



New Hampshire Department of Environmental Services Civil Rights and Nondiscrimination Implementation Plan

Original Publication Date: October 25, 2022

Revision 4: January 30, 2025

Table of Contents

Introduction.....	3
Authorities.....	3
Commissioner’s Statement.....	4
Definitions	5
Civil Rights Coordinator Responsibilities.....	9
Discrimination Complaint Procedure	10
Background.....	10
Confidentiality	10
Contact Information.....	10
Complaint Procedure	11
Filing a Complaint.....	11
Complaint Resolution Process	11
Formal Complaint Proceedings.....	11
Mediation	12
Informal Complaint Proceedings	12
Complaint Dismissal	13
Record Keeping.....	13
Subrecipient Agreements.....	13
Public Participation	13
Dissemination of Information.....	14
Language Access Services.....	15
Requesting Translation Services	16
Document Translation.....	16
NHDES Staff Instructional Overview for Document Translation	16
Language Interpretation Services	16
NHDES Staff Instructional Overview for Language Interpretation Services.....	17
Accessibility Language Resources.....	17
Record Keeping.....	17
Nondiscrimination Training	17
Access to Programs for Individuals with Disabilities	17
NHDES Civil Rights and Nondiscrimination Implementation Plan Appendices:	19
Appendix #1: Nondiscrimination Statement.....	20

Appendix #2: Discrimination Complaint Form	25
Appendix #3: Formal Complaint Resolution Flow Chart.....	26
Appendix #4: Procedural Safeguards Checklist.....	27
Appendix #5: Applicable Rules	31
40 C.F.R. § 5 – Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Assistance.....	31
40 C.F.R. § 7 – Nondiscrimination in Programs or Activities Receiving Federal Assistance From the Environmental Protection Agency.	37

Introduction

The New Hampshire Department of Environmental Services (NHDES) Title VI Program ensures no person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination, under any program or activity receiving financial assistance from NHDES on the basis of race, color, or national origin. In addition, NHDES does not discriminate based on age, sex, marital status, religion, gender identity or gender expression, income, disability, sexual orientation, citizenship status, status as a veteran or any other legally protected status. NHDES staff, applicants for, and recipients of, EPA assistance are expected to uphold these protections. To this end, NHDES has adopted this Civil Rights and Nondiscrimination Implementation Plan to ensure nondiscrimination measures are implemented and monitored.

Authorities

- [Title VI of the Civil Rights Act](#) (Prohibits discrimination on the basis of race, color, and national origin) (as amended [42 USC §2000\(d\)](#)).
- [40 C.F.R §7](#) (Nondiscrimination in programs or activities receiving federal assistance from the EPA).
- [40 C.F.R §5](#) (Nondiscrimination on the basis of sex in education programs or activities receiving federal assistance).
- [29 U.S.C. §794d](#) (Section 508 of the Rehabilitation Act – Electronic Information Technology).
- [28 C.F.R § 50.3](#) (DOJ guidelines for enforcement of Title VI of Civil Rights Act of 1964).
- [Exec. Order. No. 13166](#) (Improving access to services for persons with Limited English Proficiency).
- [Exec. Order 2016-04](#) (Prohibiting Discrimination on the Basis of Gender Identity or Gender Expression).

Commissioner's Statement



NHDES is committed to ensuring equal participation in all projects, programs, and activities whether or not federal funding is involved. Title VI of the Civil Rights Act of 1964, as amended, requires that no person shall be discriminated against, denied the benefit of, or excluded from participation in any program due to race, color, or national origin. In addition, NHDES ensures equal participation regardless of age, sex, marital status, religion, gender identity or gender expression, income, disability, sexual orientation, citizenship status, status as a veteran, or any other legally protected status.

As the Commissioner, I am responsible for working with the Civil Rights Coordinator and ensuring that they have the sufficient authority to implement the Civil Rights and Nondiscrimination Plan. I have appointed the Legal Unit Administrator as the Civil Rights Coordinator to manage and ensure the required Title VI program measures are fulfilled.

While the Civil Rights Coordinator is responsible for the management of the Plan, it is the duty of all NHDES employees, contractors, and grant or loan recipients to incorporate the requirements of this Plan into their work in order to comply with federal law.

The requirements in this Civil Rights and Nondiscrimination Plan are fundamental to the operations and mission of NHDES. All NHDES employees, contractors, and grant or loan recipients are expected to uphold and implement the requirements of this Plan.

A handwritten signature in black ink, appearing to read "Robert R. Scott".

Robert R. Scott, Commissioner

October 25, 2022

Date

Definitions

Age: How old a person is, or the number of elapsed years from the date of a person's birth.¹

Applicant: One who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.²

Bilingual Staff Member: An agency staff member who has demonstrated proficiency in both English and at least one other language. A bilingual staff member may speak or write directly to a Limited English Proficiency (LEP) individual in a language other than English.³

EPA Assistance: Any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Environmental Protection Agency (EPA) provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of personnel; or
- (3) Real or personal property or any interest in or use of such property, including:
 - (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and
 - (ii) Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA.⁴

Facility: All, or any part of, or any interests in structures, equipment, roads, walks, parking lots, or other real or personal property.⁵

Federal financial assistance: Any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

- (1) A grant or loan of Federal financial assistance, including funds made available for:
 - (i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and
- (2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.
- (3) Provision of the services of Federal personnel.
- (4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest

¹ [40 C.F.R. §7.25.](#)

² [40 C.F.R. §5.105.](#)

³ [EPA Order 1000.32, "Compliance with Executive order 13166: Improving Access to Services to Persons with Limited English Proficiency" \(February 10, 2017\).](#)

⁴ [40 C.F.R. §7.25.](#)

⁵ [40 C.F.R. §7.25.](#)

to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.⁶

Disability⁷

- (1) Disability: The term "disability" means, with respect to an individual
 - (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment (as described in (3) below).
- (2) Major Life Activities
 - (A) In general
For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
 - (B) Major bodily functions
For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- (3) Regarded as having such an impairment
For purposes of paragraph (1)(C):
 - (A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
 - (B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.
- (4) Rules of construction regarding the definition of disability
The definition of "disability" in paragraph (1) shall be construed in accordance with the following:
 - (A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.
 - (B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.
 - (C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.
 - (D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

⁶ [40 C.F.R. §5.105.](#)

⁷ [Americans with Disabilities Act of 1990, Pub. L. No. 101-336, §12102, 104 Stat. 328 \(1991\)](#) (Although 40 C.F.R. § 5 uses the term "handicapped" this plan will use the term disability as defined by the ADA).

(E)

- i. The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as
 - 1. medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
 - 2. use of assistive technology;
 - 3. reasonable accommodations or auxiliary aids or services; or
 - 4. learned behavioral or adaptive neurological modifications.
- ii. The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.
- iii. As used in this subparagraph
 - 1. the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and
 - 2. the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

Interpretation: The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.⁸

Limited English Proficient (LEP) Individuals: Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still be LEP for other types of communication (e.g., reading or writing).⁹

Meaningful Access/Engagement: Language assistance that results in accurate, timely, and effective communication to the LEP individual. For LEP individuals, meaningful access denotes reasonable efforts to provide language assistance services to ensure that LEP individuals have substantially equal access to EPA programs and activities.¹⁰

Primary Language: An individual's primary language is the language in which an individual most effectively communicates.¹¹

Program or activity: All of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance.¹²

(1)

- i A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

⁸ [EPA Order 1000.32, "Compliance with Executive order 13166: Improving Access to Services to Persons with Limited English Proficiency" \(February 10, 2017\).](#)

⁹ [EPA Order 1000.32, "Compliance with Executive order 13166: Improving Access to Services to Persons with Limited English Proficiency" \(February 10, 2017\).](#)

¹⁰ [EPA Order 1000.32, "Compliance with Executive order 13166: Improving Access to Services to Persons with Limited English Proficiency" \(February 10, 2017\).](#)

¹¹ [EPA Order 1000.32, "Compliance with Executive order 13166: Improving Access to Services to Persons with Limited English Proficiency" \(February 10, 2017\).](#)

¹² [40 C.F.R. §7.25](#) (Paragraphs 2 and 3 are not relevant to the purposes of this Plan, but are included for clarity).

- ii The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;
- (2)
 - i A college, university, or other postsecondary institution, or a public system of higher education; or
 - ii A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;
- (3)
 - i An entire corporation, partnership, or other private organization, or an entire sole proprietorship –
 - A. If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
 - B. Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
 - ii The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or
- (4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

Stakeholder: A person who has an interest or concern (not necessarily financial) in the success or failure of an organization, system, plan, or strategy, or who is affected by a course of action.¹³

Vital Document: Paper or electronic material that is critical for access to the Agency’s programs, activities, and services, or contains information about procedures or processes required by law. Classification of a document as “vital” depends upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP individual if the information in question is not provided accurately or in a timely manner.¹⁴

¹³ *Stakeholder*, Black’s Law Dictionary. (11th ed. 2019).

