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FAQs FOR CIVIL RIGHTS NONDISCRIMINATION REGULATION NOTICE OF PROPOSED RULEMAKING

1) ***What is this NPRM and why did the EPA decide to make these regulatory amendments now?***

The current NPRM is just one of several strategic measures being implemented to ensure prompt, effective and efficient civil rights nondiscrimination complaint docket management and to enhance OCR's proactive compliance program. Since 2010, the EPA commissioned both an external review of its External Compliance Program by Deloitte Consulting, and an internal review by the EPA's Civil Rights Executive Committee. Accordingly, as part of its efforts to create a robust pre- and post- award compliance program (as identified in the EPA Draft EJ 2014 Plan Supplement dated April 12, 2012), the EPA began the process of reevaluating its regulations to identify what data and information it currently obtains from recipients. This process resulted in the EPA benchmarking its regulations against those of other federal agencies and EPA's decision to bring its regulations into conformance with more than twenty other federal agencies. This NPRM is just one of several measures, which are more fully detailed in the Office of Civil Rights External Compliance and Complaints Program Draft Strategic Plan 2015-2020 (posted for comment on OCR's website on September 10, 2015), to promote mission critical program and ensure prompt, effective and efficient complaint docket management.

2) ***Why is the EPA proposing to remove the deadlines for processing and investigating external nondiscrimination complaints?***

The EPA has found that processing and investigating nondiscrimination complaints within these self-imposed, inflexible deadlines is impracticable given both the inherent scientific complexity associated with determining how populations are impacted by environmental pollutants and the number of discrimination allegations and theories that may be asserted in any one complaint under Title VI or the other nondiscrimination statutes. Also, the EPA recognizes that there may be several potential resolution paths, including informal resolution and Alternative Dispute Resolution, even for those cases raising disparate health claims, which the EPA will pursue, when appropriate. By eliminating arbitrary deadlines, the EPA will be better positioned to strategically manage its administrative complaint docket by identifying the specific aspects of individual complaints, such as complaints that present the potential for high-impact resolution. Further, the EPA will be able to explore the best resolution options for those complaints, including tailored goals and benchmarks for specific phases of the individual case, rather than a cookie-cutter approach that assumes all cases should follow the same approach, resolution strategy, and timeframes. Tailoring the appropriate resolution path to each complaint based on the unique factual pattern and legal issues presented, will further allow the EPA to dedicate the appropriate amount of time and resources to resolve each individual complaint.

3) ***Will this amendment result in additional delays in the processing of nondiscrimination complaints?***

No. The EPA is committed to ensuring that the programs and activities receiving EPA financial assistance are free of discrimination. As reflected in the Civil Rights Executive Committee Report, the EPA has made the management and oversight of its External Compliance program one of its priorities. OCR's External Compliance Strategic Plan for 2015-20 promotes mission-critical program accountability through measures that will: 1) ensure prompt, effective and efficient complaint docket management; 2) enhance the Office of Civil Rights'(OCR) external compliance program through proactive compliance reviews, strategic policy development, and engagement of critical EPA, federal and external partners and stakeholders (e.g., recipients and communities); and 3) strengthen OCR's workforce through strategic human capital planning, organizational development and technology resources and training to promote a high-performing organization.

It is important to note that even with the elimination of the arbitrary deadlines, the EPA must promptly process and investigate complaints. EPA is fully committed to processing complaints expeditiously. Removal of deadlines will not allow the EPA to unreasonably delay its resolution of complaints because, in part, the definition of a prompt investigation and resolution turns on the factual context of the complaint. Indeed, the language in the proposed rule is consistent with judicial precedent that recognizes that any investigatory timeframe may be affected by the breadth and complexity of the issues in the complaint.

