Civil Rights

TITLE VI IMPLEMENTATION PLAN

2016

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COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219 2000

Charles A. Kilpatrick, P.E.
Commissioner

TITLE VI STATEMENT OF COMMITMENT

The Virginia Department of Transportation (VDOT) will effectuate the provisions of Title VI of the Civil Rights Act of 1964, 49 Code of Federal Regulation (CFR) Part 21, 23 CFR Part 200 and other applicable directives. These authorities provide that no person in the United States shall, on the grounds of race, color, national origin, sex, age, disability or low-income be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which VDOT receives federal assistance.

Further, as a recipient of federal-aid funding, VDOT strives to achieve nondiscrimination in all its programs and activities whether or not those programs and activities are federally funded. These efforts to prevent discrimination will address, but not be limited to, a program's impact upon access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigation of complaints, allocation of funds, prioritization of projects, and the functions of right-of-way, research, planning, design, construction and project development. VDOT will ensure that every manager, supervisor, employee, and sub-recipient of federal-aid funds administered by VDOT is aware of and applies the intent and spirit of Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities in performing assigned duties.

Every employee and representative of VDOT shall perform all official equal employment opportunity actions in an affirmative manner, and in full accord with applicable statutes, executive orders, regulations, and policies enunciated there under, to assure the equality of employment opportunity, without regard to race, color, national origin, sex, age, disability or low-income both in its own workforce and in the workforces of contractors, subcontractors, and material suppliers engaged in the performance of federal-aid highway construction contracts.

The Civil Rights Administrator has been designated as the Department's Title VI Coordinator and is responsible for ensuring that all matters relating to nondiscrimination are administered effectively. The Title VI Specialist is responsible for the day-to-day administration of the Title VI Program.

Employees of the Virginia Department of Transportation, contractors or applicants with questions, problems or complaints regarding this statement, and the implementation of the stated provisions, should contact the Civil Rights Administrator at, 1401 East Broad Street, Richmond, VA 23219; telephone (804) 786-4552 or 1-888-508-3737, or the Title VI Specialist at (804) 786-2730.

Charles A. Kilpatrick, P.E.
Commissioner

12/16/15
Date

INTRODUCTION

VDOT is a recipient of federal financial assistance. As a recipient, VDOT is required to comply with Title VI of the Civil Rights Act of 1964 (Title VI), as amended, and other nondiscrimination laws and authorities. Title VI of the Civil Rights Act of 1964 and other Federal Statutes and Authorities, prohibit agencies receiving federal financial assistance from discriminating against anyone or any group in the United States on the grounds of race, color, national origin, sex, age, disability or low income. The Civil Rights Restoration Act of 1987 defined the word "program" to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives federal financial assistance, rather than just the particular programs or activities that receive the funds. The United States Department of Transportation (USDOT) and Federal Highway Administration (FHWA) Regulations (49) Code of Federal Regulations (CFR), Part 21, and 23 CFR, Part 200 respectively, and other applicable Executive Orders and authorities provide guidelines, actions, and responsibilities for the state's implementation of the Title VI Program.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, prohibits unfair and inequitable treatment of persons displaced because of federal and federal-aid programs and projects. In 1994, President Clinton signed Executive Order 12898, "Federal Action to Address Environmental Justice in Minority Population and Low-Income Populations." The USDOT and FHWA issued Orders (USDOT Order 5610.2(a) and FHWA Order 6640.23A) to effectuate Executive Order 12898. These Orders require agencies receiving federal funding to achieve environmental justice (EJ) as part of its mission in identifying disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority or low-income populations. To improve access to federally conducted and assisted programs and activities for persons who as a result of national origin have limited English proficiency (LEP), Presidential Executive Order 13166, was signed August 11, 2000. The Executive Order was titled, "Improving Access to Services for Persons with Limited English Proficiency". The USDOT issued its "Policy Guidance Concerning Recipients Responsibilities to Limited English Proficient (LEP) Persons" to effectuate Executive Order 13166. The policy guidance requires recipients of federal financial assistance to develop and implement guidance on how they will provide meaningful access to LEP persons, to comply with Title VI. VDOT's priority is to ensure equitable practices in the allocation of benefits and services to beneficiaries affected by state programs.

The Title VI Program is the "system of requirements" developed to implement Title VI of the Civil Rights Act of 1964 and civil rights related provisions of other Federal statutes and authorities. References to Title VI requirements and regulations shall not be limited to only Title VI of the Civil Rights Act of 1964. This term also relates to the provisions of other authorities that prohibit discrimination based on race, color, national origin, sex, age, disability or low income in federally assisted programs.

I. ORGANIZATION AND STAFF RESPONSIBILITIES

The Civil Rights Division (CRD) has the primary responsibility of implementing VDOT's Title VI program. The Civil Rights Administrator is the Title VI Coordinator as head of the Civil Rights Division and is responsible for ensuring that all matters relating to nondiscrimination are administered effectively. The Title VI Specialist has the lead responsibility of the day-to-day implementation of the Title VI Program.

In addition to the Title VI Specialist, each of the following program areas has significant Title VI responsibility and has appointed Title VI Designees:

Scheduling and Contract
Structure and Bridge
Right of Way and Utilities
Maintenance
Transportation & Mobility Planning
Administrative Services
Programming
Location and Design
Local Assistance
Materials
Traffic Engineering
Environmental Services
Virginia Center for Transportation Innovation and Research (TCTIR)

The Title VI Designees are responsible for ensuring implementation, compliance, program monitoring, enforcement and reporting. There are also nine District field offices with District Civil Rights Managers (DCRMs) who are responsible for ensuring effective Title VI implementation in their respective districts. They provide guidance and assistance in all Title VI related matters in an effort to meet the objectives and purpose of nondiscrimination in federally assisted programs and activities.

Relationship of Civil Rights Unit to Head of State Transportation Agency

The Civil Rights Division Administrator (CRDA) reports to the Chief Deputy Commissioner, who reports to the Commissioner of Highways. However, the CRDA, as the Title VI Coordinator for the Department, has free and open access to the Commissioner for civil right matters. These include not only matters within VDOT, but also those pertaining to VDOT and its relationship with sub-recipients, contractors, and consultant firms. VDOT is committed to enforcing non-discrimination in VDOT's federally assisted programs and all its programs and activities. Recommendations on major Title VI issues are submitted by the Civil Rights Division Administrator to the Chief Deputy Commissioner who forwards the information to the Commissioner of Highways for final approval. The Title VI Specialist is under the direct supervision of the Civil Rights Assistant Division Administrator – External Programs, nevertheless, the Title VI Specialist reports directly to the Division Administrator with respect to Title VI matters, concerns and issues.

Based on the organizational structure of VDOT, the Civil Rights Division Administrator manages the following Title VI related duties:

- Supervise the Civil Rights Unit and ensure that it is sufficiently staffed to carry out the Title VI objectives
- Submit an annual update of the Title VI implementation plan to the Federal Highway Administration for approval
- Submit to FHWA a yearly report of Title VI accomplishments for the past year and goals for the upcoming year
- Provide overall leadership for the Title VI Program
- Ensure development, updating and implementation of the Title VI Plan
- Ensure procedures and processes for preventing discrimination and addressing and resolving complaints of discrimination
- Provide guidance to District Civil Rights Managers on complex Title VI issues
- Approve statewide guidelines for Title VI Program implementation
- Responsible for development and control of the Civil Rights Division's budget to ensure that adequate resources are available for the purpose of Title VI Program implementation

Statement of Responsibility and Authority of the Title VI Specialist

The Title VI Specialist on a day-to-day basis is responsible for implementation of VDOT's Title VI program and for ensuring compliance with the provisions of Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities, including Executives Orders for Environmental Justice (EJ) and Limited English Proficiency (LEP). The Title VI Specialist's duties include the following:

- Coordinate and prepare the annual Title VI Accomplishment Report.
- Coordinate and prepare the Title VI Implementation Plan.
- Coordinate activities related to the effective and efficient implementation of VDOT's Title VI Program.

- Develop procedures and processes for preventing discrimination and addressing and resolving complaints of discrimination.

- Provide Title VI technical assistance, guidance, and training to VDOT staff, state officials, cities, counties, consultants, contractors, suppliers, universities, colleges, planning agencies, and other recipients of federal-aid highway funds.

- Develop and conduct Title VI reviews of program area activities annually.

- Develop procedures for collecting statistical data on race, ethnic group, national origin, sex, age, or disability for participants and beneficiaries of the state highway program.

- Develop and publish Title VI information for dissemination to the general public and where appropriate ensure that the information is translated in languages other than English.

- Conduct annual reviews of all appropriate program areas, consultants, contractors, and other recipients of VDOT funds.

- Implement procedures for prompt processing and disposition of Title VI complaints.

- Assist in obtaining public input, particularly in minority and traditionally underserved areas.

- Participate in the identification of Title VI impacts and mitigation measures of proposed projects.

- Assist in the identification of minorities and low income individuals in the right-of-way activities, etc.

- Develop procedures to conduct reviews of Metropolitan Planning Organizations (MPO) to ensure compliance with the provisions of Title VI, EJ and LEP requirements.

- Assist with attending MPO and public meetings or hearings involving Title VI issues.

- Review environmental documents to identify and address social, economic and environmental effects and impacts.

- Review contractual procedures for consultants and contractors to ensure equity and consistency.

- Develop procedures for pre-award and post-award approval reviews of State programs and applicants for compliance with Title VI requirements.

- Provide leadership in multidisciplinary team activities.

Statement of Responsibility and Authority of District Civil Rights Managers

The District Civil Rights Managers (DCRMs) assist and support the Title VI Specialist in the implementation of VDOT's Title VI Program. The DCRMs monitor, and ensure compliance with the provisions of Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities, including EJ and LEP within VDOT's District offices. The DCRM's responsibilities in their respective districts include:

- Prepare a summary of the District's Title VI accomplishments for the past year and goals for the upcoming year for submission to the Civil Rights Division.

- Provide technical assistance, guidance and advice to state officials, VDOT staff, cities, counties, consultants, contractors, suppliers, universities, colleges, planning agencies, and other recipients of federal-aid highway funds.

- Prepare and disseminate Title VI information to the general public and where appropriate ensure that the information is translated in languages other than English, in consultation with the Title VI Specialist.

- Develop and implement district procedures for prompt processing and disposition of Title VI complaints.

- Conduct and/or coordinate Title VI training within respective districts.

- Assist in obtaining public input, particularly in minority and traditionally underserved areas.

- Participate in the identification of Title VI impacts and mitigation measures of proposed projects.

- Assist in the identification of minorities and low income individuals in right-of-way activities, etc.

- Conduct MPO reviews to ensure compliance with the provisions of Title VI, EJ and LEP requirements.

- Attend regional MPO and public meetings or hearings involving Title VI issues.

- Review environmental documents to identify and address social, economic and environmental effects and impacts.

- Review contract documents to ensure compliance with Title VI.

Statement of Responsibility and Authority of Central Office Title VI Designees

The Title VI Designees assist and support the Title VI Specialist in the implementation of VDOT's Title VI Program. The Central Office Title VI Designees' responsibilities, on behalf of their respective Divisions include:

- Participate in VDOT's quarterly Title VI Interdisciplinary Team meetings.

- Assist with the implementation of Title VI policies for their respective Divisions.

- Advise the Civil Rights Division Administrator, Title VI Specialist or DCRMs of Title VI related problems or discrimination complaints.

- Refer Title VI discrimination complaints to the Civil Rights Division Administrator, Title VI Specialist or DCRMs.

- Maintain statistical data by race, ethnic group, national origin, sex, age, or disability, as needed for respective program areas.

- Assist Title VI Specialist to ensure that Title VI requirements are included in program area directives and that procedures used have built in safeguards to prevent discrimination.

- Collaborate with and/or assist Title VI Specialist in conducting reviews.

- Provide assistance to their Division Administrators regarding Title VI of the Civil Rights Act of 1964 and other nondiscrimination authorities.

- Assist in the development of Title VI information for public dissemination, where appropriate, in languages other than English.

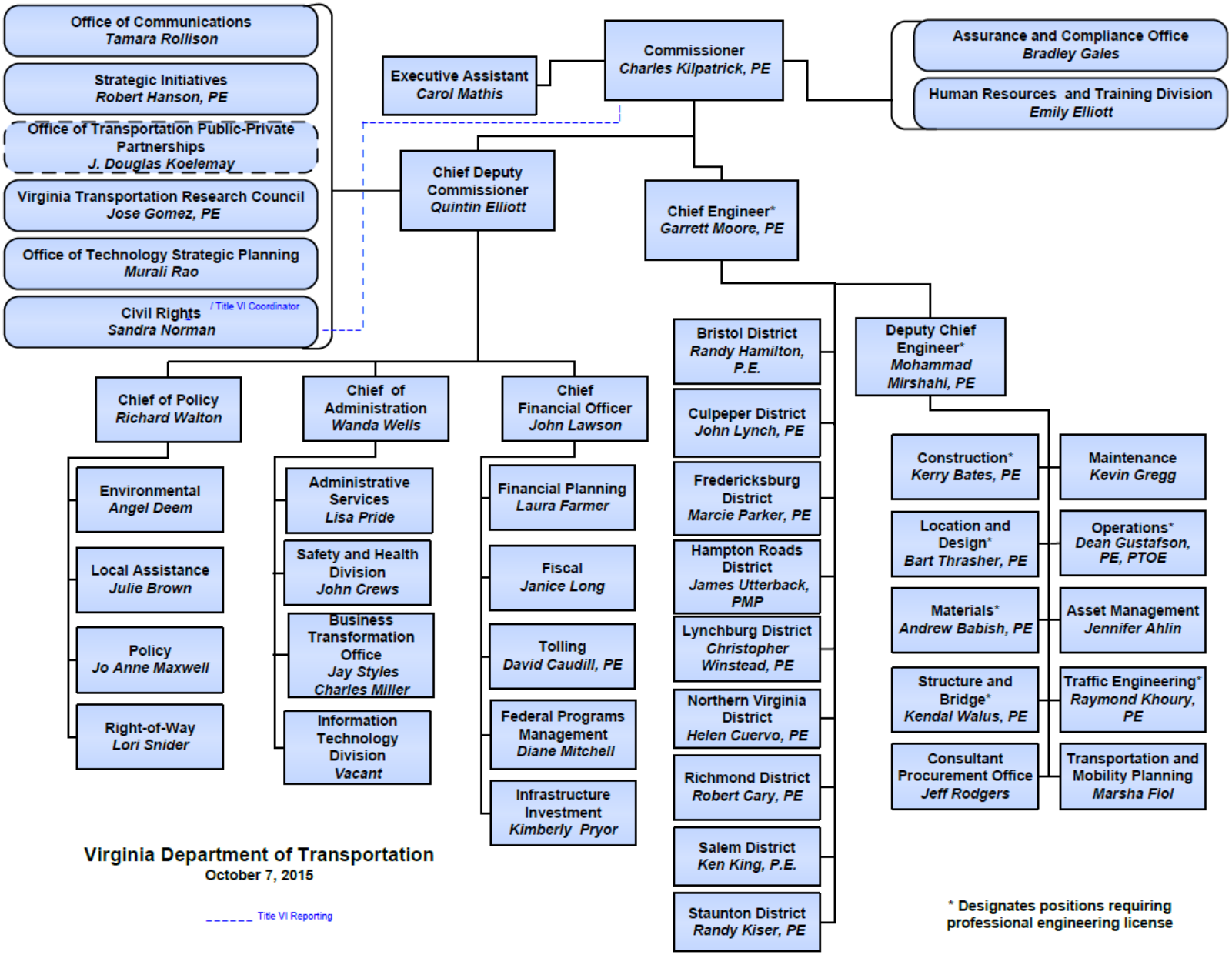
- Provide Title VI awareness within respective division to include training, tutorials and discussions.

- Complete information for the Annual Title VI Update.

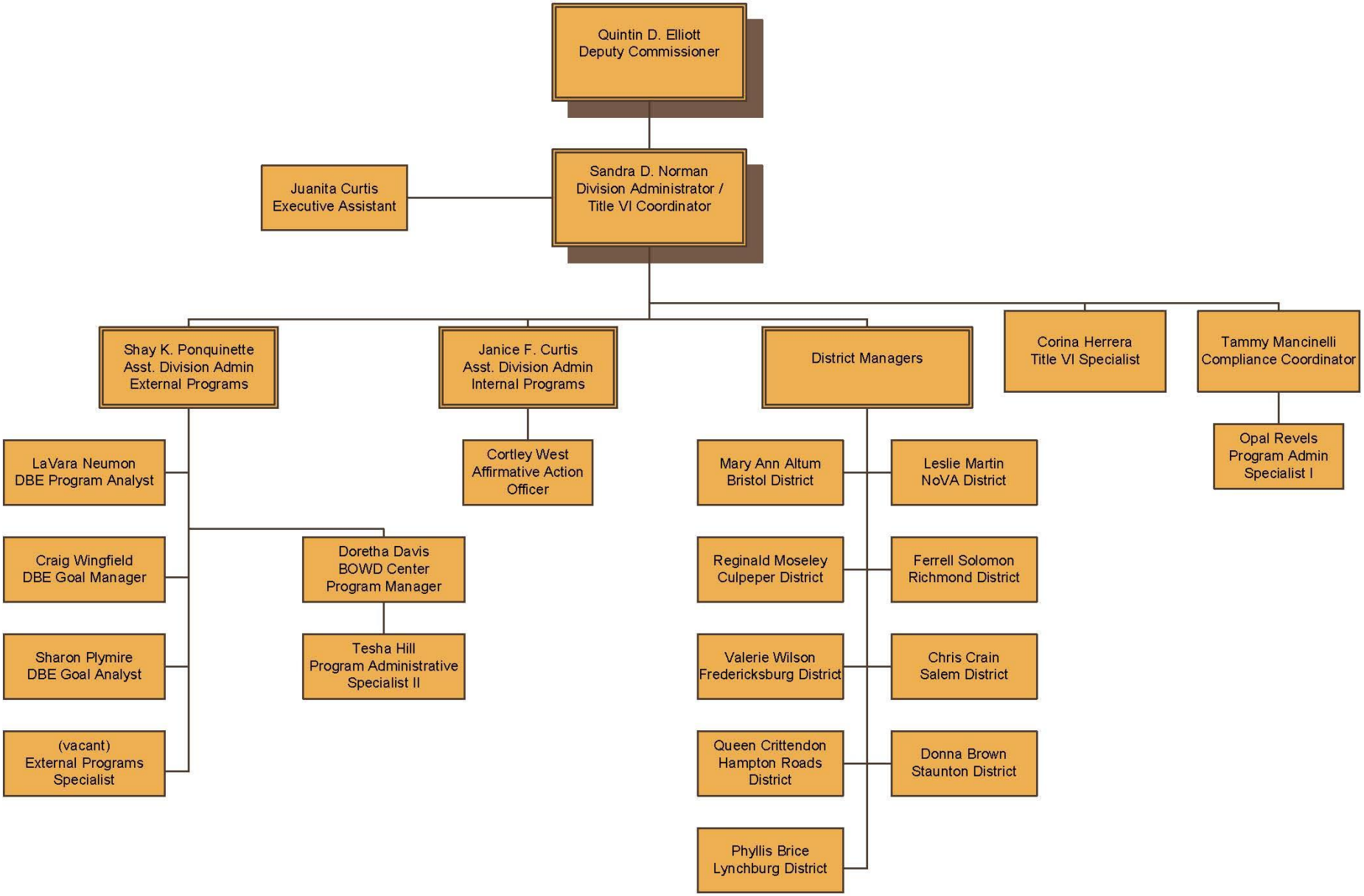
Organizational Charts

VDOT's Organizational Chart

Civil Rights Division Organizational Chart


Office of Communications
Tamara Rollison
Strategic Initiatives
Robert Hanson, PE
Office of Transportation Public-Private Partnerships
J. Douglas Koelemay
Virginia Transportation Research Council
Jose Gomez, PE
Office of Technology Strategic Planning
Murali Rao
Civil Rights / Title VI Coordinator
Sandra Norman
Executive Assistant
Carol Mathis
Commissioner
Charles Kilpatrick, PE
Assurance and Compliance Office
Bradley Gales
Human Resources and Training Division
Emily Elliott
Chief Deputy Commissioner
Quintin Elliott
Chief Engineer*
Garrett Moore, PE
Chief of Policy
Richard Walton
Environmental
Angel Deem
Local Assistance
Julie Brown
Policy
Jo Anne Maxwell
Right-of-Way
Lori Snider
Chief of Administration
Wanda Wells
Administrative Services
Lisa Pride
Safety and Health Division
John Crews
Business Transformation Office
Jay Styles
Charles Miller
Information Technology Division
Vacant
Chief Financial Officer
John Lawson
Financial Planning
Laura Farmer
Fiscal
Janice Long
Tolling
David Caudill, PE
Federal Programs Management
Diane Mitchell
Infrastructure Investment
Kimberly Pryor
Bristol District
Randy Hamilton, P.E.
Culpeper District
John Lynch, PE
Fredericksburg District
Marcie Parker, PE
Hampton Roads District
James Utterback, PMP
Lynchburg District
Christopher Winstead, PE
Northern Virginia District
Helen Cuervo, PE
Richmond District
Robert Cary, PE
Salem District
Ken King, P.E.
Staunton District
Randy Kiser, PE
Deputy Chief Engineer*
Mohammad Mirshahi, PE
Construction*
Kerry Bates, PE
Maintenance
Kevin Gregg
Location and Design*
Bart Thrasher, PE
Operations*
Dean Gustafson, PE, PTOE
Materials*
Andrew Babish, PE
Asset Management
Jennifer Ahlin
Structure and Bridge*
Kendal Walus, PE
Traffic Engineering*
Raymond Khoury, PE
Consultant Procurement Office
Jeff Rodgers
Transportation and Mobility Planning
Marsha Fiol
Virginia Department of Transportation
October 7, 2015
Title VI Reporting
* Designates positions requiring professional engineering license

Civil Rights Organization Chart FY2016



II. ADMINISTRATION

Interdisciplinary Approach of Title VI

The Interdisciplinary approach focuses on a team effort to ensuring nondiscrimination in all of VDOT's programs and activities. In implementing this approach, VDOT has employed the guidance provided by the FHWA. To ensure VDOT complies with Title VI of the Civil Rights Act of 1964 and other related statutes, VDOT has established a Title VI Interdisciplinary Team. The Interdisciplinary Team uses the systematic approach, communication and continuous interaction to proactively ensure nondiscrimination in all of VDOT's programs and activities. The Interdisciplinary Team was established February 4, 2002. The members of the team consist of a member of the Commonwealth Transportation Commissioner's Office, the Title VI Specialist, Central Office Title VI Designees, and the District Civil Rights Managers. The Interdisciplinary Team's focus is to:

- Foster awareness of nondiscrimination requirements
- Participate in the development and implementation of the Title VI Plan
- Identify areas of need requiring mitigation measures
- Formulate and prioritize strategies to address areas of mitigation
- Recommend revisions to the Title VI Plan Document
- Develop a Title VI Work Plan
- Implement Title VI Program Plan
- Continuously assess and recommend adjustments to the Title VI Implementation Plan as necessary for effectiveness

In partnership with the District Civil Rights Managers and Central Office Title VI Designees, the Specialist will review and analyze statistical data on relocations, impacted citizens and affected communities identifying Title VI, LEP and EJ implications. This will be partly achieved through monitoring contracting and procurement procedures, attending selected citizen information meetings, MPO hearings, and reviewing public hearing transcripts. Environmental documents such as Draft Environmental Impact Statements, Environmental Impact Statements, and Supplemental Impact Statements are assessed to determine whether social, economic and environmental effects and impacts are identified, described and potential mitigation measured.