¹⁴ [EPA Order 1000.32, “Compliance with Executive order 13166: Improving Access to Services to Persons with Limited English Proficiency” \(February 10, 2017\).](#)

Civil Rights Coordinator Responsibilities

Civil Rights Coordinator

Thane Joyal

NH Department of Environmental Services

P. O. Box 95; 29 Hazen Drive

Concord, NH 03302-0095

Telephone: [\(603\) 271-3137](tel:6032713137)

Email: thane.joyal@des.nh.gov or nondiscrimination@des.nh.gov

1. Monitors Title VI, Civil Rights, and Nondiscrimination activities.
2. Ensures that NHDES staff are informed and trained on the processes and procedures included in this Civil Rights and Nondiscrimination Plan.
3. Informs all persons that the agency does not discriminate by posting and updating the Nondiscrimination Notice.
4. Evaluates and monitors the NHDES Civil Rights and Nondiscrimination Implementation Plan, including completing an annual evaluation of the Plan and all associated policies, procedures, and other related documents in order to ensure that it remains current and effective. Necessary revisions will be made to address any changes in regulations, policies, or organizational needs.
5. Assists NHDES programs in implementing and enhancing public participation and the dissemination of information for NHDES activities affecting vulnerable populations.
6. Ensures services are provided to individuals with Limited English Proficiency.
7. Enacts and maintains complaint procedures.
8. Tracks all complaints filed under federal and state nondiscrimination laws.
9. Conducts semiannual reviews of all formal and informal discrimination complaints filed with the agency under federal non- discrimination laws and/or any other complaints independently investigated by NHDES to identify and address any patterns or systemic problems.
10. Ensures no intimidation or retaliation against anyone who has exercised their right to participate under 40 C.F.R. §7.
11. Has no other obligations in the agency that may create a conflict of interest.

Discrimination Complaint Procedure

Any person who believes that they have been subjected to discrimination under Title VI, on the basis of race, color, or national origin has a right to file a complaint. In addition, NHDES also prohibits discrimination based on age, sex, marital status, religion, gender identity or gender expression, income, disability, sexual orientation, citizenship status, status as a veteran, or any other legally prohibited basis.

Background

Any individual or class of individuals who believe they have been discriminated against may file a written complaint. Accommodations will be made for those who cannot provide a complaint in writing or receive written notice.

Intimidation or retaliation by NHDES staff towards the complainant is strictly prohibited. Prompt action will be taken to address this concern.¹⁵ Such claims will be handled promptly and fairly following the complaint process below.

This procedure covers the process of discrimination complaints filed and received by the NHDES Civil Rights Coordinator (Coordinator) or designee. Once the complaint is received, it will be processed according to the procedures discussed below.

Confidentiality

NHDES values the confidentiality of those who report complaints of discrimination. The content of a filed complaint will remain confidential. All information related to a complaint must be treated as private information by NHDES staff. NHDES staff are prohibited from sharing information about complaints with unauthorized parties. It is the responsibility of NHDES staff to maintain the integrity of complaint proceedings.

Contact Information

Civil Rights Coordinator

Thane Joyal

NH Department of Environmental Services

P. O. Box 95; 29 Hazen Drive

Concord, NH 03302-0095

Telephone: [\(603\) 271-3137](tel:6032713137)

Email: thane.joyal@des.nh.gov or nondiscrimination@des.nh.gov

An individual who believes they have been subjected to discrimination may also file a discrimination complaint with any of the following agencies:

NH Commission for Human Rights

2 Industrial Park Drive, Bldg. One

Concord, NH 03301

Telephone: [\(603\) 271-2767](tel:6032712767)

Fax: (603) 271-6339

Email: humanrights@hrc.nh.gov

NH Department of Justice

Civil Rights Unit

30 Capital St.

Concord, NH 03301

[\(603\) 271-3650](tel:6032713650)

Email: doj.civilrights@doj.nh.gov

¹⁵ [40 C.F.R. §7.100.](#)

US Environmental Protection Agency

Office of External Civil Rights

Mail Code 230A

1200 Pennsylvania Ave, NW

Washington, DC 20460

[\(202\) 564-3316](tel:(202)564-3316)Email: title_vi_complaints@epa.gov**US EPA, Regional I, Regional Administrator**

5 Post Office Square, Suite 100

Boston, MA 02109-3912

[\(617\) 918-1111](tel:(617)918-1111)Email: r1web.mail@epa.gov**US Department of Justice**

Civil Rights Division

Federal Coordination and
Compliance Section950 Pennsylvania Avenue,
N.W.4CON, 7th Floor

Washington, D.C. 205300

Title VI Hotline: [1-888-TITLE-06 \(1-888-848-5306\)](tel:1-888-TITLE-06)

Complaint Procedure

Filing a Complaint

The complaint must be filed within 180 days of the alleged occurrence¹⁶ and must be in writing using the NHDES Discrimination Complaint Form (Attached in Appendix #2). The Form must be signed by the individual filing the complaint or by their representative.

If the complainant is unable to provide a written statement, they may make a verbal discrimination complaint. The complainant must either record their complaint and send the recording to the Coordinator or give the Coordinator permission to record the complaint. The Coordinator or designated staff will transcribe the oral complaint into writing. The complainant will be given a copy to sign. This signed copy will act as the complainant's written discrimination complaint.

Complaint Resolution Process

Claims of discrimination will be promptly and fairly reviewed as described below under the section titled, "Formal Complaint Proceedings."¹⁷ Written notice will be provided to the complainant on the findings of the investigation as soon as available. This notice will include whether there was a finding of discrimination. The notice will also include a description of the investigative process that was followed.

Accommodations will be provided if a complainant cannot receive written notice throughout the complaint process.

These complaint procedures do not impede the Complainant's right to file complaints with other State and Federal agencies.

Formal Complaint Proceedings

Formal complaints will initially be reviewed by the Coordinator, who will provide written acknowledgment of the complaint within 10 business days by first-class mail. The written acknowledgment will be sent to the address provided on the complaint form.

¹⁶ [40 C.F.R. §7.120 \(NHDES may consider an exception to this time frame if the complaint is egregious in nature\).](#)

¹⁷ [40 C.F.R. §7.90](#)

The Coordinator may determine additional information is required. In this event, the complainant will be notified in writing of the information needed. The complainant will have 60 days to provide the requested information.

Once the additional information is received, if any, the Coordinator will determine if the complaint will be investigated. This will be determined within 15 business days of receiving the requested information, if any. The complaint will be assessed using the preponderance of evidence standard. This means that, based on the information provided, it is more likely than not the complaint warrants an investigation. The Coordinator will notify the complainant in writing of the decision within five business days.

1. If the decision is to not investigate the complaint, the notification shall specify the reason(s) for the decision; or
2. If the complaint is to be investigated, the notification shall state the grounds for the investigation and inform the parties that full cooperation will be required.

If it is determined that a complete investigation will be conducted, a report of the investigation will be drafted. This report will be submitted to the Assistant Commissioner within 75 days. The report will include a description of the complaint and summaries of all persons interviewed. The report will also include the findings and recommendations of the investigation.

1. If the Assistant Commissioner agrees with the findings and recommendations, the Coordinator will mail a letter to the complainant. The letter will detail the Assistant Commissioner's determination. The letter will be mailed within 10 business days from the determination.
2. If the Assistant Commissioner does not agree with the findings and recommendations, they may make appropriate changes to the proposed recommendations. The Assistant Commissioner must notify the Coordinator of these recommendations. This notification must be made within 10 business days.
3. If the Coordinator agrees with the Assistant Commissioner's determination, the Coordinator will notify the complainant in writing. This notice will be sent within five business days. This notice will include the findings of the investigation and all other determinations.

If the Assistant Commissioner and Coordinator cannot resolve the complaint, all materials will be submitted to the Commissioner. After review, the Commissioner will recommend an appropriate resolution. The Commissioner has up to 30 days to submit the resolution. The Commissioner will then notify the Coordinator of the decision. The Coordinator must notify the complainant in writing of the Commissioner's determination. The Coordinator must issue this notification within 5 business days.

Mediation

At any time during the complaint review process, the complainant may request mediation. Both parties must consent to the mediation. This mediation will be facilitated by a third party that is agreed upon by the parties at no cost to the complainant.

