

# PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

## EXTERNAL CIVIL RIGHTS PROGRAM GUIDELINES FOR GRANT RECIPIENTS

The Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Civil Rights is charged with ensuring the non-discriminatory use of Federal funds by recipients of PHMSA assistance. The PHMSA External Civil Rights Program Guidelines is meant to be an informative tool that can be used by recipients of PHMSA Federal financial assistance as they work to ensure they are in compliance with their civil rights responsibilities.

The PHMSA External Civil Rights Program Guidelines for Grant Recipients (CR Guidelines) is not a standard or regulation. It creates no new legal obligations and does not operate to bind PHMSA or the public. This document is intended to assist recipients of PHMSA Federal financial assistance by summarizing all of the applicable civil rights laws, as well as the regulations and policies implementing those laws in one place. The CR Guidelines is advisory in nature, informational in content, and is intended to assist recipients of PHMSA financial assistance in complying with the civil rights laws and regulations including: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and DOT regulations and policies implementing these laws. The CR Guidelines does not in any way replace or supersede those laws or regulations.

To be clear, recipients of PHMSA Federal financial assistance do not need to take any action based on this document. Recipients must comply with the laws and regulations contained herein, but this document does not require any action on the part of recipients.

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## Chapter I

### INTRODUCTION AND BACKGROUND

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is one of ten operating administrations within the Department of Transportation. It is headed by an Administrator who is appointed by the President of the United States. PHMSA operates through a Washington, D.C. headquarters and five regional offices that assist organizations in the 50 states, the District of Columbia, Puerto Rico, Guam, Northern Mariana Islands, and American Samoa. PHMSA strives to meet the needs of the public to ensure communities remain safe, livable and free from risks associated with the transportation of hazardous materials by pipeline and other modes of transportation. To be effective, PHMSA establishes national policy, sets and enforces standards, provides extensive training, conducts research, and prepares the public and first responders to prevent incidents and reduce the consequences if an incident does occur.

1.1 PURPOSE: The purpose of this document is to provide information to Recipients of PHMSA financial assistance on the civil rights laws and regulations including Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and DOT regulations and policies implementing these laws. These guidelines provide information on the objectives of the PHMSA External Civil Rights Program, a summary of compliance reviews, and PHMSA's complaint procedures.

1.2. HOW TO CONTACT PHMSA: PHMSA's Office of Pipeline Safety and Office of Hazardous Materials Safety are responsible for providing financial assistance to PHMSA Recipients. PHMSA is responsible for oversight of grant implementation for PHMSA programs. Inquiries should be directed to PHMSA Headquarters at the following address and phone number:

U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
East Building, 2nd Floor  
1200 New Jersey Ave., SE  
Washington, DC 20590

Phone: 202-366-4433, Fax: 202-366-3666

Additional information can be found at PHMSA's website -<http://www.phmsa.dot.gov/>

1.3. ACCESSIBLE FORMATS: This document is available in accessible formats upon request. To obtain paper copies of this document as well as information regarding these accessible formats, contact PHMSA's Office of Civil Rights at 202-366-9638 or by mail at the above address. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

1.4. DEFINITIONS: For purposes of this document, the following definitions will be used:

- a. Affected Community - A person or persons served or likely to be directly or indirectly affected by a program or activity receiving Federal financial assistance from PHMSA.
- b. Affirmative Action - A positive program to eliminate discrimination and ensure nondiscrimination.
- c. Applicant - A person or entity that submits an application, request, or plan required to be approved by the Secretary or his/her designee or by a primary Recipient, as a condition of eligibility for Federal financial assistance and “application” means such an application, request, or plan.
- d. Assurance - An agreement in which a Recipient legally agrees to administer its programs and services in accordance with Title VI and other civil rights laws and regulations pursuant to the grant agreement, contract, or appropriations.
- e. Beneficiary - Refers to a person or group of persons with an entitlement to receive or enjoy the benefits, services, resources, and information, or to participate in the activities and programs being funded in whole or part by PHMSA.
- f. Civil Rights Program Plan - Refers to a plan voluntarily developed by a Recipient to demonstrate how the Recipient is complying with the requirements of Title VI, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, the Age Discrimination Act and Title IX of the Education Amendments.
- g. Color - Refers to skin color complexion.
- h. Complainant - A party that makes a complaint that he or she or any specific class of persons has been subjected to discrimination or retaliation prohibited by any civil rights authority by the action or inaction of the Recipient or Sub-Recipient.
- i. Complaint - Refers to a written allegation that discrimination has occurred or is occurring in a program or activity funded by PHMSA or that the Recipient of PHMSA financial assistance is otherwise not in compliance with Federal civil rights requirements.
- j. Complaint Investigation – see Investigation.
- k. Compliance - Refers to a condition in which PHMSA has found that the Recipient or Sub-Recipient has met the requirements stated in this document and there is no indication or evidence of discrimination on the basis of race, color, national origin, gender, age or disability.
- l. Compliance Review - Refers to a systematically planned and regularly initiated investigation that assesses and evaluates the civil rights and equal opportunity policies, procedures, and

practices of an organization or its instrumentality funded in whole or part by PHMSA to determine compliance with applicable civil rights statutes, regulations, standards, and policies.

m. Contractor - Any entity or organization that has entered into a contract with a Recipient or Sub-Recipient receiving PHMSA financial assistance.

n. Department or DOT - U.S. Department of Transportation.

o. Director - Director of the PHMSA Office of Civil Rights.

p. Disability - A person that has a physical or mental impairment that is not transitory (lasting or expected to last six months or less).

q. Discrimination - Any action or inaction, whether intentional or unintentional, in any program or activity of a Federal aid Recipient, sub-Recipient or contractor that results in disparate treatment, disparate impact or perpetuating the effects of prior discrimination based on such characteristics as race, color, national origin, gender, age or disability, or in the case of disability, failing to make a reasonable accommodation.

r. Disparate Impact - A facially neutral policy or practice that disproportionately affects members of a group identified by race, color, national origin, gender, age or disability, where the Recipient's policy or practice lacks a substantial legitimate justification and where there exists one or more alternatives that would serve the same legitimate objectives but with less disproportionate effect on the basis of race, color, national origin, gender, age, or disability.

s. Disparate Treatment - Actions that result in circumstances where similarly situated persons are intentionally treated differently (i.e., less favorably) than others because of their race, color, national origin, gender, age or disability.

t. Disproportionate Burden - A neutral policy or practice that disproportionately affects low-income populations more than non-low-income populations. A finding of disproportionate burden requires the Recipient to evaluate alternatives and mitigate burdens where practicable.

u. Facility - All or any part of structures, equipment, or other real or personal property or interests therein, and the provisions of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

v. Federal Financial Assistance -

- 1) grants and loans of Federal funds;
- 2) the grant or donation of Federal property and interests in property;
- 3) the detail of Federal personnel;
- 4) the sale and lease of, and the permission to use (on other than a casual or transient basis) Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the

Recipient, or in recognition of the public interest to be served by such sale or lease to the Recipient; or

- 5) any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of assistance.

w. Investigation - Procedures PHMSA will undertake whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with the Federal civil rights requirements. The investigation will include, where appropriate, a review of the pertinent practices and policies of the Recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the Recipient has failed to comply with these guidelines.

x. Investigator - DOT or contract personnel responsible for conducting complaint or compliance investigations. Investigation of complaints may be part of one's primary job duties, or a duty assigned only occasionally.

y. Letter of Finding - A written notice to the Recipient that officially advises the Recipient of a finding(s) of noncompliance and, where appropriate, identifies the actions the Recipient must take to correct a violation or otherwise secure compliance with one or more Federal civil rights requirements. The Letter of Finding is issued by the Director, Office of Civil Rights following the issuance of the Compliance Review Report and receipt by the agency of the Recipient's reply to the Report stating what it will or will not do in response to the conclusions and recommendations in the Report.

z. Limited English Proficient (LEP) - Refers to persons for whom English is not their primary language and who have a limited ability to read, write, speak or understand English. It includes people who reported to the U.S. Census that they speak English less than very well, not well, or not at all.

aa. Low-income Person - A person whose median household income is at or below the U.S. Department of Health and Human Services (HHS) poverty guidelines that can be located at <http://aspe.hhs.gov/poverty/index.cfm>.