Budgetary Resources

Each District and Division is responsible for ensuring that adequate budgetary resources are devoted to Title VI Program implementation for their respective areas.

The Civil Rights Division Administrator is responsible for development and control of the Civil Rights Division's budget to ensure that adequate resources are available for the purpose of Title VI Program implementation.

III. TITLE VI PROGRAM IMPLEMENTATION

Program Areas Review and Monitoring

The Title VI Specialist has the primary responsibility for monitoring Title VI implementation, activities, ensuring compliance, and preparing required reports. The Central Office's Title VI Specialist receives assistance from the District Civil Rights Managers DCRMs and Central Office Title VI Designees in monitoring the nine district offices, and central offices for compliance with Title VI.

The review and analysis of statistical data on relocations, impacted citizens and affected communities identifying Title VI, LEP and EJ implications will be partly achieved through monitoring contracting and procurement procedures, attending selected citizen information meetings, MPO hearings, and reviewing public hearing transcripts. Documents such as Draft Environmental Impact Statements, Environmental Impact Statements, and Supplemental Impact Statements are assessed to determine whether social, economic and environmental effects and impacts are identified, described and potential mitigation measured.

Program Area Reviews are conducted annually. The tool used to conduct these reviews is a questionnaire completed by staff in each of the program areas. The questionnaires help identify and address areas of concern, trends, patterns or shortfall, as well as assuring compliance with Title VI. The completed questionnaires received from each program area are reviewed by the DCRMs and the Title VI Specialist and a summary of the responses is included in the Title VI Accomplishment Report submitted to FHWA on a yearly basis.

The Title VI Accomplishment Report, which lists major accomplishments made regarding Title VI activities, also includes instances where Title VI issues were identified and discrimination was prevented; indicates activities and efforts the Title VI Specialist and program area personnel have undertaken in monitoring Title VI; includes a description of the scope and conclusions of any special reviews conducted by the Title VI Specialist or program area personnel; lists any major problems(s) identified and corrective action(s) taken; and includes a summary and status report on any Title VI complaints filed with VDOT.

The Annual Work Plan outlines Title VI monitoring and review activities planned for the coming year; states who will carry out the monitoring and reviews; and has a target date for completion.

Each of the following program areas has appointed Title VI Designees for monitoring and review:

Construction
Structure and Bridge
Right of Way
Maintenance
Transportation & Mobility Planning
Administrative Services
Programming
Location and Design
Local Assistance
Materials
Traffic Engineering
Environmental Services
Virginia Center for Transportation Innovation and Research (VCTIR)

Some of the activities that fall under these programs include: Adopt-a-Highway, Bicycling & Walking, Highway Incident Management, Highway Safety Corridors, Integrated Directional Signing, Initiatives for the Older Driver, Neighborhood Traffic, Roadside Management Regulations, Rustic Rural Roads, Subdivision Street Requirements, Transportation Enhancement Projects, Transportation Partnership Opportunity Fund, Wildflowers, Work Zone Safety, Smart Travel Virginia, Public Record, Success Stories, Public Involvement Process, Safety Information Center, and Scenic Byways (See Appendix E for a description of these programs).

Title VI Responsibilities for Major Operational Areas

A. Transportation and Mobility Planning Division

General Responsibilities

The Transportation and Mobility Planning Division (TMPD) is responsible for the development of long-range and short-range planning documents that provide a safe and efficient transportation system for the citizens of the Commonwealth of Virginia. In addition to VDOT transportation planning documents, TMPD coordinates and assists in the development of local and regional transportation plans in both rural and urban areas throughout the Commonwealth. The TMPD also conducts transportation studies and administers transportation planning programs statewide.

Planning Process

A comprehensive metropolitan transportation planning process is utilized. During the transportation planning process, TMPD will assist in the preparation and implementation of public involvement plans and programs aimed at improving attendance and participation of all population groups. Demographic profiles will be developed by TMPD using datasets from the 2010 decennial Census information. These demographic profiles will assist in geographically identifying potential civil rights, Title VI, EJ and LEP issues early in the planning process. As a supplement to the decennial Census civil rights datasets, a metropolitan planning organization could opt to use (non-VDOT) update information of the Weldon Cooper Center for Public Service demographic profiles.

Title VI Responsibilities

- Ensure that all population groups are adequately informed of planning activities to participate in the transportation planning process.
- Ensure that reasonable accommodations for persons with disabilities are provided and meaningful access for citizens who are of LEP.
- Coordinate and/or provide training programs on Title VI, EJ and LEP.
- Ensure Title VI requirements are incorporated into all Planning District Commission and Transportation and Mobility Planning Division contracts and grants and have procedures to effect compliance with Title VI.
- Coordinate and participate in partnership with the Title VI Specialist to assure Title VI compliance of Planning District Commissions (PDCs) and MPOs.
- Develop measures that ensure compliance in the event of a noncompliance finding. These measures will be developed in conjunction with the Civil Rights Division and the PDC or MPO. If compliance measures cannot be implemented or agreed upon, sanctions may be imposed, that could include the withholding of payments to the contract or grant recipient until compliance measures can be implemented, and or cancellation, termination or suspension of the contract or grant, in whole or in part.
- Collect data on minority and low income persons involved in planning processes.
- Collect, maintain and analyze data on race, national origin and income level to adequately assess impacts and mitigation options.
- Complete information for the Annual Title VI Update.
- Ensure opportunity is provided to DBEs to participate in or conduct planning studies.

B. Location and Design Division

General Responsibilities

The Location and Design Division is responsible for the location, design and preparation of all right-of-way and road construction plans on all highway systems under the jurisdiction of VDOT. The Division reviews and processes all public hearing documents.

Design Process

Economic, social, topographic, and environmental impacts of proposed projects are key factors weighed in the location consideration. Federal, state, local, and departmental policies and procedures require that public hearings and/or informational meetings be held to give to all persons, including minorities and persons with LEP, an opportunity to obtain information and express their opinions

on proposed project locations. Special efforts will be made to inform members of minority communities of public hearings and other public involvement activities.

Title VI Responsibilities

- Provide translation services to Contractors with LEP to the greatest extent possible.
- Ensure consultants' compliance with State and Federal requirement guidelines by utilizing data provided by the Civil Rights Division.
- Develop mechanisms to identify affected minority and/or low income populations.
- Ensure public involvement in the decision making process.
- Advertise proposed contracts in minority publications.
- Provide information in alternative formats.
- Ensure that all meeting locations are ADA compliant and accessible by public transportation.
- Provide materials in languages other than English and interpreters for LEP communities.
- Maintain documentation on hearings.
- Provide information for the Annual Title VI Update.
- Provide opportunity for DBEs and other small businesses to participate in procurement activities.

C. Environmental Division

General Responsibilities

The Environmental Division facilitates delivery of the transportation program by providing environmental regulatory compliance, leadership, management, and accountability. The various disciplines within the Environmental Division address over sixty individual federal and state laws, executive orders, and regulations that require compliance.

The division is divided into eight sections: Air Quality, Noise, Consultant Services, Cultural Resources / Environmental Data Management, Hazardous Materials, District Program, Project Study Management Program, and Natural Resources. Each of the sections is responsible for a particular discipline within the overall environmental process. Many program areas have specific activities that directly involve contact with the public.

Environmental Process

A systematic process is used to study and evaluate all necessary environmental

aspects of proposed projects, including social and economic. Depending on the scope, complexity and impacts of a project, a National Environmental Policy Act (NEPA) Categorical Exclusion (CE), NEPA Environmental Assessment (EA), or Environmental Impact Statement will be completed.

Title VI Responsibilities

- Ensure nondiscrimination in efforts to solicit public involvement.
- Ensure all public hearings are accessible to persons with disabilities and LEP.
- Conduct studies of the potential project sites for effects on such issues as cultural resources, community life, EJ and land use patterns.
- Ensure nondiscrimination in the procurement process.
- Monitor compliance with Title VI requirements in all aspects of the environmental process.
- Develop mechanisms to identify populations affected by a project and mitigation options.
- Ensure Title VI/Environmental Justice (EJ) compliance in all Environmental Impact Statements in coordination with CRD's Title VI Specialist.
- Provide Title VI Specialist a copy of all environmental assessments and studies prior to public release for information.
- Provide opportunity for DBEs and other small businesses to participate in procurement activities.

D. Virginia Center for Transportation Innovation and Research

General Responsibilities

The Virginia Transportation Research Council (VTRC) was established in 1948 by a joint agreement between VDOT and the University of Virginia. The research staff undertakes projects originating from within VDOT, other agencies, and recommendations from VTRC's network of Research Advisory Committees' (RAC). The Research Council's research projects focus on supporting VDOT's mission to provide a safe and efficient transportation system for the traveling public.

Research Process

In-house staff performs the majority of the Research Council's research. Occasionally research contracts are awarded to university faculty and private consultants when the required expertise is not available in-house, workload or scheduling issues exist or specialized facilities are required.

Title VI Responsibilities

- Ensure adherence with DBE program requirements in the granting of research contracts and nondiscrimination in the selection of grant recipients.
- Develop procedures to promote the participation of minorities and women in all aspects of research projects.
- Verify that Title VI requirements are incorporated in all contracts and agreements.
- Compile data for the Annual Title VI Update Report.
- Monitor internal procedures to ensure compliance with Title VI requirements.

E. Right of Way and Utilities Division (ROW)

General Responsibilities

The Right of Way and Utilities Division's mission is responsible for acquiring real property and adjusting utilities for the construction, operations and maintenance of Virginia's Highways.

Acquisition Process

All aspects of VDOT's acquisition program shall be non-discriminatory and conducted without regard to race, color, national origin, sex, age or disability. The right of way acquisition process entails appraisal of property, negotiation of terms and conditions for acquisition, and assistance in the relocation of displaced individuals, businesses, farm operations, and nonprofit organizations, as well as property management. Once the appraisal process is completed, the R/W staff will present its offer to the landowner for acquisition. Acquisitions not conducted by the R/W staff are performed by consultants.

Title VI Responsibilities

- Ensure the utilization of DBE firms in the selection of consultants and other resources.
- Provide translators in instances where affected landowners have LEP.
- Provide reasonable accommodations for property owners with disabilities, when requested.
- Provide replacement housing listings to persons displaced without regard to race, color, national origin, sex, age or disability. If any instance of discrimination is confirmed, the listing agency shall be notified and the listing will no longer be used.

- Require independent contractors employed by the displacee for moving personal property, or to perform any other services related to the relocation, to observe nondiscrimination statues and policies.
- Apprise affected property owners, tenants, and others involved of their rights and options regarding negotiations, relocation, condemnation and other aspects of the acquisition process.
- Incorporate Title VI language and assurance statements in all surveys of property owners and tenants.
- Ensure comparable replacement dwellings are available and assistance is given to all displaced persons and entities by the property acquisition process.
- Complete information for the Annual Title VI Update.

Title VI Responsibilities for Special Emphasis Program Areas

A. Structure and Bridge Division

General Responsibilities

The Structure & Bridge Division plans, designs, inspects and maintains the bridges and structures for VDOT's surface transportation system. In addition, this division provides structural expertise, policies, guidelines, standards, and information to its customers/stakeholders. To augment its in-house staff, the Structure & Bridge Division procures and administers consultant contracts. The procurement and administration of consultant contracts has been identified by the division as its program area involving Title VI of the Civil Rights Act of 1964 and related statutes and authorities.

Title VI Responsibilities

- Monitor for compliance with Title VI of the Civil Rights Act of 1964 and other nondiscriminatory statutes and authorities.
- Ensure nondiscrimination in the award process.
- Include Title VI language in every contract.

B. Traffic Engineering Division

General Responsibilities

The Traffic Engineering Division's focus is the safe and operationally efficient movement of traffic on our roads and highways. As such, the Division is responsible for tasks that cover a wide array of activities. These activities vary from

procedure planning and research/study deployment to designing and implementing permanent traffic control features; and from managing accident statistics and recording traffic counts to managing route naming and numbering.

Title VI Responsibilities

- Afford all members of the public an equal opportunity to review records.
- Include Title VI language in advertisements.
- Ensure equal opportunity in the issuance of permits and certifications.
- Offer Flagger Certification training in a nondiscriminatory manner.
- Provide reasonable accommodations for individuals with disabilities and translations for LEP individuals.

C. Construction Division

General Responsibilities

The Scheduling and Contract Division's mission is to keep Virginia moving by providing transportation facilities, and utilizing an effective program for the advertisement, award, and administration of contracts for the construction, improvement, and maintenance of these facilities.

Title VI Responsibilities

- Ensure free and open competition and Title VI nondiscrimination assurances without regard to race, color, national origin, sex, age, or disability through uniformity in prequalification, preparation of construction proposals, solicitation of bids/ advertisement, receipt of bids, bid analysis and award of construction contracts, project administration/monitoring, and the utilization of consultants.
- Review all proposal documents for required nondiscrimination provisions. Included in the proposal are the nondiscrimination provisions listed in VDOT's Title VI assurances.
- Provide contractors with a list of certified DBE firms.
- Ensure that DBEs have the maximum opportunity to compete for and perform work on contracts.
- Advertise in newspapers having a wide circulation, in minority publications, trade journals, or other appropriate media to reach a wide audience.
- Send copies of advertisements to minority organizations and trade associations.
- Award contracts to the lowest responsive and responsible bidder without discrimination against any bidder because of race, color, sex, national origin,

age, disability or any other basis prohibited by Title VI and other nondiscrimination authorities.

- Ensure that Title VI regulations are enforced through project inspectors.
- Include DBE special provisions in those projects with assigned goals.
- Review all projects for application of DBE program requirements.
- Ensure through reviews that prime contractors with DBE requirements award previously committed work to proper DBE firms. Award of construction contracts shall be granted on the lowest responsive bidder including DBE requirements.
- Ensure through reviews that DBEs actually perform a commercially useful function on contracts.

D. Assurance and Compliance Office

General Responsibilities

The Assurance and Compliance Office performs professional auditing and the examination and analysis of fiscal or other source documents maintained by claimers and others making cost representations to VDOT. It is a means whereby assurances are made to responsible VDOT and FHWA management that claims against federal funds, under approved highway programs represent accomplished and duly authorized work and are otherwise allowable on the basis of pertinent statutory provisions and reimbursement policies and procedures.

In addition, the Assurance and Compliance Office is responsible for auditing costs incurred under contracts involving, but not limited to, consulting engineers, service contractors, FHWA grants and contracts, and review of street maintenance payments to cities and towns.

Title VI Responsibilities

- Assign a Title VI Designee to provide guidance to ensure that the Division complies with Title VI and other related nondiscrimination authorities.
- Ensure that every consultant is treated fairly and equally without discrimination.
- Conduct a cursory review of consultants' and contractors' employment policies, solicitations for employment, and selections of sub-consultants to ensure that consultants and contractors doing business with the Division comply with the Title VI Statement of Commitment.
- Apply sanctions in the event of consultant or contractor's noncompliance with Title VI, such as: withholding payment to the consultant or contractor; cancel contract or terminate and suspend in whole or part.

- Include Title VI Provisions in consultant contracts.
- Examine the consultant's books, records, accounts, facilities, etc. to ascertain compliance with Title VI, in the course of our pre-award or final audits and reviews.
- Provide information for the Annual Title VI Update.

E. Operations

General Responsibilities

The Operations Division provides guidance and resources to internal and external customers in an effort to promote public safety and a working environment that fosters employee satisfaction. The Emergency Operations Center (EOC) provides a state level central coordinating unit that is responsible for keeping the public informed during normal and extraordinary conditions. The Special Operations Section is responsible for developing the strategic statewide renovation plan for the rest area facilities.

Title VI Responsibilities

- Ensure public access and opportunities for involvement to all programs.
- Provide reasonable accommodation requests for information in alternate formats or languages.
- Place advertisements in local and/or community newspapers as well as newspapers geared towards a minority and female audience.

F. Materials Division

General Responsibilities

The Materials Division's role within VDOT is to build and maintain a safe and efficient transportation system through the application of current materials engineering and testing procedures. The Division procures and administers consultant contracts for commercial testing and inspecting laboratories and, to perform testing and inspection of highway construction and maintenance materials. In addition, the Division is responsible for managing the Certification Schools.

Title VI Responsibilities

- Administer consultant contracts in a non-discriminatory manner.
- Include Title VI language in all contracts.

- Review directives and procedures to ensure Title VI compliance.
- Ensure that Requests for Proposal are advertised in all segments of the community including minority and female publications.
- Ensure services are provided in a nondiscriminatory manner.

F. Consultant Procurement Office (CPO)

General Responsibilities

The Consultant Procurement Office provides leadership in managing, monitoring and standardizing the professional procurement process for consultant services and coordinates all aspects of the procurement timeline, as well as establishes the procurement schedule and communicates with key stakeholders internal and external to the organization.

Title VI Responsibilities

- Assign a Title VI Designee to ensure that the Office complies with Title VI and other related nondiscrimination authorities.
- Ensure that the professional procurement process for consultant services is implemented in a nondiscriminatory manner.
- Ensure Title VI language is included in consultant procurement documents.
- Ensure that Requests for Proposal are advertised in all segments of the community including minority and female publications.

Sub-recipient Reviews

The Title VI Specialist in conjunction with the Central Office Designees and District Civil Rights Managers will review and monitor compliance of the following entities: VDOT Central Office Divisions, Consultants, Contractors, VDOT District Offices, and Metropolitan Planning Organizations and other recipients of VDOT funds. The Central Office Title VI Designees monitor the programs and activities within their division to ensure nondiscrimination. The Designees monitor all consultants and contractors. When problems or controversial issues regarding Title VI occur, the Title VI Designee reports the issues to the Title VI Specialist for prompt resolution. Possible sanctions assessed to a consultant or contractor found in noncompliance with Title VI include withholding payment until compliance is corrected or cancellation, termination, and possible suspension of the contract in whole or in part.

Methods of monitoring include:

- Collecting statistical data (race, color, national origin, sex, age, and disability) of participation in and beneficiaries of the programs and activities conducted

by the Recipient.

- Attending training programs on Title VI and related statutes.
- Preparing a yearly report of Title VI accomplishments for the past year and goals for the next year.
- Conducting compliance reviews of major program areas to facilitate the annual Accomplishment Report & Work Plan.
- Conducting audits of districts, divisions, and sub-recipients including consultants, MPOs and localities.
- Developing and disseminating guidelines and implementation plans including Title VI, Limited English Proficiency and Environmental Justice.

A. Consultants & sub-consultants

To monitor compliance, consultants and sub-consultants are required to submit a Title VI Evaluation Form. This requirement is applicable for all consultants.

The Title VI Evaluation Form provides documentation that a consultant has procedures in place to prevent discrimination in programs and services based on Title VI.

VDOT will request a Title VI Evaluation Form within ten (10) days of notification of selection for new consultants that do not have a current assessment on file with VDOT. The Assessment Form should be submitted to the Program Manager in the division that is negotiating the contract. These are the divisions we currently receive Title VI Evaluation Forms from:

Right of Way & Utilities Division
Location & Design Division
Environmental Division
Structure & Bridge
Innovative Project Delivery
Materials Division
Transportation & Mobility Planning Division

Once the Title VI Evaluation Form is provided to VDOT, the Title VI Coordinator in the Civil Rights Division reviews the information will issue a pre-award letter within fifteen (15) days of receiving documentation, if no revisions needed, or may schedule an on-site review within the same time frame to confirm information provided in the Assessment Form. VDOT Program Managers have access to a Title VI Log that is updated monthly on the Civil Rights Website. The Title VI Coordinator may request additional information and/or recommend corrective actions. The Title VI Coordinator may randomly schedule on site compliance reviews at the consultant's office.

If the report is approved, a letter is sent out with an expiration date for one year from the date of the approval letter. Typically the letter remains current and on file with VDOT for a period of one year. An updated report is required annually for consultants who continue to perform under a contract with VDOT. It should be noted that if VDOT conducts an on-site compliance review the contractor can still be found to be out of compliance during the one year period.

Failure to comply with the nondiscrimination provisions may result in cessation of negotiations, withholding of payments, cancellation, termination, or suspension of the contract in whole or in part.

