

• Adjourn at 3 p.m. followed by optional tour of Scripps Institution of Oceanography.

Public Participation: The meeting is open to the public. The Chairman of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Edith Allison at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Transcripts will be available by request.

Issued in Washington, DC on August 11, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

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DEPARTMENT OF ENERGY

Nondiscrimination in Federally Assisted Programs Enforcement of Title VI of the Civil Rights Act of 1964—Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency (LEP); Policy Guidance

AGENCY: Department of Energy.

ACTION: Notice of Interim Policy Guidance and request for comment.

SUMMARY: The Department of Energy (DOE) publishes this Interim Policy Guidance on Nondiscrimination in Federally Assisted Programs, Enforcement of Title VI of the Civil Rights Act of 1964—Prohibition Against National Discrimination Affecting Persons with Limited English Proficiency (LEP). This Policy Guidance applies to all Departmental offices, including the National Nuclear Security Administration.

DATES: The Policy Guidance is effective immediately. Comments must be submitted on or before September 15,

2004. DOE's Office of Civil Rights and Diversity will review all comments and make modifications it deems necessary.

ADDRESSES: Written comments should be submitted to Sharon P. Wyatt, Office of Civil Rights and Diversity, Rm 5B-168, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Sharon P. Wyatt, Room 5B-168, 1000 Independence Avenue, SW., Washington, DC 20585, or telephone (202) 586-2256; TDD (202) 586-5329, or e-mail at sharon.wyatt@hq.doe.gov.

SUPPLEMENTARY INFORMATION: To ensure compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, and its prohibition of discrimination on the basis of national origin, and with Executive Order 13166, the Department of Energy issues the following Policy Guidance regarding the Title VI prohibition against national origin discrimination affecting persons with limited English proficiency (LEP). This Guidance is intended to clarify standards consistent with case law and well established legal principles. It was prepared by the Department of Energy's Office of Civil Rights and Diversity and is based on policy guidance from the Department of Justice.

Issued in Washington, DC, on August 2, 2004.

Kyle McSlarrow,

Deputy Secretary, Department of Energy.

Policy Guidance: Nondiscrimination in Federally Assisted Programs, Enforcement of Title VI of the Civil Rights Act of 1964—Prohibition Against National Origin Discrimination Affecting Persons With Limited English Proficiency (LEP).

I. Introduction

This Policy Guidance clarifies how recipients of financial assistance from the Department of Energy (including the National Nuclear Security Administration) can meet their obligation to ensure that persons with limited English proficiency have meaningful and timely access to their programs and activities.

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. If these individuals have limited ability to read, write, speak or understand English, they are limited English proficient, or "LEP." 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 federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these 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 of Federal financial assistance 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 of meaningful access for LEP individuals. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government assisted programs and activities.

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.*, as amended, provides that "no person in the United States 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." Department of Energy (DOE) regulations implementing Title VI are codified at 10 CFR part 1040. The regulations specifically prohibit a recipient under any program, directly or through contractual or other arrangements from, among other things, utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin. 10 CFR 1040.13(c). 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 in Title VI and Title VI regulations against national origin discrimination.

This guidance is issued pursuant to Title VI of the Civil Rights Act of 1964, Title VI regulations, and Executive Order 13166, titled, "Improving Access to Services by Persons with Limited English Proficiency." 65 FR 50121 (August 16, 2000). Executive Order 13166 requires that agencies that provide Federal financial assistance develop, if they have not already done so, guidance for their recipients on the

Title VI and regulatory requirement to provide meaningful access to persons who are limited English proficient.

This Policy Guidance clarifies existing legal requirements by providing a description of factors recipients should consider in fulfilling their responsibilities to LEP persons. This Policy Guidance is not a regulation, and does not create any legally binding or enforceable requirements or obligations. Rather, it is a guide which provides an analytical framework which may be used to determine how best to comply with statutory and regulatory obligations to provide meaningful access for LEP persons to the benefits, services, information, and other important portions of programs and activities. This framework also sets out the criteria DOE intends to apply when determining whether recipients are in compliance with Title VI and DOE regulations.