Recipients are encouraged to use a locally developed threshold, such as the definition found in 49 U.S.C. § 5302: "refers to an individual whose family income is at or below 150 percent of the poverty line (as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section) for a family of the size involved" or other threshold, provided that the threshold is at least as inclusive as the HHS poverty guidelines.

bb. Low-income Population - Any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstance warrant, geographically dispersed/transient persons

(such as migrant workers or Native Americans) who will be similarly affected by a proposed PHMSA program, policy or activity.

cc. Minority Persons include the following:

- 1) American Indian and Alaska Native, which refers to people having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment.
- 2) Asian, which refers to people having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- 3) Black or African American, which refers to people having origins in any of the Black racial groups of Africa.
- 4) Hispanic or Latino, which includes persons of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
- 5) Native Hawaiian or Other Pacific Islander, which refers to people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

dd. Minority Population - Any readily identifiable group of minority persons who live in geographic proximity and, if circumstances warrant, geographically dispersed/transient populations (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy, or activity.

ee. National Origin - The particular nation where a person was born, or where the person's parents or ancestors were born.

ff. Non-compliance - A PHMSA determination that the Recipient is not in compliance with the requirements of civil rights statutes (and the regulations and orders of the Department) or a failure to implement an approved civil rights program and has engaged in activities that have had the purpose or effect of denying persons the benefits of, excluding from participation in, or subjecting persons to discrimination in the Recipient's program or activity on the basis of race, color, national origin, gender, age, or disability.

gg. Non-minority - A White person, not of Hispanic origin, having origins in any of the original peoples of Europe, North Africa, or the Middle East.

hh. PHMSA - Pipeline and Hazardous Materials Safety Administration.

ii. Post Award Review - A review that extends to all organizational components of a Recipient organization or entity.

jj. Pre-Award Review - A review that includes only the critical components of an Applicant organization undertaken prior to final award of financial assistance.

kk. Primary Recipient - Any recipient that extends Federal financial assistance to a Sub-Recipient.

ll. Programs or Activities - The operations of any entity receiving PHMSA financial assistance, as described in 49 CFR § 21.23(e).

mm. Race - A classification system used to categorize humans into large and distinct populations or groups by anatomical, cultural, ethnic, genetic, geographical, historical, linguistic, religious, or social affiliation.

nn. Recipient - Any State, public or private agency, institution, department or other organizational unit that receives Federal financial assistance from PHMSA directly or indirectly through a primary Recipient. The term does not include any ultimate beneficiary under any such assistance program.

oo. Secretary – The Secretary of the U.S. Department of Transportation.

pp. Subcontractor - Any entity or organization which has entered into a subcontract with a contractor to provide a service in connection with a program or activity initiated by any Recipient or Sub-Recipient.

qq. Sub-Recipient - Any entity that receives PHMSA financial assistance through a primary Recipient.

1.5. ENVIRONMENTAL JUSTICE: Executive Order (EO) 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” was signed by President Clinton on February 11, 1994. Subsequent to issuance of the Executive Order, the U.S. Department of Transportation (DOT) issued a DOT Order for implementing the Executive Order on environmental justice (EJ). The DOT Order (Order 5610.2(a), “Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 77 FR 27534, May 10, 2012) describes the process the Department and its modal administrations will use to incorporate EJ principles into programs, policies, and activities. PHMSA issued an Environmental Justice Policy (PHMSA 5610.2, February 22, 2012) that implements environmental justice principles into its programmatic and regulatory processes.

The Presidential memorandum accompanying EO 12898 identified Title VI of the Civil Rights Act of 1964 as one of several Federal laws that should be applied “to prevent minority communities and low-income communities from being subject to disproportionately high and adverse environmental effects.” According to the U.S. Department of Justice, “...the core tenet of environmental justice—that development and urban renewal benefitting a community as a whole not be unjustifiably purchased through the disproportionate allocation of its adverse environmental and health burdens on the community’s minority—flows directly from the underlying principle of Title VI itself.”

Title VI prohibits discrimination by Recipients of Federal financial assistance on the basis of race, color, and national origin, including the denial of meaningful access for limited English proficient (LEP)

persons. Under DOT’s Title VI regulations, Recipients of Federal financial assistance are prohibited from, among other things, using “criteria or methods of administering its program which have the effect of subjecting individuals to discrimination based on their race, color, or national origin.” For example, facially neutral policies or practices that result in discriminatory effects or disparate impacts violate DOT’s Title VI regulations, unless the Recipient can show the policies or practices are substantially justified and there is no less discriminatory alternative. In addition, Title VI and DOT regulations prohibit Recipients from intentionally discriminating against people on the basis of race, color, and national origin.

The overlap between the statutory obligation placed on Federal agencies under Title VI to ensure nondiscrimination in federally assisted programs administered by State and local entities, and the administrative directive to Federal agencies under the Executive Order to address disproportionate adverse impacts of Federal activities on minority and low-income populations explain why Title VI and environmental justice are often paired. The clear objective of the Executive Order and Presidential memorandum is to ensure that Federal agencies promote and enforce nondiscrimination as one way of achieving the key objective of environmental justice—fair distribution of the adverse impacts of, or burdens associated with, Federal programs, policies, and activities.

Over the years, U.S. DOT has encouraged a proactive approach to the implementation of environmental justice principles in its programs, policies, and activities. This is reflected in PHMSA’s Policy on Environmental Justice, which, consistent with E.O. 12898, and DOT’s Order sets forth a process by which PHMSA will integrate the goals of environmental justice into its existing operations to ensure that consideration of environmental justice principles is an integral part of all programs, policies, and activities, from the inception of the planning process through to project completion, operations, and evaluation.

The guiding principles of environmental justice followed by PHMSA are briefly summarized as follows:

- To avoid, minimize or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

1.6. **LIMITED ENGLISH PROFICIENCY:** In accordance with Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency,” on December 4, 2005, the U.S. Department of Transportation issued [Policy Guidance Concerning Recipient's Responsibilities to Limited English Proficient \(LEP\) Persons](#), which is modeled after DOJ’s guidance. As described in the guidance, DOT and PHMSA Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. The guidance applies to all DOT-funded

Recipients. Coverage extends to a Recipient's entire program or activity, i.e., to all parts of a Recipient's operations. This is true even if only one part of the Recipient receives the Federal assistance. For example, if DOT provides assistance to a state department of transportation to rehabilitate a particular highway on the National Highway System, all of the operations of the entire state department of transportation—not just the particular highway program or project—are covered by the DOT guidance.

The DOT guidance outlines four factors Recipients should apply to the various kinds of contacts they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons:

- a. The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the Recipient or grantee.
- b. The frequency with which LEP individuals come in contact with the program.
- c. The nature and importance of the program, activity, or service provided by the Recipient to people's lives.
- d. The resources available to the Recipient and costs.

The greater the number or proportion of eligible LEP persons; the greater the frequency with which they have contact with a program, activity, or service; and the greater the importance of that program, activity, or service, the more likely enhanced language services will be needed. Smaller Recipients with more limited budgets are typically not expected to provide the same level of language service as larger Recipients with larger budgets. The intent of DOT's guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small organizations and local governments.

After completing the above four-factor analysis, Recipients can determine the appropriate "mix" of LEP services required. Recipients have two main ways to provide language services: oral interpretation either in person or via telephone interpretation service and written translation. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a motor vehicle department or an emergency hazardous material cleanup team in a largely Hispanic neighborhood may need immediate oral interpreters available and decide to hire full-time bilingual staff. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high in which pre-arranged language services for the particular service may not be necessary. The languages spoken by the LEP individuals with whom the Recipient has frequent contact often determine the languages into which documents will be translated and the types of interpreters provided.

Recipients should ensure that any External Civil Rights Program plan developed as a best practice for ensuring compliance with existing civil rights laws and regulations include both environmental justice and limited English proficiency requirements.

## Chapter II

### Program Overview

1. **PROGRAM OBJECTIVES:** The objectives of PHMSA’s External Civil Rights Program are as follows:
  - a. To ensure that PHMSA funded benefits and related services are made available to, and are fairly and adequately distributed among, beneficiaries without regard to race, color, national origin, gender, age or disability;
  - b. The location of existing or proposed facilities and the provision of services involved in the program or activity will not deny access to any person on the basis of prohibited discrimination; and
  - c. Persons in the affected community are not differently or adversely impacted on the basis of race, color, national origin, gender, age or disability.
  
2. **STATUTORY AUTHORITY:** Section 601 of Title VI of the Civil Rights Act of 1964 states the following:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

The Civil Rights Restoration Act of 1987 clarified the broad application of Title VI. Title VI covers all the operations of covered entities without regard to whether specific portions of the covered program or activity are federally funded. The term “program or activity” means all of the operations of an entity that receives Federal financial assistance or distributes such assistance to Sub-Recipients or subcontractors.

Section 504 of the Rehabilitation Act of 1973 states (in part):

“No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.”

The Age Discrimination Act of 1975 provides:

“No person in the United States shall, 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 Federal financial assistance.”

Title IX of the Education Amendments of 1972 states (in part):

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

#### Statutory Authority Summary

- Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.
- Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.
- Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq.
- Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq.
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.
- Civil Rights Restoration Act of 1987, Pub L. No. 100-259, 102 Stat 28(1988)

### 3. REGULATORY AUTHORITY:

#### Regulatory and Executive Orders

- 49 CFR § 21 – Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI Program
- 49 CFR § 25 – Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Assistance
- 49 CFR § 27 – Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance
- 49 CFR § 28 – Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation
- 28 CFR § 35, Nondiscrimination on the Basis of Disability in State and Local Government Services, Subpart F – Coordination of Enforcement of Nondiscrimination in Federally Assisted Program
- 28 CFR § 41 – Implementation of Executive Order 12250, Nondiscrimination on the Basis of Handicap in Federally Assisted Programs
- Executive Order 12250, Leadership and Coordination of Nondiscrimination Laws, Issued November 2, 1980
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, Issued August 11, 2000
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Issued February 11, 1994

#### Guidance Documents

- U.S. Department of Justice Title VI Legal Manual, dated January 11, 2001 – <http://www.justice.gov/crt/about/cor/coord/vimannual.php>.

- U.S. Department of Transportation Order 5610.2(a) Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 77 FR 27534, May 10, 2012.
- Pipeline and Hazardous Materials Safety Administration Environmental Justice Policy, 5610.2, February 22, 2012.
- U.S. Department of Transportation’s Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient Persons (DOT LEP Guidance), 70 FR 74087, December 14, 2005.

4. COMPLIANCE REPORTS: 49 CFR § 21.9(b) requires Recipients to “keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the Recipient has complied or is complying with (49 CFR § 21).”