B. Metropolitan Planning Organizations (MPOs)/Planning District Commissions (PDCs)

Primary Responsibility
District Civil Rights Managers (DCRMs)

Tool
MPO - PDC Compliance Review Form

Timeline for Review Process
Review: **3-4 months**

1-	Civil Rights District Manager sends out letter to MPO-PDC	
2-	MPO conducts self-assessment and returns form to DCRM	*30 days*
3-	DCRM reviews document and if needed, conducts a site visit	*30 days*
4-	letter of no significant finding is issued or letter of non-compliance issues is released	*30 days from site visit*

Corrective Actions: **3 months.**

The Review
District Civil Rights Managers will have the primary responsibility of conducting compliance reviews of MPOs and PDCs using the MPO-PDC Compliance Review Form. When the DCRM is unable to conduct the review or there is a conflict of interest based on a complaint against the district office from a MPO-PDC, the Title VI Specialist will conduct the compliance review.

The DCRM and/or the Title VI Specialist will send the current MPO/PDC Compliance Review Form with a 30 day deadline for returning the document. Once the self-assessment document is returned to the DCRM or Title VI Specialist, they will review the responses for compliance with Title VI, LEP and EJ. The DCRM and/or the Title VI Specialist will write questions that may arise from the answers

provided by the MPO-PDC on the compliance review form. If needed, a site visit will be conducted to clarify any questions and review documents and data provided on the form within 30 days of receiving the Compliance Review Form from the MPO-PDC.

If no significant findings are found, the DCRM and/or the Title VI Specialist will send a letter of no significant findings within 30 days of the site visit to the MPO-PDC and the Civil Rights Division Administrator. If non-compliance issues arise, the MPO/PDC will be issued a letter of findings, which will also be sent to the Civil Rights Division Administrator within 30 days of the site visit with recommendations for corrections and a maximum three (3) month deadline based on the items that need to be brought into compliance.

Compliance reviews of MPOs will be conducted annually. These reviews will be listed as goals in the Title VI Plan and therefore each district should determine dates for the compliance reviews in advance. Each district and central office will maintain a log with the name of the MPO, the date of the review, the outcome of the review and any recommendations.

Please see MPO-PDC Compliance Review Procedures in Appendix H and I for a copy of the review form, compliance letter and letter of findings.

C. Local Public Agencies (Cities, Counties and Towns)

In accordance with Federal Title VI regulations, VDOT will conduct periodic reviews of Local Public Agencies' (LPAs') Title VI compliance. The reviews will be scheduled by VDOT's Title VI Specialist in coordination with the Local Assistance Division and District Civil Rights Managers (DCRMs). VDOT will utilize a risk-based approach to identify a representative sample of LPAs to review. This sample will be superposed to the LPA's audit schedule developed by Local Assistance Division for a final selection of LPAs to be reviewed for Title VI compliance. The necessary review arrangements and the actual review will be conducted by the DCRMs in coordination with a staff member from Local Assistance Division.

The review will focus on how effectively the local agency has implemented its Title VI Plan, and it will consist of a Desk (Pre-Site visit) Review and an On-Site Review. The LPA will be asked to gather and submit documentation to the District Civil Rights Office for the Desk Review and to prepare other documentation such as record or contract files for the On-Site Review. Personnel with Title VI responsibilities will be interviewed during the On-Site visit.

Upon conclusion for the On-Site Review, the LPA will be notified by the DCRO of

compliance or in the event that deficiencies are found, the local agency will be told of those deficiencies. The LPA will be given 90 days to develop a voluntary Corrective Action Plan to be submitted to VDOT Civil Rights District Office. The submittal of this plan will allow the LPA to develop voluntary corrective actions prior to be found in Non-Compliance. After the LPA corrects all deficiencies, it will be notified in writing that it is in compliance. However, if the LPA does not correct the deficiencies or fails to submit a Corrective Action Plan, it may be subject to sanctions including the suspension of federal funding.

Data Collection

Under Title VI, a recipient is required to collect statistical data (race, color, national origin, sex, disability and age) of participants and beneficiaries of programs and activities conducted. Data collection is key to ensuring that transportation programs, services, facilities and projects effectively meet the needs of "all persons" without discrimination; i.e., disproportionately benefitting or harming one group over another is a violation of Title VI. Timely and accurate data allow for better decision making and provide support and defensibility to the decisions made.

Statistical data including race, national origin, sex, age, or disability (where known) of participants in and beneficiaries of VDOT's programs, (i.e. relocatees, impacted citizens, affected communities) will be collected, analyzed and maintained by VDOT to determine the transportation investment benefits and burdens to the eligible population, including minority and low-income and LEP populations (Please see Data Collection Guidelines in Appendix L for more details).

Training

VDOT designs and conducts a variety of training and development classes through the Learning Center Division either with VDOT staff or through contracts. If the training is contracted out, it is the responsibility of the division to ensure that the contract includes the language that the contractor has the responsibility for complying with Title VI. If the language is not included in the contract, it shall be the responsibility of the division to monitor and review the program for Title VI compliance.

Training compliance responsibilities include:

- Collecting statistical data (race, color, national origin, sex, age, and disability) of participation in and beneficiaries of the program.
- Monitoring training participation to ensure that minorities and women are equitably represented.
- Encouraging participation by minorities and women.

- Monitoring accomplishments and problem areas and summarizing information annually for Title VI Update Report.

As stated under Title VI responsibilities, the Title VI Specialist and the District Civil Rights Managers are responsible for providing Title VI technical assistance, guidance, and training to VDOT staff, state officials, cities, counties, consultants, contractors, suppliers, universities, colleges, planning agencies, and other indirect recipients of federal-aid highway funds. The Title VI Designees are responsible for providing Title VI awareness within their respective division to include training, tutorials and discussions.

Title VI Training will be provided to the Civil Rights Division staff as part of the comprehensive trainings or symposiums that may be developed for the entire unit. A special training unit or session is devoted to the Title VI Program during those trainings. In between the scheduled trainings, staff is made aware of online training or webinars on specific topics offered by FHWA. Title VI training is also offered to the VDOT Interdisciplinary Team and to the VDOT Consultants and Sub consultants. This training is facilitated by FHWA's Resource Center Title VI Specialist. Among the sub-recipients that will also receive Title VI training are the Metropolitan Planning Organizations (MPOs) and the Local Planning Agencies (LPAs). Training for these groups will be provided primarily with the assistance of FHWA's Resource Center staff and/or FHWA's online library of videos and resources such as Federal-aid Essentials for Local Public Agencies.

Community Outreach and Public Education

VDOT's Civil Rights Division conducts various methods of Community Outreach and Public Education (COPE). The primary purpose of COPE is to apprise sub-recipients, contractors, beneficiaries, and potential participants of their rights under Title VI. Regular and comprehensive outreach and education provide members of the public with information necessary to pursue and protect their rights under Title VI and remind them of their obligations. VDOT and its sub-recipients learn of community concerns and can receive input from them regarding their Title VI implementation and enforcement. Some of VDOT's COPE efforts include:

- Making available, and where appropriate, distributing Title VI regulations, guidelines, policy and procedures, including the implementation plan to VDOT employees, sub-recipients, contractors, beneficiaries and other interested persons;
- Displaying posters of VDOT's nondiscrimination policy and compliance with Title VI, availability of Title VI information from VDOT and FHWA, and a brief explanation of procedures for filing complaints;
- Using other forms of public distribution such as pamphlets, handbooks, manuals, and the use of print and broadcast media;
- Outreaching to people with LEP;

- Using reasonable measures to disseminate written materials in appropriate languages;
- Providing federally assisted programs and services subject to Title VI in languages other than English.

VDOT's outreach activities include:

Title VI Brochure
Civil Rights Website
Transportation Continuum Brochure
Title VI Interdisciplinary Quarterly Meetings
Public Hearings
Smart Jobs Workshop
Transportation DBE Advisory Committee (TDAC)
Virginia Transportation Construction Alliance Forums

Title VI Brochure – The three fold brochure was revised and improved into a six fold brochure with information that educates the public and VDOT on the Title VI Act and the Title VI Program. The new brochure entitled *Title VI -Ensuring non-discrimination under any program or activity receiving federal financial assistance* is distributed statewide to the public, sub recipients, and other parties or individuals participating in or otherwise benefitting from federal financial assistance.

Civil Rights Website – is an electronic resource for educating the public and VDOT on Title VI and other Civil Rights laws and processes. VDOT"s Title VI Evaluation Form is posted on this site as well as the Title VI Log, which is a list of all Title VI consultants that have an approved Title VI Evaluation Report in file. In addition, VDOT's Español website is in the process of translating appropriate portions of the website into Spanish.

Transportation Continuum Brochure – identifies all transportation areas that the Civil Rights Division impacts or influences by regulation or executive order including Title VI and Limited English Proficiency.

Title VI Interdisciplinary Quarterly Meetings – are held on a quarterly basis with the Title VI Designees to educate the Designees and receive their input and feedback on the development and implementation of Title VI related policies and procedures.

Public Hearings – Civil Rights staff attends the majority of the public hearings held including citizen informational meetings for the purpose of disseminating Title VI information to the public and to monitor impact of projects. Citizens are provided with Title VI brochures and other written materials to educate and acquaint them with Title VI and their rights under the law as well as VDOT's commitment to nondiscrimination and equal opportunity. A survey form is used to collect demographic data and track how well different segments of the population are represented. Public meeting notices are published in minority and local newspapers, flyers are distributed in the communities,

post cards are mailed out and posters are placed at the entrance and exit of a project area. Public meetings/hearings are conducted in a barrier free environment.

Transportation DBE Advisory Committee (TDAC)
Quarterly Meetings – Ongoing -The Transportation DBE Advisory Committee was formed to serve as a forum through which concerns of DBE firms are addressed and to provide recommendations for operational and administrative improvements to the commissioner and/or appropriate departments. The group meets quarterly, rotating meetings among districts. Annually, TDAC sponsors the DBE Picnic to foster industry relationships.

Virginia Transportation Construction Alliance Forums (Annually) - The Civil Rights Division participates annually in VTCA Forums. A wide range and large number of consultant firms including DBEs were invited to attend these forums. Each year a Civil Rights Division representative provides training in a breakout session. The topic is sometimes in reference to the Title VI Program.

Other VDOT COPE activities include meetings and dissemination of information at:

- Neighborhood Task Force Meetings
- Elementary, middle and high schools
- Elected Officials
- Rotary/Professional Organizations/Chamber/Hispanic Business Development
- High School Career Fairs
- Diversity Fairs
- University Student Groups
- Project Public Meetings
- Community Associations

Public Involvement Plan

Joint VDOT-DRPT state public participation process includes information to engage, inform and receive the input of the public, including Title VI protected persons. The state public participation process was updated in 2013, following a public notice and a 45 calendar day review and comment period. The updated process is documented and implemented using the June, 2013 booklet on Public Participation in Virginia's Transportation Planning and Programming Process

Complaints

Recipients, sub-recipients, beneficiaries, or participants of federally assisted programs, who believe they have been subjected to unequal treatment or discrimination on the grounds of race, color, national origin, sex, age, or disability, may exercise their right to file a complaint with the VDOT's Civil Rights Division Administrator, Title VI

Specialist, or District Civil Rights Managers. See Part IV of this plan for discrimination complaint procedures.

Limited English Proficiency (LEP)

VDOT has designated the Title VI Specialist as the agency's Language Access Coordinator (LAC). The Civil Rights Division contracts out language access services to provide the following language assistance services:

a. American Sign Language Interpretation
b. Language Interpretation Services
    On-site (face to face)
    Sight Interpretation
    Video Remote Interpretation (VRI)
    Telephonic Interpretation (scheduled and 24/7)
c. Document Translation Services

District personnel will coordinate requests for translation/interpreter services through their District Civil Rights Manager. In some situations, cost codes may be set up **for d**istrict staff to contact the Contractor directly. If not, the District Civil Rights Managers will contact the Title VI Specialist. Divisions in the Central Office will coordinate requests for translation/interpreter services through their Title VI Designee. The Designee will contact the Title VI Specialist. Divisions that have not assigned a Title VI Designee will contact the Title VI Specialist directly.

Requests for services will include the name of the person requesting translation services, and the district name and number. The Title VI Specialist will maintain a database for LEP requests, by division and district. The database will include the name of the person requesting translation services, the district name, the name of the document or the name of the LEP person, the date of the request, the number of hours or words that was translated, the language translated from and to and any other pertinent information for tracking language services. Written translation will be translated and sent back to the requestor and copied to the Title VI Specialist.

The Civil Rights Division's budget covers reasonable interpreting and translation services. It does not cover the cost for printing materials. In general there is no cost the district or division for posting translated documents on VDOT's website. If at any time in the future the Civil Rights Division budget does not include funds for language assistance then each division will be responsible for providing language services out of their own budget. Regardless of which budget funds language access services, each division and district will take into consideration the resources available and the costs when determining the need for services. It is very important to keep in mind that costs will not be used to deny all language translation requests. VDOT's Limited English Proficiency Guidelines are included in Appendix J.

Environmental Justice (EJ)

VDOT is committed to the principles of environmental justice (EJ) and is assessing and documenting the impacts of transportation projects on minority and low-income populations as a normal part of our environmental analysis efforts. A key aspect of the EJ analysis is to ensure the involvement of affected communities in the project development process. VDOT has developed Environmental Justice Guidelines to provide Environmental, Planning, Right of Way, Location and Design, Civil Rights and any other applicable with a consistent framework for both preparing an EJ analysis and developing an effective public involvement strategy. They contain only principles and general procedures, which means that the specific approach must be tailored to the unique circumstances of each project and those communities affected by it. If the procedures do not seem appropriate for a particular project, then the team will develop a more suitable approach.

The guidelines apply to projects requiring all types of NEPA documentation (Environmental Impact Statements, Environmental Assessments, Categorical Exclusions or environmental reevaluations). The identification of minority or low-income populations actually begins during systems planning by the Metropolitan Planning Organization (MPO) or VDOT's Transportation and Mobility Planning Division but is also carried out by Environmental, Location and Design and Right of Way. This information will be used and supplemented during the environmental inventory and alternatives development phases of the project development process as additional data, analysis and public input are refined. Decision-makers will be better informed about the important issues and concerns of low income and minority populations to be considered along with other factors in determining project location, design and mitigation. The EJ analysis during project development will be conducted concurrently with other technical environmental analyses during the Stage One Reporting stage.

An EJ analysis must be completed for each build alternative. Additionally, the No-Build alternative must be carefully considered as well. A clearly written description of all EJ findings must be included in the environmental document.

IV. DISCRIMINATION COMPLAINT PROCESS

Introduction

The Title VI and related discrimination authorities complaint procedures are intended to provide aggrieved persons, contractors, subcontractors, consultants, and other prime or sub-recipients an avenue to raise complaints of discrimination regarding VDOT's programs, activities and services. This process does not preclude VDOT from attempting to resolve Title VI complaints through mediation.

Purpose

The purpose of the discrimination complaint procedure is to describe the process used by the Civil Rights Division (CRD) for processing complaints of discrimination under Title VI of the Civil Rights Act of 1964 and related statutes and authorities.

Filing of Formal Complaints

A. Applicability

The complaint procedures apply to the beneficiaries of VDOT's programs, activities, and services, including but not limited to the public, contractors, subcontractors, consultants, and other sub-recipients of federal and state funds.

B. Persons Eligible to File

Recipients shall ensure nondiscrimination and equal opportunity in the administration of any program or activity funded in whole or in part with Federal funds. This includes VDOT or its contractors, subcontractors, consultants, and other sub-recipients. Any person who believes he or she has been subjected to discrimination based on race, color, national origin, sex, age, or disability, has the right to file a complaint of discrimination under Title VI and related statutes and authorities. The complaint may be filed by an affected individual or representative and must be in writing. The complaint may be filed with either: the Civil Rights Division Administrator or the VDOT's Title VI Specialist, **1401 East Broad Street**, **Richmond, VA 23219** or U.S. Department of Transportation, Federal Highway Administration, Virginia Division, Office of Civil Rights, **400 North 8th Street, Suite 750, Richmond, Virginia 23219**. The form for filing a complaint is included in Appendix A. Complaints against a district received by the Title VI Specialist will be forwarded to the respective District Civil Rights Manager.

C. Filing Time

The complaint must be filed no later than 180 days after the following:

- The date of the alleged act of discrimination; or
- The date when the person(s) became aware of discrimination; or
- Where there has been a continuing course of conduct, the date on which the conduct was discontinued.

D. Form of Complaints

Complaints must be in writing, signed by the complainant or representative, and include the complainant's name, address, and telephone number, or other means by which the complainant may be contacted. Complaints shall explain as fully as possible the facts and circumstances surrounding the claimed discrimination, and identify the individual(s) and /or organization(s) responsible for the alleged discrimination. In cases where the complainant is unable or incapable of providing a written statement, the complainant will be assisted in converting a verbal complaint into a written complaint. The complainant, however, will sign the complaint. Signed allegations of discrimination received by facsimile or e-mail will be acknowledged and processed. Complaints received by telephone will be reduced to writing then provided to the complainant for confirmation, revision and signature before processing (Appendix D, Complaint Form).

E. Complaint Basis

Complaints of alleged discrimination must be based on issues involving race, color, national origin, sex, age, or disability. Discrimination under Title VI or other relevant nondiscrimination laws is an act (or action) whether intentional or unintentional through which a person in the United States, solely because of race, color, national origin, sex, age, or disability has been otherwise subjected to unequal treatment or disparate impact under any program or activity receiving financial assistance.

Complaint Processing

A. Initial Contact

The Title VI Specialist, District Civil Rights Managers, and Central Office Title VI Designees serve as VDOT's civil rights resource for members of the public who

wish to file a discrimination complaint under Title VI and related statutes. As resources, they provide complainants with an explanation of the filing options, information concerning the discrimination complaint process, and a Title VI and Related Statutes Discrimination Complaint Form (Appendix D).

B. The Complaint Review Process

The Title VI Specialist or District Civil Rights Manager who receives the complaint will review it to ensure that relevant information is provided, the complaint is timely, and is within the correct jurisdiction. The complaint will be accepted unless it is withdrawn, not filed timely or the complainant fails to provide required information after numerous requests.

Issues that do not involve discrimination or are not based on a protected basis will be directed to the appropriate entity. Under no circumstance should the complainant be discouraged from filing a complaint.

Complaints filed with VDOT in which VDOT is named as the respondent will be forwarded to FHWA, Headquarters Office of Civil Rights (HCR) for processing. The allegations will be analyzed by HCR and the complainant notified by HCR of those aspects of the complaint accepted for investigation.

Complaints filed against VDOT's contractors, subcontractors, consultants, and other sub-recipients may be referred by FHWA to VDOT for investigation. A complaint log is maintained of all complaints filed with or investigated by VDOT (Appendix E). The complainant will receive a letter from VDOT acknowledging receipt of the complaint and the name of the investigator. The investigator will advise the complainant of their rights under Title VI and related statutes. The respondent is notified by VDOT that they have been named in a complaint. The letter reveals the investigator's name and informs the respondent that they will be contacted for an interview. The investigator will also advise the respondent of their rights under Title VI and related statutes. A letter is sent to the District Administrator for complaints that originate in a District. The Division Administrator will be informed of a complaint filed against the Central Office. The letter will list the names of the parties involved, the basis of the complaint and the assigned investigator.

Investigation

A. Investigation Plan

The investigator shall prepare a written plan that includes, but is not limited to the following:

- Complainant (s) name and address
- Respondent(s) name and address
- Applicable Law(s)
- The basis/bases for the complaint
- The allegation(s), issue(s), events or circumstances that caused the person to believe that they have been discriminated against
- Background
- The names of persons to be interviewed and issues of which they have first-hand knowledge
- Evidence to be obtained during the investigation
- The remedy sought by the complainant(s)

B. Conducting the Investigation

The investigation will address only those issues relevant to the allegations in the complaint. Confidentiality will be maintained to the fullest extent possible. Interviews will be conducted to obtain the facts and evidence regarding the allegations in the complaint. The investigator will ask questions to elicit information about aspects of the case that the witness can provide firsthand. A chronological contact sheet will be maintained in the case file throughout the investigation. The investigation working papers will be completed, cross-referenced and indexed. The interviewee may have representation of their choice at the interview.

C. Informal Resolution

The Virginia Administrative Dispute Resolution Act of 2003 authorizes public bodies to use dispute resolution proceedings. State agencies are required to adopt policies to address the use of dispute resolution proceedings within the agency and for the agency's programs and operations. VDOT recognizes mediation as the

Alternative Dispute Resolution (ADR) process that may be offered as an alternative to the investigative process. If the parties voluntarily agree to participate in medication, a trained mediator will assist the opposing parties in reaching a mutually agreeable resolution. During the initial interviews with the complainant and respondent, the investigator will request information regarding specifically requested relief and settlement opportunities.

D. Investigation Reporting Process

Within 40 days of receiving the complaint, the investigator will prepare an investigative report and submit the report and supporting documentation to the Civil Rights Administrator, or his/ her designee, for review. Subsequent to the review, the Civil Rights Administrator will submit the investigative reports, investigative files, and recommended decisions to Chief, Investigations and Adjudications, HCR for a final decision. Decisions by the FHWA are final.

Reporting Requirements to an External Agency

A copy of the complaint, together with a copy of the investigative report, will be forwarded to the Federal Highway Administration within 60 days of the date the complaint was received.

Records

The investigator will prepare and submit the complete written report to the Title VI Specialist, including the following complaint details: Date of written complaint; contract number; contractor and/or subcontractor name, and complaint basis (race, color etc.). All records and investigative working files will be maintained in a confidential area. Records are kept for five years after closure and then paper copies will be destroyed by shredding.

V. REVIEW OF STATE DIRECTIVES

It is the responsibility of every Division Administrator to ensure that planning manuals, directives, guidelines, and policies have been reviewed for Title VI compliance purposes.

In doing so, Division Administrators must ensure that a draft of these documents be submitted to Civil Rights Division Administrator for review of Title VI or Title VII compliance. Title VI Interdisciplinary team members also assist in ensuring compliance of this requirement within each of the major operational program area they represent.