At any point, the complainant may withdraw from the mediation process and return to either the formal or informal complaint process.

Informal Complaint Proceedings

The parties are encouraged to consider how they might be willing to resolve the matter through informal means, as appropriate. Either party may take informal measures as necessary to resolve the complaint.

Complaint Dismissal

A complaint may be dismissed under the following circumstances:

- A. The complainant dismisses or withdraws the complaint.
- B. The complainant does not respond to correspondence requesting additional information within the timeframes requested.
- C. The complainant cannot be located.
- D. A complaint may be dismissed after a review if it has been determined there is not a substantive claim of discrimination.

Record Keeping

Complaints will be recorded by NHDES. The nature of the complaint will be recorded, as well as other pertinent information. This may include but is not limited to: the demographics of the complainant; the date the complaint was filed; and the dates of investigation. Records of complaints may be requested by the Environmental Protection Agency (EPA).¹⁸ If requested, this information will be forwarded to the EPA. To maintain confidentiality, no personal identifying information of the complainant will be disclosed in the record.

Subrecipient Agreements

Subrecipients that receive federal funding are held to the same nondiscrimination standards as NHDES. Subrecipients must comply with NHDES and EPA Title VI and nondiscrimination requirements that prohibit the exclusion, denial of benefits or discrimination against individuals based on race, color, national origin, age, sex, religion, gender identity or gender expression, income, disability, sexual orientation, citizenship status, status as a veteran, or any other legally prohibited basis.¹⁹

Public Participation

Public participation is vital to NHDES' decisions and activities. Early and ongoing public involvement brings forth diverse opinions and values. Collaborative efforts with stakeholders improves work quality and enables NHDES to make informed decisions.

NHDES will make every effort to notify communities of activities or projects which may impact them. This section provides a summary of the goals and outreach methods that will be used by NHDES to ensure meaningful public participation.

NHDES' public participation goals are as follows:

- A. NHDES will seek public input and will consider the views of the public in making decisions.
- B. NHDES ensures fair treatment of all New Hampshire citizens as it invites public participation in the enactment of NHDES programs.
- C. NHDES ensures that the decision-making processes are accessible to all interested and impacted groups. This includes those that are financially limited or potentially vulnerable.
- D. NHDES strives to seek the input of all stakeholders and will seek to bring them into the process early.
- E. NHDES will respond in a reasonable and timely manner to requests for public records under the New Hampshire Right to Know Law (RSA 91-A).

¹⁸ [40 C.F.R. §7.85.](#)

¹⁹ [40 C.F.R. §7.50.](#)

- F. NHDES will provide language accessibility and translation services for notices and public hearings, depending on the demographic analysis of any area potentially impacted by a project.
- G. NHDES will strive to engage overburdened populations facing disparate impacts in the public participation process.

The following are various methods NHDES staff may use to support meaningful public participation:

- A. Efforts will be made to notify the public of NHDES projects which may affect their communities. These notices may be sent out by mail, email, social media posts, posted on the NHDES website, or provided on local community TV stations.
- B. NHDES may hold public meetings and hearings if a project has a significant impact on a community. Efforts will be made to host these public meetings and hearings at a time and location convenient for the affected communities.
- C. Efforts will be made to hold public meetings and hearings at a location accessible to public transportation as feasible.
- D. Public meetings and hearings will be held at a location accessible for individuals with disabilities.
- E. Accommodations will be provided for individuals who need American Sign Language (ASL) services.
- F. Translation services will be provided at public meetings if the affected community is determined to be Limited English Proficiency (LEP).
- G. Best efforts will be made to make accommodations if unexpected events arise interfering with public meetings.
- H. Contact information will be provided for NHDES staff and the submission of public comments on projects or programs.²⁰
- I. Past and present concerns within communities affected by NHDES projects and programs will be monitored.²¹

Dissemination of Information

NHDES will post documents regarding projects which may significantly affect communities on the NHDES website. Upon request or based on the demographic analysis of any area potentially impacted by a project, these documents will also be available in other languages to accommodate individuals with LEP.

NHDES may post information on upcoming projects or meetings on social media platforms. NHDES may also use local community centers or community leaders to share information on projects.

²⁰ [71 Fed. Reg. 14211 \(March 21, 2006\).](#)

²¹ [71 Fed. Reg. 14211 \(March 21, 2006\).](#)

Language Access Services

NHDES ensures that individuals with Limited English Proficiency (LEP) have meaningful access to all NHDES programs. Policy guidance published by EPA defines LEP as “Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.”²²

NHDES staff will consider the following four factors when determining the language access resources to provide when interacting with LEP communities.²³

1. The number of LEP individuals likely to be served or affected by the project or program.
2. The frequency in which LEP individuals may come in contact with the program or project.
3. The nature and importance of the project or program for the LEP community.
4. The availability and costs of language translation resources.

NHDES staff may utilize the [American Communities Survey](#), [LEP Community Mapping Tool](#), or other resources to determine which communities are considered LEP. NHDES will use these resources to determine the most common languages spoken. Upon request, written and oral communication regarding a project affecting LEP communities shall be translated and interpreted in the most effective way possible. Language access services will be provided by a third-party vendor. If necessary, language access services may also be provided by volunteer interpreters. Independently, NHDES may also undertake its own analysis on a project-by-project basis, depending on the demographic analysis of any area potentially impacted by a project and translate vital documents.

NHDES will provide written translation for vital documents for each eligible LEP language group that constitutes either:

- A. 5% of the affected community’s population; or
- B. Includes 1,000 people within the community who are likely to be encountered or affected by the project, program, or activity.²⁴

NHDES staff will use whichever of these two options comprises the least amount of people to determine document translation.²⁵ If there are fewer than 50 people in a language group that reaches the 5% of the affected communities population threshold, NHDES is not required to translate vital documents, but may choose to do so. NHDES will provide written notice in the primary language of the LEP language group of their right to receive oral or written translation of these vital documents free of cost. LEP community members may request a translation of these vital documents.²⁶

Vital documents could include:²⁷

1. Nondiscrimination notices.
2. Consent and complaint forms.
3. Intake forms with the potential for important consequences.
4. Written notices of rights, denial, loss, or decreases in benefits or services.
5. Notices of environmental hazards or cease and desist orders.

²² 69 Fed. Reg. 35606 (June 5, 2004).

²³ 69 Fed. Reg. 35606 (June 5, 2004).

²⁴ 69 Fed. Reg. 35610 (June 5, 2004).

²⁵ 69 Fed. Reg. 35610 (June 5, 2004).

²⁶ 69 Fed. Reg. 35610 (June 5, 2004).

²⁷ 69 Fed. Reg. 35609 (June 5, 2004).

6. Notices advising LEP persons of free language assistance.
7. Consumption Advisories.
8. Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required.

NHDES will also provide oral interpretation services upon requests. Oral interpretation services may be provided for interactions with LEP individuals or communities. Oral interpretation services may also be provided for public meetings in LEP communities.

Requesting Translation Services

Any LEP community member may request language access services for a specific written document or for a public meeting. NHDES will provide notice of projects that potentially impact LEP communities through media and other effective outreach resources.

At the point of first contact with an LEP individual, NHDES staff will assess the need for language access services. NHDES staff may utilize a third-party language access services vendor to effectively engage with the LEP individual. If necessary, NHDES may use volunteer translators and interpreters to provide immediate translation and interpretation services. A list of voluntary translators can be found on a designated NHDES Intranet page.

NHDES may utilize translation services from a third-party, Language Access Service vendor to translate vital documents. This service may also be used to provide interpretation. The Language Access Service vendor may translate webpages and documents. The Language Access Service vendor may also provide phone or video interpretation. If needed, this third-party vendor may provide interpretation services at public meetings.

Document Translation

Vital documents may be translated by the third-party vendor. Individuals with LEP may request vital document translation.

NHDES Staff Instructional Overview for Document Translation

All NHDES staff will be trained on accessing document translation services. Training materials will be available on a dedicated NHDES Intranet page. If any NHDES staff member requires document translation services, they must:

1. Complete the NHDES Document Translation Requests Form; and
2. Email the completed form to language-access@des.nh.gov or lar@des.nh.gov.

The request will be reviewed by the Language Access Services Team. If the request is approved, a translation request will be forwarded to the Language Access Service vendor. The Language Access Service vendor will provide a price quotation for the document translation. Once the price quote is received, a formal request for the translation service will be sent to the third-party vendor. Once the document(s) is translated by the third-party vendor, it will be sent to the requesting staff.