In providing this 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. As with most government initiatives, this requires balancing several principles. 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 persons 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 choose not to participate in federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, the Department plans to continue to provide assistance and guidance in this important area. Moreover, DOE intends

to work with the Department of Justice (DOJ) to explore how language assistance measures, resources and cost-containment approaches developed with respect to federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small non-profits. An interagency working group on LEP has developed a Web site, <http://www.lep.gov>, 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 regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. DOJ and DOE have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including LEP persons.

II. Legal Authority

The obligation of recipients of Federal financial assistance is set forth in Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d. Section 601 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 to issue rules, regulations, or orders of general applicability. As noted above, DOE regulations specifically prohibit a recipient under any program, directly or through contractual or other arrangement from, among other things, utilizing criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin. 10 CFR § 1040.13(c).

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 Title VI regulations similar to those of DOE, 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 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] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program” or from “utiliz[ing] criteria or methods of administration 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.”

On the same day that Executive Order 13166 was signed, DOJ issued a Policy Guidance Document to Agencies, entitled “Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency” (hereinafter referred to as “General DOJ LEP Guidance”), 65 FR 50123 (August 16, 2000), setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order.

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, the Assistant Attorney General for Civil Rights issued a clarifying memorandum to all federal agencies on this issue. The memorandum reaffirmed the General DOJ LEP Guidance in light of *Sandoval*.¹ The Assistant Attorney

¹ 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 the Executive Order 13166 that applies to Federally assisted programs and activities. 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 address 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.

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.

Subsequently, on June 18, 2002, DOJ issued additional Final Guidance specific to DOJ recipients, entitled “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 67 FR 41455 (June 18, 2002) (DOJ Recipient Guidance). As required by the Executive Order, this DOE guidance is consistent with Title VI, Title VI regulations, the General DOJ LEP Guidance and the DOJ Recipient Guidance.

III. Applicability

All recipients of financial assistance from the Department of Energy, either directly or indirectly, are covered by this Policy Guidance and must provide meaningful access to LEP persons. Federal financial assistance may be money paid, property transferred, or other Federal financial assistance, including training, use of equipment, donations of surplus property, provision of real or personal property at below-market rates, the detail of, or provision of services by, Federal personnel, and any Federal agreement, arrangement or other contract which has as one of its purposes the provision of assistance.²

The broad categories of DOE recipients include:

- (1) Departments or offices of State or local governmental entities, such as State energy commissions and social services agencies;
- (2) Colleges, universities, and other post-secondary educational institutions, public systems of higher education, local educational agencies, systems of vocational education, and other school systems;
- (3) Private entities, such as corporations, partnerships, and sole proprietorships, such as utilities and power plants; and
- (4) Entities that are a combination of any of those groups.

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's program or activity receives the Federal assistance.

Example: DOE provides funding to States to assist low-income residents in defraying the costs of heating fuel (Weatherization Assistance for Low-Income Persons). States, in turn, administer these funds through their social services agencies. Coverage under Title VI then extends to not only the Weatherization Program, but the entire social service agency. However, should DOE decide to terminate Federal funds based upon non-compliance with Title VI or DOE regulations, only funds directed to the particular program or activity (Weatherization Program, in this case) that is out of compliance will be effected. See 42 U.S.C. 2000d.1.

Example: When educational institutions or agencies receive DOE financial assistance, the entire educational institution or agency is covered, including all of the operations of a public system of higher education if any portion of that system receives assistance.

Example: All operations of an entire corporation, partnership, or other private organization or a sole proprietorship are covered if the assistance is extended to the entity as a whole or if the entity is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation. When neither of these is true, only the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended is covered.

Some specific DOE programs providing Federal financial assistance for recipients to whom this Guidance applies include, but are not limited to, the following:

- Weatherization Assistance for Low-income Persons;
- Energy-Related Inventions;
- Management and Technical Assistance for Minority Business Enterprise;
- Granting of the exclusive or non-exclusive use of DOE-owned patent licenses;
- National Energy Information Center;
- State Energy Program;
- University Coal Research and the Clean Coal Initiative;
- Science and Energy Training to Support Diversity-Related Programs;
- Energy Efficiency and Renewable Energy Information Dissemination;
- Outreach, Training and Technical Analysis/Assistance; and
- Solar Energy Partnership Support and Barrier Elimination.