VI. MANUALS, DIRECTIVES, REGULATIONS AND AUTHORITIES

This section is a reference source of the applicable authorities related to Title VI of the Civil Rights Act of 1964 as amended.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. □□2000d 1-5 (1982)), as implemented by Federal Highway Administration Regulations - Subchapter on Civil Rights (23 CFR 200 (1987)) and by Title 49, Code of Federal Regulations, Part 21 (1987).

Title 49, Code of Federal Regulations, Part 21 (U.S. Department of Transportation Regulations effectuating Title VI of the Civil Rights Act of 1964).

Title 49, Code of Federal Regulations, Part 25 (U. S. Department of Transportation Regulations implementing the above Act - see, particularly 49 CFR 25.17 (a), (12) and 2517 (c)).

U.S. Department of Justice Regulations, Guidelines for the enforcement of Title VI Civil Rights Act of 1964, 28 CFR. □50.3 (1987).

Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. No. 100-17, 101 Stat. 132 (1987).

Notice of proposed rulemaking, Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs, 53 Fed. Reg. 27,598 (1988).

Federal Highway Administration Regulations - Subchapter on Right-of-Way and Environment, 23 CFR Part 710 (Subchapter H) (1987).

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

(42. C.4601, 4602-4639, 4651-4655)

Section 136 (b) of the Federal-Aid Highway Act of 1970 (23 U.S.C. 109 (h)) (Adverse economic, social, and environmental effects of highway construction).

Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 U.S.C. 324
Federal Highway Administration, Federal-Aid Policy Guide, Part 172, Administration of Negotiated Contracts).

Federal Highway Administration, Federal-Aid Policy Guide, Parts 220-230, Civil Rights.

Federal Highway Administration, Federal-Aid Policy Guide, Parts 420 and 511, Research and Development Studies and Programs.

Federal Highway Administration, Federal-Aid Policy Guide, Part 635, Construction and Maintenance Contract Procedures.

Federal Highway Administration, Federal-Aid Policy Guide, Part 710, Civil Rights.

Federal Highway Administration, Federal-Aid Policy Guide, Part 712, The Acquisition Function, Policy.

Federal Highway Administration, Federal-Aid Policy Guide, Part 713, Relocation Assistance, General.

Federal Highway Administration, Federal-Aid Policy Guide, Part 720, The Appraisal Function.

Federal Highway Act 1973, 1970 (Subsequent Federal-Aid Highway Acts and Related Statutes).

Virginia Department of Transportation Policy Memorandum (DPM 6-3) May 6, 1991, which supersedes (DPM 6-8) - Contracts, Contractors, and Suppliers, February 26, 1986.

Guidelines for Procurement and Management of Professional Services, February 2000; Revision 2, August 22, 2001.

Structure and Bridge Division Manual, VII-15-30.01, May 25, 2001.

VII. TITLE VI ASSURANCE and APPENDICES (USDOT 1050.2A)

COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219 2000

Charles A. Kilpatrick, P.E.
Commissioner

TITLE VI/NONDISCRIMINATION ASSURANCES

DOT Order No.1050.2A

The *Virginia Department of Transportation (VDOT)*, (herein referred to as the "Recipient"), HEREBY AGREES THAT, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the *Federal Highway Administration,* is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation – Effectuation Of Title VI Of The Civil Rights Act Of 1964);*
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

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

General Assurances

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

> *"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity," for which the Recipient receives Federal financial assistance from DOT, including the Federal Highway Administration.*

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

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Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its federally assisted Highway Program:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.

2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all Federal-Aid Highway Program and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

   "The Virginia Department of Transportation (VDOT) in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.C.§§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

   a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
   b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or

improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
b. the period during which the Recipient retains ownership or possession of the property.

9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

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

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

Virginia Department of Transportation

by_____

Charles A. Kilpatrick, P.E.
Commissioner

DATED 12/16/15

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APPENDIX A

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

1. Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for Noncompliance: In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
   a. withholding payments to the contractor under the contract until the contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

A

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

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

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

(HABENDUM CLAUSE)

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

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

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

B

APPENDIX C

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

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

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

   1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the *Virginia Department of Transportation* will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the *Virginia Department of Transportation* will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the *Virginia Department of Transportation* and its assigns.*

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

C

APPENDIX D

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

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

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Nondiscrimination covenants, the *Virginia Department of Transportation* will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, the *Virginia Department of Transportation* will there upon revert to and vest in and become the absolute property of the *Virginia Department of Transportation* and its assigns.*

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

D

APPENDIX E

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

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, And resulting agency guidance, national origin discrimination includes discrimination because of Limited English Proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

E

VIII. APPENDICES

Appendix A	Complaint Form
Appendix B	Complaint Log Template
Appendix C	Other VDOT Programs
Appendix D	Consultant Assessment Tool
Appendix E	Consultant Title VI Evaluation Form
Appendix F	MPO / PDC Compliance Review Procedures
Appendix G	MPO / PDC Review Form, Compliance Letter and Letter of Findings
Appendix H	Public Hearing Survey Form
Appendix I	Public Hearing Database
Appendix J	Limited English Proficiency Guidelines
Appendix K	Environmental Justice Guidelines
Appendix L	Data Collection Guidelines

APPENDIX A
Complaint Form

Virginia Department of Transportation

Civil Rights

1401 E.Broad Street, Richmond, VA 23219
804.786.2085 Tel
800.508.3737 Toll Free

Title VI Complaint Form

Title VI of the 1964 Civil Rights Act requires 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."

The following information is necessary to assist us in processing your complaint. Should you require any assistance in completing this form, please let us know.

Complete and return this form to the Civil Rights Division: Ms. Sandra D. Norman, Civil Rights Division Administrator, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, VA 23219.

1. Complainant's Name:

2. Address:

3. City, State, Zip:

4. Telephone No.: Home Business: Cell:

5. Person(s) discriminated against, (if someone other than the complainant)

   Name:

   Address:

   City, State, Zip:

Telephone No.: Home Cell: Other:

Please explain your relationship to this person(s):

6. Which of the following best describes the reason you believe the discrimination took place? Was it because of your:

Race/Color ☐ National Origin ☐ Sex ☐ Age☐ Disability☐ Other☐

7. What date did the alleged discrimination take place?

8. In your own words, describe the alleged discrimination. Explain what happened and whom you believe was responsible.

9. Have you filed this complaint with any other federal, state, or local agency; or with any federal or state court? Yes ☐ No☐
If yes, provide the date the complaint was filed _____.

10. Please provide information about a contact person at the agency/court where the complaint was filed.

Name:

Address:

City, State, and Zip Code:

11. Please sign below. You may attach any written materials or other information that you think is relevant to your complaint.

_____ _____
Complaintant's Signature Date

APPENDIX B
Complaint Log Template

CASE NO	COMPLAINANT	RESPONDENT	AGENCY FILED WITH	DATE FILED	BASIS	DATE OF REPORT	DECISION

APPENDIX C
Other VDOT Programs

Highway Safety Corridors
The Virginia Department of Transportation's (VDOT) Highway Safety Corridor program is designed to reduce the number of traffic accidents in high crash areas.

Wildflowers
Learn more about all those Wildflowers that adorn the Commonwealth's roadways to keep Virginia Blooming!

Work Zone Safety
VDOT provides driving tips for driving safely through construction sites.

Smart Travel Virginia
VDOT uses Intelligent Transportation Systems to help keep motorists moving across the Commonwealth.

Public Record
Concerned about construction? Want to help shape transportation in your area? Attend a public meeting in an area near you.

Public Involvement Process
Want to learn more about public involvement in planning and programming? Check out our new citizen's guide.

Safety Information Center
VDOT is keeping the public informed and educated on important issues concerning safety. This site provides links that cover various safety issues.

Scenic Byways
This program identifies road corridors containing aesthetic or cultural value near areas of historical, natural or recreational significance. The program encourages travel to interesting destinations and away from high-traffic corridors.

Adopt-a-Highway
This popular program counts on local communities to help keep Virginia roadsides beautiful.

Bicycling and Walking
VDOT's numerous scenic biking and walking trails are among the finest in the country.

Environmental Programs
VDOT has numerous initiatives to preserve the environment while keeping Virginia moving.

Volunteer Mowing
Safety is always VDOT's top priority for volunteers mowing a state maintained road.

Integrated Directional Signing Program
Want to help travelers find your business, service or attraction? This program will provide you with all you need to know.

Neighborhood Traffic Programs
VDOT's traffic calming and through-truck restriction programs keep neighborhoods safe for residential traffic.

Rustic Rural Roads
VDOT paves the way for future roads by bringing accessibility and safety to remote regions of the Commonwealth.

Stormwater Management
VDOT is committed to ensuring that stormwater runoff from its roads and facilities complies with federal and state environmental regulatory requirements.

APPENDIX D
Consultant Assessment of Title VI Compliance

VDOT is a recipient of federal financial assistance. As a recipient, VDOT is required to comply with Title VI of the Civil Rights Act of 1964 (Title VI), as amended, and other nondiscrimination laws and authorities. Title VI of the Civil Rights Act of 1964, prohibits agencies receiving federal funds from discriminating against anyone or any group in the United States on the grounds of race, color, national origin, sex, age or disability. The Civil Rights Restoration Act of 1987 defined the word "program" to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives federal financial assistance, rather than just the particular programs or activities that receive the funds. The United States Department of Transportation (USDOT) and Federal Highway Administration (FHWA) Regulations (49) Code of Federal Regulations (CFR), Part 21, and 23 CFR, Part 200 respectively, and other applicable Orders and authorities provide guidelines, actions, and responsibilities for VDOT's implementation of the Title VI Program. These laws and regulations include but are not limited to the following:

- The 1970 Uniform Act (42 USC 4601)
- Section 504 of the 1973 Rehabilitation Act (29 USC 790)
- The Federal-aid Highway Act 1973 (23 USC 324)
- The 1975 Age Discrimination Act (42 USC 6101)
- Executive Order 12898 on Environmental Justice (EJ)
- Executive Order 13166 on Limited English Proficiency (LEP)

In brief, these laws and regulations prohibit discrimination in federally-assisted programs and activities. Title VI of the 1964 Civil Rights Act states that:

"No person in the United States shall, on the grounds 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."

The 1970 Uniform Act (42 USC 4601) forbids unfair and inequitable treatment of persons displaced, or whose property will be acquired as a result of federal and federal-aid programs and projects.

Section 504 of the Rehabilitation Act of 1973 (29 USC 790) prohibits discrimination based on disability. The Act states that no qualified handicapped person shall solely by reason of his/her handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

The Federal Highway Aid Highway Act of 1973 (23 USC 324) proscribes sex discrimination. The Act states that no personal shall on the grounds of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance under this title or carried on under this title.

The Age Discrimination Act of 1975 (42 USC 6101) prohibits age discrimination. The act states that no person shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

Civil Rights Restoration Act of 1987 clarified the intent of Title VI. The act states that coverage includes all programs and activities of federal aid recipients and contractors whether those programs and activities are federally funded or not.

Executive Order 12898: "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations" is a Presidential mandate to address equity and fairness toward low income and minority persons and populations. EO 12898 states that each federal agency shall make achieving EJ part of its mission by identifying, and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low income populations in the U.S., DC, Puerto Rico, and Marina Islands.

Executive Order 13166 directs federal agencies to ensure people who are limited English proficient (LEP) have meaningful access to services. EO 13166 instructs agencies and recipients to examine their services, develop and implement processes by which LEP persons can meaningfully access those services. This EO establishes the four factor analysis as guidance on how recipients and sub-recipients can provide meaningful access to LEP persons. Every recipient and sub-recipient of federal funds is directed to prepare a plan with consistent standards and steps to overcome language barriers for programs and activities. The Department of Justice is the agency who is responsible for enforcing this directive. An LEP person is a person who does not speak English as their primary language and has limited ability to read, speak, write or understand English.

By contracting with VDOT, a firm is obligated to comply with the laws and regulations listed above and within the Memorandum of Agreement (MOA) executed between the Department and the selected consultant firm. VDOT's Civil Rights Division with the assistance from each applicable division's Program Manager monitors a firm's compliance with the non-discrimination provisions.

To monitor compliance, each consultant and all sub-consultants are required to submit a Title VI Evaluation Report. This requirement is applicable for all firms that are recipients or sub-recipients of federal funds.

VDOT's Title VI consultant assessment tool, ***Consultant Title VI Evaluation Form***, is included in Appendix E.

APPENDIX E

VDOT Consultant Title VI Evaluation Form

Introduction

VDOT is a recipient of federal financial assistance. As a recipient, VDOT is required to comply with Title VI of the Civil Rights Act of 1964, as amended and other nondiscrimination laws and authorities. Title VI of the Civil Rights Act of 1964, and other directives prohibit agencies and sub-recipients receiving federal assistance from discriminating against anyone or any group in the United States on the grounds of race, color, national origin, sex, age, disability, or low-income. The United States Department of Transportation (USDOT) and Federal Highway Administration (FHWA) Regulations (49) Code of Federal Regulations (CFR), Part 21, and 23 CFR, Part 200 respectively, and other applicable orders and authorities provide guidelines, actions, and responsibilities for VDOT's implementation of the Title VI Program. These laws and regulations include but are not limited to the following:

- **The 1970 Uniform Act (42 USC 4601) –** prohibits unfair treatment of displacees
- **Section 504 of the 1973 Rehabilitation Act (29 USC 790)** – prohibits discrimination based on disability
- **The Federal-Aid Highway Act 1973 (23 USC 324)** – prohibits discrimination based on gender
- **The 1975 Age Discrimination Act (42 USC 6101)** – prohibits age discrimination (any age)
- **The Civil Rights Restoration Act of 1987 –** clarified the original intent of nondiscrimination organization-wide
- **Executive Order 12898 on Environmental Justice (EJ)** addresses disproportionately high and adverse human health and environmental effects on minority and low-income populations
- **Executive Order 13166 on Limited English Proficiency (LEP) -** ensures people who are limited English proficient (LEP) have meaningful access to services

In brief, these laws and regulations prohibit discrimination in federally assisted programs and activities. Title VI of the 1964 Civil Rights Act states that:

> *"No person in the United States shall, on the grounds 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."*

By contracting with VDOT, a contractor is obligated to comply with the laws and regulations listed above and within the Memorandum of Agreement (MOA) executed between the Department and the contractor. VDOT's Civil Rights Division with the assistance from each applicable division's Program Manager, monitors an organization's compliance with the non-discrimination provisions.

To monitor compliance, each contractor and all sub-contractors are required to submit a Title VI Evaluation Form. This requirement is applicable for all contractors.

The Title VI Evaluation Form provides documentation that a contractor has procedures in place to prevent discrimination in programs and services based on Title VI.

VDOT will request a Title VI Evaluation Form within ten (10) days of notification of selection for new contractors or contractors that do not have a current assessment on file with VDOT. The Assessment Form should be submitted to the Program Manager in the division that is negotiating the contract. These are the divisions we currently receive Title VI Evaluation Forms from:

Right of Way & Utilities Division
Location & Design Division
Environmental Division
Structure & Bridge
Materials Division
Transportation & Mobility Planning Division

Once the Title VI Evaluation Form is provided to VDOT, the Title VI Coordinator in the Civil Rights Division reviews the information and issues a pre-award letter within fifteen (15) days of receiving documentation or may schedule an on-site review within the same time frame to confirm information provided in the Evaluation Form. VDOT Program Managers have access to a Title VI Log that is updated monthly on the Civil Rights Website. The Title VI Coordinator may request additional information and/or recommend corrective actions. The Title VI Coordinator may randomly schedule on site compliance reviews at the contractor's office.

If the report is approved, a letter is sent out with an expiration date for one year from the date of the approval letter. Typically the letter remains current and on file with VDOT for a period of one year. An updated report is required annually for contractors who continue to perform under a contract with VDOT. It should be noted that if VDOT conducts an on site compliance review the contractor can still be found to be out of compliance during the one year period.

Failure to comply with the nondiscrimination provisions may result in cessation of negotiations, withholding of payments, cancellation, termination, or suspension of the contract in whole or in part.

Should you have any questions about VDOT's Title VI Program or the Evaluation Form, contact Corina Herrera at 804-786-2730 or at corina.herrera@vdot.virginia.gov .

VDOT TITLE VI EVALUATION FORM

This Title VI Evaluation Form is used as a Pre-award Review and Post-award Review. VDOT is required to conduct routine assessments prior to releasing funds to ensure Title VI compliance. A pre-award review assists VDOT in determining whether applicants operate in a nondiscriminatory manner. Pre-award reviews can also be used to require applicants to take preventive measures to ensure that discrimination will not occur in their services as a condition of receiving contracts. Pre-award reviews represent a frontline approach to eliminating and preventing discrimination before it occurs.

Post-Award Reviews are generally conducted after a contractor begins the scope of work. However to minimize the burden on VDOT's contractors, VDOT has developed a form that serves as both a pre-award and post-award compliance tool.

VDOT must also conduct on-site reviews of prime contractors periodically to ensure that the contractor remains in compliance with Title VI and to verify that the contractor has preventive measures to ensure nondiscrimination by their sub-contractors.

Name of Preparer:	Preparer's Title:
Phone #:	Email Address:
Name of Organization:	Address of Organization:
Address of Virginia location where project will be done:	
Type of Contractor/Organization: ☐ Private Organization ☐ Governmental Agency	 ☐ Supplier ☐ Other _____

Workforce for Virginia Location(s)		
Total	% Minority	% Female

Business Ownership/Control Minority ☐ Yes ☐ No Female ☐ Yes ☐ No	DBE Certified ☐ Yes ☐ No SWAM Certified ☐ Yes ☐ No
Does your organization currently have contracts or subcontracts with VDOT? ☐ Yes ☐ No What is your organization's most recent date of Title VI approval?	
Status of Project(s):	Value of current Contract(s):
What does your organization have in place to ensure nondiscrimination in your VDOT scope of work and your programs and services?	

Virginia Workforce
CONSULTANT EQUAL EMPLOYMENT OPPORTUNITY WORKFORCE ANALYSIS

Employment at this establishment – Report all permanent full and part-time employees including apprentices and on-the job trainees unless specifically excluded as set forth in the instructions. Enter the appropriate figures on all lines and in all columns. Blank spaces will be considered zeros.

Job Categories	Number of Employees (Report employees in only one category)														
	Race/Ethnicity														
	Hispanic or Latino		Not Hispanic or Latino												Total Col A-N
			Male						Female						
	Male	Female	White	Black or African American	Native Hawaiian Or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	White	Black or African American	Native Hawaiian Or Other Pacific Islander	Asian	American Indian or Alaska Native	Two or more races	
	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
Executive/Sir. Level Officials & Managers (1.1)															
First/Mid-Level Officials & Managers (1.2)															
Professionals (2)															
Technicians (3)															
Sales Workers (4)															
Administrative Support Workers (5)															
Craft Workers (6)															
Operatives (7)															
Laborers & Helpers (8)															
Service Workers (9)															
TOTAL (10)															
PREVIOUS YEAR TOTAL (11)															

Organization, Staffing, & Training

1. What type of services will your organization provide VDOT?
   Click here to enter text.

2. Identify the person responsible for the administration of Title VI polices and procedures (a Title VI Coordinator). Provide the name, position, title, and contact information. **Click here to enter text.**

Title VI/Nondiscrimination

1. Is your Title VI Coordinator, project managers, and other staff made aware of Title VI compliance and regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21 and the Federal Highway Administration's 23 Code of Federal Regulations 200? Please explain how they are made aware. **Click here to enter text.**

2. What procurement procedures does your organization have in place to ensure nondiscrimination in the selection and retention of subcontractors including procurements of materials and leases of equipment? *** Please note N/A is not an acceptable response, please provide a complete answer**

   Click here to enter text.

3. How does your organization notify your subcontractors and suppliers of their obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, disability and low income populations? *** Please note N/A is not an acceptable response, please provide a complete answer**

   Click here to enter text.

4. Are facilities and meeting areas fully accessible to persons with disabilities? **Click here to enter text.**

5. Does your organization have a system in place to accommodate persons with disabilities? If yes, how does your organization notify the public? If no, please explain. *** Please note N/A is not an acceptable response, please provide a**

complete answer
Click here to enter text.

6. How are limited English proficient persons made aware that they can receive translation services for access to services? *** Please note N/A is not an acceptable response, please provide a complete answer**
Click here to enter text.

7. Has your organization been reviewed by any governmental agencies for compliance with Title VI and other laws and regulations? If yes, provide a copy of the letter identifying the review findings? **Click here to enter text.**

8. Does your organization receive federal assistance (grants, loans, donations of property, or detail of personnel) from any Federal government entity? **Click here to enter text.**

9. List any discrimination complaints and/or lawsuits received in Virginia during the reporting period. Include the basis for the complaint (ethnicity, gender, etc.) and summarize the outcome or resolution. If applicable, include a copy of the investigation report. **Click here to enter text.**

Disadvantaged Business Enterprises (DBE)

1. Did your organization award any contracts/subcontracts related to VDOT work to DBEs during the reporting period?

   ☐ Yes ☐ No

   If yes, provide the following:

   - The DBE's name and amount awarded **Click here to enter text.**
   - Total # of contracts awarded to DBEs **Click here to enter text.**
   - Total dollar amount of contracts awarded to DBEs **Click here to enter text.**

I certify that the data given in this report is correct to the best of my knowledge. (Report has to be submitted with original signature, not a photocopy.)