Language Interpretation Services

Language interpretation services may be provided for in-person interactions, public meetings, and phone calls with NHDES staff. Individuals with LEP may request interpretation services while interacting with NHDES programs or activities.

NHDES Staff Instructional Overview for Language Interpretation Services

If NHDES staff encounter an individual with LEP in need of interpretation services, the staff member may reach out directly to the third-party vendor. Training materials and instructions will be available on a dedicated NHDES Intranet page.

For phone interpretation services, the staff member will need to provide the NHDES' client number, their full name, phone number, and division, bureau, or program, and the accounting unit to charge for the service. Once this information is provided, NHDES staff may continue with on-demand phone interpretation services with the vendor. After this service is provided, the NHDES staff member must report the information listed above and to language-access@des.nh.gov or lar@des.nh.gov.

For in-person interpretation services for public meetings, NHDES staff should contact the Language Access Services Team. Training materials and instructions for this service will be available on a dedicated NHDES Intranet page. The staff member should reach out to the Language Access Services Team at language-access@des.nh.gov or lar@des.nh.gov with the date of the event, location of the event, and the requested languages.

Accessibility Language Resources

If NHDES staff encounter an individual who is hearing, deaf, deafblind, hard of hearing, or has a speech disability and in need of interpretation services, the staff member may reach out to [TTY/TDD Access: Relay NH](#). Text Telephone/Teletypewriter Relay Service can be provided to accommodate for translations services. The contact information is:

TTY/TDD Access Relay NH: [1-800-735-2964](tel:1-800-735-2964) or dial [711](#) (in NH).

Record Keeping

NHDES will maintain records of the number of language translation and interpretation requests received. The languages requested for translation and interpretation will also be recorded. Additionally, the Language Access Services Team will track all requests made to the third-party vendor. This information will be used to determine the future need for language access services amongst LEP communities. No personal identifying information of the customer will be recorded to maintain confidentiality.

Nondiscrimination Training

NHDES staff will be trained annually on all nondiscrimination requirements. The goal of the training is to give NHDES staff the knowledge to successfully implement the nondiscrimination program requirements. New NHDES employees will be required to complete the training as part of orientation. Training resources will be made available on the Nondiscrimination Intranet page. These training materials and the designated Intranet page will be reviewed annually and updated as needed.

Access to Programs for Individuals with Disabilities

NHDES strives to ensure individuals with disabilities have meaningful access to all NHDES projects and programs. NHDES recognizes that individuals with disabilities may need accommodations to have equal participation in or benefit from NHDES' programs, services, and activities. NHDES facilities and facilities utilized for public hearings will be accessible for individuals with disabilities.²⁸

NHDES will provide, at no cost:

1. Appropriate auxiliary aids and services to individuals who are deaf or hard of hearing.
2. Aid to other individuals with disabilities to ensure effective communication and an equal opportunity to participate.

All services will be provided in a timely manner, and all services will respect the individual's privacy.

²⁸ [40 C.F.R. §7.65](#) (NHDES is not required to take any action which would result in a fundamental alteration in the nature of the program or may cause any undue financial or administrative burdens).

NHDES Civil Rights and Nondiscrimination Implementation Plan Appendices:

Appendix #1: Nondiscrimination Statement



NONDISCRIMINATION NOTICE

The provisions of Title VI of the Civil Rights Act of 1964, ensures that no person shall be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving financial assistance from the New Hampshire Department of Environmental Services (NHDES) on the basis of race, color or national origin. In addition, NHDES does not discriminate against any person based on age, sex, marital status, religion, gender identity or gender expression, income, disability, sexual orientation, citizenship status, status as a veteran or any other legally prohibited basis.

Any person who believes they have been aggrieved by an unlawful discriminatory practice regarding NHDES' programs has a right to file a formal complaint. Any such complaint must be in writing and submitted to the NHDES Civil Rights Coordinator within 180 days of the alleged occurrence. For more information regarding civil rights complaints, please direct inquiries to:

Civil Rights Coordinator

Thane Joyal

NH Department of Environmental Services

P. O. Box 95; 29 Hazen Drive

Concord, NH 03302-0095

Telephone: [\(603\) 271-3137](tel:(603)271-3137)

Email: thane.joyal@des.nh.gov or nondiscrimination@des.nh.gov

Inquiries also may be directed to:

NH Commission for Human Rights

2 Industrial Park Drive, Bldg. One

Concord, NH 03301

Telephone: [\(603\) 271-2767](tel:(603)271-2767)

Fax: (603) 271-6339

Email: humanrights@hrc.nh.gov

US Environmental Protection Agency

Office of External Civil Rights

Mail Code 230A

1200 Pennsylvania Ave, NW

Washington, DC 20460

[\(202\) 564-3316](tel:(202)564-3316)

Email: title_vi_complaints@epa.gov

US EPA, Regional I, Regional Administrator

5 Post Office Square, Suite 100

Boston, MA 02109-3912

[\(617\) 918-1111](tel:(617)918-1111)

Email: r1web.mail@epa.gov

NH Department of Justice

Civil Rights Unit

30 Capital St.

Concord, NH 03301

[\(603\) 271-3650](tel:(603)271-3650)

Email: doj.civilrights@doj.nh.gov

US Department of Justice

Civil Rights Division

Federal Coordination and

Compliance Section

950 Pennsylvania Avenue, N.W.

4CON, 7th Floor

Washington, D.C. 205300

Title VI Hotline: [1-888-TITLE-06 \(1-888-848-5306\)](tel:1-888-TITLE-06)

Appendix #2: Discrimination Complaint Form



DISCRIMINATION COMPLAINT FORM

Legal Unit



RSA/Rule: Voluntary

If you wish to file a complaint, please print out and complete the form. Please explain as clearly as possible what happened and why you believe you were discriminated against. Once complete, please mail or scan and email the form using the contact information at the end of the form.

Situation Giving Rise to the Incident

- ☐ Awarding of federal funds to a recipient from NHDES.
- ☐ Awarding of federal funds to NHDES.
- ☐ Employment by a recipient of federal funding from NHDES.
- ☐ Program or services offered by NHDES.
- ☐ Program or services offered by a recipient of federal funding from NHDES.

Specific Complaint

Date incident occurred (MM, DD, YY): _____

PERSON ALLEGING DISCRIMINATION		
NAME:		
MAILING ADDRESS:		
CITY/TOWN:	STATE:	ZIP:
TELEPHONE (primary):	TELEPHONE (work):	
EMAIL ADDRESS:		

REPORTING PARTY (if different than person alleging discrimination)		
NAME:		
MAILING ADDRESS:		
CITY/TOWN:	STATE:	ZIP:
TELEPHONE (primary):	TELEPHONE (work):	
EMAIL ADDRESS:		

AGENCY OR ORGANIZATION INVOLVED		
AGENCY/ORGANIZATION NAME:		
MAILING ADDRESS:		
CITY/TOWN:	STATE:	ZIP:
CONTACT NAME:	CONTACT EMAIL:	
CONTACT TELEPHONE (home):	TELEPHONE (work):	

Nature and description of the discrimination complaint:

Check the appropriate box(es) for the basis of the reason you believe you were discriminated against and explain in your summary below:

- | | |
|---|---|
| <input type="checkbox"/> Age | <input type="checkbox"/> Religion |
| <input type="checkbox"/> Gender | <input type="checkbox"/> Race / Ethnicity |
| <input type="checkbox"/> Gender identity | <input type="checkbox"/> National origin (inc. Limited English Proficiency) |
| <input type="checkbox"/> Sexual orientation | <input type="checkbox"/> Color |
| <input type="checkbox"/> Marital status | <input type="checkbox"/> Disability |
| <input type="checkbox"/> Familial status | |

Summary of complaint (provide details)*

*You may attach any written materials or other information that you think is relevant to your complaint.

Certification and signature

By signing below, I certify that the information provided on or with this complaint is true and complete to the best of my knowledge and belief.