IV. State or Local Official English Laws

Some recipients operate in jurisdictions where 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 assistance to persons with limited English proficiency.

V. Limited English Proficient Individual Defined

Persons 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 may be encountered and/or served by DOE recipients, and that should be considered when planning language services include, but are not limited to, for example:

- Low income persons eligible to participate in DOE recipient State social services agency programs and activities or weatherization assistance;
- Populations in and around DOE recipient power plant facilities, utilities, or environmental clean-up activities;
- Persons seeking assistance, services, benefits, or information, or having other contact with DOE assisted programs or activities, including Minority Business Enterprises, energy information programs and activities, educational programs and activities, social services, utilities, or other recipients of DOE funds;
- Persons who are the subject of or affected by research, surveys, environmental plans, or other analyses performed by recipients of DOE funds; and/or
- Parents and family members of the above.

VI. How Does a Recipient Determine the Extent of Its Obligation To Provide Language Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, 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 Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in this guidance are to additionally apply to the programs and activities of the Federal agencies, including DOE's federally conducted programs and activities.

(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. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to recipient programs and activities while not imposing undue burdens on small business, 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. DOE 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 or population encountered. The greater the number or proportion of LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected, by" a recipient's program or activity are those who are served or encountered in the eligible service population. 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. Where, for instance, a particular county that is a subrecipient of a State recipient of DOE weatherization assistance serves a large LEP population, the appropriate service area is most likely the county, and not the entire population served by the State recipient. If, for instance, there are particular offices or partners within

the county that serve localized areas with high proportions of LEP individuals, those localized areas would likely be the appropriate service area. 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 the recipient.

Recipients should 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. 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 recipient's programs and activities where language services are provided. When using demographic data, the focus should be on languages spoken by those persons who are not proficient in English and not on languages spoken by persons who have the ability to speak English proficiently and also another language.

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

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with LEP language groups. 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 from those expected for 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 persons who are limited English

proficient may require certain assistance in Spanish. Less frequent or unpredictable contact with different language groups may require less intensive solutions. Daily contact with LEP persons will impose 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 interpretation. In applying this standard, recipients should take care to consider whether sufficient 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. For example, the obligations to communicate critical safety information or how to apply for important benefits or services would be far greater than that to provide language services in a recreational setting. 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, or by the recipient, to make an activity compulsory, such as submission of a completed form, the right to an appeals process, or compulsory education, 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" cease to be reasonable when the costs imposed substantially exceed the benefits.

Example: Many DOE recipients of financial assistance are small commercial research and commercial firms that employ a few scientists to conduct their research activities. While

research on, for instance, health or environmental effects should be conducted in such a way as to include effects on relevant populations regardless of language spoken and thus may call for language services in order to communicate effectively with the studied populations, it would likely not be reasonable, in light of the costs imposed and the limited benefits to LEP persons, for such small specialized recipients to undertake full translations of lengthy and technical research reports. Under many circumstances involving scientific studies affecting a significant number or proportion of LEP persons, translations of report summaries may be more appropriate in addressing the interests and informational needs of LEP persons.

However, resource and cost issues 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. For example, translating only those documents that are targeted at the general public or that would be read or used by LEP persons, hiring and training bilingual staff to serve as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources, 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 may all help to reduce costs. Small recipients with limited resources and few LEP encounters may find that entering into a bulk telephonic interpretation service contract will prove cost effective. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services because of cost or resource concerns. Large entities and those that serve a significant number or proportion of LEP individuals should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. It may be useful to document the basis for limiting language services.

The 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"). Oral interpretation can range from 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, a weatherization program in a largely Hispanic neighborhood may need immediate oral interpreters available and 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 public tour of a power plant—in which pre-arranged language services for the particular service may not be necessary.

A program providing assistance to those who cannot afford utility service in an area where there is a significant population of LEP persons eligible for that service will rank high under the four factor analysis and will need to implement more significant language service measures. However, certain university operations, such as the provision of a degree program in nuclear physics, that serve or encounter few or no eligible LEP persons will rank low on the four factors and have few or no language assistance responsibilities.

