UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 24 2004

OFFICE OF
CIVIL RIGHTS

CERTIFIED MAIL # 7003 1680 0004 9923 2190
RETURN RECEIPT REQUESTED

Mrs. Marilyn G. Elliott, Acting Director
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463

RE: NONDISCRIMINATION POST AWARD COMPLIANCE REVIEW

Dear Mrs. Elliott:

The attached letter was mailed to you yesterday, November 23, 2004. Some of the enclosures were inadvertently omitted. Therefore, we are mailing you another copy of the letter and all the indicated enclosures. Our sincerely apology for the inconvenience. If you have questions please contact Yasmin Yorker on 202-343-9682.

Sincerely,

Karen D. Higginbotham
Director

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 23 2004

OFFICE OF
CIVIL RIGHTS

CERTIFIED MAIL #7003 1680 0004 9923 1704
RETURN RECEIPT REQUESTED

Mrs. Marilyn G. Elliott, Acting Director
Alabama Department of Environmental Management
PO Box 301463
Montgomery, AL 36130-1463

RE: NONDISCRIMINATION POST AWARD COMPLIANCE REVIEW

Dear Mrs. Elliott:

This letter is to notify you that the U.S. Environmental Protection Agency ("EPA") Office of Civil Rights ("OCR") has performed a post award compliance review of the Alabama Department of Environmental Management ("ADEM") in accordance with EPA's nondiscrimination regulations at 40 C.F.R. Part 5 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance) and 40 C.F.R. Part 7 (Nondiscrimination in Programs or Activities Receiving Federal Assistance from the EPA).

This compliance review, in part, examined specific procedures all recipients should have in place to ensure that recipients are operating their EPA-funded programs in a nondiscriminatory manner. Some of the areas examined included public notification procedures, grievance procedures and coordination of compliance efforts.

Having evaluated the entire record of evidence, OCR finds ADEM to be in compliance with the nondiscriminatory regulations found at 40 C.F.R. Parts 5 and 7, as described in the attached report. OCR is providing this November 8, 2004 report to outline the areas OCR examined during the review, summarize our findings and make recommendations, where appropriate.

OCR would like to thank you as well as Lynn Garthright and Olivia Rowell for your responsiveness in preparing numerous submittals during the course of this review. If you have any questions, please contact Yasmin Yorker by telephone at (202) 343-9682. We look forward to your continued civil rights compliance in the administration of your programs and activities.

Sincerely,

Karen D. Higginbotham
Director

Enclosure

cc: Steve Pressman, Associate General Counsel
Civil Rights Law Office (MC 2399A)

Nancy Tommelleo, Title VI Coordinator
EPA Region 4

NON-DISCRIMINATION POST AWARD COMPLIANCE REVIEW
(40 CFR PARTS 5 AND 7)

Recipient Reviewed:

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANGEMENT

Review Conducted By:

U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF CIVIL RIGHTS – EXTERNAL COMPLIANCE PROGRAM

Date:

November 22, 2004

AUTHORIZATION

In accordance with the U.S. EPA's nondiscrimination regulations at 40 C.F.R. Part 5 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance) and 40 C.F.R. Part 7 (Nondiscrimination in Programs or Activities Receiving Federal Assistance from the EPA), EPA's Office of Civil Rights (OCR) may periodically perform post-award compliance reviews of recipients' programs and activities to ensure recipients are operating in a nondiscriminatory manner.

OCR conducted a post-award compliance review of the Alabama Department of Environmental Management (ADEM) to determine whether ADEM is complying with certain aspects of the regulations that implement Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Act Amendments of 1972, Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (prohibiting discrimination based on sex under programs or activities receiving financial assistance under the Clean Water Act), and the Age Discrimination Act of 1975.

According to 40 CFR § 7.115, "OCR may periodically conduct compliance reviews of any recipient's programs or activities". OCR may conduct either a "desk" audit or an on-site investigation. Onsite investigations are conducted "when it has reason to believe that discrimination may be occurring". ADEM was given a desk audit consisting of review and analysis of submitted information to determine compliance with the above referenced regulations.

BACKGROUND

Alabama is the 22nd state of the United States and encompasses an area of 50,744 square miles. It is contiguously bounded by Mississippi to the west, Tennessee to the north, Georgia to the east, and Florida and the Gulf of Mexico to the south. According to the 2000 United States Census, the total population of Alabama is 4,447,100 with a per capita income of $18,189. Approximately 75% of Alabamans live in metropolitan counties while 25 % live in non-metropolitan counties. The demographic breakdown of Alabama is as follows: 71 % white, 26 % black, 1.7 % Hispanic decent, 0.7 % Asian decent, and 0.5% Native American decent. Alabama's population is growing which includes an influx of non-English speaking people. According to the 2000 Census there are approximately 162,500 people in the state who speak "languages other than English" including approximately 64,000 people who speak English "less than well."

The state capital of Alabama is Montgomery, where ADEM central headquarters is located. ADEM is comprised of five Divisions and five Offices which all report to the Office of the Director. ADEM has direct affiliation with the Alabama Environmental Management Commission (AEMC), a seven member board whose duties include selecting the ADEM director, hearing administrative appeals and developing Alabama's

environmental policy. The mission statement of ADEM, which can found on its web site *http://www.adem.state.al.us/* is

> *"Responsibly adopt and fairly enforce rules and regulations consistent with the statutory authority granted to the Alabama Environmental Management Commission (AEMC) and the Alabama Department of Environmental Management (ADEM) to protect and improve the quality of Alabama's environment and the health of all its citizens. Monitor environmental conditions in Alabama and recommend changes in state law or revise regulations as needed to respond appropriately to changing environmental conditions."*

OCR REVIEW

On May 24, 2004, OCR initiated a Post-Award Compliance Review of ADEM. OCR sent ADEM a letter requesting information on the nondiscrimination operating procedures and policies of ADEM's environmental programs. ADEM submitted their first response letter on July 16, 2004, followed by a second response letter on August 30, 2004. OCR reviewed the submitted information and sought clarification from ADEM via telephone calls and electronic mail.

One of the goals of OCR is to determine if recipients of EPA federal assistance are operating their environmental programs in a nondiscriminatory manner. OCR reviewed the submitted data and finds that ADEM is in compliance with OCR's nondiscriminatory regulations to the extent described below. OCR is providing this November 22, 2004 report to outline the areas OCR examined during the review, summarize our findings and make recommendations, where appropriate.

ADEM PROGRAM ANALYSIS

I. Program Overview

Areas of review included, but were not limited to, nondiscrimination grievance procedures, notice of nondiscrimination, public participation and sub-recipient information. The complete list of compliance review requests is included in the May 24, 2004 letter and can be found in Appendix A.