5. APPLICABILITY TO CONTRACTORS: Contractors and subcontractors are responsible for complying with any External Civil Rights Program of the Recipient with whom they are contracting. Recipients are responsible for ensuring that contractors follow their Program and comply with civil rights laws and regulations.

## CHAPTER III

### GENERAL REQUIREMENTS AND GUIDELINES

1. **INTRODUCTION**: This chapter describes best practices that all PHMSA Recipients may follow to ensure their programs, policies and activities comply with DOT's civil rights regulations. PHMSA may request the Recipient provide information necessary for PHMSA to ensure compliance.
2. **REQUIREMENT TO PROVIDE TITLE VI ASSURANCES**: In accordance with 49 CFR § 21.7(a), every application for financial assistance from PHMSA must be accompanied by an assurance that the Applicant will carry out the program in compliance with DOT's Title VI regulations. This requirement will be fulfilled when the Applicant/Recipient submits its annual certifications and assurances to PHMSA. Primary Recipients must collect Title VI assurances from Sub-Recipients prior to passing on PHMSA funds. The text of the annual assurance is available on PHMSA's website.
3. **REQUIREMENTS FOR FIRST-TIME APPLICANTS**: First-time Applicants must submit:
  - a. An assurance, as noted in 2 above, that it will comply with Title VI and other civil rights statutes.
  - b. Information regarding their civil rights compliance history if they have previously received funding from another Federal agency. This information includes a copy of any Title VI or other civil rights compliance review activities conducted in the previous three years. The information should include:
    - 1) The purpose or reason for the review,
    - 2) The name of the agency or organization that conducted the review,
    - 3) A summary of the findings and recommendations of the review, and
    - 4) A report on the status and/or disposition of such findings and recommendations.
  - c. A brief description of any pending applications to other Federal agencies for assistance, and whether any Federal agency has found the Applicant to be in noncompliance with any civil rights requirements.
4. **BEST PRACTICE FOR DOCUMENTING COMPLIANCE**: PHMSA recognizes as a best practice for primary Recipients to document their compliance with DOT's civil rights regulations by developing a Civil Rights Program Plan. PHMSA is not requiring Recipients to produce or submit a Civil Rights Program Plan. A Recipient that receives funds every year may develop a Civil Rights Program Plan and

establish a review of the plan on a triennial basis. It is a best practice that the plan be approved by the Recipient's or Sub-Recipient's board of directors or appropriate governing entity or official(s) responsible for policy decisions. Recipients should keep a copy of the board resolution, meeting minutes or similar documentation with the Civil Rights Program Plan as evidence that the board of directors or appropriate governing entity or official(s) has approved the Civil Rights Program.

Sub-Recipients who develop a Civil Rights Program Plan may provide the plan to the primary Recipient from whom they receive funding in order to assist the primary Recipient in its compliance efforts. Such plans may be submitted and stored electronically at the option of the primary Recipient. Sub-Recipients may choose to adopt the primary Recipient's notice to beneficiaries, complaint procedures and complaint form, public participation plan, and language assistance plan, where appropriate. Operational differences between the primary Recipient and Sub-Recipient may require, in some instances, that the Sub-Recipient tailor its language assistance plan. Sub-Recipients may develop and submit to the primary Recipient a list of complaints, investigations or lawsuits. Sub-Recipients may submit all the above information to the primary Recipient on a schedule required by the primary Recipient. Collection and storage of Sub-Recipient Civil Rights Program Plans may be electronic at the option of the primary Recipient.

- a. Contents. If a Recipient chooses to voluntarily produce a Civil Rights Program Plan, suggested content includes:
  - 1) A copy of the Recipient's civil rights notice to the public that indicates the Recipient complies with the civil rights laws specified in this document (Title VI, Section 504, ADA, Age Discrimination Act and Nondiscrimination on the Basis of Sex in Educational Programs), and informs the members of the public of the protections against discrimination afforded to them by these laws. It may include a list of locations where the notice is posted. A sample notice is in Appendix B.
  - 2) A copy of the Recipient's instructions to the public regarding how to file a discrimination complaint, including a copy of the complaint form, if one is used. Sample complaint procedures are in Appendix C, and a sample complaint form is in Appendix D.
  - 3) A list of any civil rights investigations, complaints, or lawsuits filed with the Recipient since the time of the last submission. See Appendix E for an example of how to report this information. To be relevant, the list would only need to include those investigations, complaints or lawsuits that pertain to allegations of discrimination on the basis of race, color, national origin, gender, age and/or disability in transportation-related activities and programs

that pertain to the Recipient submitting the report, not necessarily the larger agency or department of which the Recipient is a part.

- 4) A public participation plan that includes an outreach plan to engage minority and limited English proficient populations, as well as a summary of outreach efforts. A Recipient's targeted public participation plan for minority populations may be part of efforts that extend more broadly to include other constituencies that are traditionally underserved, such as people with disabilities, low-income populations, and others.
- 5) A copy of the Recipient's plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance.
- 6) A narrative or descriptions of efforts the primary Recipient uses to ensure Sub-Recipients are complying with the civil rights laws referenced in this document, as well as a schedule of Sub-Recipient civil rights program submissions.
- 7) A copy of the Title VI equity analysis conducted during the planning stage with regard to the location of the facility if the Recipient has constructed or is constructing a facility(ies).

5. NOTIFICATION TO BENEFICIARIES OF PROTECTION UNDER CIVIL RIGHTS LAWS:

Recipients may provide information to the public regarding the Recipient's obligations under DOT's regulations and apprise members of the public of the protections against discrimination afforded to them by the civil rights laws listed in this document. At a minimum, Recipients may disseminate this information to the public by posting a civil rights notice on the Recipient's website and in public areas of the Recipient's office(s), including the reception desk, meeting rooms, etc. A sample Civil Rights Notice to the public is provided in Appendix B.

a. Contents. The Civil Rights notice suggested content includes:

- 1) A statement that the Recipient operates programs without regard to race, color, national origin, gender, age or disability.
- 2) A description of the procedures that members of the public should follow to request additional information on the Recipient's civil rights obligations.
- 3) A description of the procedures that members of the public should follow to file a discrimination complaint against the Recipient.

- b. Dissemination. Recipients may inform the public of their rights under the civil rights laws through posters, comment cards or flyers placed around the Recipient's facility(ies). The type, timing and frequency of these measures are at the discretion of the Recipient.
- c. Document translation. Notices detailing a Recipient's civil rights obligations and complaint procedures may be translated into languages other than English, as needed, and consistent with the DOT LEP Guidance and the Recipient's language assistance plan.
- d. Sub-Recipients. In order to reduce the administrative burden associated with this requirement, Sub-Recipients may adopt the Civil Rights Notice developed by the primary Recipient; however, they may want to inform interested parties that they may file discrimination complaints directly with the Sub-Recipient.

6. DEVELOPMENT OF COMPLAINT PROCEDURES AND COMPLAINT FORM: Recipients may develop procedures for investigating and tracking civil rights complaints filed against them. They may also make their procedures for filing a complaint available to members of the public. Recipients may develop a Civil Rights complaint form and this form and the procedures for filing a complaint may be made available on the Recipient's website. Recipients may report information regarding their complaint procedures in their Civil Rights Program Plan. To reduce the administrative burden associated with this requirement, Sub-Recipients may adopt the Civil Rights complaint investigation, tracking procedures and complaint form developed by the primary Recipient. Sample complaint procedures and complaint forms are located in Appendices C and D.

7. RECORDING AND REPORTING CIVIL RIGHTS RELATED INVESTIGATIONS, COMPLAINTS AND LAWSUITS: Recipients may prepare and maintain a list of any of the following that allege discrimination on the basis of race, color, national origin, gender, age, or disability:

- a. Active investigations conducted by entities other than PHMSA;
- b. Lawsuits; and
- c. Complaints naming the Recipient.

The list should include the date when the investigation, lawsuit or complaint was filed; a summary of the allegation(s); the status of the investigation, lawsuit or complaint; actions taken by the Recipient in response and final findings related to the investigation, lawsuit or complaint. This list may be included in the Civil Rights Program Plan. See Appendix E for an example.

8. **PROMOTING INCLUSIVE PUBLIC PARTICIPATION**: The Recipient may establish or integrate DOT's Limited English Proficiency Guidance into an established public participation process. Recipients have wide latitude to determine how, when and how often specific public participation activities should take place and which specific measures are most appropriate. Recipients should make these determinations based on a demographic analysis of the population(s) affected, the type of plan, program and/or service under consideration and the resources available. Recipients engaged in planning and other decision-making activities at the local level may wish to consider the principles embodied in the planning regulations and develop and use a documented public participation plan or process that provides adequate notice of public participation activities, as well as early and continuous opportunities for public review and comment at key decision points.

9. **REQUIREMENT TO PROVIDE MEANINGFUL ACCESS TO LEP PERSONS**: Consistent with civil rights statutes, DOT's implementing regulations and Executive Order 13166, Recipients should take reasonable steps to ensure meaningful access to benefits, services, information and other important portions of their programs and activities for individuals who are limited English proficient (LEP). This document contains a summary of the LEP requirements that apply to PHMSA Recipients. Recipients are encouraged to review the tools and guidelines available at [www.lep.gov](http://www.lep.gov) and DOT's LEP guidance (70 FR 74087, Dec. 14, 2005) for additional information.

