be written and signed by the complainant or that person's representative. The written complaint must describe the action or practice that forms the basis of the complaint.

Formal complaints are submitted to one of the following:

- Equal Opportunity Officer, Office of Surface Mining Reclamation and Enforcement;

- Director, Office of Surface Mining Reclamation and Enforcement;

- Director, Office for Equal Opportunity, Department of the Interior'

- Secretary of the Interior.

Counselors should advise complainants that although they have the right to file complaints with any of the officials listed above, the complaint will be processed more expeditiously when filed directly with the OSM Equal Opportunity Officer.

Complaints filed against the Equal Opportunity Officer, Assistant Director, Human Resources Management, the Director or Deputy Director will be processed by the Alternate Equal Opportunity Officer, Assistant Secretary for Land and Minerals Management.

3. Individual Complaint Process

Employees or applicants for employment alleging discrimination based on race, color, sex, age (40 or over), national origin, religion, disability or reprisal must contact an EEO Counselor within 45 calendar days of the incident, or if it is a personnel action, 45 calendar days from the effective date of the action.

EEO Counselors have 30 calendar days to attempt informal resolution. If successful, the case is closed.

If the informal resolution attempt is unsuccessful, the EEO Counselor will provide a Notice of Final Interview (NFOI) to the employee. The Employee has 15 calendar days from the date of receipt of the NFOI to file a formal written complaint with an appropriate agency official.

If the complaint is dismissed by the Departmental Office for Equal Opportunity (OEO), the Complainant is so notified and advised of his/her appeal rights.

If the complaint is accepted by the Bureau, a formal investigation is conducted on the issues of the complaint.

Within 180 calendar days from the filing date of a complaint, the EEO Office will issue a copy of the Report of Investigation to the Complainant and the Complainant's

representative.

Upon receipt of the Report of Investigation, the Complainant will have 30 calendar days in which to request a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge or request an immediate final decision from the OEO.

If the Complainant does not request either a hearing or a final decision within the 30 calendar day time period, the OEO will issue a final Agency decision. The OEO will issue a final Agency decision within 60 calendar days from receipt of Complainant's notice that he/she wishes an immediate final decision.

If a hearing is held, the EEOC Administrative Judge will provide a recommended decision to the OEO. The OEO will have 60 calendar days to accept, modify or reject the recommended decision. if the OEO does not issue a final decision within 60 calendar days of receiving the recommended decision, this decision will become OEO's final decision.

If the complainant rejects the final agency decision, he/she may appeal to the EEOC or file a civil action in an appropriate U.S. District Court. A complainant has the option to file in Federal District Court at any time after the expiration of 180 days from the filing of the complaint. When a court complaint raises the same issue as in an administrative complaint, the administrative complaint may be dismissed.

4. Avoiding Dual Processing

An employee may file a complaint alleging discrimination under the EEO complaint process (29 CFR 1614) or the OSM's negotiated grievance procedures, but not both. Unless specifically excluded, an employee may file a complaint alleging discrimination under the OSM negotiated grievance procedure or the EEO complaint process, but not both. To avoid the dual processing of complaints, the servicing personnel office or the EO Office (whichever receives the complaint) must send prompt written notification to the other office for informational purposes only.

Once an employee files an EEO complaint, the EO Officer will accept those allegations that are determined to be within the purview of 29 CFR 1614.104. Those allegations that are not within the purview are referred to the Departmental Office for Equal Opportunity for appropriate processing. The servicing personnel office will be informed of those allegations that are being processed to avoid dual processing of similar allegations and to ensure that all pertinent personnel records are maintained.

5. Age Discrimination Complaints

The Age Discrimination in Employment Act of 1967, as amended (ADEA) prohibits discrimination in employment on the basis of age (40 years or older). If an employee, applicant, and/or former employee believes that he/she has been discriminated against based on age, that person has one of two options:

(1) The individual may choose to file a formal complaint under 29 CFR 1614; or

(2) The individual may bypass the administrative complaint process in Part 1614 and file a civil action directly in an appropriate U.S. District Court. However, the complainant must first give the EEOC not less than 30 calendar days written notice of his/her intent to file such action. Such notice must be filed within 180 days after the alleged discrimination.