A. Administrative Responses

Below is a list of six ADEM responses that need no further clarification from ADEM. This information will be used by OCR to create a file of ADEM contact numbers and other pertinent information:

1. Name of legal counsel,
2. List of ADEM facilities,

3. List of ADEM environmental programs.
4. List of sub-recipients administered through ADEM.
5. Name of person responsible for questionnaire completion.
6. Self Evaluation, required under 40 C.F.R. 7.85(c)

B. Environmental Justice Initiatives

ADEM was asked to provide a description of any initiatives responding to concerns that communities are adversely and disparately impacted by ADEM's permitted facilities. ADEM has implemented initiatives such as partnering with EPA Region 4's Environmental Justice (EJ) Collaborative and providing EJ training to 60 of their department supervisors, as well as "in the field" EJ initiatives such as the diesel retrofit of Birmingham Area school buses and a truck stop electrification project in Tuscaloosa County. Environmental Justice is a goal to be achieved, and is based on Executive Order 12898. EPA defines EJ as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

Conclusions/Recommendations:

ADEM's responses refer to "environmental justice" and "EJ." OCR considers EJ programs relevant to compliance under Parts 5 and 7 to the extent such programs address discrimination on the basis of race, color, national origin, sex, or disability as described in EPA's regulations. Other aspects of EJ programs, such as those focused on low income communities, are laudable, but not necessarily applicable to compliance with Parts 5 and 7. ADEM should continue to foster the EJ partnership with EPA Region 4 and continue "in the field" EJ initiative improvements. Even though there is some overlap between EJ and Title VI and its implementing regulations, there are distinct differences as well, and as such, ADEM should provide specific Title VI training to supervisors as well as to interested staff. Greater exposure to civil rights and EJ training will hopefully result in greater effective communication between ADEM, the public and the regulated community. Title VI training may educate ADEM employees about ADEM's nondiscrimination policies and responsibilities when providing services to the public and issuing permits to the regulated community.

II. Procedural Requirements

A. Grievance Procedures, 40 C.F.R. §§ 5.135(b), 7.90

The regulations implementing Title VI, Section 504, Section 13 of the Clean Water Act, and Title IX require recipients to adopt grievance procedures that assure the prompt and fair resolution of complaints that allege violations of 40 C.F.R. Parts 5 or 7. 40 C.F.R. § 5.135 (b); 40 C.F.R. § 7.90. In response to OCR's request for a copy

of ADEM's discrimination grievance procedures, in a letter dated August 30 2004, ADEM stated that a citizen could file a grievance one of three ways: (1) use the Feedback page on the ADEM website, (2) use the toll free phone line, or (3) make a proper request for a hearing before the AEMC in accordance with ADEM Administrative Code. The applicable code provision is found at Chapter 335-2-1, Rules of Procedure for Hearing Appeals of the Administrative Action of ADEM.

Subsequently, in a September 8, 2004 e-mail correspondence, ADEM explained that, if the request for a hearing falls within the Commission jurisdiction, the Commission must commence a hearing within 45 days of the filing of the request. These procedures appeared to be under-inclusive since they did not provide procedures for complaints alleging intentional discrimination or discriminatory effects stemming from ADEM actions that did not fall within the definition of administrative action under the Code. An administrative action is defined as "the issuance, modification, repeal or denial of any permit, license, certification, or variance, or the issuance, modification or repeal of any order, notice of violation, citation, rule or regulation by the Department." For example, allegations of discrimination as related to public participation would fall outside of the scope of an administrative action.

On September 29, 2004, ADEM, in order to avoid any confusion with procedures as established in ADEM Administrative Code Chapter 335-2-1, submitted to OCR a draft version of its nondiscrimination grievance procedures. As a result of OCR's review and ADEM's desire to fulfill its obligations under 40 C.F.R. § 5.140 and 40 C.F.R. § 7.90, on October 18, 2004, ADEM issued Memorandum #108 "Procedure for Title VI or Environmental Justice Filing of Discrimination Complaints." This grievance procedure "is intended to provide guidance to anyone who has reason to believe they have been discriminated against by the Alabama Department of Environmental Management (ADEM) on the basis of race, color, national origin, disability, age or sex." The Grievance Procedure is attached as Appendix B.

Conclusions/Recommendations:

ADEM's new Grievance Procedure satisfies the requirements of 40 C.F.R. § 5.135(b) and 40 C.F.R. § 7.90. As a matter of completeness, the grievance procedure should be readily available to the general public in the form of an electronic copy on the ADEM webpage and a paper copy for individuals who do not have access to a computer or who may walk into the main or branch offices. In addition, if ADEM receives complaints on either its website feedback page or toll free phone line from individuals alleging violations of 40 C.F.R. Parts 5 or 7, those individuals should be referred to the grievance procedure.

B. Notice of Nondiscrimination, 40 C.F.R. §§ 5.140, 7.95; and Designation of Responsible Employee 40 C.F.R. §§ 5.135(a), 7.85(g)

The regulations implementing Title VI, Section 504, Section 13 of the Clean Water Act, and Title IX require recipients to designate at least one employee to coordinate

its nondiscrimination compliance efforts. 40 C.F.R. § 5.135(a), 40 C.F.R. § 7.85(g). These regulations also contain requirements to issue notices of nondiscrimination. 40 C.F.R. § 5.140; 40 C.F.R. § 7.95. Recipients of EPA assistance must notify community members that they do not discriminate on the basis of race, color, national origin, disability, or on the basis of sex in federally-assisted education programs as well as programs or activities receiving financial assistance under the Clean Water Act.

The Part 7 regulations require a recipient to identify, in its notice of nondiscrimination, the employee designated for coordination of its compliance efforts. 40 C.F.R. § 7.95. In addition, the Title IX regulations require a recipient to provide the name of the person responsible for coordination of its compliance effort and the address and telephone number where that person may be contacted. 40 C.F.R. § 5.135(a). However, because OCR recognizes that the inclusion of a person's name in a nondiscrimination notice may result in an overly burdensome requirement to republish each notice if a person leaves the position, it is acceptable for a recipient to identify its designated official only through a position title.

In response to OCR's request for a copy of ADEM's notice of nondiscrimination, ADEM submitted, on July 16, 2004 a copy of its nondiscrimination notice. The notice submitted is required under equal employment opportunity (EEO) regulations. While the submitted nondiscrimination notice was intended to satisfy EEO regulations, more information was needed to satisfy 40 C.F.R. Parts 5 and 7. OCR sought clarification through telephone calls and electronic mail. On September 29, 2004, ADEM posted a distinct Policy of Nondiscrimination as required by 40 C.F.R. § 5.140; 40 C.F.R. § 7.95. This policy states "The Alabama Department of Environmental Management does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the administration of its programs or activities, in accordance with applicable laws and regulations." This policy is now on ADEM's web site and has been sent to branch offices for posting and is attached to this report as Appendix C.

