



# **NEW MEXICO DEPARTMENT OF PUBLIC SAFETY**

**KEEPING NEW MEXICO SAFER THROUGH SAFE ROADS AND SAFER COMMUNITIES**

## **NEW MEXICO DEPARTMENT OF PUBLIC SAFETY**

**EQUAL EMPLOYMENT OPPORTUNITY BUREAU**

**COMMERCIAL VEHICLE ENFORCEMENT BUREAU**

**TITLE VI PROGRAM COMPLIANCE PLAN**

**FFY 2024**

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**I. Title VI Nondiscrimination Statement of Policy**

The New Mexico Department of Public Safety (NMDPS) and its Commercial Vehicle Enforcement Bureau (CVEB) is committed to compliance with Title VI of The Civil Rights Act of 1964, 49 CFR Part 21 and FMCSA's Title VI/Nondiscrimination Regulation, 49 CFR Part 303 and Title VI Program Assurances, and all related Nondiscrimination authorities. NMDPS and CVEB assures that no person shall, on the grounds of race, color, national origin, sex, age, disability, income status, or limited English proficiency (LEP) be excluded from participation, be denied the benefits of, or be subject to discrimination under any NMDPS and CVEB program, activity or service.

NMDPS and CVEB is committed to ensure that every effort will be made to prevent discrimination through the impacts of its programs, policies and activities on minority and low-income populations in accordance with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and in Low-Income Populations. In addition, the NMDPS and CVEB assures that it will make every reasonable effort to provide a consistently high-level of service and meaningful access to all members of the communities it serves, including those members of the Public who are Limited English Proficient (LEP), deaf, or hard of hearing, in accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency.

The responsibility for the direction and implementation of the NMDPS and CVEB Title VI Program is assigned to the Director of the NMDPS Equal Employment Opportunity Bureau with assistance from other NMDPS personnel as needed.



**Jason R. Bowie**  
Cabinet Secretary  
New Mexico Department of Public Safety

6.5.23

**Date**

**The United States Department of Transportation**

**Standard Title VI/Non-Discrimination Assurances**

**DOT Order No. 1050.2A**

The (*New Mexico Department of Public Safety*) (herein referred to as the “Recipient”), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the United States Department of Transportation (DOT), through the **Federal Motor Carrier Safety Administration (FMCSA)**, is subject to and will comply with the following:

**Statutory/Regulatory Authorities**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 Stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. § 1681 *et seq.*), (prohibits discrimination on the basis of sex in education programs or activities);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability);
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Americans with Disabilities Act of 1990, as amended, (42 U.S.C. § 12101 *et seq.*), (prohibits discrimination on the basis of disability);
- 49 C.F.R. part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 49 C.F.R. part 27 (entitled *Nondiscrimination On The Basis Of Disability In Programs Or Activities Receiving Federal Financial Assistance*);
- 49 C.F.R. part 28 (entitled *Enforcement Of Nondiscrimination On The Basis Of Handicap In Programs Or Activities Conducted By The Department Of Transportation*);
- 49 C.F.R. part 37 (entitled *Transportation Services For Individuals With Disabilities (ADA)*);
- 49 C.F.R. part 303 (FMCSA’s Title VI/Nondiscrimination Regulation);
- 28 C.F.R. part 35 (entitled *Discrimination On The Basis Of Disability In State And Local Government Services*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

Although not applicable to Recipients directly, there are certain Executive Orders and relevant guidance that direct action by Federal agencies regarding their federally assisted programs and activities to which compliance is required by Recipients to ensure Federal agencies carry out their responsibilities. Executive Order 12898 (1995), entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” emphasizes that Federal agencies should use existing laws to achieve Environmental Justice, in particular Title VI,

June 13, 2016



to ensure nondiscrimination against minority populations. Recipients should be aware that certain Title VI matters raise Environmental Justice concerns and FMCSA intends that all Recipients evaluate and revise existing procedures (as appropriate) to address and implement Environmental Justice considerations. See the following FHWA website for more information and facts about Environmental Justice: [http://www.fhwa.dot.gov/environment/environmental\\_justice/index.cfm](http://www.fhwa.dot.gov/environment/environmental_justice/index.cfm)

Additionally, Executive Order 13166 (2001) on Limited English Proficiency, according to the U.S. Department of Justice in its Policy Guidance Document dated August 16, 2000 (65 Fed. Reg. at 50123), clarifies the responsibilities associated with the “*application of Title VI’s prohibition on national origin discrimination when information is provided only in English to persons with limited English proficiency.*” When receiving Federal funds Recipients are expected to conduct a Four-Factor Analysis to prevent discrimination based on National Origin. (See also U.S. DOT’s “*Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons,*” dated December 14, 2005, (70 Fed. Reg. at 74087 to 74100); the Guidance is a useful resource when performing a Four-Factor Analysis).