Signature

Date

Submit completed form and any other relevant information, by one of the following methods*:

Via email to Civil Rights Coordinator: thane.joyal@des.nh.gov or nondiscrimination@des.nh.gov

Via hand delivery or,

US Postal Service mail to:

NHDES Legal Unit

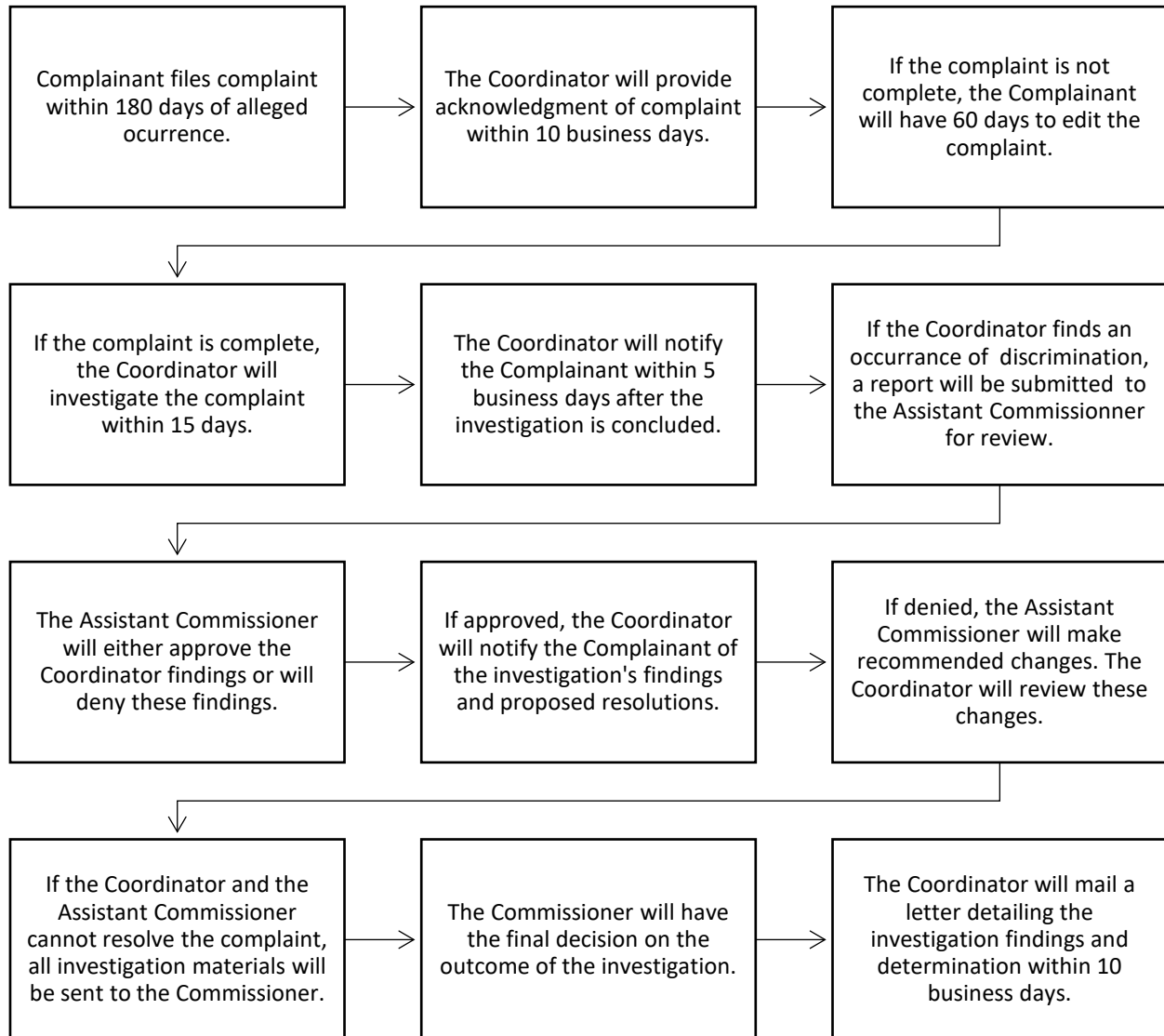
Attn: Civil Rights Compliance Coordinator

29 Hazen Drive

Concord, NH 03302-0095

Complaints of discrimination made to NHDES, the US Environmental Protection Agency Office of Civil Rights (US EPA OCR), the US Equal Employment Opportunity Commission (EEOC), or the New Hampshire Commission for Human Rights (NHCHR) must ordinarily be filed within 180 days of the last act of alleged discrimination. However, extensions of these deadlines may be permitted under certain circumstances. You should contact NHDES or the appropriate agency directly for more information.

Appendix #3: Formal Complaint Resolution Flow Chart



Appendix #4: Procedural Safeguards Checklist

The Procedural Safeguards Checklist lists the EPA's minimum requirements expected in the NHDES Title VI and Nondiscrimination Plan.

PROCEDURAL SAFEGUARDS CHECKLIST FOR RECIPIENTS

FEDERAL NON-DISCRIMINATION OBLIGATIONS

Federal Non-Discrimination Laws: Collectively, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972; and EPA's implementing non-discrimination regulations at 40 C.F.R. Parts 5 and 7.

Item	Yes, with Supporting Documentation	In Progress	No
Notice of Non-Discrimination under the Federal Non-Discrimination Laws²⁹			
(See Attachment for recommended text of notice.)			
Post the non-discrimination notice in a prominent place:			
• in your offices and facilities			
• on your website's homepage			
• in general publications distributed to the public			
Ensure the non-discrimination notice			
• is accessible to limited-English proficient individuals and individuals with disabilities			
• clearly identifies the non-discrimination coordinator, including name and contact information			
Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws³⁰			
Adopt grievance procedures that are prominently published ³¹ in print and online and that:			
• clearly identify the non-discrimination coordinator, including name and contact information			
• explain the role of the non-discrimination coordinator relative to the coordination and oversight of the grievance procedures			
• state who may file a complaint under the grievance procedures and describe the appropriate bases for filing a complaint			
• describe which formal and informal processes are available, and the options for complainants in pursuing either			
• state that the preponderance of the evidence standard will be applied during the analysis of the complaint			
• contain assurances that intimidation and retaliation are prohibited ³² and that claims of intimidation and retaliation			

²⁹ 40 C.F.R. §7.95(a); 40 C.F.R. § 5.140.

³⁰ 40 C.F.R. §7.90; 40 C.F.R. § 5.135(b).

³¹ 40 C.F.R. §5.135(b).

Item	Yes, with Supporting Documentation	In Progress	No
will be handled promptly and fairly pursuant to your grievance procedures in the same manner as other claims of discrimination			
<ul style="list-style-type: none"> assure the prompt and fair resolution of complaints which allege violation of federal non-discrimination laws 			
<ul style="list-style-type: none"> state that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process³³ 			
<ul style="list-style-type: none"> are reviewed on an annual basis (for both in-print and online materials), and revised as necessary, to ensure prompt and fair resolution of discrimination complaints 			
Non-Discrimination Coordinator³⁴			
Designate at least one non-discrimination coordinator to ensure compliance with the federal non-discrimination laws, who will:			
<ul style="list-style-type: none"> provide information to individuals internally and externally that you do not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of your programs or activities, and you do not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights 			
<ul style="list-style-type: none"> provide notice of your formal and informal grievance processes and the ability to file a discrimination complaint 			
<ul style="list-style-type: none"> establish a mechanism (e.g., an investigation manual) for implementation of your grievance procedures to ensure that all discrimination complaints filed with you under federal non-discrimination laws are processed promptly and fairly. One element of any policy and procedure or mechanism must include providing meaningful access for limited-English proficient individuals and individuals with disabilities to your programs and activities 			
<ul style="list-style-type: none"> track all complaints filed with you under federal non-discrimination laws, including any patterns or systemic problems 			
<ul style="list-style-type: none"> conduct semiannual reviews of all formal and informal discrimination complaints filed with you under federal non-discrimination laws and/or any other complaints independently investigated by you to identify and address any patterns or systemic problems 			
<ul style="list-style-type: none"> ensure that appropriate training is provided for your staff in the formal and informal processes available to resolve 			

³² See 40 C.F.R. §7.100.

³³ Whether ECRCO considers complaint investigations and resolutions to be “prompt” will vary depending on the complexity of the investigation and the severity and extent of the alleged discrimination. For example, the investigation and resolution of a complaint involving multiple allegations and multiple complainants likely would take longer than one involving a single allegation of discrimination and a single complainant.

³⁴ 40 C.F.R. §7.85(g); 40 C.F.R. §5.135(a).