- a. Four Factor Analysis. To ensure meaningful access to programs and activities, Recipients should use the information obtained in the Four Factor Analysis to determine the specific language services that are appropriate to provide. A careful analysis can help a Recipient determine if it communicates effectively with LEP persons and will help with language access planning. This analysis is an individualized assessment that balances the following four factors:
  - 1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or Recipient. In addition to the number or proportion of LEP persons served, the analysis should identify how LEP persons interact with the Recipient; identify LEP communities to determine the number or proportion of LEP persons from each language group; assess the literacy skills of LEP populations in their native languages to determine if translation of documents will be an effective practice; and determine if LEP persons are underserved by the Recipient due to language barriers.
  - 2) The frequency with which LEP persons come into contact with the program. Examples include: use of the service, contact over the phone or at public meetings, customer service interactions and other contact with the public.

- 3) The nature and importance of the program, activity or service to people's lives provided by the program. Generally speaking, the more important the program, the more frequent the contact and the likelihood that language services will be needed. A plan developed for the needs of seniors and people with disabilities will often also meet the needs of LEP persons.
  - 4) The resources available to the Recipient for LEP outreach, as well as the costs associated with that outreach. Resources and cost issues can often be reduced by technological advances, reasonable business practices and sharing of language assistance materials and services among and between Recipients, advocacy groups, LEP populations and Federal agencies.
- b. Developing a Language Assistance Plan. After completing the Four Factor Analysis, the Recipient may use the results of the analyses to determine which language assistance services are appropriate. The Recipient may develop an assistance plan to address the identified needs of the LEP population(s) it serves. Recipients that develop a Language Assistance Plan may include the following in the plan.
- 1) Results of the Four Factor Analysis and a description of the LEP population(s) served;
  - 2) Describe how the Recipient provides language assistance services by language;
  - 3) Describe how the Recipient provides notice to LEP persons about the availability of language assistance;
  - 4) Describe how the Recipient monitors, evaluates and updates the plan; and
  - 5) Describe how the Recipient trains employees to provide timely and reasonable language assistance to LEP populations.

After completing the Four Factor Analysis, a Recipient may determine that an effective LEP plan for its community includes translations of vital documents (such as, complaint forms, notice of a person's rights under civil rights laws, and other documents that provide access to essential information or services) into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the Recipient's programs and services. Failure to translate vital documents could result in a Recipient denying an eligible LEP person access to services and discrimination on the basis of national origin.

- c. **Safe Harbor Provision.** DOT has adopted DOJ’s Safe Harbor Provision, which outlines circumstances that can provide a “safe harbor” for Recipients regarding translation of written materials for LEP populations. The Safe Harbor provision stipulates that, if a Recipient provides written translation of vital documents for each eligible LEP language group that constitutes five percent (5%) or 1,000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered, then such action will be considered strong evidence of compliance with the Recipient’s written translation obligations. Translation of non-vital documents, if needed, can be provided orally. If there are fewer than 50 persons in a language group that reaches the five percent (5%) trigger, the Recipient is not required to translate vital written materials but should provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. A Recipient may determine based on the Four Factor Analysis that even though a language group meets the threshold specified by the Safe Harbor Provision, written translation may not be an effective means to provide language assistance measures. For example, a Recipient may determine that a large number of persons in that language group have low literacy skills in their native language and therefore require oral interpretation.

10. MINORITY REPRESENTATION ON PLANNING AND ADVISORY BODIES: Recipients should not, on the ground of race, color, national origin, gender, age and disability “deny a person the opportunity to participate as a member of a planning, advisory or similar body which is an integral part of the program” (49 CFR § 21.5(b)(1)(vii)). Recipients that have non-elected planning boards, advisory councils or committees, or similar committees, the membership of which is selected by the Recipient, may include in their Civil Right Program Plan a table depicting the racial breakdown of the membership of those committees by race and gender, and a description of efforts made to encourage the participation of minorities on these committees.

11. PROVIDING ASSISTANCE TO SUB-RECIPIENTS: Primary Recipients may assist their Sub-Recipients in complying with DOT’s civil rights regulations, including any reporting requirements. Primary Recipients may provide the following information to Sub-Recipients; such information, forms, and data may be kept in a central repository and available for all Sub-Recipients:

- a. Sample notices to the public informing beneficiaries of their rights under DOT regulations, procedures on how to file a civil rights complaint and the Recipient’s complaint form.

- b. Sample procedures for tracking and investigating civil rights complaints filed with a Sub-Recipient, and when the primary Recipient expects the Sub-Recipient to notify the primary Recipient of complaints received by the Sub-Recipient.
- c. Demographic information on race and English proficiency of residents served by the Sub-Recipient. This information will assist the Sub-Recipient in assessing the level and quality of service it provides to communities within its service area and in assessing the need for language assistance.
- d. Any other Recipient-generated or obtained data that will assist Sub-Recipients in complying with the civil rights program.

12. MONITORING SUB-RECIPIENTS: Primary Recipients may monitor their Sub-Recipients for compliance with the regulations. Importantly, if a Sub-Recipient is not in compliance with the civil rights requirements, then the primary Recipient is also not in compliance. The Recipient may document its process for ensuring all Sub-Recipients are complying with the general reporting requirements; if Sub-Recipients voluntarily choose to produce a Civil Rights Program Plan, then you may wish to collect those plans from Sub-Recipients and review for compliance.

13. REQUIREMENT TO PROVIDE ADDITIONAL INFORMATION UPON REQUEST: PHMSA may request other information than that required by these Guidelines from a Recipient. The information may be necessary to investigate complaints of discrimination or to resolve concerns about possible noncompliance with DOT's regulations.

## CHAPTER IV

### COVERED EMPLOYMENT

1. GENERAL: Employment discrimination includes: (1) consideration of a person's race, color, national origin, gender, age or disability in weighing a person's qualifications for hire, discharge, promotion, demotion, transfer, layoff, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship; or (2) consideration of race, color, national origin, gender, age or disability with respect to recruitment or recruitment advertising. Recipients will not discriminate against applicants for employment or employees on the grounds of race, color, national origin, gender, age or disability.

2. TYPES OF COVERED EMPLOYMENT:

- a. Primary Objective of the Federal Financial Assistance is to Provide Employment. Recipients must take action to insure applicants and employees, throughout their employment, are treated without regard to their race, color, national origin, gender, age or disability. If PHMSA learns a Recipient or Sub-Recipient is discriminating, PHMSA may take appropriate actions against the Recipient or Sub-Recipient that practices discrimination in employment, "where a primary objective of the Federal financial assistance is to provide employment." [49 C.F.R. § 21.5(c)(1), (2)]
- b. Primary Objective of the Federal Financial Assistance is For Any Other Reason. Regardless of the objectives of the Federal financial assistance program, discrimination on the basis of race, color, national origin, gender, age or disability in employment practices tends to exclude individuals from participation in, deny them the benefits of or subject them to discrimination under any program. This section will apply to the employment practices of the Recipient or Sub-Recipient to the extent necessary to assure equality to beneficiaries. If PHMSA learns of discrimination in employment, PHMSA may take appropriate actions. [49 C.F.R. § 21.5(c)(3)]

3. PRE-AWARD INFORMATION: PHMSA may require an Applicant for Federal financial assistance submit information necessary to make a determination regarding the employment practices of the Applicant. At a minimum, the civil rights assessment information will include:

- a. A statistical breakdown by race, color, national origin, gender, age and disability of the Applicant's workforce that is or is likely to be involved in any manner, either directly or indirectly, in preparing the application for Federal financial assistance, the handling or use of such funds, or performing the work with the aid of such funds. The breakdown must be by job titles, grouped as necessary for work of comparable difficulty and responsibility.

- b. A listing of the number and types of employment openings that are expected to be created in connection with the Federally-assisted work, including those that will not be reimbursed directly from Federal funds.
- c. A cumulative listing of employment actions, including hiring, firings, promotions, layoffs, training courses, or other actions for the previous year in that portion of the Applicant's workforce for which the breakdown listed above is provided.
- d. An analysis of the available workforce in the area in which the Applicant does or may reasonably recruit, expressed in terms of race, color, national origin, gender, age or disability.

4. COMPLIANCE RESPONSIBILITIES:

- a. Procedures: PHMSA will analyze the Recipient's employment practices and the ways in which those practices may affect the benefits provided by the program. PHMSA will analyze each of its programs and Recipients to determine:
  - 1) Whether the Recipient engages in discrimination in employment; and
  - 2) Whether the Recipient's employment practices cause beneficiaries to be denied equal opportunity and discriminatory treatment in connection with the Recipient's Federally-assisted activities.
- b. Considerations to be taken into account by these provisions include, but are not limited to:
  - 1) The nature and purpose of the program;
  - 2) The benefits of the program;
  - 3) The intended beneficiaries; and
  - 4) The nature of the Recipient's employment practices and the ways in which those practices may affect the benefits provided by the program.