Conclusion/Recommendations:

ADEM is in compliance with 40 C.F.R. § 5.135 (a) and 40 C.F.R § 7.85 (g) as it has designated a responsible employee for its compliance efforts. In addition, ADEM's new Policy of Nondiscrimination satisfies the requirements of 40 C.F.R. § 5.140 and 40 C.F.R. § 7.95. To ensure continuing notice that it does not discriminate, ADEM must post this notice in locations visited by members of the public. Break rooms and other areas frequented predominately by ADEM employees are not sufficient posting locations. ADEM should also post this notice in publications that are distributed to members of the public. Methods of notice may also include publishing in newspapers and magazines, and placing notices in ADEM's internal publications or on ADEM's printed letterhead. Methods of notice must accommodate those with impaired vision or hearing. Where appropriate, the notice must be in a language or languages other than English. ADEM should refer to EPA's Limited English Proficiency Guidance (LEP Guidance) for assistance in determining when such translations are appropriate.

For additional assistance OCR has provided the Limited English Proficiency (LEP) Guidance as Appendix D.

III. Public Participation

In response to OCR's public participation inquiry, ADEM submitted a publication entitled "Public Participation in the ADEM Rulemaking and Permitting Processes." This document outlines the protocol that ADEM utilizes in their public participation processes. This document can now be found on the ADEM web site.

OCR sought clarification on how ADEM assists non-English speaking groups at public hearings. ADEM responded in an August 30, 2004 letter, that a staff person's name and number are included in the Department's hearing notices if special accommodations are required. This can include physical or language accommodations. ADEM also has agreements with local universities to provide foreign language interpreters as well as American Sign Language for the hearing impaired.

While reviewing the ADEM Organization Chart, OCR personnel took notice that the Office of Planning and Public Affairs within the Office of the Director coordinates Environmental Justice Activities while the Ombudsman/P2 Unit within the Office of Education and Outreach receives and coordinates complaints regarding environmental problems or activities of the department, and operates departmental toll free phone line

ADEM also referenced a Strategic Plan written by the ADEM Strategic Planning Commission. ADEM has acknowledged that Environmental Justice is an area for increased awareness. OCR commends ADEM in trying to address these issues including Commission recommendations that these issues may best be served through potential changes in the law. Many EJ concerns as described in the Strategic Plan entail both quality of life and permitting issues. These community concerns that "some ADEM permitting decisions lead to disproportionate impacts on communities of color" would be an example of an overlap between EJ and 40 C.F.R Parts 5 and 7 and as such OCR makes the following recommendations.

Conclusions/Recommendations:

In order to possibly address issues in the Strategic Plan and to provide assistance in determining recipient responsibilities to the public, ADEM should refer to EPA's document entitled "Public Involvement in Environmental Permits: A Reference Guide." The document may foster ideas within ADEM and may improve the communication pipeline between ADEM, the public and regulated community. OCR commends ADEM for placing the Final Strategic Plan on its web site and would encourage periodic web site updates by placing any Strategic Progress Reports and the Final Strategic Report on the ADEM website, once completed.

ADEM should notify the public about the availability of special accommodations at public meetings. Information should be posted on ADEM's web site and in the Public Participation Document. For additional assistance OCR has provided the Limited English Proficiency (LEP) Guidance as Attachment D.

In addition, to effectively address potential discrimination claims, ADEM should ensure that there is an established communication infrastructure or procedure between the Office of Planning and Public Affairs within the Office of the Director and the Ombudsman/P2 Unit within the Office of Education and Outreach.

IV. Efforts to Ensure Sub-Recipient Nondiscrimination, 40 C.F.R. §§ 7.15, 7.25.

The nondiscrimination provisions of 40 C.F.R. Parts 5 and 7 apply to "any successor, assignee, or transferee of a recipient," commonly referred to as sub-recipients. 40 C.F.R. § 7.25. In response to OCR's inquiry regarding ADEM's efforts to ensure that its sub-recipients are in compliance with these provisions, ADEM explained that "many of the recipients are government agencies which should be aware of civil rights obligations."

ADEM also submitted a copy of its state contract language template (Contract). The Contract, at Section 7, includes Equal Employment Opportunity language for the contractor and any subsequent subcontract. This language primarily reflects regulatory requirements pertinent to employment and, therefore, does not address the nondiscrimination provisions of 40 C.F.R. Parts 5 and 7. OCR, therefore, makes the following recommendations.

Conclusions/Recommendations:

ADEM should establish administrative procedures to notify sub-recipients of their civil rights obligations and to ensure that ADEM sub-recipients are in compliance with the nondiscriminatory regulations as set forth in 40 C.F.R Parts 5 and 7.

ADEM should expand Section 7 of its Contract template to include the following language, or language that is substantially similar:

> *Any person, group or organization, that signs this agreement shall comply with the following federal statutes: Title VI of the Civil Rights Act of 1964, Section 13 of the 1972 Amendments to the Federal Water Pollution Control Act, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and their implementing regulations at 40 C.F.R. Parts 5 and 7, where applicable.*

This language should be included in agreements with both sub-recipients (receiving grants from ADEM) as well as contractors.

APPENDICES

A. May 24, 2004 Request Letter from OCR to ADEM
B. ADEM's Grievance Procedure
C. ADEM's Policy of Nondiscrimination
D. Limited English Proficiency Guidance

Appendix A

May 24, 2004 Request Letter from OCR to ADEM

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 24 2004

OFFICE OF
CIVIL RIGHTS

CERTIFIED MAIL #7002 2410 0004 4323 9931
RETURN RECEIPT REQUESTED

Mr. James W. Warr, Director
Alabama Department of Environmental Management
PO Box 301463
Montgomery, Alabama 36130-1463

Dear Mr. Warr,

This is to notify you that the U.S. Environmental Protection Agency ("EPA") Office of Civil Rights ("OCR") will conduct a compliance review of the Alabama Department of Environmental Management ("ADEM") in accordance with EPA's nondiscrimination regulations at 40 C.F.R. Part 7 (Nondiscrimination in Programs or Activities Receiving Federal Assistance from the EPA) and 40 C.F.R. Part 5 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance). These regulations provide that OCR may periodically conduct reviews of recipients' programs and activities to determine whether they are complying with the regulations which implement Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (prohibiting discrimination based on sex under programs or activities receiving financial assistance under the Clean Water Act). OCR is also charged with enforcing the Age Discrimination Act of 1975.

This compliance review will, in part, examine specific procedures all recipients are required to have in place to assure EPA they are operating their federally funded programs in a nondiscriminatory manner. Some of the specific procedures found at 40 C.F.R. Part 7 include:

- Public notification procedures
- Grievance procedures
- Coordination of compliance effort by designated official
- Self-evaluation procedures

To assist us in completing this review, please submit written responses to the attached questions to our Office within 45 days of the receipt of this letter. Upon receipt of the requested data and information, OCR will examine the information received, determine whether there is compliance with the applicable nondiscrimination regulations, and prepare a report of our preliminary findings and recommendations, if any, for achieving voluntary compliance. If necessary, OCR may later schedule an on-site review to further investigate suspected noncompliance.