Item	Yes, with Supporting Documentation	In Progress	No
complaints filed with you under federal non-discrimination laws			
<ul style="list-style-type: none"> provide or procure training services for your staff to ensure that they are appropriately trained on your non-discrimination policies and procedures, as well as the nature of your obligation to comply with federal non-discrimination laws 			
<ul style="list-style-type: none"> ensure that complainants are updated on the progress of their discrimination complaints filed with you under federal non-discrimination laws and promptly informed as to any determinations you have made 			
<ul style="list-style-type: none"> undertake periodic evaluations of the efficacy of your efforts to provide services, aids, benefits, and participation in any of your programs or activities without regard to race, color, national origin, disability, age, sex or prior exercise of rights or opposition to actions protected under federal non-discrimination laws 			
<ul style="list-style-type: none"> not have other responsibilities that create a conflict of interest (e.g., serving as your non-discrimination coordinator as well as your legal advisor or representative on civil rights issues) 			
Public Participation			
Ensure your public involvement process is available to all persons regardless of race, color, national origin, disability, age, sex or prior exercise of rights or opposition to actions protected under federal non-discrimination laws.			
Ensure that the factors used to determine the appropriate time, place, location, duration, and security at public meetings are developed and applied in a non-discriminatory manner.			
Develop, publicize and implement written public participation procedures consistent with EPA's Public Participation Guidance found at 71 FR 14207, 14210 (March 21, 2006), that include implementation of steps for effective public participation each time you engage in a public participation or public involvement process. For example:			
<ul style="list-style-type: none"> develop a description of the community (including demographics, history, and background) 			
<ul style="list-style-type: none"> provide a contact list of your relevant staff members, including phone numbers and email addresses, to allow the public to communicate via phone or internet 			
<ul style="list-style-type: none"> develop a list of past and present community concerns (including any complaints filed under the federal non-discrimination laws) 			
<ul style="list-style-type: none"> develop and implement a detailed plan of action (outreach activities) you will take to address concerns 			
<ul style="list-style-type: none"> develop and implement a contingency plan for unexpected events 			
<ul style="list-style-type: none"> identify location(s) where public meetings will be held (consider the availability and schedules of public transportation 			

Item	Yes, with Supporting Documentation	In Progress	No
<ul style="list-style-type: none"> develop a list of contact names for obtaining language assistance services for limited-English proficient persons, including translation of documents and/or interpreters for meetings 			
<ul style="list-style-type: none"> develop a list of appropriate local media contacts (based on the culture and linguistic needs of the community) 			
<ul style="list-style-type: none"> provide the location of the information repository 			
Meaningful Access to Programs and Activities for Persons with Limited English Proficiency			
Conduct an appropriate analysis described in EPA's LEP Guidance, found at 69 FR 35602 (June 25, 2004) and http://www.lep.gov , to determine what language services or mix of language services you need to provide to ensure that limited-English proficient individuals can meaningfully participate in your programs and activities, and			
<ul style="list-style-type: none"> develop a language access plan consistent EPA's LEP Guidance 			
<ul style="list-style-type: none"> develop, publicize, and implement written procedures to ensure meaningful access to all your programs and activities for all persons, including access for limited-English proficient individuals 			
<ul style="list-style-type: none"> translate vital documents of general interest into prominent languages 			
<ul style="list-style-type: none"> translate vital documents of individual interest to LEP individuals 			
<ul style="list-style-type: none"> provide for simultaneous oral interpretation of live proceedings (e.g., town hall meetings and public hearings) in prominent languages 			
<ul style="list-style-type: none"> provide for simultaneous interpretation of proceedings, meetings, etc., for individual LEP person participating in one of your programs or activities (e.g., a LEP individual wishing to file a grievance or complaint) 			
Meaningful Access to Programs and Activities for Persons with Disabilities			
Develop, publicize and implement written procedures to ensure meaningful access to your programs and activities for individuals with disabilities that:			
<ul style="list-style-type: none"> provide, at no cost, appropriate auxiliary aids and services, including but not limited to, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication and an equal opportunity to participate fully in the benefits, activities, programs and services provided by you in a timely manner and in such a way as to protect the privacy and independence of the individual 			
<ul style="list-style-type: none"> ensure that your facilities and other facilities utilized by you (e.g., if you hold a public hearing at a recreational center) are physically accessible for individuals with disabilities 			

Appendix #5: Applicable Rules

40 C.F.R. § 5 – Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Assistance

Authority: [20 U.S.C. 1681](#), [1682](#), [1683](#), [1685](#), [1686](#), [1687](#), [1688](#).

Source: [65 FR 52865](#), [52890](#), Aug. 30, 2000, unless otherwise noted.

Subpart A – Introduction

§5.100 Purpose and effective date.

The purpose of these Title IX regulations is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in these Title IX regulations. The effective date of these Title IX regulations shall be September 29, 2000.

§5.110 Remedial and affirmative action and self-evaluation.

(a) **Remedial action.** If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) **Affirmative action.** In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in these Title IX regulations shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964-1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966-1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966-1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

§5.115 Assurance required.

(a) **General.** Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which these Title IX regulations apply will be operated in compliance with these Title IX regulations. An assurance of compliance with these Title IX regulations shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 5.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

§5.130 Effect of employment opportunities.

The obligation to comply with these Title IX regulations is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§5.135 Designation of responsible employee and adoption of grievance procedures.

(a) **Designation of responsible employee.** Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under these Title IX regulations, including any investigation of any complaint communicated to such recipient alleging its noncompliance with these Title IX regulations or alleging any actions that would be prohibited by these Title IX regulations. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) **Complaint procedure of recipient.** A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by these Title IX regulations.

§5.140 Dissemination of policy.**(a) Notification of policy.**

(1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and these Title IX regulations not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and these Title IX regulations, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 5.300 through 5.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and these Title IX regulations to such recipient may be referred to the employee designated pursuant to § 5.135, or to the designated agency official.

Subpart B - Coverage

§5.200 Application.

Except as provided in §§ 5.205 through 5.235(a), these Title IX regulations apply to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§5.235 Statutory amendments.

(a) This section, which applies to all provisions of these Title IX regulations, addresses statutory amendments to Title IX.

(c) **Program or activity or program** means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)

(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(iii)

(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship -

- (1) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or
- (2) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or
- (B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

Subpart E - Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§5.500 Employment.

(a) **General.**

- (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.
- (2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.
- (3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 5.500 through 5.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(b) **Application.** The provisions of §§ 5.500 through 5.550 apply to:

- (1) Recruitment, advertising, and the process of application for employment;
- (2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;
- (3) Rates of pay or any other form of compensation, and changes in compensation;
- (4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;
- (5) The terms of any collective bargaining agreement;
- (6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;
- (7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
- (8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;
- (9) Employer-sponsored activities, including social or recreational programs; and
- (10) Any other term, condition, or privilege of employment.

§5.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

- (a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§5.510 Recruitment.

(a) ***Nondiscriminatory recruitment and hiring.*** A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) ***Recruitment patterns.*** A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 5.500 through 5.550.

§5.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§5.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 5.550.

§5.525 Fringe benefits.

(a) ***"Fringe benefits" defined.*** For purposes of these Title IX regulations, *fringe benefits* means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 5.515.

(b) ***Prohibitions.*** A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§5.530 Marital or parental status.

(a) ***General.*** A recipient shall not apply any policy or take any employment action:

- (1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or
- (2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.
- (b) **Pregnancy.** A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.
- (c) **Pregnancy as a temporary disability.** Subject to § 5.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.
- (d) **Pregnancy leave.** In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§5.535 Effect of state or local law or other requirements.

- (a) **Prohibitory requirements.** The obligation to comply with §§ 5.500 through 5.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.
- (b) **Benefits.** A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§5.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§5.545 Pre-employment inquiries.

- (a) **Marital status.** A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is “Miss” or “Mrs.”
- (b) **Sex.** A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§5.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 5.500 through 5.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall

prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F – Procedures

§5.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (“Title VI”) are hereby adopted and applied to these Title IX regulations. These procedures may be found at 40 CFR 7.105 through 7.135.

40 C.F.R. § 7 – Nondiscrimination in Programs or Activities Receiving Federal Assistance From the Environmental Protection Agency.

Authority: [42 U.S.C. 2000d](#) to 2000d-7 and 6101 *et seq.*; [29 U.S.C. 794](#); [33 U.S.C. 1251nt](#).

Source: [49 FR 1659](#), Jan. 12, 1984, unless otherwise noted.

Subpart A – General

§7.15 Applicability.

This part applies to all applicants for, and recipients of, EPA assistance in the operation of programs or activities receiving such assistance beginning February 13, 1984. New construction ([§7.70](#)) for which design was initiated prior to February 13, 1984, shall comply with the accessibility requirements in the Department of Health, Education and Welfare (now the Department of Health and Human Services) nondiscrimination regulation, [45 CFR 84.23](#), issued June 3, 1977, or with equivalent standards that ensure the facility is readily accessible to and usable by handicapped persons.³⁵ Such assistance includes but is not limited to that which is listed in the *Catalogue of Federal Domestic Assistance* under the 66.000 series. It supersedes the provisions of former [40 CFR parts 7](#) and [12](#).

Subpart B – Discrimination Prohibited on the Basis of Race, Color, National Origin or Sex

§7.30 General prohibition.