The notice may be mailed to the following:

Equal Employment Opportunity Commission
Federal Sector Programs
1801 L Street, N.W.
Washington, D.C. 20507

If the complainant elects to file a formal complaint through the EEO administrative process, he/she must first exhaust administrative remedies before filing a civil action in a U.S. District Court.

When complaints are filed solely on the basis of Age, complainants are not entitled to attorney's fees during the administrative process.

6. Class Complaints of Discrimination

A class complaint is a written complaint of discrimination filed on behalf of a class by the agent of the class, alleging that the class is so numerous that a consolidated complaint by the members of the class is impractical, that there are questions of fact common to the class, that the claims of the agent of the class are typical of the claims of the class, and that the agent of the class or, if represented, the representative, will fairly and adequately protect the interests of the class.

A class complaint must be signed by the agent or representative and must identify the policy or practice which adversely affected the class as well as the specific action or matter which affected the class agent.

The time limits for contacting an EEO Counselor and conducting the EEO counseling inquiry are the same as for Title VII individual complaints, including the provision for a 60 day extension of time during the counseling period.

7. Filing and Presentation of Class Complaints

The complaint must be filed with the Department of the Interior no later than 15 calendar days after the agent's receipt of the notice of right to file a class complaint.

A class action complaint may be filed with one of the following individuals.

- Equal Opportunity Officer, Office of Surface Mining Reclamation and Enforcement;
- Director, Office of Surface Mining Reclamation and Enforcement;
- Director, Office for Equal Opportunity, Department of the Interior
- Secretary of the Interior.

Within 30 calendar days of receipt of the complaint, DOI will designate a representative and forward the complaint, along with a copy of the counselor's report and any other relevant information about the complaint, to the EEOC. The EEOC will assign an administrative judge to recommend that DOI accept or dismiss the complaint.

8. Mixed Case Complaints

OSM will process a mixed case complaint in the same manner as it would any other discrimination complaint, except:

a. Within 45 calendar days following completion of the investigation, DOI will issue a final decision.

b. Upon the filing of a complaint, OSM will advise the complainant that if a final decision is not issued within 120 days of the date of filing the mixed case complaint, the complainant may appeal the matter to the MSPB at any time thereafter, as specified in 5 CFR 1201.154(a), or may file a civil action as specified in section 1614.310(g), but not both.

c. DOI will notify the complainant that if (s)he is dissatisfied with DOI's final decision on the mixed case complaint, (s)he may appeal the matter to the MSPB (not the EEOC) within 20 days of receipt of OSM's final decision.

d. Upon issuance of a final decision on a mixed case complaint, DOI will advise the complainant of the right to appeal the matter to the MSPB (not EEOC) within 20 days of receipt of the notice and of the right to file a civil action as provided in CFR 1614.310(a).

Two criteria determine whether a case is a mixed case:

(1) the employee has standing to file an appeal to the MSPB. The following employees generally have a right to appeal to the MSPB:

(a) competitive service employees not serving a probationary period under an initial appointment;

(b) career appointees to the Senior Executive Service;

(c) non-competitive service preference eligible employees with one or more years of current continuous service (e.g., postal employees and attorneys with veterans preference); and

(2) the matter which forms the basis of the discrimination complaint can be appealed to the MSPB. Most MSPB appealable matters fall into the following six categories:

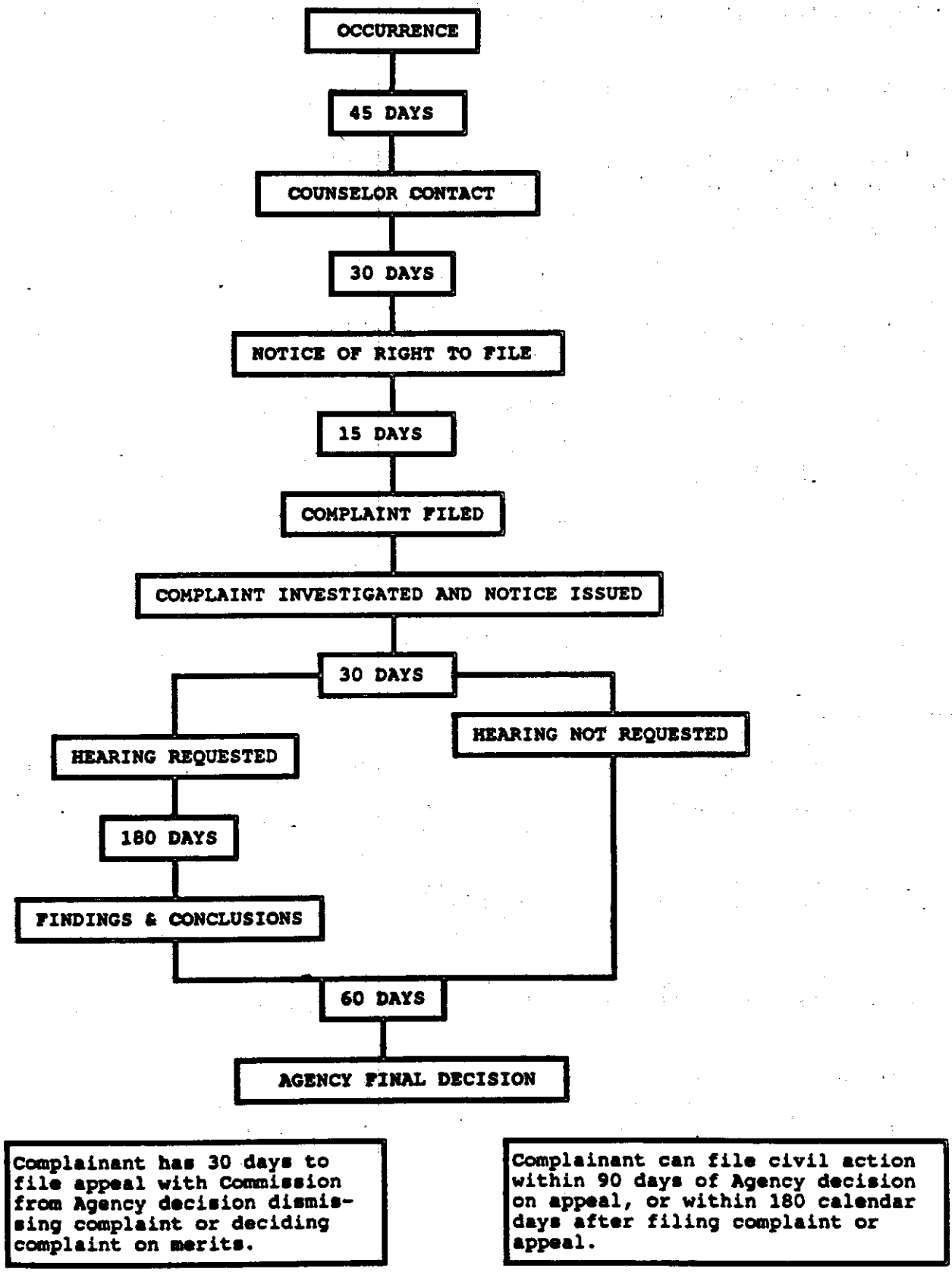
(a) reduction in grade or removal for unacceptable performance;

(b) removal, reduction in grade or pay, suspension for more than 14 days, or furlough for 30 days or less for such cause as will promote the efficiency of the service;

(c) separation, reduction in grade, or furlough for more than 30 days, when the action was effected because of a reduction-in-force;

(d) reduction in force action affecting a career SES appointee;

(e) reconsideration decision sustaining a negative determination of competence for General Schedule employees; and

(f) disqualification of an employee or applicant because of a suitability determination.

FEDERAL SECTOR COMPLAINT PROCESSING UNDER 29 C.F.R., PART 1614