In addition to the compliance review of ADEM, OCR will also conduct compliance reviews of three other recipient agencies this fiscal year. If you have any questions about this process or the enclosure, please contact Yasmin Yorker, Assistant Director of OCR's External Compliance Program, by telephone at (202) 343-9682, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460-1000. We look forward to reviewing the requested information.

Sincerely,

Karen D. Higginbotham
Director

Enclosure

cc: Steve Pressman Associate General Counsel
Civil Rights Law Office (MC 2399A)

Nancy Tommelleo, Title VI Coordinator
EPA Region 4

EPA Office of Civil Rights Data Request
Alabama Department of Environmental Management

The information requested below is required to enable the U.S. Environmental Protection Agency ("EPA") Office of Civil Rights ("OCR") to determine whether the Alabama Department of Environmental Management ("ADEM") is operating in a nondiscriminatory manner as required by Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Section 13 of the Federal Water Pollution Control Act Amendments of 1972, and the Age Discrimination Act of 1975, as well as EPA's implementing nondiscrimination regulations at 40 C.F.R. Part 7 (Nondiscrimination in Programs or Activities Receiving Federal Assistance from the EPA) and 40 C.F.R. Part 5 (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance). If any of these requests for information have been filed in responses provided to other federal agencies within the last two years, ADEM has the option of responding anew or submitting a copy of the previous response. If ADEM believes there is a better way of responding to these requests for information, please specify.

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1. Please provide the following information
   - Name and contact information of ADEM's legal counsel, if any, for this review;
   - Name and address of each facility operated by ADEM;
   - A description of the scope and extent of ADEM's operations (particularly those functions not described on the ADEM's web site);
   - A description of the environmental programs administered and or any services provided directly to the public.

2. A list indicating the status of all civil rights lawsuits and formal complaints pending against ADEM or closed in the last two years. Specify the legal basis (race, sex, disability, etc.) and the issue in each lawsuit and complaint, and describe the disposition, where appropriate. At this time, please do not include lawsuits or formal complaints brought by employees of ADEM (*i.e.*, equal employment opportunity cases).

3. A list of all written objections received by ADEM in the last two years, not identified in request #2, involving polluting, siting or any other action on the part of ADEM or a regulated entity that allegedly adversely and disparately impacts a community based on race, color, national origin, sex, handicap, or age. (Include the name, address, telephone number, if available, of both the commenter and the alleged offender.)

4. Indicate whether any federal agency has conducted a civil rights compliance review of ADEM, in the last two years and provide a copy of any written reports prepared, either by the federal agency or ADEM, pursuant to these reviews. Include documentation of any remedial actions taken stemming from the review findings.

5. A list of all sub-recipients of EPA assistance to ADEM in the last year and the names of the entities or projects supported by that assistance. EPA OCR requests that the information be submitted electronically, if possible.

6. A description of ADEM's efforts to ensure that sub-recipients of EPA assistance are in compliance with applicable civil rights statutes and regulations.

7. A description of any initiatives by ADEM responding to concerns that communities are adversely and disparately impacted by ADEM's permitted facilities (*e.g.*, exposed to greater health risks based on race, color, national origin, sex, handicap or age).

8. A copy of any self-evaluation that ADEM has conducted with respect to its administrative policies and practices, and documentation of corrective action initiated with respect to services, policies, and practices that are inconsistent with Section 504 of the Rehabilitation Act of 1973. The contents of the self-evaluation 'file' including (1) a list of the interested persons consulted; (2) a description of areas examined and any problems identified; and (3) a description of any modifications made.

9. A copy of ADEM's discrimination grievance procedures, notice of nondiscrimination, and any other written public or internal nondiscrimination policy statements.

10. A description of the methods used by ADEM to provide initial and continuing notice that it does not discriminate on the bases of race, color, national origin, sex, age, or handicap. (Appropriate means for communicating notice include publication of information in handbooks, pamphlets, manuals, the display of informational posters in public places, and broadcast of information by television or radio).

11. A description of ADEM's public participation policies and procedures with regard to the permitting process, including any relevant written documents.

12. The name and telephone number of the person responsible for completing this questionnaire.

Complete and submit within 45 days of receipt of this letter.

Submit to Yasmin Yorker, Assistant Director External Compliance
U.S. EPA - Office of Civil Rights (MC 1201A)
1200 Pennsylvania Ave., NW
Washington, DC 20460

APPENDIX B

ADEM's Grievance Procedure

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
POST OFFICE BOX 301463 36130-1463 • 1400 COLISEUM BLVD. 36110-2059
MONTGOMERY, ALABAMA
WWW.ADEM.STATE.AL.US
(334) 271-7700

JAMES W. WARR
DIRECTOR

BOB RILEY
GOVERNOR

Facsimiles: (334)
Administration: 271-7950
General Counsel: 394-4332
Air: 279-3044
Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-6131
Laboratory: 277-6718
Mining: 394-4326
Education/Outreach: 394-4383

October 18, 2004

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

MEMORANDUM #108

SUBJECT: PROCEDURE FOR TITLE VI OR ENVIRONMENTAL JUSTICE FILING OF DISCRIMINATION COMPLAINTS

GENERAL

This memorandum is intended to provide guidance to anyone who has reason to believe they have been discriminated against by the Alabama Department of Environmental Management (ADEM) on the basis of:

- race;
- color;
- national origin;
- disability;
- age; or
- sex.

This memorandum, in compliance with 40 CFR §§ 5.135 and 7.90, provides a step-by-step procedure for filing a timely complaint to the proper authority and describes the process that will be used to investigate and resolve the complaint. However, these procedures do not apply to administrative actions which are being pursued in another forum.

SUBMISSION OF COMPLAINT

A. Filing Complaints of Discrimination.

(1) Complainants may submit written complaints to ADEM's Title VI/Environmental Justice (EJ) Coordinator at ADEM which is located at 1400 Coliseum Blvd., Montgomery, Alabama 36110-2059. ADEM's mailing address is P.O. Box 301463, Montgomery, Alabama 36130-1463.

(2) In cases where the complainant is unable or incapable of providing a written statement, but wishes ADEM to investigate alleged discrimination, a verbal complaint of discrimination may be made to ADEM by calling the EJ Coordinator at (334) 271-7700. The complainant will be interviewed by an ADEM employee who, if necessary, will assist the person in converting verbal complaints in writing. All complaints must, however, be signed by the complainant or his/her representative.

(3) Complaints must be filed with the Title VI/EJ Coordinator at ADEM within 90 days of an alleged discriminatory act. ADEM has the authority to waive the 90-day time period required for filing a complaint if the complainant can demonstrate that the failure to file was based on "good cause." If the complainant wishes to request a waiver, the

complainant must submit a detailed written description explaining why the complainant failed to file the complaint within 90 days of the alleged act(s) of discrimination.