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or on the basis of sex in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act, as amended, including the Environmental Financing Act of 1972.

§7.35 Specific prohibitions.

- (a) As to any program or activity receiving EPA assistance, a recipient shall not directly or through contractual, licensing, or other arrangements on the basis of race, color, national origin or, if applicable, sex:
- (1) Deny a person any service, aid or other benefit of the program or activity;
 - (2) Provide a person any service, aid or other benefit that is different, or is provided differently from that provided to others under the program or activity;
 - (3) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program or activity;
 - (4) Subject a person to segregation in any manner or separate treatment in any way related to receiving services or benefits under the program or activity;
 - (5) Deny a person or any group of persons the opportunity to participate as members of any planning or advisory body which is an integral part of the program or activity, such as a local sanitation board or sewer authority;
 - (6) Discriminate in employment on the basis of sex in any program or activity subject to section 13, or on the basis of race, color, or national origin in any program or activity whose purpose is to create

³⁵ Noting the EPA uses the term “handicapped persons” and this Plan uses the term “disability” in light of recommendations from the Americans with Disabilities Act.

employment; or, by means of employment discrimination, deny intended beneficiaries the benefits of EPA assistance, or subject the beneficiaries to prohibited discrimination.

(7) In administering a program or activity receiving Federal financial assistance in which the recipient has previously discriminated on the basis of race, color, sex, or national origin, the recipient shall take affirmative action to provide remedies to those who have been injured by the discrimination.

(b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.

(c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

(d) The specific prohibitions of discrimination enumerated above do not limit the general prohibition of § 7.30.

Subpart C – Discrimination Prohibited on the Basis of Handicap:

§7.45 General prohibition.

No qualified handicapped person shall solely on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving EPA assistance.

§7.50 Specific prohibitions against discrimination.

(a) A recipient, in providing any aid, benefit or service under any program or activity receiving EPA assistance shall not, on the basis of handicap, directly or through contractual, licensing, or other arrangement:

(1) Deny a qualified handicapped person any service, aid or other benefit of a federally assisted program or activity;

(2) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless the action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(3) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an entity that discriminates on the basis of handicap in providing aids, benefits, or services to beneficiaries of the recipient's program or activity;

(4) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(5) Limit a qualified handicapped person in any other way in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service from the program or activity.

(b) A recipient may not, in determining the site or location of a facility, make selections:

(1) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives EPA assistance or

- (2) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity receiving EPA assistance with respect to handicapped persons.
- (c) A recipient shall not use criteria or methods of administering any program or activity receiving EPA assistance which have the effect of subjecting individuals to discrimination because of their handicap, or have the effect of defeating or substantially impairing accomplishment of the objectives of such program or activity with respect to handicapped persons.
- (d) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.
- (e) The exclusion of non-handicapped persons or specified classes of handicapped persons from aid, benefits, or services limited by Federal statute or Executive Order to handicapped persons or a different class of handicapped persons is not prohibited by this subpart.

§7.55 Separate or different aid, benefits, or services.

Recipients shall not deny a qualified handicapped person an opportunity equal to that afforded others to participate in or benefit from the aid, benefit, or service in the program or activity receiving EPA assistance. Recipients shall administer programs or activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§7.60 Prohibitions and requirements relating to employment.

- (a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal assistance.
- (b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur, and shall not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.
- (c) The prohibition against discrimination in employment applies to the following activities:
 - (1) Recruitment, advertising, and the processing of applications for employment;
 - (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (3) Rates of pay or any other form of compensation and changes in compensation;
 - (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (5) Leaves of absence, sick leave, or any other leave;
 - (6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
 - (7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (8) Employer sponsored activities, including those that are social or recreational; or
 - (9) Any other term, condition, or privilege of employment.
- (d) A recipient shall not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(e) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(f) A recipient shall not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) A recipient shall not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except as permitted by the Department of Justice in 28 CFR 42.513.

§7.65 Accessibility.

(a) **General.** A recipient shall operate each program or activity receiving EPA assistance so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. This paragraph does not:

(1) Necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(2) Require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such financial and administrative burdens, the recipient shall be required to take any other action that would not result in such an alteration or financial and administrative burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity receiving EPA assistance.

(b) **Methods of ensuring compliance in existing facilities.** A recipient may comply with the accessibility requirements of this section by making structural changes, redesigning equipment, reassigning services to accessible buildings, assigning aides to beneficiaries, or any other means that make its program or activity accessible to handicapped persons. In choosing among alternatives, a recipient must give priority to methods that serve handicapped persons in the most integrated setting appropriate.

(c) **Deadlines.**

(1) Except where structural changes in facilities are necessary, recipients must adhere to the provisions of this section within 60 days after the effective date of this part.

(2) Recipients having an existing facility which does require alterations in order to comply with paragraph (a) of this section must prepare a transition plan in accordance with §7.75 within six months from the effective date of this part. The recipient must complete the changes as soon as possible, but not later than three years from date of award.

(d) **Notice of accessibility.** The recipient must make sure that interested persons, including those with impaired vision or hearing, can find out about the existence and location of the services, activities, and facilities that are accessible to and usable by handicapped persons.

(e) **Structural and financial feasibility.** This section does not require structural alterations to existing facilities if making such alterations would not be structurally or financially feasible. An alteration is not structurally feasible when it has little likelihood of being accomplished without removing or altering a load-bearing structural member. Financial feasibility shall take into account the degree to which the alteration work is to be assisted by EPA assistance, the cost limitations of the statute under which such assistance is provided, and the relative cost of accomplishing such alterations in manners consistent and inconsistent with accessibility.

§7.70 New construction.

(a) **General.** New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) **Conformance with Uniform Federal Accessibility Standards.**

(1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101-19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

§7.75 Transition plan.

If structural changes to facilities are necessary to make the program or activity accessible to handicapped persons, a recipient must prepare a transition plan.

(a) **Requirements.** The transition plan must set forth the steps needed to complete the structural changes required and must be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. At a minimum, the transition plan must:

(1) Identify the physical obstacles in the recipient's facilities that limit handicapped persons' access to its program or activity,

(2) Describe in detail what the recipient will do to make the facilities accessible,

(3) Specify the schedule for the steps needed to achieve full accessibility under §7.65(a), and include a year-by-year timetable if the process will take more than one year,

(4) Indicate the person responsible for carrying out the plan.

(b) **Availability.** Recipients shall make available a copy of the transition plan to the OCR upon request and to the public for inspection at either the site of the project or at the recipient's main office.

Subpart D - Requirements for Applicants and Recipients

§7.80 Applicants.

(c) **Compliance information.** Each applicant for EPA assistance shall submit regarding the program or activity that would receive EPA assistance:

(1) Notice of any lawsuit pending against the applicant alleging discrimination on the basis of race, color, sex, age, handicap, or national origin;

(2) A brief description of any applications pending to other Federal agencies for assistance, and of Federal assistance being provided at the time of the application; and

(3) A statement describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before the application, and information concerning the agency or organization performing the reviews.

§7.85 Recipients.

(a) **Compliance information.** Each recipient shall collect, maintain, and on request of the OCR, provide the following information to show compliance with this part:

- (1) A brief description of any lawsuits pending against the recipient that allege discrimination which this part prohibits;
- (2) Racial/ethnic, national origin, age, sex and handicap data, or EPA Form 4700-4 information submitted with its application;
- (3) A log of discrimination complaints which identifies the complaint, the date it was filed, the date the recipient's investigation was completed, the disposition, and the date of disposition; and
- (4) Reports of any compliance reviews conducted by any other agencies.

(b) **Additional compliance information.** If necessary, the OCR may require recipients to submit data and information specific to certain programs or activities to determine compliance where there is reason to believe that discrimination may exist in a program or activity receiving EPA assistance or to investigate a complaint alleging discrimination in a program or activity receiving EPA assistance. Requests shall be limited to data and information which is relevant to determining compliance and shall be accompanied by a written statement summarizing the complaint or setting forth the basis for the belief that discrimination may exist.

(c) **Self-evaluation.**

(1) Each recipient must conduct a self-evaluation of its administrative policies and practices, to consider whether such policies and practices may involve handicap discrimination prohibited by this part. When conducting the self-evaluation, the recipient shall consult with interested and involved persons including handicapped persons or organizations representing handicapped persons. The evaluation shall be completed within 18 months after the effective date of this part.

(e) **Maintaining compliance information.** Recipients must keep records for paragraphs (a) and (b) of this section for three (3) years after completing the project. When any complaint or other action for alleged failure to comply with this part is brought before the three-year period ends, the recipient shall keep records until the complaint is resolved.