## CHAPTER V

### COMPLIANCE REVIEWS

1. GENERAL: This chapter describes the review process PHMSA will follow when determining whether a Recipient is in compliance with DOT civil rights regulations subsequent to the award of Federal financial assistance. This chapter also describes the information and actions expected from Recipients and Sub-Recipients that are subject to these reviews. Recipients and Sub-Recipients may use this chapter to develop local programs to monitor compliance with PHMSA's civil rights program to fulfill their obligations under the regulations. PHMSA will use these procedures to ensure that only those Recipients or Sub-Recipients that fully comply with PHMSA's civil rights program requirements receive an award or continue to receive Federal financial assistance.
2. COMPLIANCE PROCEDURES: DOT regulations require PHMSA to conduct compliance reviews of its Recipients. These reviews will be conducted either as a desk audit or an on-site visit. The review may cover all or a portion of a Recipient's compliance with the civil rights program. Compliance reviews may be part of the Triennial Review process or separate from or in addition to that process. The reviews are at PHMSA's discretion and the scope of the review will be defined on a case-by-case basis.
3. CRITERIA: The following list of factors will contribute to the selection of Recipients for compliance reviews.
  - a. Lawsuits, complaints or investigations conducted by organizations other than PHMSA alleging the Recipient is noncompliant with DOT's civil rights regulations;
  - b. Alleged noncompliance brought to the attention of PHMSA by other Federal, State or local agencies;
  - c. Civil Rights Program findings or recommendations on prior Triennial or other reviews that have not been sufficiently resolved or implemented or repeat findings in any PHMSA review concerning civil rights.
4. SCOPE: In general, compliance reviews will assess the following information:
  - a. The Recipient's documented efforts to comply with the Federal civil rights requirements.
  - b. Other information that is necessary and appropriate to make a determination that the Recipient is compliant with the Federal civil rights requirements.

5. TYPES OF REVIEWS: PHMSA will conduct two different reviews on all Recipients. The first review will be performed prior to an award of Federal financial assistance and the second review will be after the award.

a. Pre-award Reviews: Pre-award review is an evaluation of the compliance posture of an applicant for PHMSA assistance prior to the approval of that assistance. The purpose of these reviews is to ensure that the benefits of a proposed project are being distributed in a nondiscriminatory manner. The evaluation of an applicant's compliance is a written determination based on, but not limited to, review of the application documentation, to include a Title VI Assurance Statement. If it is necessary, an on-site visit will be conducted by PHMSA staff. The application review includes general reporting and program-specific information, such as:

- 1) The overall efforts made by the applicant to ensure compliance under civil rights regulations, including any compliance reports prepared by other Federal agencies on the applicant.
- 2) If an onsite review is conducted, an inspection of all materials pertaining to implementation of civil rights and verification that all service are being implemented consistent with the civil rights statutes.
- 3) Other information that is necessary and appropriate for PHMSA to evaluate to make a determination that the applicant is in compliance with civil rights.
- 4) Failure by an applicant to submit the information requested by PHMSA may delay completion of a compliance review. This delay could hamper further consideration of pending grant applications.

b. Post-award Reviews: A post-award review is an inspection and/or evaluation of the Recipient's program after PHMSA's assistance has been provided or extended to the Recipient. PHMSA will conduct these reviews once every three years as part of its ongoing monitoring responsibilities. These reviews may be conducted as either a desk audit or on-site audit. These reviews result in a written report used to make a determination of the compliance status of the Recipient. If necessary, a compliance review report will contain recommendations for corrective action.

6. COMPLIANCE DETERMINATION:

After reviewing the Recipient's or Sub-Recipient's efforts to comply with the Federal civil rights requirements, PHMSA will issue a compliance report that include findings of no deficiency, deficiency or noncompliance.

- a. Finding of No Deficiency. A determination that reflects that no deficiency was found in the review of the Recipient's civil rights program or after the results of an investigation or compliance review. Recipients are not expected to take any corrective action in response to findings of no deficiency except with regard to advisory comments. Advisory comments are recommendations that the Recipient undertake activities in a manner more consistent with the guidance provided in the pertinent section of the Guidelines. PHMSA expects Recipients to notify PHMSA as to whether the Recipient will take action in response to the advisory comments.
- b. Finding of Deficiency. A determination that the Recipient has not complied with one or more of the pertinent provisions of these guidelines. Recipients are expected to take corrective actions in response to finding of deficiency and the compliance review will provide specific instructions to the Recipients on how to take corrective action.
- c. Findings of Noncompliance. A determination that the Recipient has engaged in activities that have had the purpose or effect of denying persons the benefits of, excluding them from participation in, or subjecting persons to discrimination on the basis of race, color, national origin, gender, age, or disability under the Recipient's program or activity. Upon such determination, PHMSA will consider the Recipient to be noncompliant with civil rights requirements. If noncompliance cannot be corrected informally, the Recipient may be subject to remedial action or proceedings under this document and DOT's civil rights regulations.

Remedial actions refer to specific tasks that must be undertaken by the Recipient or Sub-Recipient to correct deficiencies and ensure continued compliance with external civil rights laws and regulations. Where PHMSA has conducted a compliance review, or other review, audit, or complaint investigation, and has made a finding of noncompliance or probable noncompliance, PHMSA will send a Letter of Finding to the Recipient or Sub-Recipient identifying the deficiencies observed and recommending voluntary corrective actions. Within 30 calendar days of the receipt of the PHMSA Letter of Finding, the Recipient or Sub-Recipient must submit a Remedial Action Plan for implementing the corrective actions and, if necessary, sufficient reasons and justification for PHMSA to reconsider any of its findings or recommendations.

- 1) Within 30 calendar days of receiving the Recipient's response, PHMSA's Office of Civil Rights (OCR) will review the submitted Remedial Action Plan and any request for reconsideration and decide what remedial action(s) are necessary and appropriate to bring the Recipient or Sub-Recipient into compliance. If necessary, before making a decision, PHMSA OCR may conduct a site visit to substantiate information or statements contained in

the Recipient's response. PHMSA will issue a decision, including its findings and recommendations, as part of the Final Remedial Action Plan.

- 2) The Final Remedial Action Plan will be sent to the Recipient or Sub-Recipient for review. The Recipient or Sub-Recipient has 15 calendar days from receipt of the Final Remedial Action Plan to agree to initiate the action(s) specified in the plan or disagree with the Final Remedial Action Plan. The Recipient or Sub-Recipient agree or disagree on the signature page of the Final Remedial Action Plan and return the signature page to PHMSA's Office of Civil Rights.
- 3) If the Recipient or Sub-Recipient agrees to terms in the Final Remedial Action Plan, PHMSA will amend its finding to probable compliance or full compliance, and a letter stating the amended compliance determination will be sent to the Recipient.
- 4) If the Recipient or Sub-Recipient does not agree with the terms in the Final Remedial Action Plan, it must submit a written statement of its reasons for not agreeing to the remedial actions contained in the plan. Under such circumstances the Recipient or Sub-Recipient will be held in noncompliance, and a meeting will be scheduled with the Recipient or Sub-Recipient within 30 calendar days to resolve the stated disagreements.

7. RESULTS OF COMPLIANCE REVIEW ACTIVITIES: PHMSA will summarize the results of the review in a draft compliance report, which will include findings of no deficiency, findings of deficiency, and advisory comments, as appropriate. If findings of deficiency remain in the final compliance report, the Recipient will be required to take corrective action, develop a timeline for compliance, and report on its progress to PHMSA on, at a minimum, a quarterly basis. Once PHMSA determines that the Recipient has satisfactorily responded to the review's findings, it will inform the Recipient that the review process has ended and release it from further progress reporting in response to the review. PHMSA may follow up on a compliance review with additional reviews as necessary.

8. EFFECTING COMPLIANCE: If a Recipient refuses to provide the Office of Civil Rights with the data and information necessary to determine the Recipient's compliance status, the Office of Civil Rights will seek the advice of the Office of Chief Counsel on taking appropriate action to secure enforcement of the Recipient's obligation to provide access to the necessary information. If these methods fail, the Office of Civil Rights, with the concurrence of the Office of Chief Counsel, will solicit the concurrence of the Department of Transportation's Departmental Office of Civil Rights and Office of General Counsel to refer the matter to the Department of Justice for enforcement action.

If a Recipient refuses to undertake corrective actions in response to a Letter of Finding, the Office of Civil Rights will consult with the responsible program office, notify the Office of Chief Counsel and the

Departmental Office of Civil Rights, and seek their concurrence on taking next steps, including but not limited to, terminating or refusing to grant or to continue Federal financial assistance or taking an enforcement action with the assistance of the Department of Justice.

If any procedure is used by the Office of Civil Rights to effect compliance for the deficiencies noted above, it will adhere to the requirements of 49 C.F.R. § 21.13.

## CHAPTER VI

### CIVIL RIGHTS DISCRIMINATION COMPLAINTS

1. INTRODUCTION: This chapter provides information on how PHMSA will respond to complaints filed with PHMSA alleging that a PHMSA Recipient has violated DOT's civil rights regulations. It also describes the procedures for filing, processing, investigating and disposing of complaints of discrimination.

2. RIGHT TO FILE A COMPLAINT: Any person, individually, or as a member of any specific class of persons, who believes that he or she has been subjected to discrimination on the basis of race, color, national origin, gender, age, disability or retaliation by the actions or inactions of a PHMSA Recipient or Sub-Recipient may file a written complaint with the PHMSA Office of Civil Rights. A complaint may also be filed by a representative on behalf of such a person. A complaint must be filed no later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the PHMSA Director of Civil Rights.

Recipients or Sub-Recipients are encouraged to adopt separate procedures for local disposition of civil rights complaints that are consistent with these guidelines. PHMSA recommends that civil rights complaints be initially filed with the Recipient or Sub-Recipient for resolution. In those cases where the complainant is dissatisfied with the resolution by the Recipient or Sub-Recipient, the same complaint may be submitted to PHMSA's Office of Civil Rights for investigation.

Unless otherwise permitted, the final determination of all civil rights complaints affecting programs administered by PHMSA will be made by the PHMSA Director of Civil Rights.

3. SUBMISSION OF COMPLAINTS:

a. Filing Complaints of Discrimination.