B. Complaint Format.

(1) All complaints must be in writing and signed by the complainant or his/her representative before ADEM can respond. Complaints shall:

a. describe with specificity the action(s) that allegedly intentionally discriminate or result in discrimination in violation of 40 CFR Parts 5 and 7;

b. describe with specificity the impact that allegedly has occurred or will occur as the results of such action(s); and

c. identify the parties subjected to, impacted by, or potentially impacted by the alleged discrimination.

(2) ADEM will provide the complainant or his/her representative with a written acknowledgement within ten working days that ADEM has received the complaint.

C. Determination of Jurisdiction and Investigative Merit.

The EJ Coordinator, based on the information in the complaint and additional information provided by the alleged civil rights violator(s), will determine if ADEM has jurisdiction to pursue the matter and whether the complaint has sufficient merit to warrant an investigation. These determinations will be made within 15 working days after the receipt of the complaint by ADEM. A complaint shall be regarded as meriting investigation unless:

(1) It clearly appears on its face to be frivolous or trivial;

(2) Within the time allotted for making the determination of jurisdiction and investigative merit, ADEM voluntarily concedes noncompliance and agrees to take appropriate remedial action or reaches an informal resolution with the complainant;

(3) Within the time allotted for making the determination of jurisdiction and investigative merit, the complainant withdraws the complaint; or

(4) It is not timely and good cause does not exist for waiving the requirement.

INVESTIGATION

If the Title VI/EJ Coordinator accepts the complaint, the Coordinator will designate an individual to investigate the allegation(s). After examining all of the information in light of the requirements in 40 C.F.R. Parts 5 and 7, the investigator will draft a report with findings and recommendations.

A. Request for Additional Information from the Complainant.

In the event that the complainant has not submitted sufficient information to make a determination of jurisdiction or investigative merit, ADEM may request additional information. This request shall be made within 15 working days of the receipt of the complaint by ADEM and will require that the

party submit the information within 60 working days from the date of the original request. Failure of the complainant to submit additional information within the designated timeframe may be considered good cause for determination of no investigative merit.

B. Request for Information Involving Third Party Entities.

In the case of complaints involving third party entities; e.g. a sub-recipient, permit applicant or permittee, ADEM will notify the third party entity that the complaint has been received no later than the time of the written notice provided to a complainant that the complaint is complete. At such time, ADEM will ask the third party entity to provide information necessary for ADEM to investigate the complaint. ADEM will use the information provided by the third party entity and the complainant in resolving the complaint.

DISPOSITION OF COMPLAINTS

Within 180 days of accepting the complaint, the Office of the Director will issue a written decision approving or disapproving the findings and recommendations made in the investigative report. ADEM will implement and recommendations approved by the Office of the Director. The consequent disposition of the complaint will be communicated to the complainant in writing.

In addition, complaints may be filed in accordance with 40 C.F.R. Parts 5 and 7 with the U.S. EPA, Office of Civil Rights, 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, DC 20460-1000, instead of following the ADEM grievance process.

James W. Warr, Director

APPENDIX C

ADEM's Policy of Nondiscrimination

Release date: "September 30, 2019"

ED_001379_FOIA_EPA-HQ-2017-004711

Welcome To The

ALABAMA

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

(334) 271-7700 1400 Coliseum Blvd. Montgomery, AL 36110
mailing address: Post Office Box 301463, Montgomery, AL 36130-1463

Nondiscrimination

ADEM
ALABAMA
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

POLICY OF NONDISCRIMINATION

The Alabama Department of Environmental Management does not discriminate on the ba race, color, national origin, sex, religion, age or disability in the administration of its progra activities, in accordance with applicable laws and regulations.

The Department has designated responsibility for coordination of compliance efforts and rece inquiries concerning nondiscrimination requirements, as implemented by 40 C.F.R. Parts 5 and 7 t

Title VI/Environmental Justice Coordinator
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36130-1463
334/271-7700

The Department appoints employees based on an equal opportunity, merit basis, without regai race, color, national origin, sex, religion, age or disability.

ED_001379_00008448-00023

APPENDIX D

Limited English Proficiency Guidance

U.S. Environmental Protection Agency

Federal Register Environmental Documents

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Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

[Federal Register: June 25, 2004 (Volume 69, Number 122)]
[Notices]
[Page 35602-35613]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr25jn04-79]

ENVIRONMENTAL PROTECTION AGENCY
[FRL-7776-6]

Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Environmental Protection Agency (EPA).
ACTION: Policy guidance.

SUMMARY: The U.S. Environmental Protection Agency is publishing for public comment proposed policy Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against

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National Origin Discrimination Affecting Limited English Proficient Persons. The proposed guidance suggests a general framework that EPA-assisted programs and activities may use to provide meaningful access to LEP persons. The guidance is proposed in accordance with Executive Order 13166--Improving Access to Services for Persons with Limited English Proficiency and guidance issued by the U.S. Department of Justice.

DATES: This Guidance is effective immediately. Comments must be submitted on or before 30 days from the date of this publication in the Federal Register. EPA will review all timely comments and will determine if modifications to the Guidance are necessary.

ADDRESSES: Written comments on the guidance document should be mailed

to LEP Guidance, Office of Civil Rights (MC 1201A), U.S. EPA, Washington, DC 20460, or submitted to the following e-mail address: civilrights@epa.gov. Please include your name and address, and optionally, your affiliation.

FOR FURTHER INFORMATION CONTACT: Helena Wooden-Aguilar, U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Ave., NW., Washington, DC, 20460-1000. Telephone 202-343-9681.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 13166, entitled ``Improving Access to Services for Persons with Limited English Proficiency,'' issued on August 11, 2000 \1\ (see 65 FR 50121 (August 16, 2000), 67 FR 41455 (June 18, 2002)), Memorandum from Ralph F. Boyd, Jr., to Heads of Federal Agencies, General Counsels, and Civil Rights Directors regarding Executive Order 13166 (July 8, 2002), each Federal agency is directed to examine the services it provides, and then identify, develop, and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. In addition, Executive Order 13166 directs each Federal agency to issue guidance pursuant to Title VI of the Civil Rights Act of 1964 \2\ to ensure that recipients of Federal financial assistance take reasonable steps to provide meaningful access to their programs and activities by LEP persons.\3\ Executive Order 13166 directs that such guidance be consistent with guidance published contemporaneously in the Federal Register by DOJ, which ``set[s] forth general principles for agencies to apply in developing guidelines for services to individuals with limited English proficiency.'' \4\

\1\ 65 FR 50121 (August 16, 2000).

\2\ 42 U.S.C. 2000d-7.

\3\ Executive Order 13166 states that the agency-specific guidance documents must ``take into account the types of services provided by recipients, the individuals served by recipients, and other factors set forth in the [Department of Justice] LEP Guidance.''

\4\ Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons With Limited English Proficiency; Policy Guidance, 65 FR 50123 (August. 16, 2000).

In accordance with EPA's Title VI regulations, the term recipient is defined as ``any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.'' \5\ Additionally, EPA defines assistance as, ``any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty) or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: Funds; Services of personnel; or, Real or personal property or any interest in or use of such property, including: Transfers or leases of such property for less than fair market value or for reduced consideration; and Proceeds from a

subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA.'' \6\

\5\ 40 CFR 7.25.
\6\ Id.