(g) **Coordination of compliance effort.** If the recipient employs fifteen (15) or more employees, it shall designate at least one person to coordinate its efforts to comply with its obligations under this part.

§7.90 Grievance procedures.

Requirements. Each recipient shall adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of this part.

§7.95 Notice of nondiscrimination.

(a) **Requirements.** A recipient shall provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, age, or handicap in a program or activity receiving EPA assistance or, in programs or activities covered by section 13, on the basis of sex. Methods of notice must accommodate those with impaired vision or hearing. At a minimum, this notice must be posted in a prominent place in the recipient's offices or facilities. Methods of notice may also include publishing in newspapers and magazines, and placing notices in recipient's internal publications or on recipient's printed letterhead. Where appropriate, such notice must be in a language or languages other than English. The notice must identify the responsible employee designated in accordance with § 7.85.

(b) **Deadline.** Recipients of assistance must provide initial notice by thirty (30) calendar days after award and continuing notice for the duration of EPA assistance.

§7.100 Intimidation and retaliation prohibited.

No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either:

- (a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or
- (b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.

Subpart E - Agency Compliance Procedures**§7.110 Preaward compliance.**

(a) **Review of compliance information.** Within EPA's application processing period, the OCR will determine whether the applicant is in compliance with this part and inform the Award Official. This determination will be based on the submissions required by §7.80 and any other information EPA receives during this time (including complaints) or has on file about the applicant. When the OCR cannot make a determination on the basis of this information, additional information will be requested from the applicant, local government officials, or interested persons or organizations, including aged and handicapped persons or organizations representing such persons. The OCR may also conduct an on-site review only when it has reason to believe discrimination may be occurring in a program or activity which is the subject of the application.

(b) **Voluntary compliance.** If the review indicates noncompliance, an applicant may agree in writing to take the steps the OCR recommends to come into compliance with this part. The OCR must approve the written agreement before any award is made.

(c) **Refusal to comply.** If the applicant refuses to enter into such an agreement, the OCR shall follow the procedure established by paragraph (b) of §7.130.

§7.120 Complaint investigations.

The OCR shall promptly investigate all complaints filed under this section unless the complainant and the party complained against agree to a delay pending settlement negotiations.

(a) **Who may file a complaint.** A person who believes that he or she or a specific class of persons has been discriminated against in violation of this part may file a complaint. The complaint may be filed by an authorized representative. A complaint alleging employment discrimination must identify at least one individual aggrieved by such discrimination. Complaints solely alleging employment discrimination against an individual on the basis of race, color, national origin, sex or religion shall be processed under the procedures for complaints of employment discrimination filed against recipients of Federal assistance (see 28 CFR part 42, subpart H and 29 CFR part 1691). Complaints of employment discrimination based on age against an individual by recipients of Federal financial assistance are subject to the Age Discrimination in Employment Act of 1967 and should be filed administratively with the Equal Employment Opportunity Commission (see 29 CFR part 1626). Complainants are encouraged but not required to make use of any grievance procedure established under §7.90 before filing a complaint. Filing a complaint through a grievance procedure does not extend the 180 day calendar requirement of paragraph (b)(2) of this section.

(b) **Where, when and how to file complaint.** The complainant may file a complaint at any EPA office. The complaint may be referred to the region in which the alleged discriminatory acts occurred.

(1) The complaint must be in writing and it must describe the alleged discriminatory acts which violate this part.

(2) The complaint must be filed within 180 calendar days of the alleged discriminatory acts, unless the OCR waives the time limit for good cause. The filing of a grievance with the recipient does not satisfy the requirement that complaints must be filed within 180 days of the alleged discriminatory acts.

(c) **Notification.** The OCR will notify the complainant and the recipient of the agency's receipt of the complaint within five (5) calendar days.

(d) **Complaint processing procedures.** After acknowledging receipt of a complaint, the OCR will immediately initiate complaint processing procedures.

(1) **Preliminary investigation.**

(i) Within twenty (20) calendar days of acknowledgment of the complaint, the OCR will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the OCR will notify the complainant and the Award Official. The OCR will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the OCR a response to the notice of complaint within thirty (30) calendar days of receiving it.

(iv) Complaints alleging age discrimination under the Age Discrimination Act of 1975 will be referred to a mediation agency in accordance with § 7.180.

(2) **Informal resolution.**

(i) OCR shall attempt to resolve complaints informally whenever possible. When a complaint cannot be resolved informally, OCR shall follow the procedures established by paragraphs (c) through (e) of § 7.115.

(e) **Confidentiality.** EPA agrees to keep the complainant's identity confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Ordinarily in complaints of employment discrimination, the name of the complainant will be given to the recipient with the notice of complaint.

(g) **Dismissal of complaint.** If OCR's investigation reveals no violation of this part, the Director, OCR, will dismiss the complaint and notify the complainant and recipient.

§7.125 Coordination with other agencies.

If, in the conduct of a compliance review or an investigation, it becomes evident that another agency has jurisdiction over the subject matter, OCR will cooperate with that agency during the continuation of the review of investigation. EPA will:

(a) Coordinate its efforts with the other agency, and

(b) Ensure that one of the agencies is designated the lead agency for this purpose. When an agency other than EPA serves as the lead agency, any action taken, requirement imposed, or determination made by the lead agency, other than a final determination to terminate funds, shall have the same effect as though such action had been taken by EPA.

§7.140 General prohibition.

No person in the United States may, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance.

§7.145 Specific prohibitions.

(a) As to any program or activity receiving EPA assistance, a recipient shall not directly or through contractual, licensing, or other arrangements on the basis of age:

- (1) Exclude any individuals from, deny them the service, aid or benefits of, or subject them to discrimination under, a program or activity;
 - (2) Provide a person any service, aid or other benefit that is different, or is provided differently from that provided to others under the program or activity;
 - (3) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program or activity;
 - (4) Subject a person to segregation in any manner or separate treatment in any way related to receiving services or benefits under the program or activity;
 - (5) Deny a person or any group of persons the opportunity to participate as members of any planning or advisory body which is an integral part of the program or activity, such as a local sanitation board or sewer authority;
 - (6) In administering a program or activity receiving Federal financial assistance in which the recipient has previously discriminated on the basis of age, the recipient shall take affirmative action to provide remedies to those who have been injured by the discrimination.
- (b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their age, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular age.
- (c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the ground of age; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.
- (d) The specific prohibitions of discrimination enumerated above do not limit the general prohibition of § 7.140.

§7.150 Exceptions to the rules against age discrimination - normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by §§7.140 and 7.145, if the action reasonably takes into account age as a factor necessary to the normal operation or achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity if:

- (a) Age is used as a measure or approximation of one or more other characteristics;
- (b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;
- (c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and
- (d) The other characteristic(s) are impractical to measure directly on an individual basis.

§7.155 Exceptions to the rules against age discrimination - reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by §§ 7.140 and 7.145 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and

substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§7.160 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 7.150 and 7.155 is on the recipient of EPA financial assistance.

§7.165 Special benefits for children and the elderly.

If a recipient operating a program which serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children the provision of those benefits shall be presumed to be voluntary affirmative action provided that it does not have the effect of excluding otherwise eligible persons from participation in the program.

§7.175 Exhaustion of administrative remedy.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Age Discrimination Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and EPA has made no finding with regard to the complaint; or EPA issues any finding in favor of the recipient.

(b) If EPA fails to make a finding within 180 days or issues a finding in favor of the recipient, EPA shall:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant that:

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary of the Department of Health and Human Services, the Administrator, the Attorney General of the United States, and the recipient;

(iv) The notice must state: The alleged violation of the Age Discrimination Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Age Discrimination Act by the same recipient is the subject of a pending action in any court of the United States.

§7.180 Mediation of age discrimination complaints.

(a) The OCR will refer all accepted complaints alleging age discrimination to the Mediation Agency designated by the Secretary of the Department of Health and Human Services.

(b) Both the complainant and the recipient must participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. The recipient and the complainant must meet with the mediator at least once before the OCR will accept a judgment that an agreement is not possible. The recipient and the complainant, however, need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator must prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator will send a

copy of the agreement to the OCR, which will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator must protect the confidentiality of all information obtained in the course of the mediation process. No mediator may testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

(e) Mediation ends after sixty (60) days from the time EPA received the complaint or if:

(1) An agreement is reached; or

(2) The Mediator determines that an agreement cannot be reached.

(f) The mediator must return unresolved complaints to OCR to be processed in accordance with the procedure in §7.120.