### **General Assurances**

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

*“No person in the United States shall, on the grounds of race, color, national origin, sex, age, disability, low-income, or LEP be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from DOT, including the FMCSA.”*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973) by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally-assisted.

### **Specific Assurances**

More specifically, and without limiting the above general Assurances, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted **FMCSA Program**:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in 49 C.F.R. §§ 21.23 (b) and 21.23 (e) will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations;
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the FMCSA Program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

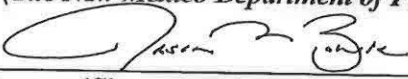
*“The **(New Mexico Department of Public Safety)**, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any*

*contract entered into pursuant to this advertisement, all contractors will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of the owner's race, color, national origin, sex, age, disability, income-level, or LEP in consideration for an award.”;*

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations;
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient;
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith;
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property;
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
  - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
  - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
  - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
  - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, [*The New Mexico Department of Public Safety*] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FMCSA access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by the FMCSA. You must keep records, reports, and submit the material for review upon request to FMCSA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[*The New Mexico Department of Public Safety*] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the Department of Transportation under the FMCSA Program. This ASSURANCE is binding on [New Mexico], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FMCSA Program. The person (s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

\_\_\_\_\_  
(*The New Mexico Department of Public Safety*)  
by   
\_\_\_\_\_  
(*Signature of Authorized Official*)  
DATED 6.5.23



## APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations as set forth in Appendix E, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FMCSA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FMCSA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FMCSA may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the FMCSA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

## CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

### APPENDIX B

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

**NOW, THEREFORE**, the Department of Transportation as authorized by law and upon the condition that the (*New Mexico Department of Public Safety*) will accept title to the lands and maintain the project constructed thereon in accordance with (*New Mexico Legislative Authority*), the Regulations for the Administration of **Federal Motor Carrier Safety Administration (FMCSA) Program**, and the policies and procedures prescribed by the **FMCSA** of the Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (*New Mexico Department of Public Safety*) all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

### (HABENDUM CLAUSE)

**TO HAVE AND TO HOLD** said lands and interests therein unto (*The New Mexico Department of Public Safety*) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the (*New Mexico Department of Public Safety*), its successors and assigns.

The (*New Mexico Department of Public Safety*), in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]\* (2) that the (*New Mexico Department of Public Safety*) will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, subtitle A, Office of the Secretary, part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI.)

June 13, 2016



**CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER  
THE ACTIVITY, FACILITY OR PROGRAM**

**APPENDIX C**

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the (*New Mexico Department of Public Safety*) pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, national origin, sex, age, disability, income-level, or LEP will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, (*The New Mexico Department of Public Safety*) will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.\*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the (*New Mexico Department of Public Safety*) will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the (*New Mexico Department of Public Safety*) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to effectuate the purpose of Title VI.)

**CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED  
UNDER THE ACTIVITY, FACILITY OR PROGRAM**

**APPENDIX D**

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by (*The New Mexico Department of Public Safety*) pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, national origin, sex, age, disability, income-level, or LEP will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, national origin, sex, age, disability, income-level, or LEP will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, (*The New Mexico Department of Public Safety*) will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.\*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, (*The New Mexico Department of Public Safety*) will there upon revert to and vest in and become the absolute property of (*The New Mexico Department of Public Safety*) and its assigns.\*

(\*Reverter clause and related language to be used only when it is determined that such a clause is necessary to effectuate the purpose of Title VI.)



## APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. § 2000d *et seq.*), (prohibits discrimination on the basis of race, color, national origin), as implemented by 49 C.F.R. § 21.1 *et seq.* and 49 C.F.R. part 303;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973 (23 U.S.C. § 324 *et seq.*) (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 *et seq.*) (prohibits discrimination on the basis of disability); and 49 C.F.R. part 27;
- The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (Pub. L. 97-248 (1982)), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (102 Stat. 28) (“....which restore[d] the broad scope of coverage and to clarify the application of title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and title VI of the Civil Rights Act of 1964.”);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189), as implemented by Department of Justice regulations at 28 C.F.R. parts 35 and 36, and Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

### **III. Description of Federal-Aid Program**

The NMDPS CVEB promotes safety on New Mexico highways by providing law enforcement traffic services to the motoring public to ensure the safe and legal operation of commercial motor vehicles and to prevent the introduction of illicit contraband into New Mexico while facilitating trade.

Under the MCSAP grant funding, enforcement efforts are enhanced, including those governed by the State Criminal Code, Motor Transportation Act, Motor Vehicle Code, and federal/state commercial motor vehicle safety regulations as adopted by the New Mexico Administrative Code. The mission is further enhanced by radiological inspections on all Waste Isolation Pilot Project (WIPP) shipments originating in or entering the State, as well as route control of hazardous material shipments. Public outreach and education through town hall meetings as well as carrier safety briefings and education enhance the purpose and mission of the CVEB.

Through the provision of the above services, human life and property is protected through the detection and prevention of criminal activity and enforcement of state laws and regulations.

### **IV. Notification to Beneficiaries/Participants**

The NMDPS CVEB posts the following notice in areas accessible to the public including all Ports of Entry and the DPS website: English: <https://dps.nm.gov/wp-content/uploads/2022/09/Updated-Public-Notice-English.pdf> Spanish: <https://www.dps.nm.gov/wp-content/uploads/2022/09/Updated-Public-Notice-Spanish.pdf>

#### **Public Notice of Title VI Program Rights**

The New Mexico Department of Public Safety Commercial Vehicle Enforcement Bureau gives public notice of its' policy to uphold and assure full compliance with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964 and related Nondiscrimination authorities. Title VI and related Nondiscrimination authorities stipulate that no person in the United States of America shall on the grounds of race, color, national origin, sex, age, disability, income level or Limited English Proficiency be excluded from the participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.

Any person who desires more information regarding the New Mexico Department of Public Safety Commercial Vehicle Enforcement Bureau's Title VI Program can contact its Title VI Coordinator – Vanessa Willock, EEO Director -- at the address noted below.

Any person who believes they have, individually or as a member of any specific class of persons, been subjected to discrimination on the basis of race, color, national origin, sex, age, disability, income level or Limited English Proficiency has the right to file a formal



complaint. Any such complaint must be in writing and submitted within 180 days following the date of the alleged occurrence to:

Vanessa Willock, EEO Director/Title VI Program Coordinator  
The New Mexico Department of Public Safety  
4491 Cerrillos Rd  
Santa Fe, NM 87507  
1-505-827-9185  
Vanessa.Willock@state.nm.us

Spanish, Navajo, and/or Vietnamese translations (postings based on assessed LEP populations in each area) of the notice are also posted at all NMDPS Districts, Ports of Entry and areas accessible to the public.

#### **V. Sub-recipient Compliance Reports**

The NMDPS CVEB does not provide any FMCSA grant funds to Sub-Recipients.

#### **VI. Training**

The Director of the NMDPS Equal Employment Opportunity Bureau (EEO Director) is responsible for conducting and/or coordinating Title VI related training for the agency. The EEO Director facilitates or conducts at least one training session a year for, at a minimum, agency commissioned and non-commissioned personnel. Additional Title VI training sessions conducted by department certified NTC Instructors may be added as needed or by request. All DPS Officers will also be provided with a copy of the FMCSA Enforcement Memorandum regarding Limited English Proficiency annually.

The training consists of an overview of Title VI Program regulations and requirements; a discussion of the DPS commitment to its Title VI Program; as well as a discussion of protected classes.

#### **VII. Access to Records**

The NMDPS CVEB will make all records relating to the effective implementation of the Title VI Program available for FMCSA review either at a specified time; or upon request for a complaint investigation, compliance review, or any other reason.