When entities apply for EPA financial assistance, they submit an assurance with their application stating that they will comply with the requirements of Title VI and EPA's implementing regulations. Persons, or their authorized representatives, who believe that they have been discriminated against by EPA recipients in violation of Title VI and EPA's implementing regulations may file written complaints with the EPA.\7\ Under certain circumstances, the failure to assure that people who are not proficient in English can have meaningful access to an EPA financial assistance recipient's programs and activities may constitute national origin discrimination prohibited by Title VI and EPA's implementing regulations.

\7\ 40 CFR 7.120.

The purpose of this LEP Guidance is to assist recipients in complying with Title VI and EPA's implementing regulations that prohibit discrimination against persons based on their national origin, and to provide LEP persons meaningful access to EPA recipients' programs or activities. Likewise, this Guidance describes steps that EPA encourages its recipients to provide to Limited English Proficient persons to ensure meaningful access to recipients's programs and activities. The LEP Guidance is consistent with the goals set forth in Executive Order 13166, DOJ's final LEP guidance \8\, and with the DOJ policy guidance document entitled ''Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons with Limited English Proficiency.'' \9\

\8\ 67 FR 41455 (June 18, 2002).
\9\ 65 FR 50123 (August 16, 2000).

During the development of this guidance document, EPA has ensured, to the extent possible under the time frame established by Executive Order 13166, that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have had an adequate opportunity to provide input into this guidance document. To ensure stakeholder involvement in the development of this guidance, EPA has consulted with affected groups (both community organizations and recipients, amongst others) and has solicited comments on earlier versions of this document from a wide range of stakeholders.

On October 26, 2001, DOJ issued a memorandum to Federal agencies on Executive Order 13166 that clarified requirements for complying with Executive Order 13166, directed those agencies that had not yet published guidance documents to submit agency-specific guidance to DOJ for approval,\10\ and stated that the guidance did not create any new statutory or regulatory obligations for recipients. Rather, it only clarifies existing Title VI responsibilities by identifying the steps that recipients of Federal financial assistance can take to avoid

administering their programs in a way that results in discrimination on the basis of national origin in violation of Title VI and EPA's implementing regulations. In addition to the October memorandum, DOJ issued a July 2002 memorandum asking federal agencies for their continued assistance in implementing Executive Order 13166.\11\

\10\ Memorandum from the Department of Justice, to the Heads of Departments and Agencies, General Counsels, and Civil Rights Directors (October 26, 2001) (on file with author).

\11\ Memorandum from the Department of Justice, to the Heads of Federal Agencies, General Counsels, and Civil Rights Directors (July 8, 2002) (on file with author).

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DOJ's initial guidance for recipients was published January 16, 2001.\12\ On January 18, 2002, DOJ's initial guidance for recipients was republished for additional comment.\13\ Based on public comments filed in response to the January republication, DOJ published a revised draft guidance for public comment on April 18, 2002.\14\ After taking into account additional comments, DOJ issued its final guidance on June 18, 2002.\15\ On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled ``Assessment of the Total Benefits and Costs of Implementing Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency.'' Among other things, the Report recommended the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, DOJ published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance documents to other Federal grant agencies. This proposed EPA LEP Guidance is consistent with DOJ's Final LEP Guidance.

\12\ 66 FR 3834 (January 16, 2001).

\13\ 67 FR 2671 (January 18, 2002).

\14\ 67 FR 19237 (April 18, 2002).

\15\ 67 FR 41455 (June 18, 2002).

Because this guidance adopts to the federal government-wide standards and framework detailed in the DOJ LEP Guidance, EPA specifically solicits comments on the nature, scope, and appropriateness of the EPA specific examples set out in this guidance which explain and/or highlight how those federal government-wide compliance standards are applicable to recipients of federal financial assistance from EPA.

Pursuant to the Administrative Procedures Act, 5 U.S.C. 553(b)(A), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are exempt from notice and comment. Because this policy guidance is a general statement of policy without the force and effect of law, it falls within this exception and prior notice and opportunity for public comment is not required.

According to DOJ's October 26, 2001 memorandum, Federal agencies should consider whether the action they propose to take to implement Executive Order 13166 and Title VI is subject to Executive Order 12866 (Regulatory Review and Planning, September 30, 1993). Executive Order

12866 requires that agencies submit to the Office of Management and Budget for review any ``significant regulatory actions'' the agency wishes to take.\16\ A significant regulatory action is described as a regulatory action that is likely to have an annual effect on the economy of $100 million or more. Executive Order 13166 and this guidance merely clarify existing Title VI responsibilities and help recipients to understand their existing obligations. Hence, they do not create any new binding requirements.

\16\ Executive Order 12866 section 6(a).

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or ``LEP.'' Based on the 2000 census, 28% of all Spanish-speakers, 28% of all Chinese-speakers, and 32% of all Vietnamese-speakers reported that they spoke English ``not well'' or ``not at all'' in response to the 2000 census.\17\

\17\ United States Census (2000), available at http://www.census.gov/prod/2003pubs/c2kbr-29.pdf. [illegible]

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by a recipient's programs and activities. The Federal Government is committed to improving the accessibility of programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access to a recipient's programs or activities for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.\18\

\18\ EPA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-7, and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.\19\ These are criteria the U.S. Environmental Protection Agency expects to use in evaluating whether recipients are in compliance with Title VI and Title VI implementing regulations.

\19\ The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to provide meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

As with most government initiatives, several principles are balanced. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that Federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in Federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well

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choose not to participate in Federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, EPA, in conjunction with DOJ, plans to continue to provide assistance and guidance in this important area. In addition, EPA plans to share information, such as, model plans, examples of best practices, and cost-saving approaches, with recipients, state, and local administrative agencies, and LEP persons. A Federal interagency working group on LEP has developed a Web site, http://www.lep.gov, [illegible] to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of Alexander v. Sandoval, 532 U.S. 275 (2001), as impliedly striking down the disparate impact prohibition in the regulations promulgated under Title VI that form part of the basis for Executive Order 13166.

Consistent with the position of DOJ detailed below, EPA takes the position that this is not the case, and will continue to do so. Accordingly, EPA will strive to ensure that assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall ``on the ground 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.'' Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity ``to effectuate the provisions of [section 601]
* * * by issuing rules, regulations, or
orders of general applicability.'' \20\

\20\ 42 U.S.C. 2000d-1.

EPA implementing regulations provide that recipients ``shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, * * * or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.'' \21\

\21\ EPA's implementing regulations also prohibit discrimination based on sex and disability. 40 CFR 7.35(b).