4) ***Is there anything that the EPA is planning to do to increase accountability throughout its External Compliance Program?***

Yes. Under each of the Goals identified in OCR's External Compliance Strategic Plan for 2015-2020, the EPA has identified specific benchmarks to ensure accountability, that will significantly impact the operating practices of the External Compliance Program, including: 1) the development and implementation of a comprehensive Case Resolution Manual that will address all phases of the case resolution process including highlighting several expected activities that are anticipated to occur once a complaint is accepted; 2) full utilization of all resolution options available, including informal resolution and Alternative Dispute Resolution; 3) the development and implementation of an automated case management system; 4) the development and deployment of a Compliance Toolkit that will provide guidance to recipients regarding their civil rights obligations; 5) the maintenance of a user-friendly Website that will include case decisional documents, and other important documents as appropriate; 6) the creation of an annual report addressing accomplishments of the External Compliance program; and 7) expanded training and development to empower OCR staff with the tools that they need to complete work.

5) ***Does the EPA's deletion of the reference to the investigation of all complaints in the introductory text of 40 CFR 7.120 mean that the EPA will reject more cases?***

No, the EPA is not making this proposal in order to reject more cases. The proposed modification does not alter the reasons for dismissing a complaint upon which the EPA and other agencies have relied. Instead, the proposed amendment language clarifies the agency's discretion to pursue a path to resolution in light of the particular facts of each case. This would bring the EPA regulation into conformance with those of over twenty other agencies, which is

another step in the agency's journey to build a model Civil Rights Program. The EPA also seeks to conform to the regulatory text of its sister agencies in order to affirm that it will not seek to impose a one-size fits all approach to resolution.

6) ***Does the removal of the "reason to believe that discrimination may exist" language leave recipients vulnerable to unreasonable searches?***

No, the deletion of this language will not make recipients vulnerable to unreasonable compliance reviews because the EPA must still comply with the Fourth Amendment in terms of how it selects targets for compliance reviews. The EPA will not randomly select targets for compliance reviews. Rather, compliance review sites will be carefully selected in light of a number of relevant criteria including statistical data, prior complaints, reports by other EPA offices, information shared by other federal agencies, and other specific and reliable information from communities and other sources. Moreover, the EPA will continue to tailor its requests for additional information from recipients during post-award compliance reviews to data and information that is relevant to determining compliance. With the proposed rule, the EPA will: 1) help ensure that recipients of EPA financial assistance are complying with their nondiscrimination obligations, before a complaint is filed or a lengthy investigation is conducted; and 2) bring EPA's regulations into conformance with those of over twenty other federal agencies that have well established compliance review programs with which recipients are already familiar.

7) ***In the cost estimate there is a discussion that the EPA intends to use a "phased" approach in terms of developing a compliance review program, what does this mean?***

The phased approach allows the EPA to develop a robust compliance review program, while allowing it to learn from a more limited pilot program and have available more resources as the program grows. OCR's Proactive Compliance Program will include compliance reviews and also strategic policy development and the proactive engagement of critical internal and external partners and stakeholders such as recipients and communities.

8) ***Why is the EPA proposing to have recipients submit compliance reports?***

Collecting this compliance data allows the EPA to be more proactive in identifying problems before they rise to the level of a complaint, and to identify trends among its recipients regarding compliance with non-discrimination laws. Such data and information collection is consistent with the Department of Justice's Title VI Coordination Regulations, which require federal agencies to "provide for the collection of data and information from applicants for and recipients of federal assistance sufficient to permit effective enforcement of Title VI." 28 C.F.R. §42.406(a). Further, as demonstrated by sister agencies, a successful compliance report program can be an invaluable tool in managing the complaint investigation docket, selecting recipients for compliance reviews, and conducting targeted outreach to provide technical assistance.

9) ***Why does the EPA's cost estimate contain details about the number, frequency and possible content of compliance reports, but the preamble to the NPRM indicates that the EPA has not yet finalized those details?***

The inclusion of a cost estimate is a necessary part of any regulatory docket. Yet, EPA wants to work collaboratively with stakeholders to create these reports and does not have a fixed idea of what information should be in a compliance report, the frequency of when reports will be requested, or the prioritization of which recipients will be expected to submit such reports. EPA looks forward to further discussions with all stakeholders about compliance reporting in light of what other federal agencies already require and what states already do.

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