#### **VIII. Complaint Disposition Process**

The procedures for filing a discrimination (including Title VI) complaint are contained in NMDPS Policy No. ADM 34 and 36. The procedure for filing a discrimination complaint is as follows:

- a. Complaints should be reported as soon as possible after an incident of alleged discrimination, harassment, or retaliation. To ensure a prompt and thorough investigation the complainant shall provide as much of the following information as possible. A complainant shall make an oral or written complaint, whether or not all of the following information is known:



- i. The name, division, and position of the person(s) allegedly engaging in the discrimination, harassment, or retaliation.
  - ii. A description of the incident(s) including the date(s), time(s), location(s), and the presence of any witnesses.
  - iii. Whether the complainant believes that the incident(s) had any effect on the complainant's position, salary, benefits, promotional opportunities, or other terms or conditions of his or her employment or in the complainant's or any other persons receipt of services.
  - iv. The names of others who might have been subject to the same or similar inappropriate conduct.
  - v. Whether the complainant has taken any steps to try and stop the inappropriate conduct.
  - vi. Any other information the complainant believes to be relevant to the complaint.
- b. Any supervisor who receives a written or oral report of discrimination, harassment or retaliation **shall immediately forward the report to the DPS EEO Officer, regardless of the supervisor's assessment of the veracity of the complaint.**
- c. Neither supervisors nor the DPS EEO Officer may require an individual to reduce his or her complaint to writing. The supervisor or DPS EEO Officer shall immediately reduce any oral complaint to writing on the Title VI Complaint Form and have the complaining party sign the form. Supervisors shall take this step before forwarding the complaint to the DPS EEO Officer. In the event that an individual refuses to sign the Discrimination, Harassment, and Retaliation Complaint Form, the supervisor or EEO Officer shall so note that on the form and process it as though it had been signed.

### **Procedure for an Investigation and Resolution of a Complaint**

The procedures for investigating a discrimination complaint are contained in NMDPS Policy No. ADM 36. The procedure for investigating and resolving a complaint are as follows:

If upon receipt of a complaint involving allegations of civil rights based discrimination, harassment, or retaliation, or at any time during an inquiry or investigation, the EEO Officer reasonably believes that immediate corrective or preventative action is required to assure the safety or well-being of the complainant and to preserve the work environment, the EEO Officer shall recommend to the Secretary and/or the Chief that temporary corrective action (other than an adverse action against the complainant) be taken pending the resolution of the complaint. Such action, when warranted, may include separating the complainant and respondent, or temporarily removing the respondent, with no loss of pay, from the workplace. The Secretary and/or the Chief shall make the determination on temporary corrective action in consultation with the EEO Officer.

If the Secretary and/or the Chief determine that a report of discrimination, harassment, or retaliation is appropriately referred for criminal investigation, a criminal investigation referral shall be made by the Secretary and/or the Chief, or the Secretary if the Chief is involved in the complaint. The Chief or the Secretary, including if the Chief is involved, will also take the necessary

steps to transfer, reassign, place on administrative leave, or otherwise remove the respondent from workplace contact with the complainant to assure the well-being and safety of the complainant. Complainant will be informed when a particular report is referred for criminal investigation.

### **Informal Resolution Procedure**

- a. Immediately upon receipt of a complaint of discrimination or harassment, and following review of the central registry described below, the DPS EEO Officer will make an initial determination as to whether the acts complained of are amenable to mediation.
- b. If the EEO Officer determines that the acts complained of are amenable to mediation the EEO Officer, or designee, shall consult with the complainant. If the complainant is willing to have his or her complaint mediated, then the EEO Officer shall attempt mediation. In no event shall mediation be conducted regarding any of the following complaints;
  - i. Allegations of threats, violence, intimidation, physical touching, assault or retaliation;
  - iii. In any situation where the respondent has previously entered into mediation agreement regarding similar conduct.
- c. If mediation is successful, a written agreement is prepared by the assigned mediator. The written agreement must be signed by both parties and approved by the EEO Officer and where necessary, the Secretary and/or the Chief. A copy is kept in a confidential file. Generally, the mediation agreement may include:
  - iv. A pledge by the respondent not to engage in any behavior that could be construed as a violation of this policy;
  - v. A promise by the respondent not to retaliate against the complainant;
  - vi. The restoration of any employment terms, conditions, or opportunities the complainant lost or was denied because of the discrimination or harassment, and any other relief necessary to remedy the situation; and/or
  - vii. A procedure for monitoring compliance with the agreement.
- d. If the complaint **can** be resolved informally, the Formal Resolution Procedure detailed herein will not be followed. A copy of the written mediation agreement will be maintained in the central registry along with the complaint. A copy of the mediation agreement will also be provided to the complainant and respondent.
- e. If the complaint **cannot** be resolved informally, the complaint shall follow the Formal Resolution Procedure in this Policy. The Informal Resolution Procedure is not required prior to initiating the Formal Resolution Procedure.