The language assistance needs of LEP persons may be addressed through an assessment, based on the four factors, of the programs or activities where language assistance is more likely to be needed. Policies and procedures should then be developed to address these program areas and activities. Emphasis should be placed on the non-English languages that are mostly likely to be spoken by the population utilizing the program or activity. In addition, consideration must be given to what resources will be needed to accommodate the non-English speaking population and the location and availability of such resources. In circumstances in which language

services are warranted, the provision of resources should not place an undue burden on the LEP beneficiary, nor should the LEP beneficiary bear any financial cost for such services.

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.

VII. 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 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;³ and understand and follow confidentiality and impartiality rules to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles (particularly in administrative hearings or other more formal contexts).

Example: In order to meet the eligibility requirements for the Weatherization Program, States, using various criteria, require applicants to provide sensitive information regarding the amount and source of their income and assets. LEP persons needing interpreters or translations will need to be assured that the interpreter or translator does not divulge this information to anyone other than the appropriate officials.⁴

Example: Where proceedings being interpreted 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.

Example: Local agencies receive DOE financial assistance to independently monitor DOE environmental restoration programs at or near DOE facilities for environmental impacts. Monitoring activities have included assessments of air quality, ground-water and radioactivity surveillance. Such activities have been conducted in the State of New Mexico at the Sandia National Laboratory, the Inhalation and Toxicology Research Institute in Albuquerque, and the Los Alamos National Laboratory in Los Alamos. In and around these communities there are significant LEP populations potentially affected by the activities of DOE. In order to inform the public of their findings, the monitoring agencies conduct public outreach, such as public meetings and speaking forums, and publish newsletters and technical reports. Much of the information presented is highly technical in nature, and it will require language services that

are of highest quality. The interpreter or translator should be able to skillfully translate the specialized terminology, and convey technical concepts with accuracy, and just as the outreach needs to be understandable to an English-speaking layperson, so too should the interpretation be understandable to an LEP layperson.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner in order to be meaningful and effective. 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, meaningful access is not provided when notices of public hearings concerning recipient activities in areas having significant LEP populations are publicized only in English or an insufficient number of days before the event takes place. When the timeliness of services is important, such as with certain activities of DOE recipients providing health and safety services, important benefits or warnings, and when important legal rights are at issue, a recipient might not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct might 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, such as public helpline or information line operators, social service workers, direct providers of services, etc., 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 a courtroom 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.

Example: Block grants of \$300,000 each have been awarded by DOE to three community organizations to help minimize future economic impacts of workforce restructuring on communities near DOE facilities. The grant money provided to these organizations will be used, in part, to provide technical assistance and funding opportunities to small businesses, and job training assistance to affected employees. Given their limited resources, these community organizations may elect to contract for language services, as appropriated and necessary, instead of hiring bilingual staff.

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. Telephone interpreter services may be used to supplement any system of interpreter services. This service is also helpful in a case of a language rarely encountered, and not easily accommodated in person. Although

³Many 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 which do not have an appropriate direct interpretation of some energy or social service-related terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely 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.

⁴For those languages in which no formal accreditation or certification currently exists, recipients should consider a formal process for establishing the credentials of the interpreter.

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 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, Friends, or Other Informal "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 in place of or as a supplement to the free language services offered by the recipient. LEP persons may feel more comfortable with a trusted family member, friend, or other person of their choosing. 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, friends, 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, business, or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), friends, or other informal interpreters 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.

While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, or other applicants or other informal interpreters 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 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 applications, public or administrative hearings,

research, etc., 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 (source language) into an equivalent written text in another language (target 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 vital written materials could include, for example: Applications, such as applications for weatherization programs; public notices; consent forms; letters containing important information regarding participation in a program; eligibility rules; notices pertaining to the availability, reduction, denial or termination of services or benefits or the right to appeal; notices advising the public of the availability of free language assistance; and critical outreach and community education materials.

Whether or not a document (or the information it 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 energy assistance generally should be considered vital, whereas signs regarding tour times for public tours of a facility generally should not. 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." 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.