Signature: _____
(Authorized Officer) (Title) (Date)

For Office Use Only:

Provide award? Yes _____ No _____

Recommendations:
_____
_____
_____
_____
_____
_____
_____

APPENDIX F
MPO/PDC Compliance Review Procedures

District Civil Rights Managers will have the primary responsibility of conducting compliance reviews of MPOs and PDCs using the MPO-PDC Compliance Review Form. When the DCRM is unable to conduct the review or there is a conflict of interest based on a complaint against the district office from a MPO-PDC, the Title VI Specialist will conduct the compliance review. The DCRM and/or the Title VI Specialist will send the current MPO/PDC Compliance Review Form with a 30 day deadline for returning the document. Once the self-assessment document is returned to the DCRM or Title VI Specialist, they will review the responses for compliance with Title VI, LEP and EJ. The DCRM and/or the Title VI Specialist will write questions that may arise from the answers provided by the MPO-PDC on the compliance review form. If needed, a site visit will be conducted to clarify any questions and review documents and data provided on the form within 30 days of receiving the Compliance Review Form from the MPO-PDC. If no significant findings are found, the DCRM and/or the Title VI Specialist will send a letter of no significant findings within 30 days of the site visit to the MPO-PDC and the Civil Rights Division Administrator. If non-compliance issues arise, the MPO/PDC will be issued a letter of findings, which will also be sent to the Civil Rights Division Administrator within 30 days of the site visit with recommendations for corrections and a maximum three (3) month deadline based on the items that need to be brought into compliance. Compliance reviews of MPOs / PDCs will be conducted annually. These reviews will be listed as goals in the Title VI Plan and therefore each district should determine dates for the compliance reviews in advance. Each district and central office will maintain a log with the name of the MPO-PDC, the date of the review, the outcome of the review and any recommendations.

APPENDIX G
MPO/PDC Review Form, Compliance Letter and Letter of Findings

VDOT Virginia Department of Transportation

Metropolitan Planning Organization
Title VI Program Review Form

This questionnaire is used to assess your organization's compliance with Title VI regulations. VDOT is required to conduct Title VI reviews of Metropolitan Planning Organizations (MPOs) to monitor and ensure Title VI compliance. The review form assists VDOT in determining whether the MPO operates in a nondiscriminatory manner.

Name of MPO	
Address of MPO	
Date of Review	

Title VI Administration

1. Identify the person responsible for the administration of the Title VI policies and procedures
   Name:
   Position Title:

2. Has the Title VI representative participated in any form of training with specific reference to Title VI?
   Yes ☐ No ☐
   If YES, what type of Training?
   Describe and provide date

3. Does the Title VI representative have access to the top official at the MPO?
   Yes ☐ No ☐
   Please list names of the official(s)

Staffing

1. Identify the following for each individual who has responsibilities in the transportation component of the organization. Name, position title, sex, and race. Please attach an organizational chart.

NAME	POSITION TITLE	GENDER	RACE

2. Of the positions above, identify those that are elected by citizens and those positions that are appointed by some governing authority. Identify the said governing authority.

3. Does the organization have an Affirmative Action Plan?
Yes ☐ No ☐
If YES, please attach a copy of the plan

Public Involvement

1. What efforts are made to notify the public of meetings, workshops, special sessions, etc.?

2. What efforts are made to ensure minorities, disabled, and other socially and economically disadvantaged individuals (low income/elderly) are aware of MPO meetings?

3. Are accommodations for translation services or special needs included in notices to the public?
Yes ☐ No ☐
If YES, please attach a sample of the most recent notice.

4. Does the MPO include minority media in all notification processes for public meetings or public review of agency documents?
Yes ☐ No ☐
If YES, identify the media resources used by name

5. Where are MPO meetings held? _____
Please describe the meeting locations, time, days of week. Is the atmosphere conductive for public involvement?

6. Are the meetings held where bus or rail service is provided?
Yes ☐ No ☐
If NO, please explain.

7. Has your organization received any request for information in an alternative format such as Braille, Audio, or non-English?
Yes ☐ No ☐
If YES, please discuss.

8. What is your process for providing access to persons whose primary language is not English?

9. Has the MPO established any advisory or citizen's group?
Yes ☐ No ☐
If YES, describe any efforts or methods used to focus on increasing the participation of minority, socially, and economically disadvantaged individuals in the transportation planning processes.

10. Are persons traditionally underrepresented by transportation systems, such as low income or minority, actively sought out for involvement in MPO processes?
Yes ☐ No ☐
If YES, what methods are used?

11. Are contacts with minority groups or leaders used to identify information needs and planning/programming issues or concerns?
Yes ☐ No ☐
If YES, identify those individuals contacted during the reporting period

12. How does the MPO gather data when assessing transportation needs, projects, and impacts?

How is the data utilized to examine and evaluate the equitable distribution of benefits and burdens of transportation investments?

Note: The emphasis here is on collecting and utilizing data that reflects community boundaries, racial and ethnic makeup, income levels, property taxes, community services, etc.

13. Are limited English proficient persons made aware that they can receive translation services at no cost to them?
Yes ☐ No ☐
If YES, identify how

Americans with Disabilities Act

1. What efforts are made to ensure all public meetings are fully accessible to the disabled?

2. Does the MPO have a telecommunication device; teletypewriter (TTY) or does the MPO promote the use of the Virginia Relay Service for communicating with individuals with impaired speech or hearing?
Yes ☐ No ☐
If YES, fill in which device or service is used

3. Is the TTY number posted on MPO materials such as newsletters, web site, or other published material?
Yes ☐ No ☐

Environmental Justice

1. Has the MPO received any training on environmental justice?
Yes ☐ No ☐

2. Identify and discuss any environmental justice issues that arose during the reporting period.

3. Does the MPO order or conduct Environmental Impact Studies?
   Yes ☐ No ☐
   If YES, provide a list of studies/locations completed during the last three years

4. Is the MPO exploring innovative and proactive ways to improve and/or sustain working relationships with impacted communities including traditionally underserved communities? Please explain

Contracting - consultants

1. Did your organization award any consultant contracts during the reporting period?
   Yes ☐ No ☐
   If YES, identify the following.
   Total dollar amount of contracts awarded: _____
   Total dollar amount awarded to DBE* firms:_____

   *DBE = Disadvantaged Business Enterprises

2. Please provide list of companies, the type of service and the award amount.

3. How does your organization solicit and award consultant contracts?

4. Do contracts with consulting firms include contract provisions for Title VI, EEO, limited English proficiency, etc.?
   Yes ☐ No ☐
   Provide an example.

5. How does your organization solicit DBEs?

6. How are DBE firms identified? For example, do firms self-identify or does the MPO use the listing of certified DBE firms published by the Department of Small Business and Supplier Diversity – SBSD (a new agency formed through the merger of DMBE and Virginia DBA)?

Other

1. Has the MPO been reviewed recently by any governmental agencies (such as the Federal Transit Administration (FTA), Department of Labor, Equal Employment Opportunity Commission, etc.) for compliance with Title VI or other Equal Opportunity programs?

Yes ☐ No ☐ If YES, please indicate the agency/agencies and provide a copy of the letter identifying the review finding(s). If the review was conducted by FTA, please attach a copy of the final report.
2. Has the MPO received any requests under the Freedom of Information Act during the previous three years? Yes ☐ No ☐ Please provide a summary.
3. Have any formal or informal complaints of discrimination been lodged against the MPO during the previous three years? Yes ☐ No ☐ If yes, please provide a statement on the nature of the complaint and status of the complaint.
4. What is the MPO's process for complaints of discrimination? Please describe the process for receiving, investigating, and resolving complaints?
5. Identify any significant issues and/or changes that have occurred during the reporting period.
6. Identify all individuals by name and title that are anticipated to attend an on-site compliance review if one is needed.

For Office Use Only:

Findings / Conclusions

Compliance: _____ Non-compliance: _____

Review conducted by: _____ _____

Approved by: _____ Date: ____/____/____

MPO Review - Compliance **Letter template**

Date

Name of Representative
Title
Name of MPO
Address

Re: MPO Title VI Compliance Review

Dear _____:

This letter is in reference to *(enter name of MPO)* Metropolitan Planning Organization's *(enter year)* Title VI compliance review conducted by the Virginia Department of Transportation (VDOT). The *(enter name of MPO)* MPO is a recipient of Federal Highway Administration funding assistance and is therefore subject to a Title VI Program review.

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., prohibits discrimination on the basis of race, color, and national origin in federally funded programs and activities. Title VI, in concert with other laws and regulations, prohibits discrimination on the basis of race, color, national origin, disabilities, sex, low-income and limited English proficiency by sub-recipients of federal assistance.

After reviewing all of the submitted materials, we have determined that there are NO CURRENT VIOLATIONS of Title VI or related laws and regulations.

If you have any questions regarding this letter, please contact your District Civil Rights Manager at _____ or the Title VI Specialist at (804)786-2730.

Sincerely,
Name
Title
District
Civil Rights Division
Virginia Department of Transportation

Cc: VDOT Civil Rights Division Administrator

MPO Review Letter of Findings

Date

Name of Representative
Title
Name of MPO
Address
City / State, and Zip Code

Dear _____:

This letter is in reference to *(enter name of MPO)* Metropolitan Planning Organization's *(enter year)* Title VI compliance review conducted by the Virginia Department of Transportation (VDOT). As a result of your MPO Title VI Compliance Review, VDOT has found deficiencies in the implementation of your responsibilities under the Title VI Program. The following deficiencies must be corrected by _____.

List of Deficiencies
1.
2.
3.

Your failure to take actions regarding the above issues could result in your federal funding assistance being canceled, terminated, or suspended.

We encourage you to take corrective actions to resolve this matter and we are anxious to assist you in achieving compliance. If you have any questions regarding this letter, please contact your District Civil Rights Manager at _____ or the Title VI Specialist at (804) 786-2730.

Sincerely,

Name
Title
District
Civil Rights Division
Virginia Department of Transportation
Cc.: VDOT Civil Rights Division Administrator

APPENDIX H
Public Hearing Survey Form

VDOT Virginia Department of Transportation

Civil Rights Informational Survey

Pursuant to Title VI of the Civil Rights Act of 1964 and related nondiscrimination authorities, the Virginia Department of Transportation (VDOT) collects responses to the questions below in order for us to evaluate access to public meetings for ALL persons in the community. Disclosure of this information is strictly voluntary and anonymous.

1. Please check the block for the racial or ethnic group with which you identify:
   - □ White
   - □ Black / African American
   - □ Hispanic / Latino
   - □ American Indian / Alaskan Native
   - □ Asian
   - □ Hawaiian or other Pacific Islander
   - □ Two or more races_____

2. Please indicate your sex:
   - □ Male
   - □ Female

3. Please indicate your household income
   - □ Under $10,000
   - □ $10,000 – $19,999
   - □ $20,000 – $29,999
   - □ $30,000 – $39,999
   - □ $40,000 – $49,999
   - □ $50,000 – $74,999
   - □ $75,000 – $99,999
   - □ $100,000 – $150,000
   - □ Over $150,000
   - □ Would rather not say

4. Please indicate your age group:
   - □ 18-25
   - □ 26-39
   - □ 40-65
   - □ Over 65

5. Please indicate how you found out about this public meeting:
   - □ Internet
   - □ Newspaper
   - □ Flyer
   - □ Other ____

6. Were special accommodations to access the meeting facility requested?
   - □ Yes (If yes) please respond to question 8
   - □ No

7. Were special accommodations such as language translation, sign language, Braille or large print documents, etc. requested for participation in this public forum?
   - □ Yes (If yes) please respond to question 8
   - □ No

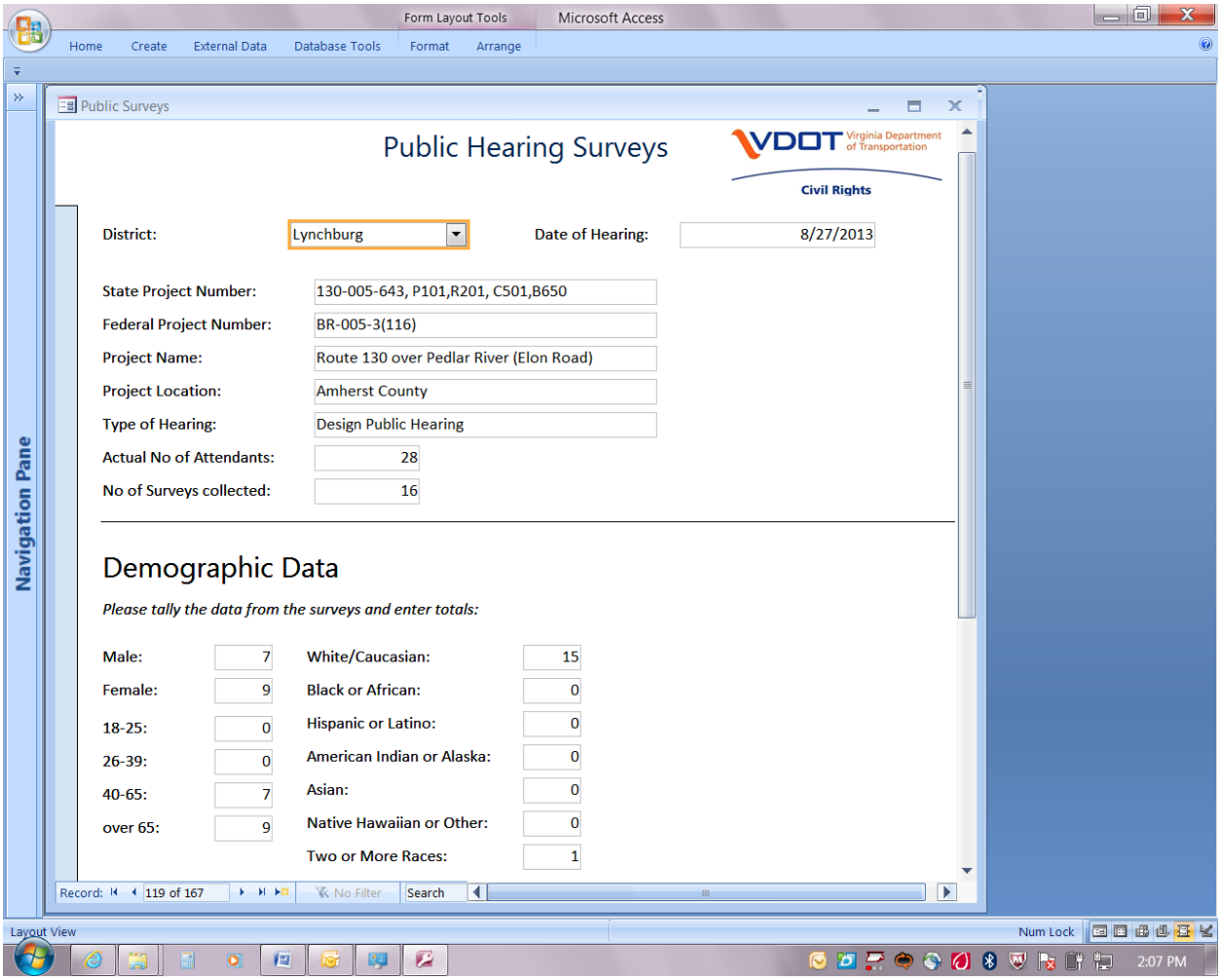
8. If you answered yes to question 6 or 7, were the special accommodations requested received?
   - □ Yes
   - □ No

For Office Use Only

Project Name	
State Project Name	
Federal Project Number	
Construction Location	
Type of Meeting	
Date of Meeting	
Title VI Impact	□ No □ Yes, please explain
Recommendation	

If you have any questions or need assistance, please contact VDOT's Civil Rights Division at 804-786-2730.

APPENDIX I
Public Hearing Database



APPENDIX J
Limited English Proficiency Guidelines

LIMITED ENGLISH PROFICIENCY GUIDELINES

Virginia Department of Transportation

Civil Rights

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VI. APPENDICES

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Appendix B: U.S. DOT LEP Guidance – Federal Register
Appendix C: VDOT Complaint Form
Appendix D: Language Flashcards
Appendix E: FHWA Memorandum Dated April 7, 2006
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I. Limited English Proficiency Statement of Commitment

The Commonwealth of Virginia, Department of Transportation, (VDOT) will effectuate the provisions of Title VI of the Civil Rights Act of 1964, 49 Code of Federal Regulations (CFR) Part 21, 23 CFR Part 200, Executive Orders (EO) and other applicable directives. These authorities provide that no person in the United States shall, on the grounds of race, color, national origin, sex, age, disability, or income, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in VDOT programs and activities.

As a recipient of federal-aid funding, VDOT is committed to nondiscrimination in all its programs and activities whether or not those programs and activities are federally funded. This guidance clarifies VDOT's fulfillment of responsibilities to limited English proficient (LEP) persons, pursuant to Executive Order 13166, entitled "Improving Access to services for persons with Limited English Proficiency" and other USDOT and FHWA Orders and directives effectuating EO 13166. VDOT will take reasonable steps to ensure meaningful access to the agency's programs, activities, services and information that are normally provided in English are accessible to LEP persons. VDOT is cognizant of the fact that failure to ensure that LEP persons can effectively participate in federally assisted programs and activities may violate the prohibition against national origin discrimination under Title VI of the Civil Rights Act of 1964.

The key to providing meaningful access to LEP persons is to ensure that LEP beneficiaries can communicate effectively and act appropriately based on that communication. The Department will ensure that every manager, supervisor, employee, and sub-recipient of federal-aid funds administered by VDOT takes reasonable steps to ensure meaningful access to VDOT recipients' programs and activities. Districts and divisions will collect and maintain demographic statistics on persons who participate in their programs and services. In addition, every district and division will post written notices in a public area regarding the right to free language assistance for persons conducting business with the Department in the most frequently encountered or likely to be encountered languages.

Allegations of discrimination will be brought to the immediate attention of the Civil Rights Division Administrator or a District Civil Rights Manager.

II. Introduction

VDOT is a recipient of federal financial assistance. As a recipient, VDOT is required to comply with Title VI of the Civil Rights Act of 1964, as amended (Title VI), and all nondiscrimination laws and authorities. Title VI and other authorities prohibit agencies receiving Federal funds from discriminating against anyone or any group in the United States on the grounds of race, color, national origin, sex, age, disability and low income. The Civil Rights Restoration Act of 1987 defined the word "program" to make clear that discrimination is prohibited throughout an entire agency if any part of the agency receives federal financial assistance, rather than just the particular programs or activities that receive the funds.

English is the predominant language of the United States. The United States is, however, home to millions of national origin minority individuals who are "limited English proficient" (LEP). That is, they cannot speak, read, write or understand the English language at a level that permits them to interact effectively. Because of these language differences and their inability to speak or understand English, LEP persons are often excluded from programs, benefits and/or activities of agencies receiving Federal financial assistance.

Presidential Executive Order (EO) 13166 entitled "Improving Access to Services for Persons with Limited English Proficiency" was intended to improve access to federally conducted and assisted programs for persons who are LEP. The USDOT issued its "Policy Guidance Concerning Recipients Responsibilities to Limited English Proficient (LEP) Persons" to effectuate EO 13166. The policy guidance requires recipients of Federal financial assistance to develop and implement guidance on how the recipient will assess and address the needs of otherwise eligible limited English proficient persons seeking access to the programs and activities of recipients of federal financial assistance.

VDOT's LEP guidance provides procedures that will assist VDOT in complying with Title VI responsibilities to ensure meaningful access to all programs, activities and/or benefits for LEP persons.

III. Guidance Statement for Interpreter Services

The ability of individuals to communicate with and understand LEP persons is essential to the ability to participate in VDOT's programs, services and activities. To ensure that every Virginian, regardless of his or her native language, has access to and may participate in agency programs, VDOT is committed to providing appropriate interpreter services to individuals with limited English proficiency (LEP), to the extent possible.

The provision of appropriate interpreter services is central to the integrity of all programs, services and activities, ensuring that those with limited English proficiency can understand and participate in a meaningful manner. A stakeholder's ability to access VDOT's services and programs requires that the individual's language needs be met to ensure clear communication, access and input.

VDOT's procedures for the provision of interpreter services and translated documents are intended to ensure meaningful access for LEP persons. The procedures also promote the autonomy of district and residency offices to determine the mix of resources available for their use such as local governments, non-profit organizations, libraries, staff and other resources.

IV. 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.'' 42 U.S.C. 2000d–1.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients from ''utilizing 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.'' 28 CFR 42.104(b)(2). DOT's Title VI regulations include almost identical language in this regard. *See* 49 CFR 21.5(b)(vii)(2) (portions of these regulations are provided in Appendix A).

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 DOJ, 45 CFR 80.3(b)(2), 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 its recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding 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 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's General LEP Guidance).

Pursuant to Executive Order 13166, DOT developed its own guidance document for recipients

and initially issued it on January 22, 2001, ‘‘DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries.’’ However, in light of the public comments received and the Assistant Attorney General’s October 26, 2001, clarifying memorandum, DOT has revised its LEP guidance to ensure greater consistency with DOJ’s revised LEP guidance, published June 18, 2002, and other agencies’ revised LEP guidance. 67 FR 117 (June 18, 2002).

V. Agency Guidelines for Full Participation by LEP Persons

1. Implementation

The Title VI Specialist is responsible for monitoring agency programs and activities to ensure meaningful access for LEP persons. The VDOT has designated the Title VI Specialist as the agency's Language Access Coordinator (LAC).

2. Inventory of VDOT Resources for Language Assistance Services (LAS).

The LAC will maintain an inventory of LAS available to all VDOT personnel. The inventory will include, but is not limited to, the following:

A. Contract language services providers (LSP) based on the following qualification factors:

1. The interpretation skill level of the LSP and its agents;
2. The length of time the LSP has been in business;
3. Any previous experience the agency may have had with the LSP, and
4. The LSP's experience in providing LEP services in similar contexts.

B. Language Services Provider's contract overview and scope

Contract Overview

The Civil Rights Division has established a contract to provide statewide translation and interpreter services to the Virginia Department of Transportation. The Department wants to ensure meaningful access to persons with limited English proficiency. Language translation and interpretation services are available through the Civil Rights Division and District Civil Rights Managers.

Contract Scope

The item code available under this contract provides for services across the full spectrum of all language services including document translation, oral interpretation, and in-person interpretation. Languages that will be interpreted include but are not limited to: Spanish, Chinese (Mandarin and Cantonese), French, Japanese, Korean, Russian, Vietnamese, Armenian, Cambodian, German, Haitian Creole, Italian, Polish, Portuguese, and Thai. The Contractor shall make interpretation and documentary translation services available to VDOT during the hours of 7:00 AM to 6:00 PM, Monday through Friday.