### **Formal Resolution Procedure**



a. Administrative Inquiry or Formal EEO Investigation

- i. When a complaint is to be handled through formal procedures, an impartial administrative inquiry or formal EEO investigation will begin within ten (10) working days after the EEO Officer's receipt of a written or oral complaint, regardless of whether the complaint was first received by a supervisor or the EEO Officer.
  1. In the case of complaints which are initially but unsuccessfully addressed through the informal process, an impartial administrative inquiry or formal EEO investigation will begin within ten (10) working days of mediation failure.
  2. Whether a complaint is handled through formal or informal procedures, in the case of an oral complaint received directly by the EEO Officer or which, for any reason, has not been reduced to writing on the Discrimination, Harassment and Retaliation Complaint Form, the EEO Officer shall fill out the Form and obtain the complaining individual's signature on it, verifying that it accurately reflects the individual's report.
  3. If an employee refuses or decides not to sign the Form, the supervisor or EEO Officer shall so note that on the form and process it as though it had been signed.
  4. If the alleged conduct could be a violation of policy, but an individual chooses not to file an individual complaint, the supervisor or EEO Officer will so note on the form and the matter will be reviewed in the name of the appropriate cognizant supervisor.
  5. The Department attempts to complete administrative inquiries or formal EEO investigations within fifteen (15) working days. Except in the most unusual circumstances, investigations must be completed within thirty (30) working days unless a longer period of time is authorized by the Secretary after his review of a written request by the EEO Officer justifying the need for more time.
  6. The pendency of a criminal investigation and/or prosecution shall provide sufficient justification to delay the administrative inquiry or formal EEO investigation in order to not compromise the criminal investigation and/or prosecution.
  7. Where a Formal EEO investigation is conducted under this policy, the complainant and the respondent shall be apprised of the progress of the investigation and the estimated completion date of the investigation not less than every fifteen (15) days.
- ii. Upon notification of a complaint, the EEO Officer may request that an administrative inquiry be conducted to determine the need for formal EEO investigation. When requested, the inquiry will be conducted by an appropriate level supervisor to be determined in consultation with the EEO Officer.
- iii. If an administrative inquiry is conducted, the results of the inquiry along with all supporting documentation will be forwarded to the EEO Officer for further review. If the EEO Officer determines that further investigation is not warranted,

the EEO Officer will determine the appropriate disposition of the matter to include dismissal, appropriate corrective action, or the recommendation of discipline.

- iv. If, based upon the administrative inquiry, the EEO Officer determines that corrective action is appropriate; the EEO Officer shall make a determination as to the appropriate corrective action and issue such action to the respondent.
- v. If, based upon the administrative inquiry, the EEO Officer determines that disciplinary action is warranted; the EEO Officer will prepare and submit a report with a disciplinary action recommendation to the Chief and/or Secretary for consultation and final determination.
- vi. If, based upon the administrative inquiry, the EEO Officer determines that a formal EEO investigation is warranted, the EEO Officer or designee will conduct a formal EEO investigation or, if necessary to expedite the resolution of a complaint or resolve any potential conflict of interest, will appoint a competent independent outside investigator to conduct the investigation. When the complaint of discrimination, harassment, or retaliation is against the EEO Officer, the investigation shall be conducted by a competent independent investigator appointed by the Secretary in accordance with these procedures.
- vii. Where a formal EEO investigation is conducted under this policy, all interviews with the complainant, respondent, and witnesses **shall** be recorded and preserved.
- viii. Where a formal EEO investigation is conducted under this policy, the EEO Officer, or designee shall contact the respondent, give him, or her, a copy of the complaint, solicit the respondent's account of the alleged incidents, and inform the respondent that a recommendation and report will be prepared.
- ix. Where a formal EEO investigation is conducted under this policy, the EEO Officer, or designee, shall interview the complainant, the respondent, and any other witnesses identified by the complainant, or the respondent, or otherwise brought to the EEO Officer's attention, or whom the EEO Officer believes may have relevant information. Witnesses should not be limited only to those who directly observed the complained about events and may include others with knowledge of the working environment, the complainant, or the respondent.
- x. All individuals interviewed as part of an administrative inquiry or formal EEO investigation shall be informed that the DPS does not tolerate retaliation against any individual who opposes what s/he reasonably believes to be civil rights based discrimination, harassment, or retaliation or who cooperates in good faith in the investigation of a complaint.
- xi. During an administrative inquiry or formal EEO investigation, all aspects of the complaint and investigation shall be held in the strictest confidence by all parties and the EEO Officer, or designee, except to the extent reasonably necessary to resolve the complaint or implement any corrective action or discipline. Witnesses, the complainant, and the respondent shall not discuss their statements with each other or other employees.