- 1) Complainants may submit complaints to the PHMSA, Office of Civil Rights via mail, fax or electronically. The complaints must be in writing and signed by the complainant and/or the complainant's representative. Complaints may be filed in alternative formats (i.e., audio tape, DVD, braille) by persons with disabilities or in other languages by persons with limited English proficiency.
- 2) In cases where the complainant is unable or incapable of providing a written statement, but wishes PHMSA to investigate alleged discrimination, a verbal complaint of discrimination may be made to the PHMSA Office of Civil Rights. The complainant will be interviewed by a PHMSA civil rights official authorized to receive complaints. If

necessary, the PHMSA civil rights official will assist the person in converting verbal complaints to writing. All complaints must, however, be signed by the complainant or his/her representative.

b. Complaint Format.

- 1) Complaints must state, as fully as possible, the facts and circumstances surrounding the alleged discrimination. A sample format is available on the PHMSA website at [http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/File\\_an\\_External\\_Civil\\_Rights\\_Complaint\\_with\\_PHMSA.pdf](http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/File_an_External_Civil_Rights_Complaint_with_PHMSA.pdf).
- 2) PHMSA Office of Civil Rights will provide the complainant or his/her representative with a written acknowledgment that PHMSA has received the complaint within 10 business days of receipt of the complaint.

4. DETERMINATION OF JURISDICTION AND INVESTIGATIVE MERIT: The PHMSA Office of Civil Rights, based on the information in the complaint, will determine if PHMSA has jurisdiction to pursue this matter and whether the complaint has sufficient merit to warrant an investigation. These determinations will be made within 15 business days after the receipt of the complaint. A complaint will merit an investigation unless:

- a. It clearly appears on its face to be frivolous or trivial;
- b. It is determined that it is not within PHMSA jurisdiction; or
- c. Other good cause for not investigating the complaint exists, e.g., Recipient is presently under investigation by another Federal agency.

5. REQUEST FOR ADDITIONAL INFORMATION FROM COMPLAINANT: If the complainant has not submitted sufficient information to make a determination of jurisdiction or investigative merit, the PHMSA Office of Civil Rights may request additional information. This request will be made within 15 calendar days of the receipt of the complaint by the Office of Civil Rights and will require that the party submit the information within 30 calendar days from the date of the original request.

Failure of the complainant to submit additional information within the designated time frame may be considered good cause for a determination of no investigative merit and the complaint to be closed.

There may be circumstances when PHMSA must release the information in the complaint to the Recipient. This will be accomplished with the complainant's approval. In cases where the complainant will not approve release of the complaint to the Recipient, PHMSA may close the case.

6. REFERRAL TO OTHER AGENCIES: When a complaint reveals information that indicates a possible noncompliance with civil rights statutes in a program that is not within PHMSA's jurisdiction, the Office of Civil Rights will refer the complaint to the agency having jurisdiction. The complainant will be promptly notified of such referral.

7. NOTIFICATION OF DECISION TO INVESTIGATE: The Director of Civil Rights will notify the complainant, party charged, and primary Recipient (if not the party charged) within 15 calendar days by registered letter (or other means of delivery with tracking) of the decision:

- a. If the decision is not to investigate the complaint, the notification will specifically state the reason for the decision.
- b. If the complaint is to be investigated, the notification will state the grounds of PHMSA's jurisdiction; inform the parties that an investigation will take place, request any additional information needed to assist the investigator in preparing for the investigation and the availability of alternative dispute resolution to resolve the complaint.

8. COMPLAINT INVESTIGATION:

- a. The investigation may be conducted by a "desk audit" or an "on-site" investigation.
- b. All incoming complaints will be examined to determine if the discrimination alleged would be irremediable if not dealt with promptly. If such a determination is made, the complaint will be given priority status. The processing, investigation, and determination of such complaints will be accelerated to advance significantly the normal completion date of the process.
- c. Before beginning the investigation, the investigator will send a letter of introduction, establishing the times and dates for the investigation and interviews along with requesting information relevant to the allegations under investigation. This preparation will be completed within 30 working days after the assignment has been given to the investigator, contingent upon the investigator's workload and resources.
- d. If it is determined that an "on-site" visit is necessary to complete the investigation, the investigator will send a letter to the parties advising of the planned visit.

- e. The responsible investigator will prepare a written report at the conclusion of the investigation, which the Director will review for thoroughness. The investigative report will include the following:
  - 1) Summary of the complaint, including a statement of the issue(s) and basis(es) alleged by the complainant and the Recipient's reply to each of the allegations;
  - 2) Applicable laws and regulations;
  - 3) Methodology
  - 4) Description of the investigation, including a list of the persons contacted by the investigator and a summary of the interviews conducted;
  - 5) A statement of the investigator's findings and analysis for each allegation; and
  - 6) The decision and recommended corrective/remedial action.
- f. Failure of the Recipient to submit information requested by the investigator within the designated timeframe may be considered good cause for a determination of noncompliance, and the Recipient may be subject to possible enforcement action as addressed in Chapter VII of these guidelines.

9. **CLOSURE LETTERS:** After PHMSA has concluded the investigation, PHMSA's Office of Civil Rights will transmit to the complainant and the Recipient one of the following letters based on its findings.

- a. **No Violation Letter of Finding.** This letter of finding indicates PHMSA did not find a violation of DOT's external civil rights regulations. This letter will include an explanation of why PHMSA did not find a violation. If applicable, the letter may include a list of procedural violations or concerns, which will put the Recipient on notice that certain practices are questionable and that without corrective steps, a future violation finding is possible.
- b. **Letter of Resolution.** This letter is issued when the Recipient has voluntarily taken actions to come into compliance or has agreed to take the required steps. It can be issued before any discrimination has been proven and a letter of finding proposed. It simply explains the steps the Recipient has taken or will take and can include a settlement agreement.

- c. Violation Letter of Finding. This letter of finding indicates the Recipient is in violation of DOT's civil rights regulations. The letter will include each violation referenced to the applicable regulation, a brief description of proposed remedies, notice of the time limit on coming into compliance, the consequences of failure to achieve voluntary compliance, and an offer of assistance to the Recipient in devising a remedial plan for compliance, if appropriate.

#### 10. DISPOSITION OF COMPLAINTS:

- a. Approval and Notice of Disposition. The Director will review the investigative report and either approves the findings and recommendations made by the investigator in the investigative report or require the investigator to conduct an additional investigation. Once the investigative report is complete, the disposition of the complaint will be communicated to the complainant and Recipient by letter. In addition, the rationale supporting the decision and any recommendations to any party will be included in the letter.
- b. Informal Resolution. If the Notice of Disposition is issued and finds the Recipient in noncompliance, the Recipient is required to initiate voluntary remedial actions agreeable to the PHMSA Civil Rights Office.
- c. Request for Reconsideration. Either party may request reconsideration of the findings within 30 calendar days of receipt of the Notice of Disposition. This request should include any additional information or analysis the party considers relevant. The Director will inform the parties of the decision to accept or reject the request within 30 calendar days after its receipt. In cases in which a request for reconsideration is approved, the responsible investigator will reopen the investigation and proceed to process the complaint in the same manner described above.
- d. Enforcement Procedure. In cases in which all required means of remedial action have failed to bring the respondent into compliance, enforcement procedures will be initiated by the PHMSA Office of Civil Rights in conjunction with DOCR.

#### 11. DEVELOPING AND MONITORING OF SETTLEMENT AGREEMENTS:

Settlement agreements must be signed by the PHMSA Director of Civil Rights, the responsible official of the Recipient and the complainant and should include:

- a. A description of the allegations;
  - 1) The authority of DOT to investigate the complaint and secure voluntary compliance;

- 2) The jurisdiction of DOT to cover the entity (e.g., receives funds from PHMSA);
  - 3) Terms of the settlement, including the specific steps the Recipient will take to correct the compliance issues and dates for implementing each step;
  - 4) Dates for submitting reports and documentation verifying implementation, if applicable; and
  - 5) Provision for enforcement in the event the Recipient fails to comply with the agreement, if applicable.
- b. Monitoring activities should be tailored to follow the agreement. Once the terms of the Settlement Agreement are complete, the Director will notify the Recipient of this fact. If PHMSA OCR determines that the Recipient failed to implement the agreement, the Director will notify the Recipient of the deficiencies and needed remedial actions.
- c. If PHMSA learns or has reason to believe that the agreement is not being complied with, the Director will contact the Recipient immediately. If the matter cannot be resolved, subsequent actions will depend on the enforcement language in the agreement.

## CHAPTER VII

### EFFECTING COMPLIANCE WITH DOT REGULATIONS

1. INTRODUCTION: This chapter outlines procedures that PHMSA will use when it determines that a Recipient is noncompliant with the DOT Civil Rights Regulations. Under Title VI regulations at 49 CFR § 21.13(a) it states that:

If there appears to be a failure or threatened failure to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be accomplished by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to: (1) a referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Civil Rights Act), or any assurance or other contractual undertaking, and (2) any applicable proceedings under State or local law.

2. PROCEDURES FOR SECURING VOLUNTARY COMPLIANCE: PHMSA may determine a Recipient is noncompliant with DOT's Civil Rights regulations following a compliance review or after PHMSA completes an investigation in response to a civil rights complaint. Prior to taking measures to effect compliance, PHMSA will attempt to resolve noncompliance informally and by using the following procedures.

