

**DEPARTMENT OF TRANSPORTATION
DIVISION OF TECHNOLOGY AND SUPPORT SERVICES**

Statutory Authority: 17 Delaware Code, Section 132(e) and 29 Delaware Code, Section 8404(8)
(17 Del.C. §132(e), 29 Del.C. §8408(8))
2 DE Admin. Code 2501

PROPOSED

PUBLIC NOTICE

2501 External Equal Employment Opportunity Complaint Procedure

Background

As authorized under 17 Del.C. §132(e) and 29 Del.C. §8404(8), the Delaware Department of Transportation, through its Division of Technology and Support Services, seeks to adopt amendments to its existing regulations regarding procedures for addressing, investigating and responding to complaints of discrimination on the grounds of race, color, religion, sex, age, national origin or disability with respect to its External EEO Programs.

Public Comment Period

The Department will take written comments on the proposed revisions concerning its External Equal Opportunity Complaint Procedure from September 1, 2012 through September 30, 2012. The proposed Regulations appear below.

Any questions or comments regarding this document should be directed to:

Marti Dobson, Director, Technology and Support Services
Delaware Department of Transportation
P.O. Box 778
Dover, DE 19903
(302) 760 -2099 (phone)
(302) 760-2895 (fax)
marti.dobson@state.de.us

2501 External Equal Opportunity Complaint Procedure

1.0 Purpose

To specify a process to be employed by the Delaware Department of Transportation (DelDOT) to address, investigate and respond to complaints of discrimination on grounds of race, color, religion, sex, age, or national origin or disability, with respect to the programs comprising DelDOT's External EEO Programs.

2.0 Coverage

This procedure covers complaints filed by individuals, organizations or business entities which believe that they have been subjected to discrimination in violation of applicable non-discrimination statutes acting pursuant to a Federal-aid contract with the Department. A complaint may also be filed by a representative for the aggrieved person or party with the aggrieved party's consent.

3.0 Definitions

"Discrimination" involves any act or inaction, whether intentional or unintentional in any program or activity of a Federal-aid recipient, sub-recipient, or contractor, which results in disparate (unfavorable) treatment, disparate impact, or perpetuating the effects of prior discrimination based on race, color, sex, national origin, age, disability or in the case of disability, failing to make a reasonable accommodation. An action (or inaction) whether intentional or unintentional, through which a person, based on race, color, sex, age, national origin or disability, has been subjected to unequal treatment or denied benefits under any program or activity receiving financial assistance from the FHWA under Title 23 U.S.C.

"Investigator" means an individual or entity assigned to conduct an investigation of a complaint. This may be DelDOT personnel or consultant(s) acting on DelDOT's behalf.

“Investigative report” means a written record which contains various documents and information acquired during the investigation under this procedure, including affidavits of the complainant, the alleged discriminating official, and the witnesses, and copies of, or extracts from, records, policy statements, or regulations of the agency, organized to show their relevance to the complaint or the general environment out of which the complaint arose. This document will be provided to the Federal Highway Administration, as required, and will otherwise be maintained confidentially, except where a lawsuit on the same subject has been filed.

“Probable cause” means evidence and information gathered and reviewed as part of the investigation supports the allegations of the complainant and comprise sufficient support that discrimination, or a violation, and/or non-compliance may have occurred.

“Respondent” means a person, party, business entity or agency whose action or inaction is complained of by an aggrieved party as being discriminatory or non-compliant with applicable statutes, regulations and policies.

4.0 Timely Filing and Withdrawal of Complaint

- 4.1 Complaints must be filed in writing and submitted to DeIDOT. Complaints shall be signed by the complaining party or their representative and shall include the complainant’s name, address, and telephone number. Complaints must clearly state specifically those facts and circumstances surrounding the claimed discrimination covered by this procedure and the applicable regulations. Complainants may receive assistance from DeIDOT personnel to reduce to writing the facts and circumstances of the alleged discrimination with specificity to provide for full investigation.
- 4.2 Allegations received by fax containing such information and signature will be processed. Allegations received by e-mail or by telephone will be reduced to writing or printed and provided to the complainant for confirmation or revision for accuracy and signature before processing.
- 4.3 Complaints must be filed no later than 180 days after the following:
 - 4.3.1 The date of the alleged act of discrimination; or
 - 4.3.2 The date when the person(s) became aware of the alleged discrimination; or
 - 4.3.3 Where there has been a continuing course of conduct, the date on which that conduct was discontinued or the latest instance of the conduct.
- 4.4 Complainants may withdraw their complaint at any time. This action closes the case without prejudice.
- 4.5 A complaint may be dismissed for any one of the following reasons:
 - 4.5.1 The complaint is not filed in a timely manner, according to the requirement in Section C above.
 - 4.5.2 The complainant does not allege a basis covered by the statutes providing authority for this complaint procedure.
 - 4.5.3 The complaint does not allege any harm with regard to covered programs or statutes.
 - 4.5.4 The complainant fails to respond to repeated requests for additional information needed to process the complaint.
 - 4.5.5 The complainant cannot be located after reasonable attempts.
 - 4.5.6 The complainant has filed a legal action in Federal District Court with the same basis(es) and issue(s) involved in the complaint.
 - 4.5.7 The same complaint allegations have been filed with another Federal, State, or local agency.