Example: Non-English speaking immigrants, particularly recent arrivals to the United States, often are poorer than the majority population and may be eligible for social services programs, such as weatherization programs. Notices of program availability and eligibility and application forms likely would constitute "vital" documents that should be translated into frequently encountered languages.

However, translations are generally not required for more technical documents not written for consumption by the general public, such as some scientific and research papers, budget justifications, or annual performance plans, or for vacancy announcements (where proficiency in English is an essential element of employment).

Each program or activity should make a careful assessment of the written materials that it produces, and make a determination of what documents are deemed critical or vital to accessing or understanding its own operations, information, benefits, or services, and therefore potentially subject to translation.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when an executive summary or the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the

general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where an 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 with whom the recipient has contact 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. Some recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 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 result in 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 some 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 factors discussed above. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan 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) outline the circumstances that can 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) it does not mean there is non-compliance with applicable law or this Policy Guidance. 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.

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

(a) The DOE recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, 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.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. 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 vital documents are being translated, competence can often be achieved by use of certified translators.

Certification or accreditation may not always be possible or necessary.⁵ 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.⁶ Community organizations may be able to help consider whether a document is written at a good level for the 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 quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal, health, economic, or other important 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 (including, *e.g.*, information or documents of recipients regarding certain health, safety, evacuation, benefits, social service, or other important benefits, services, rights, or impact). 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.

VIII. 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 and maintenance 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 DOE 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 cards” can be found and downloaded at <http://www.usdoj.gov/crt/cor/13166.htm>. 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 interpreters 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.

⁵ 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.

⁶ For instance, there may be languages which do not have an appropriate direct translation of some terms used by the recipient and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. 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 translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

—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 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 need to be made aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, may need to be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(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 intake areas and other entry 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, heat, electricity, energy or weatherization assistance services or operations run by DOE recipients. For instance, signs in intake 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.⁷
- Stating in outreach documents that language services are available from the agency. For instance, announcements could be in 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 viable.

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

IX. Voluntary Compliance Effort

A primary goal of the Department is to seek voluntary compliance. The Department will work with recipients to bring about such compliance.

Department regulation, 10 CFR 1040.102(a), stresses the importance of cooperation and assistance: “Each responsible Departmental official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.” The Department’s Office of Civil Rights and Diversity also is available to provide technical assistance and guidance to recipients to help them comply with the law.

Complaints by LEP persons will be investigated by the Office of Civil Rights and Diversity in the manner prescribed by Section 1040.104. If the investigation results in a finding of compliance, the recipient will be informed in writing by the Office of Civil Rights and Diversity. If the investigation results in a finding of non-compliance, the recipient will be informed of the finding in writing, the areas of non-compliance that form the basis for the finding, and of any corrective measures that need to be taken by the recipient. If the recipient does not take the corrective measures necessary to achieve voluntary compliance, the Department is required to pursue compliance through administrative processes, litigation, or other enforcement proceedings.

The enforcement mechanism associated with 10 CFR Part 1040 is fully set forth in Subpart H of Part 1040 which provides, in pertinent part, that “if there appears to be a failure or threatened failure to comply with any of the provisions of this part, and if the noncompliance or threatened noncompliance cannot be corrected by voluntary means, compliance with this part may be effected by suspension, termination of, or refusal to grant or to continue Federal financial assistance.” Other means may include, but are not limited to, a referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any applicable law. See 10 CFR 1040.111 *et seq.*

EEO/Diversity Managers for field operations and laboratories have primary enforcement responsibility for ensuring compliance, and conducting reviews and investigations of recipients within their jurisdictions.

While all recipients must work toward building systems that will

⁷ The Social Security Administration has made such signs available at <http://www.ssa.gov/multilanguage/langlist1.htm>. These signs could, for example, be modified for recipient use.

ensure access for LEP individuals, DOE 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, DOE will 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. In developing any phased implementation schedule, DOE 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.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04-824-001, et al.]

PECO Energy Company, et al.; Electric Rate and Corporate Filings

August 6, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PECO Energy Company

[Docket Nos. ER04-824-001 and ER04-825-001]

Take notice that on August 2, 2004, PECO Energy Company (PECO Energy) tendered for filing a response to the deficiency letter issued on July 2, 2004, in Docket Nos. ER04-824-000 and ER04-825-000. PECO Energy states that the filing deals with revisions to two interconnection agreements between PECO Energy and Exelon Generation Company, LLC, which PECO Energy

filed with the Commission on May 7, 2004.