- a. Notification to the Recipient. When PHMSA determines that a Recipient is noncompliant with DOT's regulations, it will transmit a letter of finding to the Recipient that describes PHMSA's determination and requests that the Recipient voluntarily take corrective action(s) that PHMSA deems necessary and appropriate.
- b. Recipient Response. Within 30 calendar days of receipt of PHMSA's letter of finding, the Recipient must submit a remedial action plan, including a list of planned corrective actions and, if necessary, sufficient reasons and justification for PHMSA to reconsider any of its findings or recommendations. The Recipient's plan must:
  - 1) List all corrective action(s) accepted by the Recipient.
  - 2) Describe how the corrective actions will be implemented and provide a timeline for achieving compliance.

- 3) Include a written assurance that the Recipient will implement the accepted corrective action(s) and has the capability to implement the accepted corrective action(s) in the manner discussed in the plan.
- 4) A copy of the board resolution, meeting minutes or similar documentation with evidence that the board of directors or appropriate governing entity or official(s) has approved the remedial action plan.

3. **REQUEST FOR RECONSIDERATION**: A Recipient may request that PHMSA reconsider its finding. A request for reconsideration should provide a justification for the request to reconsider, including any evidence or information supporting such a request, and include a written assurance that on the basis of the requested reconsideration, the Recipient is or otherwise will come into compliance with DOT's civil rights regulations. This request must be submitted to the PHMSA Office of Civil Rights within 30 calendar days of PHMSA's notification to the Recipient.

- a. **PHMSA Review of the Recipient Response**. Within 30 calendar days after receiving the Recipient's response, PHMSA will review the submitted remedial action plan and any request for reconsideration and decide what remedial action(s) are necessary and appropriate to bring the Recipient into compliance. If necessary, before making a decision, PHMSA may conduct a site visit to substantiate information or statements contained in the Recipient's response. PHMSA will issue a decision, including its findings and recommendations, as part of a final remedial action plan. The final remedial action plan will be sent to the Recipient for review and signature
- b. **Conditions for Declining the Remedial Action Plan**. The Recipient has 15 calendar days from the date of notification by PHMSA to agree or disagree with the final remedial action plan. If a Recipient disagrees with this plan, it must submit a written statement of its reasons for not agreeing to the remedial actions contained in the plan. Under those circumstances, the Recipient will be considered in noncompliance, and PHMSA will schedule a meeting with the Recipient within 30 calendar days to resolve the disagreements.

4. **PROCEEDINGS**: When PHMSA and the Recipient cannot agree on a final remedial action plan and the Recipient continues to be in noncompliance with DOT Civil Rights regulations, PHMSA may suspend, terminate or refuse to grant or continue Federal financial assistance to the Recipient. This will generally occur when all means of informal resolution have failed to get the Recipient to comply with the law. PHMSA may refer the matter to DOJ with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States or any assurance or contractual undertaking.

- a. Termination of or refusal to grant or to continue Federal financial assistance. In accordance with DOT regulations (and 49 CFR § 21.13(c)), PHMSA will not suspend, terminate or refuse to grant or continue Federal financial assistance until:
- 1) PHMSA has notified the Applicant or Recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;
  - 2) PHMSA has found, after opportunity for a hearing, that the Applicant or Recipient has failed to comply with civil rights regulations;
  - 3) The action has been referred to the Departmental Office of Civil Rights and General Counsel and was then approved by the Secretary of Transportation; and
  - 4) At least 30 calendar days have passed after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.
- b. Other means authorized by law. In accordance with DOT civil rights regulations, PHMSA will not refer a matter to DOJ or take any other action to effect compliance until:
- 1) PHMSA has determined that compliance cannot be secured by voluntary means;
  - 2) PHMSA has notified the Recipient of its failure to comply and the action PHMSA intends to take; and
  - 3) At least 10 calendar days have passed from the mailing of such notice to the Recipient. During this 10-day period, PHMSA will make additional efforts to persuade the Recipient to comply with the regulation and to take such corrective action as may be appropriate.
- c. Hearings. Whenever PHMSA has determined that it is appropriate to terminate or refuse to grant or continue Federal financial assistance, prior to such action PHMSA will provide the Applicant or Recipient with an opportunity for a hearing. PHMSA will provide reasonable notice of the hearing by registered or certified mail, return receipt requested, to the Applicant or Recipient. The notice will advise the Applicant or Recipient of the action proposed to be taken, the specific provision under which the proposed action is to be taken and the matters of fact or law asserted as the basis for this action. The notice will either:

- 1) Fix a date not less than 20 calendar days after the date of such notice that the Applicant or Recipient may request that the matter be scheduled for hearing; or
- 2) Advise the Applicant or Recipient that the matter in question has been scheduled for a hearing at a stated place or time. The time and place will be reasonable and subject to change for cause.

The complainant, if any, will be advised of the time and place of the hearing.

- d. Waiver of Hearing. An Applicant or Recipient may waive a hearing and submit written information and argument for the record. The failure of an Applicant or Recipient to request a hearing or to appear at a hearing for which a date has been set will be deemed to be a waiver of the right to a hearing and consent to PHMSA making a decision on the basis of the available information.
  - e. Time and Location of Hearing. Hearings will be held at the PHMSA Headquarters office in Washington, DC, at a time fixed by the PHMSA Administrator unless the convenience of the Applicant or Recipient or of PHMSA requires that another place be selected.
  - f. Hearing Officer. Hearings will be held before the Secretary of Transportation or before a hearing examiner appointed in accordance with 5 USC § 3105.
  - g. Right to Counsel. In all proceedings carried out under DOT's civil rights regulations, the Applicant or Recipient and PHMSA have the right to be represented by counsel.
  - h. Procedures, Evidence and Record. The hearing, decision and any administrative review will be conducted in conformity with 5 USC §§ 554 and 557 and in accordance with such rules of procedure as are proper relating to the conduct of the hearing, giving of notices to the Applicant or Recipient, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. PHMSA and the Applicant or Recipient may introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.
5. JUDICIAL REVIEW: When DOT issues a final order after a hearing on the record, such final action is subject to judicial review.

## CHAPTER VIII

### SMALL DISADVANTAGED BUSINESS PARTICIPATION

1. GENERAL: Each Recipient may develop and maintain procedures to:
  - a. Ensure that a Recipient does not discriminate against any business organization in the award of any contract because of the race, color, national origin, gender, age or disability of its managers, employees, or owners; and
  - b. Establish a policy or program to ensure that small disadvantaged businesses are afforded a fair and representative opportunity to do business.
2. REVIEW: If the PHMSA's Civil Rights Office is conducting any compliance review or investigation, PHMSA may request information to determine small disadvantaged business participation. Information that may be requested includes:
  - a. A list of awards of contracts to small disadvantaged businesses during the previous year, describing the nature of goods and services purchased and the dollar amount involved.
  - b. A comparison of the percentage of awards of contracts to small disadvantaged businesses (by number of contracts and by total dollar amount involved) to the total procurement activity of the Applicant for the previous year.
  - c. Procedures to ensure that known small disadvantaged businesses will have an equitable opportunity to compete for contracts and subcontracts.
  - d. Procedures an Applicant will use to ensure its Sub-Recipients and contractors use small disadvantaged businesses for any contracting opportunities.

Based on the information submitted, PHMSA will determine whether the Recipient is in compliance with regard to small disadvantaged business participation.

## APPENDIX A

### CIVIL RIGHTS PROGRAM CHECKLIST

FOR RECIPIENTS: As a best practice, each Recipient may wish to voluntarily develop a Civil Rights Program Plan document. Sub-recipients may wish to submit the information to their primary Recipient (the entity from whom the Sub-recipient receives funds directly), on a schedule to be determined by the primary Recipient.

#### Items a Recipient May Wish to Include:

- Civil Rights Notice to the Public, including a list of locations where the notice is posted. (Chapter III, page 1; Appendix B)
- Civil Rights Complaint Procedures (i.e., instructions to the public regarding how to file a Civil Rights discrimination complaint). (Chapter III, page 4; Appendix C)
- Civil Rights Complaint Form. (Chapter III, page 4; Appendix D)
- List of any civil rights investigations, complaints and lawsuits. (Chapter III, page 5; Appendix E)
- Public Participation Plan, including information about outreach methods to engage minority and limited English proficient (LEP) populations, as well as a summary of outreach efforts made since the last Civil Rights submission. (Chapter III, page 3 and 5)
- Language Assistance Plan for providing language assistance to persons with limited English proficiency (LEP), based on the DOT LEP Guidance. (Chapter III, page 3 and 6)
- A table depicting the membership of non-elected committees and councils, the membership of which is selected by the Recipient, broken down by race, gender, age and disability, a description of the process the Recipient uses to encourage the participation of minorities on such committees. (Chapter III, page 8; Appendix F)
- Primary Recipients must include a description of how the Recipient monitors its Sub-recipients for compliance with civil rights and a schedule of Sub-recipient civil rights program submissions. (Chapter III, page 3 and 8)
- A copy of board meeting minutes, resolution, or other appropriate documentation showing the board of directors or appropriate governing entity or official(s) responsible for policy decisions reviewed and approved the civil rights program plan.

## APPENDIX B

## CIVIL RIGHTS NOTICE TO THE PUBLIC (GENERAL REQUIREMENT)

## Background

A Civil Rights Notice to the Public may be displayed to inform a Recipient's customers of their rights under Title VI, Section 504 of the Rehabilitation Act, Americans with Disabilities Act and Age Discrimination Act. At a minimum, Recipients may post the notice on the agency's website and in public areas of the agency's office(s), including the reception desk, meeting rooms, etc. The Notice is a vital document. If any of the Limited English Proficient (LEP) populations in your service area meet the Safe Harbor threshold (see Chapter III), then the Notice should be provided in English and in any other language(s) spoken by LEP populations that meet the Safe Harbor Threshold. At a minimum, this statement in the Notice – "If information is needed in any other language, then contact [phone number]" – should be stated in English and in any other language(s) spoken by LEP populations that meet the Safe Harbor threshold.