5.0 Persons Authorized to Receive Complaints

- 5.1 The Department’s Civil Rights Complaint Procedure is designed to provide for progressively more formal steps that give opportunity for adjustment at several key points.
 - 5.1.1 Civil Rights Administrator - DeIDOT
 - 5.1.2 Contract Services Administrator - DeIDOT
 - 5.1.3 Representative of the Federal Highway Administration (FHWA)
- 5.2 Complaints received alleging discrimination and/or discriminatory acts or treatment will be retained by or forwarded to DeIDOT’s Civil Rights Administrator for processing. Copies of complaints received alleging discrimination and/or discriminatory acts or treatment by DeIDOT or its personnel will also be forwarded to FHWA. The DelMar Division office can be reached at (302) 734-5323.

6.0 Complaint Processing

- 6.1 All complaints will be logged in, upon receipt, by the Civil Rights Administrator. Complainants will be advised in writing of the receipt of their complaint and of the process for handling the complaint. Acknowledgement letters

will be sent to the complainant and to the respondent containing this information and information about forwarding of a complaint to the FHWA, when appropriate.

- 6.2 The Civil Rights Administrator will provide for the prompt formal investigation of the complaint. In instances of alleged Title VI and/or ADA violations, the investigation will include securing necessary information from sub-recipients regarding the project referenced in the complaint. The investigation will include a thorough review of the circumstances under which the alleged discrimination occurred, the treatment of similarly-situated individuals or entities, and all other relevant data and information, which will be recorded in the investigative file.
- 6.3 In the event any person (individually or as an agency), organization representative, or business entity (not including the complainant) fails or refuses to furnish information to an investigator, such failure may result in a ~~finding of determination of probable cause that non-compliance exists, except in complaints alleging Title VI or ADA violations.~~ The investigator will indicate in the investigative report that the individual or contractor refused to provide pertinent information and outline efforts made to obtain the information. In those instances of possible Title VI or ADA violations the complaint, along with the investigative file and report will be forwarded to the FHWA DelMar Division Office and the FHWA - Headquarters, Civil Rights for a final determination.
- 6.4 The investigation will be completed within ~~60~~ 90 days of receipt by the Civil Rights Administrator. Where circumstances exist justifying additional investigative time, the deadline for completion of the investigation may be extended as is deemed necessary. Upon completion of the investigation, an investigative report will be generated outlining the investigative steps taken, information and evidence gathered, analysis of evidence and information, persons contacted and ~~conclusion~~ recommendation(s). The complainant will be given a written summary of the results of the investigation.
- 6.5 ~~Findings of non-compliance~~ Determinations of Probable Cause reflecting non-compliance
 - 6.5.1 DeIDOT's Civil Rights Administrator will review the results of any investigation and determine whether the record contains sufficient information and evidence to support probable cause that any violation or non-compliance exists. The Civil Rights Administrator will render a finding of probable cause exists of non-compliance or violation ~~based on the allegations and investigation in complaints that are filed involving circumstances that do not allege Title VI or ADA violations, recommendations based on the allegations and investigation will be made and the complaint along with full investigation forwarded to the FHWA DelMar Division Office and FHWA - Headquarters, Civil Rights for a final determination.~~
 - 6.5.2 The Civil Rights Administrator will engage in affirmative efforts to conciliate and resolve satisfactorily all determinations that probable cause exists regarding potential violations of applicable statutes or failure to comply with applicable regulations. A corrective action plan will be generated for any respondent, including any sub-recipient of Federal funds, ~~found to be non-compliant where evidence supports a determination that probable cause of non-compliance exists.~~ Additionally, DeIDOT's Civil Rights Administrator will establish and monitor a timetable for remedial action for completion.
- 6.6 ~~Findings of Compliance~~ Determinations of No Probable Cause or reflecting compliance
 - 6.6.1 DeIDOT's Civil Rights Administrator will review the results of any investigation and determine whether there is no probable cause that any violation or non-compliance exists, ~~except in complaints alleging Title VI or ADA violations.~~ The Civil Rights Administrator will render a written determination reflecting that no probable cause exists and that evidence reflects compliance or no violation in those instances where, based on the allegations and investigation, the evidence indicates and it is determined that the responding party acted in conformity with laws/regulations and/or there was no apparent violation. In those instances of possible Title VI or ADA violations the complaint, along with the investigative file and report, will be forwarded to the FHWA DelMar Division Office and FHWA – Headquarters, Civil Rights for a final determination.
 - 6.6.2 Should the complainant disagree the complainant may appeal the determination.
- 6.7 Notification
 - 6.7.1 Where a ~~finding of determination of probable cause reflecting~~ non-compliance or violation has been rendered, the complainant will receive written notification of any efforts to conciliate, any corrective action plan established, the timetable for completing the corrective actions, and information regarding all available avenues of appeal.
 - 6.7.2 Where a ~~finding of determination of no probable cause which reflects~~ compliance or no apparent violation has been rendered the complainant will receive written notification of the determination and information regarding all available avenues of appeal continued redress. Complainant will be advised that the investigative report and all related documentation will be forwarded to FHWA for a final letter of findings, where appropriate.
 - 6.7.3 ~~Respondent will receive written notification upon closure of the investigation and when appropriate notice of all available avenues of appeal.~~ All complaints alleging Title VI or ADA violations will be forwarded,