- xii. As part of an administrative inquiry or formal EEO investigation, the EEO Officer, or designee, shall review the central registry, described below, to determine whether prior complaints of discrimination, harassment, or retaliation have been made by the complainant, or against the respondent, and the outcome of any prior complaints.
- xiii. As part of an administrative inquiry or formal EEO investigation, the EEO Officer, or designee, shall determine if any supervisor was aware of the conduct and did not report or respond to it as required by this policy.

**b. Report and Recommendation**

- i. Following completion of an administrative inquiry or a formal EEO investigation, the EEO Officer shall make an assessment of the following:
  - 1. All of the facts and circumstances surrounding the complaint and the working environment;
  - 2. The credibility of the complainant, the respondent, and any witnesses; and
  - 3. The existence of prior complaints and their resolution.
- ii. Based on this assessment, the EEO Officer shall arrive at a determination about whether the alleged discrimination, harassment or retaliation occurred.
- iii. No complaint shall be dismissed, or found to be unsubstantiated, solely because no witnesses other than the complainant and the respondent are available.
- iv. The EEO Officer, or designee, shall prepare a written report and recommendation promptly following the completion of a formal EEO investigation or following an administrative inquiry where disciplinary action is recommended. Except in the most unusual circumstances, the report must be completed within fifteen (15) working days after the completion of the inquiry or investigation. Extensions beyond fifteen (15) working days must be authorized by the Secretary, after his review of a written request by the EEO Officer justifying the need for more time.

**c. The report and recommendation must include:**

- i. A summary of the complaint;
- ii. A summary of the response by the individual charged with discrimination harassment or retaliation;
- iii. A summary of the statements and evidence obtained during the investigation;
- iv. A finding of whether a policy violation has occurred and an explanation supporting that finding along with a finding of whether any supervisor was or should have been aware of the violation and failed to report or respond to it;
- v. Of a violation occurred, the finding must include a statement about the severity of the violation;
- vi. An assessment of any credibility concerns regarding the complainant, respondent, or any witness and an explanation for the basis of the concern;
- vii. A summary of known prior mediation agreements, corrective actions regarding similar conduct, or substantiated complaints against the respondent;



- viii. A recommendation of discipline against the respondent, if appropriate, along with an explanation for the particular recommendation;
- ix. A recommendation of corrective action or discipline against a supervisor who knew or should have been aware of the discrimination, harassment, or retaliation and did not report or respond to it, if appropriate, along with an explanation for the particular corrective or disciplinary action recommendation;
- x. A recommendation as to the restoration of any employment terms, conditions, or opportunities the complainant might have lost as a result of the discrimination, harassment, or retaliation; and
- xi. An appendix containing relevant information and evidence obtained during the investigation.