Comment Date: 5 p.m. eastern time on August 23, 2004.

2. Calpine Energy Management, L.P.

[Docket No. ER04-1080-000]

Take notice that on August 2, 2004, Calpine Energy Management, L.P. (CEM) filed a Notice of Succession to adopt CES Marketing IV, L.P.'s market-based rate authorizations and an amendment to its FERC Rate Schedule No. 1 to include a tariff provision prohibiting power sales to affiliated public utilities with a franchised electric service territory. CEM requests an effective date of August 3, 2004.

Comment Date: 5 p.m. eastern time on August 23, 2004.

3. PCF2, LLC

[Docket No. ER04-1081-000]

Take notice that on August 2, 2004, PCF2, LLC (PCF2), filed a Notice of Succession to adopt CES Marketing III, LLC's market-based rate authorizations and an amendment to its FERC Rate Schedule No. 1 to include a tariff provision prohibiting power sales to affiliated public utilities with a franchised electric service territory. PCF2 requests an effective date of August 3, 2004.

Comment Date: 5 p.m. eastern time on August 23, 2004.

4. BS Energy LP

[Docket No. ER04-1082-000]

Take notice that on August 2, 2004, BS Energy LP (BSELP) filed BS Energy LP Rate Schedule FERC No. 1, and requested the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and requested the waiver of certain Commission regulations. BSELP states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. BSELP also states that it is not engaged in the business of generating or transmitting electric power.

Comment Date: 5 p.m. eastern time on August 23, 2004.

5. Foothills Generating, L.L.C.

[Docket No. ER04-1085-000]

Take notice that on August 2, 2004, Foothills Generating, L.L.C. (Foothills) filed a Notice of Cancellation of its Market-Based FERC Electric Rate Tariff and all rate schedules and/or service agreements, effective October 1, 2004.

Comment Date: 5 p.m. eastern time on August 23, 2004.

6. Illinois Power Company and Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04-1091-000]

Take notice that on August 2, 2004, Illinois Power Company (Illinois Power) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), (collectively Applicants) filed an application requesting that the Commission authorize the Midwest ISO to: (1) Return to Illinois Power the "exit fee" payment that Illinois Power made when it withdrew from the Midwest ISO in 2001; (2) reimburse Illinois Power for the costs that it incurred in connection with the development of the Alliance RTO; and (3) recover through Schedule 10 of the Midwest ISO's tariff, the amounts that the Midwest ISO pays to Illinois Power.

Comment Date: 5 p.m. eastern time on August 23, 2004.

7. Southwest Power Pool, Inc.

[Docket No. ER04-1096-000]

Take notice that on August 2, 2004, Southwest Power Pool, Inc. (SPP) pursuant to the Commission's order issued on July 2, 2004,¹ submitted a further compliance filing concerning the Commission's requirement of a seams agreement in connection with SPP's efforts to gain final approval as a Regional Transmission Organization (RTO) under Order Nos. 2000 and 2000-A.

SPP states that copies of the filing were served upon the SPP's members and affected state regulatory commissions.

Comment Date: 5 p.m. eastern time on August 23, 2004.

8. Southwest Power Pool, Inc.

[Docket Nos. RT04-01-004 and ER04-48-004]

Take notice that on August 2, 2004, Southwest Power Pool, Inc. (SPP) pursuant to the Commission's order issued July 2, 2004,² submitted a further compliance filing in connection with its efforts to gain final approval as a Regional Transmission Organization (RTO) under Order Nos. 2000 and 2000-A. SPP states that, with the materials included with its August 2, 2004 filing, it has fully satisfied all outstanding compliance conditions for RTO recognition.

SPP states that copies of the filing were served upon SPP's members and affected state regulatory commissions.

¹ Southwest Power Pool, Inc., 108 FERC ¶ 61,003 (2004) (July 2 Order).

² Southwest Power Pool, Inc., 108 FERC ¶ 61,003 (2004).