along with the investigative file and report to the FHWA DelMar Division Office and FHWA – Headquarters, Civil Rights for a final determination. In those instances, Complainants will receive written notification the complaints have been forwarded.

6.7.4 Respondent will receive written notification upon closure of the investigation, notice of forwarding of the investigation to FHWA, and when appropriate notice of all available avenues of appeal.

7.0 Resolution of Complaint and Appeal Process

- 7.1 It is in the best interest of all parties involved that issues raised in a complaint of discrimination be resolved informally. Every effort will be made to pursue resolution of the complaint, even while the investigation is underway.
- 7.2 Based on the investigation and the analysis of information and evidence gathered, specific recommendations or a formal corrective action plan may be generated. ~~The respondent has the right to request review of the complaint and the investigation as an appeal where specific recommendations or a formal corrective action plan have been generated.~~
- 7.3 ~~In those instances where the complainant continues to be aggrieved, the complainant has the right to request review of the investigation as an appeal. Complainants will be advised of their right to file their grievances with other governmental agencies (such as the Delaware Human Relations Commission) or appropriate Federal agencies, including but not limited to FHWA, U. S. DOT or the EEOC.~~
- 7.4 Appeals
 - 7.4.1 ~~Appeals will be reviewed by the Director, Technology and Support Services. Any decision reached on appeal will be final.~~
 - 7.4.2 ~~All appeals must be in writing, outlining the appealing party's issues, concerns, or basis for the appeal.~~
 - 7.4.3 ~~After review of the investigative file and any additional information submitted, a final determination will be made. Complainants and respondents will be informed in writing of the final decision within ten business days. Complainants dissatisfied with the results of the Complaint Process will be advised of their right to file their grievances with other governmental agencies (such as the Delaware Human Relations Commission) or appropriate Federal agencies.~~

Attachment A Acknowledgment Letter To Complainant

Date

Complainant/Addressee

Address Line 1

Address Line 2

City, ST Zip

Dear :

The Delaware Department of Transportation has received your _____ (letter/confirmation/complaint) dated _____, filed against _____ in which you alleged discrimination. We have reviewed your complaint and have determined that the investigation will focus on the following issue:

Insert issue and basis here

Your complaint will be investigated. Further correspondence or additional information should be forwarded to the following address:

Civil Rights Administrator
Technology and Support Services
DeIDOT
800 Bay Road, PO Box 778
Dover, DE 19903

Please be advised that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by civil rights laws. Any individual alleging such harassment or intimidation may file a complaint with DeIDOT or with the Federal Highway Administration. Any questions or concerns you have regarding the investigative process and your rights can be discussed

with the Civil Rights Administrator.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records. In the event we receive such a request, we will seek to protect personal information, which if released, could constitute an unwarranted invasion of privacy.

Sincerely,

Name
Civil Rights Administrator

SIGNER INITIALS: ___ (writer/typist initials)
Enclosure OR Attachment (if any)
cc: (if any)

Attachment B
Acknowledgment Letter to Respondent
Date

Respondent/Addressee
Address Line 1
Address Line 2
City, ST Zip

Dear :

A complaint of discrimination has been filed by _____, against _____. The complaint alleges _____ (Insert issue and basis here) This complaint will be investigated by _____. _____ will contact you at a later date with more detailed information about the investigative process. If you have any questions you may contact _____ at _____.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records. In the event we receive such a request, we will seek to protect personal information, which if released, could constitute an unwarranted invasion of privacy.

Sincerely,

Name
Civil Rights Administrator

SIGNER INITIALS: ___ (writer/typist initials)
Enclosure OR Attachment (if any)
cc: (if any)

Attachment C
Rejection/dismissal Letter to Complainant
Date

Complainant/Addressee
Address Line 1
Address Line 2
City, ST Zip

Dear :

This acknowledges receipt of your complaint of discrimination filed against _____. After thorough review of your complaint, it has been determined that the matters raised in your complaint will not be investigated for the following reason

(Insert reason for dismissal here – See § IV. E. of the procedure)

Sincerely,

Name
Civil Rights Administrator

SIGNER INITIALS: ___ (writer/typist initials)

Enclosure OR Attachment (if any)

cc: (if any)

11 DE Reg. 1067 (02/01/08)

16 DE Reg. 270 (09/01/12) (Prop.)