d. Final Resolution of Complaint

- i. Where disciplinary action is recommended following an administrative inquiry or following a formal EEO investigation, a copy of the report and recommendation shall be sent to the Secretary and/or the Chief.
- ii. The Chief, in the case of law enforcement personnel, and the Secretary, in the case of civilian personnel, shall make the final determination as to the discipline, if any, to be imposed after consultation with the EEO Officer.
- iii. If the Chief is being investigated, the determination as to the discipline to be imposed shall be made by the Secretary.
- iv. Corrective or disciplinary action is mandatory when the EEO Officer determines that the respondent has engaged in discrimination, harassment, or retaliation. The corrective and/or disciplinary action imposed may range from corrective counseling up to and including termination.
- v. After consideration of a report recommending disciplinary action or a report issued following a formal EEO investigation, the Secretary and/or the Chief shall make a determination as to whether to take one or more of the following courses of action:
  - 1. Sustain the complaint, order the conduct to stop, impose appropriate discipline on the respondent, recommend the restoration of any employment benefit the complainant lost because of the conduct, and provide any other relief necessary, within their purview, to remedy the situation;
  - 2. Order further investigation and require a supplementary report and recommendation; or
  - 3. Dismiss the complaint, if it is found to be without merit.
- vi. If the EEO Officer finds that discrimination, harassment, or retaliation occurred and the Secretary and/or the Chief determine that disciplinary action should be taken which is less or more severe than that recommended by the EEO Officer, the Secretary and/or the Chief shall prepare a written memorandum, to be appended to the EEO Officer's report and recommendation, explaining the basis for the downward or upward deviation.

- vii. Once the Secretary and/or the Chief have approved the recommendation and report:
  - 1. Respondent shall be provided with a copy of the report and recommendation only in cases where the complaint is sustained and discipline is imposed.
  - 2. An employee complainant shall be provided a separate report that includes:
    - a. A summary of the complaint;
    - b. A summary of the response by the individual charged with discrimination, harassment or retaliation;
    - c. A finding of whether a violation of this policy occurred and an explanation supporting the finding; and
    - d. A statement regarding whether disciplinary action has been recommended. This statement shall not detail the discipline recommended.
  - 3. The EEO Officer may meet with the employee complainant to explain the decision.
  - 4. Client complainants shall be informed in writing that the investigation was completed and that the Department has taken appropriate action.
- viii. The respondent's division director and/or supervisor shall meet with the respondent to explain the decision and implement any discipline in accordance with the Department's Discipline Policy and/or any other rules, regulations, or laws.
- ix. The respondent is provided with a copy of the report solely to assist him or her in exercising his or her rights under the Department's Discipline Policy. The contents of the report are to be kept confidential except for this purpose and not to be disseminated for any other purpose.
- x. Either party can respond in writing to the report and decision as a formal rebuttal to be included in the official file. If disciplinary action is taken, the respondent may exercise his or her rights under the Department's Discipline policy and/or any other rules, regulations, or laws.
- xi. The supervisor of an individual found to have violated the Anti-Discrimination, Harassment, and Retaliation Policy is responsible for monitoring the individual's compliance with any recommendation made as a result of the finding. The supervisor must make his or her best efforts to ensure that the discrimination, harassment, or retaliation does not recur and that the complainant is not subjected to retaliation by the individual found to have violated this policy, or by other coworkers.
- xii. The Secretary and/or the Chief shall ensure that any disciplinary action imposed by the Secretary and/or the Chief is implemented subject to the right of the respondent to appeal the disciplinary action in accordance with the Department's policy regarding discipline, and any other rules, regulations or other laws.

### **Confidentiality**

All inquiries, complaints, and investigations under this policy will be confidential. Information is revealed strictly on a need-to-know basis.

### **Central Registry**

A copy of all complaints, tape recorded interviews, investigation reports, final decisions, or mediation agreements, and all other evidence, shall be kept in a central registry for a minimum of ten (10) years, and accessible by the EEO Officer, in a secured, confidential file.

### **Rights of the Complainant**

The procedures under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of discrimination, harassment, or retaliation under state or federal laws.

The NMDPS EEO Director will maintain a log of Title VI complaints received. The log shall include the date the complaint was filed, a summary of the allegations, the status of the complaint, and actions taken in response to the complaint.

#### **IX. Status of Corrective Actions**

Not applicable.

#### **X. Community Participation Process**

Not applicable to NMDPS.

#### **XI. CMV Inspection Selection & Unbiased Enforcement Policy**

The NMDPS has updated and modified its current Safety Inspections policy (OPR#57) to include references to the CVSA Operational Policy #13; the signed FMCSA Title VI Program Assurance; the Public Notice(s) of Title VI Program Rights (including the weblink to the Public Notices); complaint disposition including coordination with the Applicant's Title VI Program Coordinator; Title VI Program training for personnel conducted annually or every-other-year; and periodic monitoring by NMDPS of the effective implementation of this policy. The updated policy OPR#57 was published to DPS personnel via the agency PowerDMS system on October 12, 2021.