The Supreme Court, in Lau v. Nichols, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare, including a regulation similar to that of EPA, to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In Lau, a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. ``Improving Access to Services for Persons with Limited English Proficiency,'' 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from ``restrict[ing]
a person in any way in the enjoyment of
any advantage or privilege enjoyed by others receiving any service, aid, or other benefit provided by the program'' \22\ or from
``utiliz[ing]
criteria or methods of administering its programs which
have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the

program as respects individuals of a particular race, color, or national origin.'' \23\

\22\ 40 CFR 7.35(a)(3).
\23\ 40 CFR 7.35(b).

On that same day, DOJ issued a general guidance document addressed to ``Executive Agency Civil Rights Officers'' setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. ``Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons With Limited English Proficiency,'' 65 FR 50123 (August 16, 2000) (``DOJ LEP Guidance''). The Executive Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Departments of the Federal Government is particularly important. Inconsistency or contradictory guidance could confuse recipients of federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address.

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in Alexander v. Sandoval, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for ``Heads of Departments and Agencies, General Counsels and Civil Rights Directors.'' This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of Sandoval.\24\ The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups--the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities--the Executive Order remains in force. This guidance document is published pursuant to Title VI and in accordance with Executive Order 13166 and Assistant Attorney General Boyd's October 26, 2001 clarifying memorandum.

\24\ The memorandum noted that some commentators have interpreted Sandoval as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. See, e.g., Sandoval, 532 U.S. at 286, 286 n.6 (``[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate impact regulations; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are `inspired by, at the service of, and inseparably intertwined with' section 601 * * * when section 601 permits the very behavior that the regulations forbid.''). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not alter the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

III. Who Is Covered?

EPA interprets its Title VI regulations to require all recipients of EPA assistance to provide meaningful access to LEP persons. A recipient is defined as ``any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the

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assistance.'' \25\ EPA assistance is defined ``as any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: Funds; Services of personnel; or Real or personal property or any interest in or use of such property, including: Transfers or leases of such property for less than fair market value or for reduced consideration; and Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA.'' \26\ Recipients of EPA assistance include, for example:

\25\ 40 CFR 7.25.
\26\ 40 CFR 7.25.

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* Nonprofit agencies or community groups that receive technical assistance grants to interpret and disseminate information related to Superfund hazardous waste sites.
* State and local government agencies that receive grants to implement effective environmental management programs.

Subrecipients of EPA recipients (but not the ultimate beneficiary of the assistance) likewise are covered. 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.\27\

\27\ See 42 U.S.C. 2000d-4a. However, if a Federal agency were to decide to terminate or refuse to grant or continue assistance based on noncompliance with Title VI or its regulations, the termination or refusal will be limited in its effect to the particular program, or part thereof in which such noncompliance is found. 42 U.S.C. 2000d-1.

Example: EPA provides assistance to a state department of environment to identify and clean up hazardous waste sites. All of the operations of the entire state environmental department and not

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just the hazardous waste programs are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted

services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be Limited English Proficient, or ``LEP,''and may be entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by EPA recipients and should be considered when planning language services include, but are not limited to:

* Persons who live in communities in close proximity to a plant or facility that is permitted or regulated by an EPA recipient.
* Persons subject to, or affected by environmental protection, clean-up, and enforcement actions of an EPA recipient .
* Persons who seek to enforce or exercise rights under Title VI or environmental statutes and regulations.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be flexible and fact-dependent, the starting point 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 grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. The intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small businesses, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. EPA recipients should apply the following four factors to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where for instance, a recipient provides

services through local district offices, the appropriate service area is most likely the district, and not the jurisdiction or area served by the department. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter proposed action by an environmental agency in their community.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.\28\ Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs

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and activities were language services provided.

\28\ The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak these languages. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

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(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP individuals from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of

the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate information to a person who may be adversely impacted by an immediate water source contamination or to sudden release of airborne toxic chemicals differ from those to provide information on efforts to increase recycling. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity, warning or notice compulsory, such as particular educational programs on lead-based paint and children, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, ``reasonable steps'' may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be ``fixed'' later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.\29\ Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

\29\ Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

This four-factor analysis necessarily implicates the ``mix'' of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter ``interpretation'') and written translation (hereinafter ``translation''). Interpretation can range from either on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, an emergency response action in a largely Hispanic neighborhood may need immediate oral interpreters available, so recipients whose programs cover such activity should give serious consideration to hiring some 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--such as in the case of a voluntary general public tour of a water treatment plant--in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation). Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients

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should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations. Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

* Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (e.g.,

consecutive, simultaneous, summarization, or sight translation);

* Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person; \30\

\30\ Many languages have ``regionalisms,'' or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages that do not have an appropriate direct interpretation of some courtroom or legal terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

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* Understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires;

* Understand and adhere to their role as interpreters without deviating into a role as engineer, legal advisor, or other roles (particularly in administrative or public hearings).

Some activities of recipients, such as enforcement bureaus or administrative courts, may have additional self-imposed requirements for interpreters. Where individual rights or potential liability for noncompliance with environmental requirements depend on precise, complete, and accurate interpretation or translations, the use of certified interpreters is strongly encouraged.\31\ Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

\31\ For those languages in which no formal accreditation or certification currently exists, agencies should consider a formal process for establishing the credentials of the interpreter. Additionally, for those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

While quality and accuracy of language services is critical, it can vary with the context. For example, the quality and accuracy of language services during an emergency response action, for example, must be extraordinarily high, while the quality and accuracy of language services in understanding ultraviolet. Indexes need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. While there is no single definition for ``timely'' applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of EPA recipients providing

health and safety services, and when important legal rights are at issue, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, program directors, emergency response teams or community involvement coordinators, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff are also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be times when the role of the bilingual employee may conflict with the role of an interpreter (for instance, a bilingual law clerk would probably not be able to perform effectively the role of an environmental appeals or administrative hearing interpreter and law clerk at the same time, even if the law clerk were a qualified interpreter). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff are fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the

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discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members or Friends as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children) or friends are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, family, or financial information to a family member, friend, or member of the local community. In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For EPA recipient programs and activities, this could be true in emergency response actions where health, safety, or access to important benefits and services are at stake, or when accuracy is important to protect an individual's rights and access to important services.

One example of such a case would be an administrative investigation conducted by a municipal environmental control office in response to an anonymous citizen complaint about illegal environmental discharges in a residential neighborhood. In such a case, use of family members or neighbors to interpret for persons alleged to have committed the discharge or potential witnesses may raise serious issues of competency, confidentiality, and conflict of interest and is inappropriate. While issues of competency, confidentiality, and

conflict of interest is the use of family members (especially children), friends, or neighbors often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of the environmental quality physical offices (as distinguished from the environmental enforcement activities it performs) offered to the public. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for regulatory enforcement, adjudicatory, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language into an equivalent written text in another language.