C. Language Services Provider ordering procedure

District personnel will coordinate requests for translation/interpreter services through their District Civil Rights Manager. In some situations, cost codes may be set up **for d**istrict staff to contact the Contractor directly. If not, the District Civil Rights Managers will contact the Title VI Specialist at 804-786-2730. Divisions in the Central Office will coordinate requests for translation/interpreter services through their Title VI Designee. The Designee will contact the Title VI Specialist at 804-786-2730. Divisions that have not assigned a Title VI Designee will contact the Title VI Specialist directly.

Requests for services will include the name of the person requesting translation services, and the district name and number. The Title VI Specialist will maintain a database for LEP requests, by division and district. The database will include the name of the person requesting translation services, the district name, the name of the document or the name of the LEP person, the date of the request, the number of hours or words that was translated, the language translated from and to and any other pertinent information for tracking language services.

Each requestor will fill out an evaluation form to evaluate the services performed by the Contractor. The evaluation forms will be sent directly to the Title VI Specialist.

Written translation will be translated and sent back to the requestor and copied to the Title VI Specialist.

Cost for Services

The Civil Rights Division contracts out language access services. The Civil Rights Division's budget covers reasonable translation services. It does not cover the cost for printing materials. In general there is no cost the district or division for posting translated documents on VDOT's website. If at any time in the future the Civil Rights Division budget does not include funds for a language contract then each division will be responsible for providing language services out of their own budget. Regardless of which budget funds language access services, each division and district will take into consideration the resources available and the costs when determining the need for services. It is very important to keep in mind that costs will not be used to deny all language translation requests.

D. All Language Assistance Services will be made available to LEP persons at the expense of VDOT, where the circumstances indicate the provision of LEP services is appropriate or required.

E. Monitoring, Evaluating and Training

The Coordinator along with management, District Civil Rights Managers, the Title VI Specialist and Title VI Designees will identify language service needs and strategies for responding to those needs. The Title VI Specialist in the Civil Rights Division is responsible for monitoring agency programs and activities to ensure meaningful access for LEP persons. The Title VI Specialist may be contacted by calling (804)

786-2730 or by email at corina.herrera@vdot.virginia.gov.

The Civil Rights Division Administrator has designated the Title VI Specialist as the agency's Language Access Coordinator (LAC). The Coordinator's duties include:

- Ensuring identification and securing of existing and needed resources (in-house, new hires contract, resource sharing with other agencies, volunteers, or other) to provide oral and written language services.
- Identifying and developing or recommending guidelines to implement the Plan.
- Identifying criteria for designation of languages for initial round of translation, based on demographic data;
- Creating systems to distribute translated documents, post electronically, and maintain supply;
- Identifying training needs and provide for training to LEP Monitors, staff, and managers needing to use language services, as well as language service providers on staff.
- Establishing protocols for ensuring quality, timeliness, cost-effectiveness, and appropriate levels of confidentiality in translations, interpretation, and bilingual staff communications.
- Identifying and implement a system for receiving and responding to complaints.
- Exchanging promising practices information with divisions, districts and residencies
- Reviewing the progress of VDOT on an annual basis in providing meaningful access to LEP persons, develop reports, and modify [recommend modification to] LEP Guidelines as appropriate.

Limited English Proficiency Monitors

Civil Rights Managers and Title VI Interdisciplinary Designees will serve as LEP Monitors for divisions and districts. LEP Monitor duties include:

- Working with the LEP Coordinator to identify needs and strategies for meeting those needs so that staff will have access to appropriate language services.
- Ensuring the facility's compliance with the LEP Guidelines, including any implementation.
- Providing training to facility staff on implementation of LEP Guidelines.
- Establishing and maintaining the facility's language assistance resource list, ensuring competency; revise the list as needed.
- Maintaining data on requests from LEP persons and provide reports to management and the LEP Coordinator, as appropriate.

District Civil Rights Managers:

DISTRICT	District Civil Rights Managers	PHONE #
Bristol	Mary Ann Altum	276-645-1677
Culpeper	Reginald Moseley	540-829-7391
Fredericksburg	Valerie Wilson	540-899-4562
Hampton Roads	Queen Crittendon	757-925-2519
Lynchburg	Phyllis A. Brice	434-856-8169
Northern VA	Leslie Martin Title VI Coordinator: Leonard Lewis	703-259-1775 703-259-1764
Richmond	Ferrell Solomon	804-524-6091
Salem	Chris Crain	540-387-5552
Staunton	Donna Brown	540-332-7888

Title VI Interdisciplinary Designees:

DIVISION	DESIGNEE	PHONE #
Planning	Sam Curling	804-786-4216
Location & Design	Shannon Edwards	804-786-1803
Virginia Center for Transportation Innovation & Research (VCTIR)	Cindy Perfater & Donna Cognata	434-293-1992 434-293-1957
Right of Way	Vicky Campbell	804-786-2910
Structure & Bridge	Russell Martin	804-786-4460
Traffic Engineering	E. B. “Betty” Newsome	804-786-5274
Consultant Procurement Office	Wazirah Wallace Tracy Wood	804-786-2561 804-786-9691
Environmental	Patrick M. Hughes	804-371-6839
Materials Division	Shirley Perrin	804-786-3926
Administrative Services	Lamar Williams	804-786-3568
Maintenance	Clint Simpson	804-786-0895
Local Assistance	Cynthia Clark	804-371-6289

VDOT will conduct a survey to determine the level of internal resources available for language services. This survey will seek to find out what languages are spoken by staff in addition to English; whether the individual can read, write and/or speak the language; and the level of fluency. The results of this assessment will be made available to all VDOT division and district offices.

Training

VDOT staff members and sub-recipients should know their obligations to provide meaningful access to information and services for LEP persons, and all persons in public contact positions should be properly trained. An effective training objective would likely include training to ensure that:

- VDOT staff and sub-recipients know about LEP policies and procedures.
- VDOT staff and sub-recipients who have contact with the public (or those in a recipient's custody) are trained to utilize interpreter services effectively.
- VDOT and sub-recipients may want to include this training as part of the orientation provided for new employees.

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. As mentioned above, training will be provided by the Title VI Specialist, District Civil Rights Managers and Title VI Designees.

F. To ensure consistent standards, translation services will be provided by professional providers based on the factors listed in 2A. Bilingual staff may be utilized on a limited basis when LAS are not anticipated or available.

3. Situational Needs Assessment

The agency will, on a continuing basis, assess the need for language services on a district and/or statewide basis and make LAS available as deemed appropriate. Prior to the development of its LEP Plan of Action, VDOT examined the prevalence of LEP stakeholders statewide, by district and/or by service area of program using the following four factors:

- The number or proportion of LEP persons served or encountered in the eligible service population
- The frequency with which LEP individuals come in contact with the program
- The nature and importance of the program, activity, or service to people's lives
- The resources available to VDOT and costs to provide LEP services

In making this assessment, the agency considered the following among other data sources:

- United States census results

- Data maintained by the agency

- The agency's past experience in providing services to LEP stakeholders

- Data maintained by other agencies including the Virginia Department of Education and the Virginia Department of Health

- Information sources maintained by private and public local entities, including community-based organizations and local social services departments

The need for LEP services will be identified based upon the type of contact:

In-person Contact

Contact the District Civil Rights Manager, the Title VI Designee or the Title VI Specialist for a translator. The translator will identify the language need of the LEP person and provide them with an interpreter. If one of these persons cannot be reached, use the "I speak…cards" to attempt to identify the language spoken and show them the public notice for language services. Obtain the LEP person's name and contact information in the event the language service contractor is not immediately available.

Telephone Contact

Due to telephone contacts being a time sensitive issue and the risk of losing a caller going through too many transfers, we recommend contacting Central Office Civil Rights Division at (804) 786-2730 and a Civil Rights staff person will contact the language service contractor. The contractor will identify the language need of the LEP person and transfer the person to that language division.

Written Documents

Contact the District Civil Rights Manager, the Title VI Designee or the Title VI Specialist for written documents translations. Electronic capability will result in the efficient return of written translated documents. The division or district can scan the document and email it to their District Civil Rights Manager, their Title VI Designee or the Title VI Specialist. If they do not have scanning capability and the document was not received by them electronically, then they can use inter-office mail to send the document. The document will be forwarded to the contractor and sent back within the time frame mentioned before.

Guidelines for responding to individual requests from LEP persons:

- All requests will be logged into a database whether the language spoken can be determined or not.
- Requests for under $25.00 per request will be granted – This decision will be a subjective decision based on staff's experience and the knowledge of the costs listed above. (For Spanish, a phone call that might last up to 20 minutes or a document that is 3 typed pages in English is likely to fit this criterion.)
- Requests for over $25.00 -$50.00 will be reviewed by supervisors based on the four factor analysis and granted if deemed vital.

- Requests for over $50 including all in-person interpretation requests will be considered by management in the district or division.
- Note: depending on the budget, these figures may change and all districts and divisions will be notified.

4. District Offices

a. The Title VI Specialist and Civil Rights Managers will create a mix of language assistance resources appropriate to the demographics of each district.

b. All LAS will be available to district and residency office staff based on need.

c. The Title VI Specialist and Civil Rights Managers will evaluate language resources available in their service area including community colleges, state and private universities, and community-based organizations. Civil Rights Managers may, with the approval of the Civil Rights Division Administrator, enter into agreements for the provision of such services with community resources.

d. Districts with a lower need for language services may coordinate with other districts that maintain a larger resource pool to utilize their language resource services to any extent practicable.

e. The Title VI Specialist and Civil Rights Managers will maintain a database tracking LEP contacts. District offices shall make the data available to the Title VI Specialist as requested.

f. Civil Rights Managers and the Title VI Specialist will communicate to staff that the use of a family member or friend may only take place after informing an LEP person of his/her right to free interpreter services and will only be used as a last result because family members may not have the subject knowledge necessary to communicate the information accurately and in the best manner possible.

5. Central Office

a. The Title VI Specialist with the assistance of Title VI Designees will institute an LEP protocol appropriate to Central Office.

b. Central office protocol will be designed using the agency resources described in section 2 of these guidelines.

c. Central office protocols will be designed using the general guidelines set out in section 4 relating to district offices.

6. Other Covered Entities:

Contractors, sub-contractors, Metropolitan Planning Organizations (MPOs), Planning District Commissions (PDCs) and other entities that receive funds from VDOT for federal projects are covered under Title VI and Executive Order 13166. VDOT will include language in any contract or Memorandum of Understanding stating that the recipient or sub-recipients is responsible for monitoring access for limited English proficiency.

7. Agency Documents

a. The Title VI Specialist, District Civil Rights Managers, Designees and management will, on a continuing basis, identify vital documents that are routinely provided to stakeholders that will be translated into languages other than English. The translation of vital documents into languages other than English is particularly important where a significant number or percentage of the customers served and/or eligible to be served have limited English proficiency. Whether or not a document is vital depends on how significant the impact on the health, safety, legal rights, or livelihood of an LEP person may be. Written documents include electronic documents and web-sites. Vital documents may include materials such as:
   - Emergency transportation information;
   - Notices of public hearings and proposed transportation plans;
   - Community education materials;
   - Notices notifying LEP persons of language assistance at no cost to the LEP person;
   - Written tests in a classroom; and
   - Markings, signs and packaging for hazardous materials and substances;
   - Signs in bus and train stations, and in airports;
   - Signs in waiting rooms, reception areas, and other initial points of entry;
   - Instructions on how to participate in a recipient's program.

b. The Title VI Specialist will coordinate with the Language Service Provider (LSP) to have identified documents translated accordingly.

c. Translated documents will be made available on the VDOT portal for divisions and districts access.

8. Adjudication of Complaints

a. Any LEP individual has a right to file a complaint against the agency where he or she believes that the agency did not provide necessary LEP services as appropriate. These complaints include those available under Title VI of the Civil rights Act of 1964.

b. All complaints, alleging a violation under Title VI will be referred to the Title VI Specialist or Civil Rights Managers.

c. The Title VI Specialist and Civil Rights Managers will take appropriate steps to resolve all complaints in accordance with the agency's discrimination complaint procedures.

d. The Title VI Specialist will maintain a database tracking requests for language services, all complaints and their resolution. The database will include the following items:

1. Source of complaint
2. LEP request including relevant contact information
3. Nature of complaint request
4. Date complaint/request received
5. Date complaint/request resolved
6. Manner of resolution
7. Comments

e. Fact-finding procedures by Title VI Specialist and Civil Rights Managers will follow the investigation protocol in the Title VI Manual.

f. Mediation and hearings:

g. Interpreters will be made available to hearing participants upon request or where CRD staff identifies a need for an interpreter.

9. Questions and Answers

Q. Who is a Limited English Proficient (LEP) individual?

A. Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English can be limited English proficient, or "LEP." These individuals may be entitled to language assistance with respect to a particular type or service, benefit, or encounter.

Q. Does a recipient have to provide translation services in every language?

A. No. Recipients and federal agencies are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. What is "reasonable" is based on the four factor analysis. Recipient research of demographics and available resources may determine that language services are provided to the largest number of LEP persons served or encountered by a program or service.

Q. Will providing language services increase the risk of litigation and liability for recipients as a result of LEP Guidance?

A. No. Alexander v. Sandoval holds principally that there is no private right of action to enforce Title VI disparate regulations. The LEP Guidelines are based on Title VI and DOT's Title VI regulations at 49 CFR part 21 and does not provide any private right of action beyond that which exists in those laws. Thus LEP Guidance does not increase the risk of recipient's legal liability to private plaintiffs. DOT does not dismiss the fact that although there is no legal grounds this does not prevent persons from initiating legal actions.

Q. What is a "safe harbor?"

A "safe harbor means that if a recipient provides written translations under certain circumstances, such action will be considered strong evidence of compliance with the recipient's WRITTEN translation obligations under Title VI. The following actions will be considered strong evidence of compliance with the recipient's written translation obligations: (a) the DOT recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5% or 1,000, whichever is less, of the population of persons eligible to be served; (b) if there are fewer than 40 persons in a language group that reaches the 5% 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.

Q. Does the Executive Order apply to federally conducted activities overseas or to foreign recipients of federal financial assistance?

A. No. The Department of Justice (DOJ) has determined that Executive Order (EO) 13166 applies only within the United States and its territories and does not apply extraterritorially.

However, agencies that conduct activities overseas must still submit a plan for making their domestic activities accessible to people who are limited English proficient. That plan will indicate that the agency conducts federal activities abroad, but that DOJ has determined that the EO does not apply to those activities.

Similarly, agencies that provide federal financial assistance abroad and domestically must still create guidance for their domestic recipients, and may include a statement in the guidance indicating that the guidance does not apply extraterritorially.

Q. What are recipients of federal funds and federal agencies required to do to meet LEP requirements?

A. Recipients and federal agencies 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. 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 or agency, and costs. As indicated above, the intent of this guidance is to find a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, or small nonprofits.

LEP Guidelines – Appendix A
Executive Order 13166

FEDERAL REGISTER

Vol. 65, No. 159

Presidential Documents

PRESIDENT OF THE UNITED STATES

Executive Order 13166 of August 11, 2000

Title 3 -

The President

Improving Access to Services for Persons with Limited English Proficiency

Part IV

65 FR 50121

DATE: Wednesday, August 16, 2000

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To view a specific page, transmit p* and the page number, e.g. p*1

[*50121]

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

Section 1. Goals.

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and 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. Each Federal agency shall also work to ensure that recipients

of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964, as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

Sec. 2. Federally Conducted Programs and Activities.

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

Sec. 3. Federally Assisted Programs and Activities.

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, [*50122] each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

Sec. 4. Consultations.

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

Sec. 5. Judicial Review.

This order is intended only to improve the internal management of the executive branch and

does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

S WILLIAM J. CLINTON

THE WHITE HOUSE,

August 11, 2000.

[FR Doc. 00-20938 Filed 8-15-00; 8:45 am]

Billing code 3195-01-P

LEP Guidelines -- Appendix B
U.S. DOT LEP Guidance

FR-DOC-0523972
DEPARTMENT OF TRANSPORTATION LEP GUIDANCE

[Federal Register: December 14, 2005 (Volume 70, Number 239)]
[Notices]
[Page 74087-74100]
From the Federal Register Online via GPO Access [wais.access.gpo.gov]
[DOCID:fr14de05-122]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST-2001-8696]

Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of guidance with request for comments.

SUMMARY: The United States Department of Transportation (DOT) is publishing guidance concerning services and policies by recipients of Federal financial assistance from the Department of Transportation related to persons with limited English proficiency. The guidance is based on the prohibition against national origin discrimination in Title VI of the Civil Rights Act of 1964, as it affects limited English proficient persons.

DATES: This guidance is effective immediately. Comments must be received on or before January 13, 2006. Late-filed comments will be considered to the extent practicable. DOT will review all comments and will determine what modifications to the guidance, if any, are necessary. This guidance supplants existing guidance on the same subject originally published at 66 FR 6733 (January 22, 2001).

ADDRESSES: You may submit comments, identified by the docket number [OST-2001-8696], by any of the following methods:
Web Site: http://dms.dot.gov.

Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: (202) 493-2251.

Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-0001.

Hand Delivery: To the Docket Management System; Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number [OST-2001-8696] or the Regulatory Identification Number (RIN) for this notice at the beginning of your comment. Note that all comments received will be posted without change to http://dms.dot.gov, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit http://dms.dot.gov.

Docket: You may view the public docket through the Internet at http://dms.dot.gov or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Joseph Austin, Chief, External Policy and Program Development Division, Departmental Office of Civil Rights, Telephone: (202) 366-5992, TTY: (202) 366-9696, E-mail: joseph.austin@dot.gov; or Bonnie Angermann, Attorney-Advisor, Office of General Law, Office of the General Counsel, Telephone: (202) 366-9166, E-mail: bonnie.angermann@dot.gov. Arrangements to receive the policy guidance in an alternative format may be made by contacting the named individuals.

SUPPLEMENTARY INFORMATION: Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq., and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives Federal financial assistance. The purpose of this limited English proficiency policy guidance is to clarify the responsibilities of recipients of Federal financial assistance from the U.S. Department of Transportation (DOT) (``recipients''), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.

Executive Order 13166, ``Improving Access to Services for Persons With Limited English Proficiency,'' reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that is subject to the requirements of Title VI to publish guidance for its respective recipients clarifying that obligation.

[[Page 74088]]

Executive Order 13166 further directs that all such guidance documents be consistent with the compliance standards and framework detailed in the Department of Justice's (DOJ's) Policy Guidance entitled ``Enforcement of Title VI of the Civil Rights Act of 1964--National Origin Discrimination Against Persons With Limited English Proficiency.'' See 65 FR 50123 (August 16, 2000) (DOJ's General LEP Guidance).

DOT published its initial guidance regarding its recipients' obligations to take reasonable steps to ensure access by LEP persons on January 22, 2001, and requested public comment on the guidance. See 66 FR 6733. DOT received 21 comments in response to its January 22, 2001, policy guidance. The comments reflected the views of individuals, organizations serving LEP populations, organizations favoring the use of the English language, and recipient agencies. While many comments identified areas for improvement and/or revision, the majority of the comments on the DOT LEP Guidance expressed agreement with its overall goal of ensuring access of LEP individuals to recipients' services. DOT worked closely with DOJ to ensure that recipients' comments were addressed in a consistent fashion.

In the order most often raised, the common areas of comment regarded: cost considerations, especially for smaller recipients serving few LEP persons; increased litigation risk and liability for recipients as a result of the guidance; and use of interpreters and the definition of ``qualified interpreter.''

A large number of comments focused on cost considerations and suggested that the Department address them as part of its evaluation of the language assistance needs of LEP persons. Particularly, this concern was expressed by state agencies that at the time received Coast Guard grants to administer safe boating courses.\1\ But this policy guidance does not require DOT recipients to translate all courses or materials in every circumstance or to take unreasonable or burdensome steps in providing LEP persons access. We have clarified the guidance to better convey its flexibility, based on the four-factor analysis set forth in DOJ's General LEP Guidance.

\1\ This guidance does not address the extent to which Executive Order 13166 requires language access services in the provision of boating safety courses funded by the Coast Guard, because that agency is no longer a component of the Department of Transportation.

Several recipients commented that they serve few if any LEP persons and that the cost of interpreting all of their courses and materials would be excessive and unnecessary. While none urged that costs be excluded from consideration altogether, at least one comment expressed concern that a recipient could use cost as a basis for avoiding otherwise reasonable and necessary language assistance to LEP persons. In contrast, a few comments suggested that the flexible fact-dependent compliance standard set forth in the guidance, when combined with the desire of most recipients to avoid the risk of noncompliance, could lead some large recipients to incur unnecessary or inappropriate fiscal burdens in the face of already strained program budgets. The Department is mindful that cost considerations could be inappropriately used to avoid providing otherwise reasonable and necessary language assistance.

Similarly, cost considerations could be ignored or minimized to justify the provision of a particular level or type of language service even though effective alternatives exist at a minimal cost. The Department also is aware of the possibility that satisfying the need for language services might be quite costly for certain types of recipients, particularly if they have not updated their programs and activities to the changing needs of the populations they serve.

The potential for some recipients to assert adverse cost impacts in order to avoid Title VI obligations does not, in the Department's view, justify eliminating cost as a factor in all cases when determining the necessary scope of reasonable language assistance services under DOT's guidance. The Department continues to believe that costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures, and the DOJ Recipient LEP Guidance identifies the appropriate framework through which costs are to be considered. See Department of Justice Final 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).

The second most common category of comments DOT received expressed concern over increased litigation risk and liability for recipients as a result of the LEP Guidance. As is addressed below in the Introduction, Alexander v. Sandoval, 532 U.S. 275 (2001), holds principally that there is no private right of action to enforce Title VI disparate impact regulations. The LEP Guidance is based on Title VI and DOT's Title VI regulations at 49 CFR part 21 and does not provide any private right of action beyond that which exists in those laws. Thus, the LEP Guidance does not increase the risk of recipients' legal liability to private plaintiffs. However, the Department does not dismiss the possibility that individuals may continue to initiate such legal actions.