*The sample below is provided for the purposes of informational guidance only.*

## SAMPLE Civil Rights Notification to the Public

## Notifying the Public of Rights under Civil Rights Laws

## THE CITY OF USA

The City of USA operates its programs and services without regard to race, color, national origin, gender, age, or disability in accordance with Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, Americans with Disabilities Act and Age Discrimination Act. Any person who believes she or he has been aggrieved by any unlawful discriminatory practice under these civil rights areas may file a complaint with the City of USA.

- For more information on the City of USA's civil rights program, and the procedures to file a complaint, contact 800-555-1212, (TTY 800-555-1111); email [civil.rights.complaint@city.st.us](mailto:civil.rights.complaint@city.st.us); or visit our administrative office at 1234 Main Street, City of USA, State 11111. For more information, visit [www.city.st.us](http://www.city.st.us).
- A complainant may file a complaint directly with the Pipeline and Hazardous Materials Safety Administration by filing a complaint with the Office of Civil Rights, PH-20, 1200 New Jersey Ave, SE, Washington, DC 20590.
- If information is needed in another language, contact 800-555-1212.
  - Make sure the sentence above is also provided in any language(s) spoken by LEP populations that meet the Safe Harbor Threshold.

## APPENDIX C

### CIVIL RIGHTS COMPLAINT PROCEDURE (GENERAL REQUIREMENT)

#### Background

Recipient's Civil Rights Program Plan may include a copy of the Recipient's civil rights complaint procedure. The complaint procedure and complaint form should be available on the Recipient's website. The Complaint Procedure is a vital document. If any of the Limited English Proficient (LEP) populations in your service area meet the Safe Harbor threshold (see Chapter III), then the complaint procedure should be provided in English and in any other language(s) spoken by LEP populations that meet the Safe Harbor Threshold. At a minimum, the complaint procedure should include a notice – "If information is needed in another language, then contact [phone number]" – should be stated in English and in any other language(s) spoken by LEP populations that meet the Safe Harbor threshold.

*The sample below is provided for the purposes of informational guidance only.*

#### SAMPLE Civil Rights Complaint Procedure

Any person who believes she or he has been discriminated against on the basis on race, color, national origin, gender, age or disability by the City of USA may file a civil rights complaint by completing and submitting this Civil Rights Complaint Form. The City of USA Office of Civil Rights investigates complaints received no more than 180 days after the alleged incident. They will process complaints that are complete.

Once the complaint is received, the Office of Civil Rights will review it to determine if our office has jurisdiction. The complainant will receive an acknowledgement letter informing her/him whether the complaint will be investigated by our office.

The Office of Civil Rights has XX days to investigate the complaint. If more information is needed to resolve the case, the Office of Civil Rights may contact the complainant. The complainant has XX business days from the date of the letter to send requested information to the investigator assigned the case. If the investigator is not contacted by the complainant or does not receive the additional information within XX business days, the Office of Civil Rights can administratively close the case. A case can be administratively closed also if the complainant no longer wishes to pursue their case.

After the investigator reviews the complaint, she/he will issue one of two letters to the complainant: a closure letter or a letter of finding (LOF). A closure letter summarizes the allegations and states that there was not a civil rights violation and that the case will be closed. An LOF summarizes the allegations and the interviews regarding the alleged incident, and explains whether any disciplinary

action, additional training of the staff member or other action will occur. If the complainant wishes to appeal the decision, she/he has XX days after the date of the letter or the LOF to do so.

A person may also file a complaint directly with the Pipeline and Hazardous Materials Safety Administration, Office of Civil Rights, PH-20, 1200 New Jersey Ave, SE, Washington, DC 20590.

## APPENDIX D

## SAMPLE CIVIL RIGHTS COMPLAINT FORM (GENERAL REQUIREMENT)

## Background

Recipients may create and make available a Civil Rights Complaint Form for use by customers who wish to file a civil rights complaint. The complaint form should be available on the Recipient's website. A Recipient's Civil Rights Complaint Form must specify the three classes protected by Title VI – race, color and national origin – the class protected by Section 504 of the Rehabilitation Act and the Americans with Disabilities Act – disability – the class protected by the Age Discrimination Act – age – and the class protected by DOT regulations related to Education programs or activities receiving Federal financial assistance – sex – and allow the complainant to select one or more of those protected classes as the basis/bases for discrimination. The Civil Rights Complaint Form is a vital document. If any of the Limited English Proficient (LEP) populations in your service area meet the Safe Harbor threshold (see Chapter III), then the complaint form should be provided in English and in any other language(s) spoken by LEP populations that meet the Safe Harbor Threshold.

*The sample below is provided for the purposes of informational guidance only.*

**Section I**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Numbers:

(Home) \_\_\_\_\_ (Work) \_\_\_\_\_

Electronic Mail Address: \_\_\_\_\_

Accessible Format Requirements?

Large Print \_\_\_\_\_ Audio tape \_\_\_\_\_

TDD \_\_\_\_\_ Other \_\_\_\_\_

**Section II**

Are you filing this complaint on your own behalf?

Yes \_\_\_\_ No \_\_\_\_

[If you answered "yes" to this question, go to Section III.]

If not, please supply the name and relationship of the person for whom you are complaining:

\_\_\_\_\_

Please explain why you have filed for a third party. \_\_\_\_\_

\_\_\_\_\_

Please confirm that you have obtained the permission of the aggrieved party if you are filing on behalf of a third party.

Yes \_\_\_\_ No \_\_\_\_

**Section III**

Have you previously filed a Civil Rights complaint with this agency? Yes \_\_\_\_ No \_\_\_\_

If yes, what was your Complaint Number? \_\_\_\_\_

[Note: This information is needed for administrative purposes; we will assign the same complaint number to the new complaint.]

Have you filed this complaint with any other Federal, State, or local agency, or with any Federal or State court?

Yes \_\_\_\_ No \_\_\_\_

If yes, check all that apply:

Federal Agency: \_\_\_\_\_ State Agency: \_\_\_\_\_

Federal Court: \_\_\_\_\_ State Court: \_\_\_\_\_

Local Agency: \_\_\_\_\_

Please provide information about a contact person at the agency/court where the complaint was filed:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agency: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

[Note: This above information is helpful for administrative tracking purposes. However, if litigation is pending regarding the same issues, we defer to the decision of the court.]

**Section IV**

Name of agency complaint is against:

\_\_\_\_\_

Contact person: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone number: \_\_\_\_\_

On separate sheets, please describe your complaint. You should include specific details such as names, dates, times, witnesses, and any other information that would assist us in our investigation of your allegations. Please also provide any other documentation that is relevant to this complaint.

**Section V**

Please sign here: \_\_\_\_\_

Date: \_\_\_\_\_

[Note - We cannot accept your complaint without a signature.]

\_\_\_\_\_

Please submit this form in person at the address below, or mail this form to:

City of USA Civil Rights Officer  
1234 Main Street  
City of USA, State 11111  
OR fax it to: City of USA Civil Rights Officer at 800-555-0001

OR e-mail it to: [civil.rights.complaints@city.st.us](mailto:civil.rights.complaints@city.st.us)

Once your complaint is received, you will receive a letter acknowledging receipt of the complaint.

APPENDIX E

LIST OF CIVIL RIGHTS INVESTIGATIONS, COMPLAINTS AND LAWSUITS (GENERAL REQUIREMENT)

Background

All Recipients may prepare and maintain a list of any of the following that allege discrimination on the basis of race, color, national origin, gender, age or disability:

- Active investigations conducted by PHMSA and entities other than PHMSA;
- Lawsuits; and
- Complaints naming the Recipient.

This list may include the date that the civil rights investigation, lawsuit or complaint was filed; a summary of the allegation(s); the status of the investigation, lawsuit or complaint; and actions taken by the Recipient in response, or final findings related to the investigation, lawsuit or complaint. This list may be included in the Civil Rights Program Plan and updated as required.

*The sample below is provided for the purposes of informational guidance only.*

SAMPLE List of Investigations, Lawsuits and Complaints

	Date (Month, Day, Year)	Summary  (include basis of complaint: race, color, national origin, gender, age or disability)	Status	Action(s) Taken
Investigations				
1.				
2.				
Lawsuits				
1.				
2.				
Complaints				
1.				
2.				

## APPENDIX F

TABLE DEPICTING MINORITY REPRESENTATION ON COMMITTEES AND COUNCILS  
SELECTED BY THE RECIPIENT (GENERAL REQUIREMENT)

## Background

Recipients that have non-elected planning boards, advisory councils or committees or similar bodies, the membership of which is selected by the Recipient, may provide a table depicting the membership of those committees broken down by race, gender, age and disability, and a description of efforts made to encourage the participation of minorities and women on such committees.

*The sample below is provided for the purposes of informational guidance only.*

SAMPLE Table Depicting Membership of Committees, Councils, Broken Down by Race and Gender

	White Male	White Female	Hispanic Male	Hispanic Female	African American Male	African American Female	Asian Male	Asian Female	Native American Male	Native American Female
Population	31%	15%	15%	13%	6%	8%	5%	3%	2%	2%
Citizens Advisory Council	81%	10%	3%	0%	2%	1%	1%	1%	1%	0%