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program. Such written materials could include, for example:

* Consent and complaint forms
* Intake forms with the potential for important consequences
* Written notices of rights, denial, loss, or decreases in benefits or services
* Notices of disciplinary action, environmental hazards, or cease and desist orders.
* Notices advising LEP persons of free language assistance
* Residential Lead-Based Paint Disclosure Program Forms and Pamphlets
* Consumption Advisories
* Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which knowing English is not required

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* Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it disseminates or solicits) is ``vital'' may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for participation in a local coalition of environmental stewards may not generally be considered vital, whereas petitions for enforcement of local environmental health rules could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are ``vital'' to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of ``meaningful access.'' Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large or when the target audience for a document encompasses many different languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals who are eligible to be served or directly affected by a recipient's programs or activities determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens of different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is often a one-time expense, consideration should be given to whether the up-front cost of translating a document (as opposed to oral interpretation) should be amortized over the likely life span of the document when applying this

four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) below outline the circumstances that may provide a ''safe harbor'' for recipients regarding the requirements for translation of written materials. A ''safe harbor'' means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not necessarily mean there is noncompliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis. Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor Guides. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

(a) The EPA recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or includes 1,000 members, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

(b) If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides 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. For example, community coordinators should, where appropriate, ensure that permits or environmental impact statements have been explained to persons in communities in close proximity to manufacturing facilities.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply, including the consideration that translators have knowledge in both languages of any specialized terms or concepts relevant to the program or activity. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by

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use of certified translators. Certification or accreditation may not always be possible or necessary. Competence can often be ensured by having a second, independent translator ``check'' the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ``back translation.''

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning. Community organizations may be able to help determine whether a document is written at an appropriate level for the intended audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the translator's ability can vary with the context. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (e.g., information or documents of EPA recipients regarding certain enforcement actions, health, and safety services). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development, maintenance, and use of a periodically-updated written plan on language assistance for LEP persons (``LEP plan'') for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain EPA recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in

providing important input into this planning process from the beginning.

The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance

The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or ``I speak cards''), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say ``I speak Spanish'' in both Spanish and English, ``I speak Vietnamese'' in both English and Vietnamese, etc. To reduce costs of compliance, the Federal government has made a set of these cards available on the Internet. The Census Bureau ``I speak card'' can be found and downloaded at http://www.usdoj.gov/crt/cor/13166.htm. [EXIT disclaimer] When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures

An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

* Types of language services available.
* How staff can obtain those services.
* How to respond to LEP callers.
* How to respond to written communications from LEP persons.
* How to respond to LEP individuals who have in-person contact with recipient staff.
* How to ensure competency of interpretation and translation services.

(3) Training Staff

Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

* Staff know about LEP policies and procedures.
* Staff having contact with the public are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's custody) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

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(4) Providing Notice to LEP Persons

Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

* Posting signs in entry areas and points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, safety, or environmental enforcement services or activities run by EPA recipients. For instance, signs in intake or environmental advocacy or protection offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.\32\

\32\ The Social Security Administration has made such signs available at http://www.ssa.gov/multilanguage/langlist1.htm. [illegible] These signs could, for example, be modified for recipient use.

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* Stating in outreach documents that language services are available from the agency or organization. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be ``tagged'' onto the front of common documents.

* Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.

* Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

* Including notices in local newspapers in languages other than English.

* Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

* Presentations and/or notices at schools and religious organizations.

(5) Monitoring and Updating the LEP Plan

Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP

plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

* Current LEP populations in service area or population affected or encountered.
* Frequency of encounters with LEP language groups.
* Nature and importance of activities to LEP persons.
* Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
* Whether existing assistance is meeting the needs of LEP persons.
* Whether staff knows and understands the LEP plan and how to implement it.
* Whether identified sources for assistance are still available and viale.

In addition, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by EPA through the procedures identified in the Title VI regulations.\33\ These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

\33\ 40 CFR part 7, subpart E.

The Title VI regulations provide in part that EPA will seek the cooperation of applicants and recipients in securing compliance. If a complaint is made, EPA will attempt to resolve it through informal means whenever possible. If a complaint is made and the matter cannot be resolved informally, EPA may secure compliance by denying, annulling, suspending, or terminating EPA assistance. If EPA discovers noncompliance, EPA engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, EPA expects to propose reasonable timetables for achieving compliance and consult with and assist recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations with regard to LEP, EPA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients should work toward building systems that will ensure access for LEP individuals, EPA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally assisted programs and activities for LEP persons, EPA expects to look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions

over a period of time. However, in developing any phased implementation schedule, EPA recipients should ensure that the provision of appropriate assistance for significant LEP populations, or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.

IX. Specific Examples

EPA recipients are principally state and local government environmental programs. Their principal functions are the development and implementation of environmental regulations, policies and programs; issuance of environmental permits; and enforcement of environmental laws. Other significant recipient categories include universities, which use grant monies to fund and

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conduct research and education, and public-interest non-profits, which use grant monies to organize, educate and represent communities with environmental concerns.

The promulgation of environmental regulations generally requires public notice and comment on proposals. EPA recipients, in applying the four factor analysis, will need to take reasonable steps to ensure limited English proficient persons have a meaningful opportunity to comment on proposed regulations. The mission of EPA and many of it recipients, in part, is to protect public health. EPA and its recipients should affirmatively develop and employ creative measures to eliminate or minimize communication barriers that interfere with the ability of LEP persons to meaningfully participate in and benefit from EPA and EPA recipient programs and activities.

Often, issuing environmental permits also requires public notice and, and when the permitting action affects LEP persons, the permit process is subject to the same kinds of language concerns that are present in the promulgation of environmental regulations. Indeed, language concerns may be at least as critical in environmental permitting because, while the development and implementation of environmental regulations, policies and programs largely concerns general programmatic standards and practices, environmental permitting typically concerns the application of those standards and practices in a specific geographic area that directly affects an immediate population or community.

Enforcing environmental laws often requires public input. Private citizens often file complaints and can be important sources of information--but only if they can communicate with the relevant authority for enforcing those laws. Another area of environmental enforcement that will often require language and translation services is the settlement of environmental cases. It is EPA policy that such settlements include the affected population or community. This is especially true where environmental settlements include the use of Supplemental Environmental Projects (SEPs) which provide direct services, benefits or improvements to local communities.

X. Conclusion

This LEP Guidance suggests a general framework to help recipients develop a program to provide meaningful access to LEP persons and provides an idea of how EPA will evaluate recipients efforts to ensure meaningful access. The recommendations above are not intended to be

Release date: "September 30, 2019" ED_001379_FOIA_EPA-HQ-2017-004711

exhaustive. Recipients have considerable flexibility in determining how to comply with their Title VI legal obligation in the LEP setting, and are not required to use the suggested framework in this guidance document. However, EPA recipients should ensure meaningful access by LEP persons to their programs and activities through appropriate policies and procedures for providing language assistance to fulfill their Title VI responsibilities.

Dated: June 16, 2004.
Karen Higginbotham,
Director, Office of Civil Rights.
[FR Doc. 04-14464 Filed 6-24-04; 8:45 am]
BILLING CODE 6560-50-P

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