The third most numerous category of comments DOT received regarded the definition of ``qualified interpreter'' and expressed commentators' concern with recipients' responsibility to make interpreters available, especially for recipients who serve populations with extremely diverse language needs. Set forth below in section VI are practices to help recipients ascertain that their interpreters are both competent and effective. This section should enable recipients to assess the qualifications of the interpreters they use and identify any improvements that need to be addressed.

Three of the comments urged withdrawal of the guidance, arguing it is unsupported by law. In response, the Department notes that its commitment to implementing Title VI and its regulations to address language barriers is longstanding and is unaffected by recent judicial action precluding individuals from successfully maintaining suits to enforce agencies' Title VI disparate impact regulations. This guidance clarifies existing statutory and regulatory provisions by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons.

The remaining 18 comments were generally supportive of the guidance and DOT's leadership in this area. One recipient commented that constraining LEP persons' access to services may actually hinder their ability to become more proficient in the English language, therefore justifying increased programs for LEP persons. Several comments received addressed areas unique to the provision of transportation

services to LEP persons. One recipient discussed the inconsistency between the Federal Motor Carrier Safety Administration's (FMCSA's) regulations requiring all drivers to speak and understand a certain amount of English, and the guidance's requirement that the FMCSA division offices provide information and services in other languages to accommodate LEP persons. Pursuant to 49 CFR 391.11(b)(2), a person is qualified to drive a motor vehicle if he or she ``[c]an read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records.'' In 1997, following an

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American Civil Liberties Union (ACLU) legal challenge to this requirement, DOT issued an advance notice of proposed rulemaking (ANPRM) to address this issue. On July 24, 2003, FMCSA withdrew this ANPRM, concluding that the information introduced in response to the notice ``does not establish that the current regulation requires an unnecessarily high level of English fluency that has resulted in a discriminatory impact or effect based upon national origin, color, or ethnicity.'' FMCSA determined the regulation ``as written and properly enforced effectively balances issues of civil rights and highway safety.'' 68 FR 43890.

Another recipient, who works with community-based organizations concerned with transportation practices and policies, suggested mandatory LEP Access Assessments be attached to the standard financial assistance Assurance Forms that recipients must execute, to serve as a basis for disqualifying recipients submitting inaccurate or substantially incomplete assessments from Federal grant funding. While providing LEP persons with meaningful access is the law and should be given high priority, DOT advocates a flexible approach in ensuring such access, as outlined below in section V, in order to suit the varying needs of its recipients, and therefore has not adopted this suggestion. As discussed in section VIII, DOT seeks to promote voluntary compliance to meet Title VI's goal of ensuring that Federal funds are not used in a manner that discriminates on the basis of race, color, or national origin. DOT will work with recipients to meet this goal, and will resort to more intrusive administrative remedies only if voluntary compliance cannot be secured and stronger measures become necessary to ensure LEP persons have meaningful access to services from recipients of DOT financial assistance.

This document has been modified based on careful consideration of public comments received by DOT, and the approach DOJ adopted after analyzing the public comments it received following its initial guidance published at 66 FR 3834 (January 16, 2001). This guidance is consistent with: Title VI, implementing regulations, Executive Order 13166, the DOJ General LEP Guidance, and the model DOJ Recipient Guidance issued on June 18, 2002.

With particular emphasis on the concerns mentioned above, the Department proposes this ``Limited English Proficiency Guidance for Department of Transportation Recipients.'' The text of this guidance document appears below.

Because this guidance must adhere to the Federal-wide compliance standards and framework detailed in the model DOJ Recipient Guidance

issued on June 18, 2002, DOT specifically solicits comments on the nature, scope, and appropriateness of the DOT-specific examples set out in this guidance explaining and/or highlighting how those consistent Federal-wide compliance standards are applicable to recipients of Federal financial assistance from DOT. This guidance supplants the existing guidance on the same subject published at 66 FR 6733 (January 22, 2001). This guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

Dated: December 7, 2005.
J. Michael Trujillo,
Director, Departmental Office of Civil Rights.

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

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, regarding individuals older than age 5, 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.''

In a 2001 Supplementary Survey by the U.S. Census Bureau, \2\ 33% of Spanish speakers and 22.4% of all Asian and Pacific Island language speakers aged 18-64 reported that they spoke English either ``not well'' or ``not at all.''

\2\ PO35. Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and Over. Cens. Summ. File 3, 2001 Supp. Survey Summ. Tables (SF 3) (based on 12 monthly samples during 2001) Washington: U.S. Dep't of Comm., Bur. of the Census. Viewed 14 September 2004, available at: http://factfinder.census.gov/servlet/DTTable?_bm=y&-geo_id=D&-ds_name=D&_-lang=en&-redoLog=false&-mt_name=DSS_2001_EST_G2000_P035

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 meaningfully 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 have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.\3\

\3\ DOT 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 and possibly additional reasonable efforts based on the nature of its programs and activities, 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, 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 guidance clarifies existing legal requirements for LEP persons by describing the factors recipients should consider in fulfilling their responsibilities to LEP persons.\4\ These are the same criteria DOT will use in evaluating whether recipients are complying with Title VI and Title VI regulations.

\4\ This 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. Recipients should use the guidance 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 LEP.

Executive Order 13166 charges DOJ with the responsibility for providing LEP Guidance to other Federal agencies, such as DOT, and for ensuring consistency among each agency-specific guidance. Consistency among Federal Government agencies is particularly important. Inconsistent or contradictory guidance could confuse recipients of Federal funds and needlessly increase costs without facilitating the meaningful access for LEP persons that this policy guidance is designed to address. As with most government initiatives, this requires balancing several principles.

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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 and activities aimed at the American public do not leave individuals 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 who particularly benefit from federally assisted

programs and activities. 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 nonprofit organizations that receive Federal financial assistance. There are many productive steps that the Federal Government, either collectively or as individual agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller recipients may choose not to participate in federally assisted programs or activities, threatening the critical functions that the programs or activities strive to assist. To that end, DOT plans to continue to work with DOJ and other Federal agencies to provide ongoing assistance and guidance in this important area. In addition, DOT plans to work with recipients of Federal financial assistance--for example, with motor vehicle departments, transit authorities, state departments of transportation, and other transportation service providers--and LEP persons, to identify and share model plans, examples of best practices, and cost-saving approaches. Moreover, DOT intends to explore how language assistance measures and cost-containment approaches developed with respect to its own federally conducted programs and activities can be effectively shared or otherwise made available to recipients, particularly small businesses, small local governments, and small nonprofit organizations. 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. We 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 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.'' 42 U.S.C. 2000d-1.

Department of Justice regulations promulgated pursuant to section 602 forbid recipients 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.'' 28 CFR 42.104(b)(2). DOT's Title VI regulations include almost identical language in this

regard. See 49 CFR 21.5(b)(vii)(2) (portions of these regulations are provided in Appendix A).

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 DOJ, 45 CFR 80.3(b)(2), 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 its recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding 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 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's General LEP Guidance).

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 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. 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.\5\

\5\ 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' Sec. 601 * * * when Sec. 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 address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal agencies to enforce their own Title VI regulations.

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Pursuant to Executive Order 13166, DOT developed its own guidance document for recipients and initially issued it on January 22, 2001. ``DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries.'' However, in light of the public comments received and the Assistant Attorney General's October 26, 2001, clarifying memorandum, DOT has revised its LEP guidance to ensure greater consistency with DOJ's revised LEP guidance, published June 18, 2002, and other agencies' revised LEP guidance. 67 FR 117 (June 18, 2002).

III. Who Is Covered?

Pursuant to Executive Order 13166, the meaningful access requirement of Title VI, the Title VI regulations, and the four-factor analysis set forth in the DOJ's revised LEP Guidance, 67 FR 117 (June 18, 2002), apply to the programs and activities of Federal agencies, including DOT. Federal financial assistance includes grants, cooperative agreements, training, use of equipment, donations of surplus property, and other assistance. Recipients of DOT assistance include, for example:

State departments of transportation.
State motor vehicle administrations.
Airport operators.
State highway safety programs.
Metropolitan planning organizations.
Regional transportation agencies.
Regional, state, and local transit operators.
Public safety agencies.\6\

\6\ Recipients should review DOJ's LEP Guidance for specific examples of how the four-factor analysis applies to interactions between funded law enforcement authorities and first responders.

Hazardous materials transporters and other first responders.
State and local agencies with emergency transportation

responsibilities, for example, the transportation of supplies for natural disasters, planning for evacuations, quarantines, and other similar action.

Sub-recipients likewise are covered when Federal funds are passed through from one recipient to a sub-recipients.

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.

Example: DOT provides assistance to a state department of transportation to rehabilitate a particular highway on the National Highway System. All of the operations of the entire state department of transportation--not just the particular highway program--are covered by the DOT guidance.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal nondiscrimination 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, therefore, are entitled to language assistance under Title VI of the Civil Rights Act of 1964 with respect to a particular type of service, benefit, or encounter. However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d-1.

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

Public transportation passengers.

Persons who apply for a driver's license at a state department of motor vehicles.

Persons subject to the control of state or local transportation enforcement authorities, including, for example, commercial motor vehicle drivers.

Persons served by emergency transportation response programs.

Persons living in areas affected or potentially affected by transportation projects.

Business owners who apply to participate in DOT's Disadvantaged Business Enterprise program.

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 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 a program,

activity, or service of the recipient 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 recipient to people's lives; and (4) the resources available to the recipient and costs. As indicated above, the intent of this policy 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 nonprofit organizations.

After applying the above four-factor analysis to the various kinds of contacts a recipient has with the public, the recipient may conclude that different language assistance measures are sufficient to ensure meaningful access to the different types of programs or activities in which it engages. For instance, some of a recipient's activities will have a greater impact on or contact with LEP persons than others, 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. DOT 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

The greater the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population, the more likely language services are needed. Ordinarily, persons ``eligible to be served, or likely to be directly affected, by'' a recipient's programs or activities are those who are in fact, served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that is part of the recipient's service area. However, where, for instance, a motor vehicle office serves a large LEP population, the appropriate service area is that served by the office, and not the entire population 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,

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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) whose English proficient or LEP minor children and dependents encounter the services of DOT recipients.

Recipients should first examine their prior experiences with LEP individuals and determine the breadth and scope of language services that are needed. In conducting this analysis, it is important to: Include language minority populations that are eligible beneficiaries of recipients' programs, activities, or services but may be underserved because of existing language barriers; and consult additional data, for example, from the census, school systems and community organizations,

and data from state and local governments, community agencies, school systems, religious organizations, and legal aid entities.\7\

\7\ 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 that language but speak or understand English less than well. People who are also proficient in English may speak some of the most commonly spoken languages other than English.

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

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, as the more frequent the contact, the more likely enhanced language services will be 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. Recipients should also consider the frequency of different types of language contacts, as frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish, while less frequent contact with different language groups may suggest a different and/or 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. However, 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 a commercial telephonic interpretation service to obtain immediate interpreter services. Additionally, in applying this standard, recipients should 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 rights to an LEP person who needs public transportation differ, for example, from those to provide recreational programming. 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 compulsory, such as requiring a driver to have a license, can serve as strong evidence of the importance of the program or activity.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs imposed may have an impact on the nature of the steps it should take in providing meaningful access for LEP persons. 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. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns.

Resource and cost issues, however, can often be reduced by technological advances, reasonable business practices, and the sharing of language assistance materials and services among and between recipients, advocacy groups, affected populations, and Federal agencies. For example, the following practices may reduce resource and cost issues where appropriate:

Training bilingual staff to act as interpreters and translators.

Information sharing through industry groups.

Telephonic and video conferencing interpretation services.

Translating vital documents posted on Web sites.

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.\8\

\8\ Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective.

Formalized use of qualified community volunteers.

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.

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''). 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 motor vehicle department or an emergency hazardous material clean-up team in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring bilingual staff (of course, many such departments have already made these arrangements). Additionally, providing public

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transportation access to LEP persons is crucial. An LEP person's inability to utilize effectively public transportation may adversely affect his or her ability to obtain health care, or education, or access to employment. 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 an airport or train station--in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language services provided, quality and accuracy of those services can be critical. Recipients have substantial flexibility in determining the appropriate mix.

VI. Selecting Language Assistance Services

Recipients may provide language services in either oral or written form. Quality and accuracy of the language service is critical in order to avoid potential 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 options below 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 into 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 recipient's program or activity and of any particularized vocabulary and phraseology used by the LEP person;\9\ and understand and follow confidentiality and impartiality rules to the same extent as the recipient employee for whom they are interpreting and/or to the extent their position requires.

\9\ 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 certain legal terms, the interpreter should 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.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal advisor, or other roles.

Additionally, some recipients may have their own requirements for interpreters, as individual rights may depend on precise, complete, and accurate interpretations or translations. In some cases, interpreters may be required to demonstrate that their involvement in a matter would not create a conflict of interest.

While quality and accuracy of language services are critical, they are nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services as part of disaster relief programs, or in the provision of emergency supplies and services, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety course need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner in order to be effective. Generally, to be ``timely,'' the recipient should provide language assistance 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 when an LEP person needs access to public transportation, a DOT recipient does not provide meaningful LEP access when it has only one bilingual staff member available one day a week to provide the service.

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 transit station managers, department of motor vehicle service representatives, security guards, or program directors, with staff that are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff members 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, as discussed above. Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff members 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 facilitate 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 interpreters 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 prompt 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 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

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interpreter and cannot be recognized over the phone. The issues discussed above regarding interpreter competency are also relevant to telephonic interpreters. Video teleconferencing and allowing interpreters to review relevant documents in advance may also be helpful.

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 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 help ensure that services are available more regularly.

Use of Family Members, Friends, Other Customers/Passengers 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 an interpreter of their choice at their own expense (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 members, 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, mission-related, 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 or confidential 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, such as the desire to obtain an LEP person's personal identification information, for example, in the case of an LEP person attempting to apply for a driver's license. Thus, DOT recipients should generally offer free interpreter services to the LEP person. This is particularly true in situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when no interpreters, or bilingual or symbolic signs are available in a state department of motor vehicles. In an effort to apply for a driver's license, vehicle registration, or parking permit, an LEP person may be forced to enlist the help of a stranger for translation. This practice may raise serious issues of competency or confidentiality and may compromise the personal security of the LEP person, as the stranger could have access to the LEP person's personal identification information, such as his or her name, phone number, address, social security number, driver's license number (if different from the social security number), and medical information. However, there are situations 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 an airport, or a train or bus station. 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 to interpret 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, 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 written materials could include, for example:

Driver's license, automobile registration, and parking permit forms.

Parking tickets, citation forms, and violation or deficiency notices, or pertinent portions thereof.

Emergency transportation information.

Markings, signs, and packaging for hazardous materials and substances.

Signs in bus and train stations, and in airports.

Notices of public hearings regarding recipients' proposed transportation plans, projects, or changes, and reduction, denial, or termination of services or benefits.

Signs in waiting rooms, reception areas, and other initial points of entry.

Notices advising LEP persons of free language assistance and language identification cards for staff (i.e., ``I speak'' cards).

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Statements about the services available and the right to free language assistance services in appropriate non-English languages, in brochures, booklets, outreach and recruitment information, and other materials routinely disseminated to the public.

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.

Applications, or instructions on how to participate in a recipient's program or activity or to receive recipient benefits or services.

Consent forms.

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 accurate or timely. For instance, applications for bicycle safety courses should not generally be considered vital, whereas access to safe driving handbooks could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across their 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,'' as lack of awareness may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach efforts in furtherance of its programs and 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, and some such translations may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, and religious and community organizations to spread a message.

Sometimes a very large document may include both vital and non-vital information. This may also be the case when 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, providing information in appropriate languages regarding where an LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? 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 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.

The languages spoken by the LEP individuals with whom the recipient has frequent contact determine the languages into which vital documents should be translated. However, because many DOT recipients serve communities in large cities or across an entire state and regularly serve areas with LEP populations that speak dozens and sometimes more than 100 languages, it would be unrealistic to translate all written materials into each language. 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. However, well-substantiated claims of lack of resources to translate all such documents into dozens or more than 100 languages do not necessarily relieve the recipient of the obligation to translate vital documents into at least several of the more frequently encountered languages. The recipient should then set benchmarks for continued translations into the remaining languages over time.

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 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 under Title VI.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is noncompliance. Rather 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. For example, even if a safe harbor is not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, it 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 DOT recipient provides written translations of vital documents for each eligible LEP language group that constitutes 5% 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 5% 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, and vice versa.

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.\10\ 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

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translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called ``back translation.''

\10\ For those languages in which no formal accreditation exists, a particular level of membership in a professional translation association can provide some indicator of professional competence.

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.\11\ Community organizations may be able to help consider whether a document is written at an appropriate level for the audience. Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical or programmatic terms 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 other recipients or Federal agencies may also be helpful.

\11\ For instance, although there may be languages that do not have a direct translation of some legal, technical, or program-related terms, 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 those terms in that language that can be used again, when appropriate.

While quality and accuracy of translation services are critical, they are nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no important consequences for LEP persons who rely on them may be translated by translators who are less skilled than important documents with legal or other information upon which reliance has important consequences (including, e.g., driver's license written exams and documents regarding important benefits or services, or health, safety, or legal information). 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 an Effective Implementation 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 it serves. Although recipients have considerable flexibility in developing such a plan, maintaining a periodically updated written plan on language assistance for LEP persons (``LEP plan'') for use by recipient employees serving the public would be an appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Such written plans may also provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. Thus, recipients may choose to document the language assistance services in their plan, and how staff and LEP persons can access those services. Certain DOT recipients, such as those serving very few LEP persons or those 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. In that event, a recipient should consider alternative ways to reasonably articulate a plan for providing meaningful access. Early input from entities such as schools, religious organizations, community groups, and groups working with new immigrants can be helpful in forming this planning process. 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

There should be an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters pursuant to the first two factors in the four-factor analysis.

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, or ``I speak Vietnamese'' in both English and Vietnamese. To reduce costs of compliance, the Federal Government has made a set of these cards available on the Internet. The Census Bureau's ``I speak card'' 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 recipient 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 members should know their obligations to provide meaningful access to information and services for LEP persons, and all employees in public contact positions should be properly trained. An effective LEP plan would likely include training to ensure that:

Staff knows about LEP policies and procedures.

Staff having contact with the public (or those in a recipient's custody) is 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. Recipients have flexibility in deciding the manner in which the training is provided, and the more frequent the contact with LEP persons, the greater the need will be for in-depth training. 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.

(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 that the recipient notify LEP persons of services available free of charge. Recipients should provide this notice in languages LEP persons would understand. Examples of notification that recipients should consider include:

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Posting signs in intake areas and other entry points. This is important so that LEP persons can learn how to access those language services at initial points of contact. This is particularly true in areas with high volumes of LEP persons seeking access to certain transportation safety information, or other services and activities run by DOT recipients.\12\

\12\ 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 and should explain how to get the necessary language assistance. The Social Security Administration has made such signs available at http://www.ssa.gov/multilanguage/langlist1.htm. DOT recipients could, for example, modify these signs for use in programs, activities, and services.

Stating in outreach documents that language services are available from the agency. 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 an automated telephone voice mail attendant or menu system. The system 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.

Providing 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 the 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.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. DOT enforces Title VI as it applies to recipients' responsibilities to LEP persons through the procedures provided for in DOT's Title VI regulations (49 CFR part 21, portions of which are provided in Appendix A).

The Title VI regulations provide that DOT will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, DOT will inform the recipient in writing of this determination, including the basis for the determination. DOT uses voluntary mediation to resolve most complaints. However, if a case is fully investigated and results in a finding of noncompliance, DOT must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, DOT must secure compliance through the termination of Federal assistance after the DOT recipient has been given an opportunity for an administrative hearing and/or by referring the matter to DOJ with a recommendation that appropriate proceedings be brought to enforce the laws of the United States. In engaging in voluntary compliance efforts, DOT proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, DOT's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs, activities, and services.

While all recipients must work toward building systems that will ensure access for LEP individuals, DOT 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, DOT 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. However, in developing any phased implementation schedule, DOT 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. Promising Practices

The following examples are provided as illustrations of the responses of some recipients to the need to provide services to LEP persons, and are meant to be interesting and useful examples of ways in which LEP recipients can provide language services. Recipients are

responsible for ensuring meaningful access to all portions of their program or activity, not just the portions to which DOT assistance is targeted. So long as the language services are accurate, timely, and appropriate in the manner outlined in this guidance, the types of promising practices summarized below can assist recipients in moving toward

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meeting the meaningful access requirements of Title VI and the Title VI regulations. These examples do not, however, constitute an endorsement by DOT, which will evaluate recipients' situations on a case-by-case basis using the factors described elsewhere in this guidance.

Language Banks. In several parts of the country, both urban and rural, community organizations and providers have created language banks that dispatch competent interpreters, at reasonable rates, to participating organizations, reducing the need to have on-staff interpreters for low-demand languages. This approach is particularly appropriate where there is a scarcity of language services or where there is a large variety of language needs but limited demand for any particular language.

Language Support Offices. A state social services agency has established an ``Office for Language Interpreter Services and Translation.'' This office tests and certifies all in-house and contract interpreters, provides agency-wide support for translation of forms, client mailings, publications, and other written materials into non-English languages, and monitors the policies of the agency and its vendors that affect LEP persons.

Some recipients have established working liaisons with local community colleges to educate the LEP community in transportation matters. One city formed a multilingual/multi-agency task force to address language barriers and the concerns of the affected communities. The task force completed a survey of city staff with multilingual skills in order to identify employees willing to serve as interpreters and is preparing lists of community and cultural organizations.

Use of Technology. Some recipients use their Internet and/or intranet capabilities to store translated documents online, which can be retrieved as needed and easily shared with other offices. For example, a multilanguage gateway on a Web page could be developed for LEP persons and the public to access documents translated into other languages.

Telephone Information Lines and Hotlines. Recipients have subscribed to telephone-based interpretation services and established telephone information lines in common languages to instruct callers on how to leave a recorded message that will be answered by someone who speaks the caller's language. For example, a recipient may choose to adopt a program similar to the National Highway Traffic Safety Administration's (NHTSA's) Auto Safety Hotline, which has four representatives who speak Spanish and are available during normal hotline business hours (Mon.-Fri., 8 a.m.-10 p.m. eastern time).\13\

\13\ The evening hours permit people from the West Coast (where a significant number of LEP persons reside) to call after work, providing an option for instructions in Spanish, a separate queue,

and Spanish-speaking operators.

Signage and Other Outreach. Recipients have provided information about services, benefits, eligibility requirements, and the availability of free language assistance, in appropriate languages by (a) posting signs and placards with this information in public places such as grocery stores, bus shelters, and subway stations; (b) putting notices in print media and on radio and television stations that serve LEP groups or broadcasting in languages other than English;\14\ (c) airing videos and public service announcements for non-English-speaking residents; (d) placing flyers and signs in the offices of community-based organizations that serve large populations of LEP persons; (e) distributing information at places of worship, ethnic shopping areas, and other gathering places for LEP groups; (f) using posters with appropriate languages designed to reach potential beneficiaries; and (g) developing pictures, images, figures, or icons that could be understandable alternatives to written words.

\14\ Notifications should be delivered in advance of scheduled meetings or events to allow time for persons to request accommodation and participate.

DOT agencies and recipients have implemented numerous language access services:

DOT's Pipeline and Hazardous Materials Safety Administration (formerly known as the Research and Special Programs Administration), at 49 CFR Sec. Sec. 192.616 and 195.440, requires pipeline officers to establish a program for effective reporting by the public of gas pipeline emergencies to the operator or public officials, also providing that the program must be conducted in English and other common languages.\15\ We recommend that recipients consider the appropriateness of such an approach to meet their individual service provision needs.

\15\ ``Each [pipeline] operator shall establish a continuing educational program to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or the appropriate public officials. The program and the media used should be as comprehensive as necessary to reach all areas in which the operator transports gas. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area.'' 49 CFR Sec. 192.616. Section 195.440 of title 49, Code of Federal Regulations, imposes similar requirements in the case of hazardous liquid or carbon dioxide pipeline emergencies.

DOT's National Highway Traffic Safety Administration (NHTSA) has translated the National Standardized Child Passenger Safety

Training Program curriculum into Spanish. The course, designed to help communities work with parents and caregivers on the proper installation of child safety seats, has been pilot tested and is scheduled to be available to the public by early 2006 through many national Latino organizations and State Highway Safety Offices.

DOT's Federal Motor Carrier Safety Administration (FMCSA) division offices in California, Arizona, New Mexico, Texas, and Puerto Rico employ personnel conversant in Spanish to communicate the agency's critical safety regulations.

The Del Rio, Texas, Police Department implemented the El Protector program in Del Rio and developed public service broadcasts in Spanish about traffic safety issues such as loading and unloading school buses, drinking and driving, and pedestrian safety.

Emergency Medical Services (EMS) staff in Los Angeles reported that their system is equipped to receive calls in more than 150 languages, although Spanish is the most frequent language used by 911 callers who do not speak English.

District of Columbia DMV information, forms, and support material are available in German, Spanish, French, Russian, Dutch, and Portuguese and can be downloaded from the division's Web site. The DC DMV also provides a ``City Services Guide'' in Chinese, Korean, Spanish, and Vietnamese. DC's ``Click It or Ticket'' program material and information on child safety seat loaner programs and fitting station locations are available in Spanish.

The New Jersey Department of Motor Vehicles administers driver's license tests in more than 15 languages, including Arabic, French, Greek, Korean, Portuguese, and Turkish.\16\

\16\ DOT recommends that state agencies share such information, to avoid the necessity of each agency performing every translation.

In North Dakota, while the Traffic Safety Office acknowledges a limited minority population requiring assistance with translation, the Driver Licensing Unit offers the option of an oral test in Spanish.

The Iowa Department of Transportation (IDOT) provides a Spanish version of the Commercial

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Driver's License knowledge test using a touch screen computer, and study guides of the Iowa Driver's Manual in Albanian, Bosnian, Russian, Vietnamese, and Korean. IDOT established a liaison with a local community college to provide education for Bosnian refugees concerning the Commercial Motor Vehicle driving course.\17\

\17\ DOT especially recommends the idea of working with local community colleges to educate the LEP community in transportation matters.

The Wisconsin DOT created a 3rd grade level study guide,

the Motorist Study Manual Easy Reader, which was translated by the Janesville Literacy Council into Spanish. Wisconsin DOT also provides the regular 6th grade level version of the Reader in English, Spanish, and Hmong; a Motorcycle Study Manual in English and Spanish; and a CDL (Commercial Driver's License) Study Manual in English and Spanish. In addition, Knowledge and Highway Sign Tests are written in 13 languages other than English, recorded on audiocassette tapes in English and Spanish, or orally interpreted by bilingual staffers obtained from a roster of Wisconsin DOT employees who speak, read, or write foreign languages.

The Idaho Office of Traffic and Highway Safety implemented a Spanish-language safety belt media campaign to educate its Hispanic community on the statewide ``Click It, Don't Risk It!'' program to boost seat belt use. Information appears in Unido, Idaho's largest Spanish-language newspaper, and warns all motorists to buckle up or risk receiving a safety belt citation.

The New Mexico State Highway and Transportation Department, with Federal Highway Administration (FHWA) support, provides Spanish-language translations of its Right-of-Way Acquisition and Relocation brochures and also employs bilingual right-of-way agents to discuss project impacts in Spanish.

The State of Oregon developed a report on multilingual services provided by state agencies. State agencies will use the final document to enhance their existing programs, including expanding communication efforts to serve and protect all Oregonians.

The Texas DOT utilizes bilingual employees in its permit office to provide instruction and assistance to LEP Spanish-speaking truck drivers when providing permits to route overweight trucks through Texas. In its ``On the Job Training Supportive Services Program'' Texas DOT has used Spanish-language television to inform people who have difficulty reading English of opportunities in the construction industry.

When the Virginia DOT (VDOT) became aware that several Disadvantaged Business Enterprise (DBE) firms were about to be removed from construction projects in Northern Virginia because they required certified concrete inspectors, and that they could not comply because the concrete inspection test was only offered in English, it used supportive services funding from the Federal Highway Administration to translate the training manual and test material into Spanish. VDOT also provides tutoring for the DBE firms. The Virginia State Police maintains a written list of interpreters available statewide to troopers through the Red Cross Language Bank, as well as universities and local police departments.

The Colorado State Patrol produced safety brochures in Spanish for farmers and ranchers. It has also printed brochures in Spanish pertaining to regulatory requirements for trucking firms.

In preparation of its 20-year planning document, the Transportation Concept Report, the California DOT (Caltrans) held a public meeting titled ``Planning the Future of Highway 1'' in the largely Hispanic city of Guadalupe, through which Highway 1 runs. The meeting was broadcast on the local public access channel since many of the Spanish-speaking residents potentially affected by Highway 1 projects rely on the channel to receive public affairs information. Caltrans provided a Spanish-language interpreter during the meeting and also made its Spanish-speaking public affairs officer available to meet

with participants individually.

During project planning for interstate improvements along Interstate 710 in California, engineers presented ``good'' alternatives to the affected communities; however, the proposed highway expansion would have removed low-income homes in communities that are 98% Spanish speaking. To ensure that their concerns were heard, California identified the affected communities and facilitated the establishment of Community Advisory Committees that held bilingual workshops between engineers and the public.

The Minnesota DOT authored a manual detailing its requirements to provide access to all residents of Minnesota under environmental justice standards, which included ideas such as publishing notices in non-English newspapers, printing notices in appropriate languages, and providing interpreters at public meetings.

In New Mexico, the Zuni Entrepreneurial Enterprises, Inc. (ZEE) Public Transportation Program designed the Zuni JOBLINKS program to develop, implement, and maintain a transportation system to link Native Americans and other traditionally unserved/underserved persons in the service area to needed vocational training and employment opportunities. Outreach for the program included radio announcements and posting of signs in English and Zuni that described ZEE's services and provided ZEE's phone number.

Washington, DC's Metropolitan Area Transit Authority (WMATA) publishes pocket guides regarding its system in French, Spanish, German, and Japanese, and has a multilanguage website link.

In North Dakota, Souris Basin Transportation (SBT) started using visual logos on the sides of the vehicles to help illiterate passengers identify the bus on which they were riding. Although the illiteracy rate has dropped among seniors, SBT kept the logos on its vehicles for use by the growing LEP population and also added volunteers who speak languages other than English (such as Spanish, German, Norwegian, Swedish, and French) available by phone to drivers and staff.

New York City Transit MetroCard vending machines are located in every station and contain software that allows them to be programmed in three languages in addition to English, based upon area demographics. Currently, these machines are capable of providing information in Spanish, French, French Creole, Russian, Chinese, Japanese, Italian, Korean, Greek, and Polish.

The Metropolitan Atlanta Rapid Transit Authority (MARTA) advertises upcoming service and fare changes in Spanish, Korean, Vietnamese, and Chinese language newspapers. MARTA also produces a bilingual (Spanish/English) service modifications booklet.

The Fort-Worth Transportation Authority communicates information about service and fare changes in Spanish and English. It recruits Spanish-speaking customer service representatives and bus operators and has a community outreach liaison who is bilingual. The transit provider also provides a Spanish-language interpreter at all public meetings.

The Salt Lake City International Airport maintains a list of 35 bilingual and multilingual employees who speak one of 19 languages (including three dialects of Chinese) and their contact information. The list is published in the

Airport Information Handbook and provided to all airport employees. The airport also contracts with a telephonic interpretation service to provide on-demand telephone interpretation services to beneficiaries.

The Port of Seattle has 16 ``Pathfinders'' on staff who act as guides and information sources throughout the Seattle Tacoma International Airport. A key selection criterion for Pathfinders is multilingual ability. The Pathfinders collectively speak 15 languages and are often called on to act as interpreters for travelers who do not speak English. Pathfinders greet all international flights and are assigned to do so based on language skills.

Seattle Tacoma International Airport's trains carry announcements in English, Japanese, and Korean. The Port of Seattle contributed $5,000 to the creation of the City of Tukwila's ``Newcomers Guide,'' which is published in six languages and includes information about the airport and Airport Jobs, a referral service for employment at the airport.

The following is a sample notice that would be useful for recipients to add to the publications or signs for their programs, services, or activities, in order to notify LEP individuals of the availability of materials and services in other languages.

Sample Notice of Availability of Materials and Services

FOR FURTHER INFORMATION CONTACT: For hearing-impaired individuals or non-English-speaking attendees wishing to arrange for a sign language or foreign language interpreter, please call or fax [name] of [organization] at Phone: xxx-yyy-zzzz, TTY: xxx-yyy-zzzz, or Fax: xxx-yyy-zzzz.'' \18\

\18\ If there is a known and substantial LEP population that may be served by the program discussed in the notice, the notice should be in the appropriate non-English language.

Appendix A to DOT Guidance

DOT's Title VI regulation (49 CFR part 21) states the following, in relevant part:

Sec. 21.5 Discrimination prohibited.

(a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited:

(1) A recipient under any program to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any

matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person 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;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons 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 with respect to individuals of a particular race, color, or national origin.

* * * * *

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

* * * * *

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin.

[FR Doc. 05-23972 Filed 12-13-05; 8:45 am]

BILLING CODE 4910-62-P

LEP Guidelines -- Appendix C
Complaint of Discrimination Form

Virginia Department of Transportation

Civil Rights

1401 E.Broad Street, Richmond, VA 23219
804.786.2085 Tel
800.508.3737 Toll Free

Title VI Complaint Form

Title VI of the 1964 Civil Rights Act requires 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."

The following information is necessary to assist us in processing your complaint. Should you require any assistance in completing this form, please let us know.

Complete and return this form to the Civil Rights Division: Ms. Sandra D. Norman, Civil Rights Division Administrator, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, VA 23219.

1. Complainant's Name:

2. Address:

3. City, State, Zip:

4. Telephone No.: Home Business: Cell:

5. Person(s) discriminated against, (if someone other than the complainant)

   Name:

   Address:

   City, State, Zip:

Telephone No.: Home Cell: Other:

Please explain your relationship to this person(s):

6. Which of the following best describes the reason you believe the discrimination took place? Was it because of your:

Race/Color ☐ National Origin ☐ Sex ☐ Age☐ Disability☐ ☐ Other

9. What date did the alleged discrimination take place?

10. In your own words, describe the alleged discrimination. Explain what happened and whom you believe was responsible.

9. Have you filed this complaint with any other federal, state, or local agency; or with any federal or state court? Yes ☐ No☐
If yes, provide the date the complaint was filed _____.

11. Please provide information about a contact person at the agency/court where the complaint was filed.

Name:

Address:

City, State, and Zip Code:

11. Please sign below. You may attach any written materials or other information that you think is relevant to your complaint.

_____ _____
Complaintant's Signature Date

LEP Guidelines -- Appendix D
Language Flashcards

LANGUAGE IDENTIFICATION CARD

2004 Census Test

United States Census 2010

LANGUAGE IDENTIFICATION FLASHCARD

ضع علامة في هذا المربع إذا كنت تقرأ أو تتحدث العربية.	1. Arabic
Խնդրում ենք նշում կատարեք այս քառակուսում, եթե խոսում կամ կարդում եք հայերեն:	2. Armenia
যদি আপনি বাংলা পড়েন বা বলেন তা হলে এই বাক্সে দাগ দিন।	3. Bengali
ឈូមបញ្ជាក់ក្នុងប្រអប់នេះ បើអ្នកអាន ឬនិយាយភាសា ខ្មែរ ។	4. Cambod
Motka i kahhon ya yangin ûntûngnu' manaitai pat ûntûngnu' kumentos Chamorro.	5. Chamorr
如果你能读中文或讲中文，请选择此框。	6. Simplifie Chinese
如果你能讀中文或講中文，請選擇此框。	7. Traditiona Chinese
Označite ovaj kvadratić ako čitate ili govorite hrvatski jezik.	8.Croatian
Zaškrtněte tuto kolonku, pokud čtete a hovoříte česky.	9. Czech
Kruis dit vakje aan als u Nederlands kunt lezen of spreken.	10. Dutch
Mark this box if you read or speak English.	11. English
اگر خواندن و نوشتن فارسي بلد هستيد، اين مربع را علامت بزنيد.	12. Farsi

LANGUAGE IDENTIFICATION FLASHCARD

☐ Cocher ici si vous lisez ou parlez le français.	13. French
☐ Kreuzen Sie dieses Kästchen an, wenn Sie Deutsch lesen oder sprechen.	14. German
☐ Σημειώστε αυτό το πλαίσιο αν διαβάζετε ή μιλάτε Ελληνικά.	15. Greek
☐ Make kazye sa a si ou li oswa ou pale kreyòl ayisyen.	16. Haitian Creole
☐ अगर आप हिन्दी बोलते या पढ़ सकते हों तो इस बक्स पर चिह्न लगाएँ।	17. Hindi
☐ Kos lub voj no yog koj paub twm thiab hais lus Hmoob.	18. Hmong
☐ Jelölje meg ezt a kockát, ha megérti vagy beszéli a magyar nyelvet.	19. Hungarian
☐ Markaam daytoy nga kahon no makabasa wenno makasaoka iti Ilocano.	20. Ilocano
☐ Marchi questa casella se legge o parla italiano.	21. Italian
☐ 日本語を読んだり、話せる場合はここに印を付けてください。	22. Japanese
☐ 한국어를 읽거나 말할 수 있으면 이 칸에 표시하십시오.	23. Korean
☐ ໃຫ້ໝາຍໃສ່ຊ່ອງນີ້ ຖ້າທ່ານອ່ານຫຼືປາກພາສາລາວ.	24. Laotian
☐ Prosimy o zaznaczenie tego kwadratu, jeżeli posługuje się Pan/Pani językiem polskim.	25. Polish

DB-3309

U.S. DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. CENSUS BUREAU

LANGUAGE IDENTIFICATION FLASHCARD

☐ Assinale este quadrado se você lê ou fala português.	26. Portuguese
☐ Însemnaţi această căsuţă dacă citiţi sau vorbiţi româneşte.	27. Romanian
☐ Пометьте этот квадратик, если вы читаете или говорите по-русски.	28. Russian
☐ Обележите овај квадратић уколико читате или говорите српски језик.	29. Serbian
☐ Označte tento štvorček, ak viete čítať alebo hovoriť po slovensky.	30. Slovak
☐ Marque esta casilla si lee o habla español.	31. Spanish
☐ Markahan itong kuwadrado kung kayo ay marunong magbasa o magsalita ng Tagalog.	32. Tagalog
☐ ให้กาเครื่องหมายลงในช่องถ้าท่านอ่านหรือพูดภาษาไทย.	33. Thai
☐ Maaka 'i he puha ni kapau 'oku ke lau pe lea fakatonga.	34. Tongan
☐ Відмітьте цю клітинку, якщо ви читаєте або говорите українською мовою.	35. Ukranian
☐ اگر آپ اردو پڑھتے یا بولتے ہیں تو اس خانے میں نشان لگائیں۔	36. Urdu
☐ Xin đánh dấu vào ô này nếu quý vị biết đọc và nói được Việt Ngữ.	37. Vietnamese
☐ באצייכנט דעם קעסטל אויב איר לייענט אדער רעדט אידיש.	38. Yiddish

DB-3309

U.S. DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. CENSUS BUREAU

LEP Guidelines -- Appendix E
FHWA Memorandum Dated April 7, 2006

Memorandum

U.S. Department of Transportation

Federal Highway Administration

Subject: **ACTION:** Implementation of Executive Order 13166 – Improving Access to Services for People With Limited English Proficiency

Date: April 7, 2006

From: Frederick D. Isler
Associate Administrator for Civil Rights

Reply to Attn of: HCR-10

To: Division Administrators
Directors of Resource Centers
Directors of Field Services

On August 11, 2000, President Clinton issued Executive Order (EO) 13166 directing Federal agencies to ensure that their program and activities are accessible to persons with Limited English Proficiency (LEP). The EO requires each Federal agency to examine the services it provides and 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. Each agency must prepare a plan to improve access to its Federally conducted programs and activities (i.e., the services it provides directly to the public) by eligible LEP persons.

In accordance with the EO, the U.S. Department of Transportation (DOT) published revised LEP guidelines concerning service and policies by recipients of Federal financial assistance in the Federal Register (70 FR 74087) on December 14, 2005 (see attached). This guidance supersedes existing guidance on the same subject originally published in the 66 FR 6733 (January 22, 2001). The purpose of this LEP policy guidance is to clarify the responsibilities of recipients of Federal financial assistance from the USDOT recipients and assist them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations. The guidance applies to all DOT funding recipients, which include State departments of transportation, State motor vehicle administrations, airport operators, metropolitan planning organizations (MPO), and regional, State, and local transit operators,

among many others. Additional information regarding DOT's LEP guidance can also be found at http://www.dotcr.ost.dot.gov/asp/lep.asp

The DOT guidance outlines four factors recipients should apply to the various kinds of contacts 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 eligible to be served or likely to be encountered by a program, activity, or service of the recipient 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 recipient to people's lives.
4. The resources available to the recipient and costs.

In accordance with the requirements, the FHWA's Office of Civil Rights is available to assist with the implementation of the EO 13166. Please distribute this information to your State partners, local government, MPOs, etc. and work with them in the implementation of the LEP requirements.

Should you have any questions, please contact either Ms. Rosemarie Morales at 410-779-7150, Ms. Linda J. Williams at 202-366-1604, or Ms. Ann Wicks at 202-366-2213. Thank you for your assistance in this important matter.

Attachment

LEP Guidelines, Federal Register (70 FR 74087)

TEXT PDF

cc: Joseph Austin

LEP Guidelines -- Appendix F
Language Survey Form

Pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," The Virginia Department of Transportation (VDOT) is conducting a survey of VDOT to determine the level of potential resources available for possible language translation and interpretation. The Civil Rights Division has a language service contract that will be the primary source for translations. We anticipate using employees as a back-up resource from time to time. Disclosure of this information is strictly voluntary.

Name:	District:	Division:

Please indicate languages you speak in addition to English:

☐ Spanish	☐ Polish
☐ Chinese (Mandarin)	☐ Portuguese
☐ Chinese (Cantonese)	☐ Thai
☐ Japanese	☐ Arabic
☐ Korean	☐ Hebrew
☐ Russian	☐ Hindi
☐ Vietnamese	☐ Bosnian
☐ Armenian	☐ Punjabi
☐ Cambodian (Khmer)	☐ Urdu
☐ German	☐ Tagalog
☐ Haitian Creole	☐ African Dialects
☐ Italian	☐ Other

Language #1:

☐ Read	☐ Fluent	☐ Passable	☐ Limited
☐ Write	☐ Fluent	☐ Passable	☐ Limited
☐ Speak	☐ Fluent	☐ Passable	☐ Limited

Language #2:

☐ Read	☐ Fluent	☐ Passable	☐ Limited
☐ Write	☐ Fluent	☐ Passable	☐ Limited
☐ Speak	☐ Fluent	☐ Passable	☐ Limited

Language #3:

☐ Read	☐ Fluent	☐ Passable	☐ Limited
☐ Write	☐ Fluent	☐ Passable	☐ Limited
☐ Speak	☐ Fluent	☐ Passable	☐ Limited

Please indicate whether you would be willing to provide language assistance.

☐ Yes
☐ No

If you have any questions or need assistance, please contact VDOT's Civil Rights Division at 804-786-2730. Please return form by 2/15/12 to corina.herrera@vdot.virginia.gov

Appendix K
Environmental Justice Guidelines

ENVIRONMENTAL JUSTICE GUIDELINES

Virginia Department of Transportation

Civil Rights

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* Page numbers listed are only applicable to the EJ Guidelines when printed as a stand alone document.

I. INTRODUCTION

President Clinton issued Executive Order 12898 on February 11, 1994, which reinforces the importance of fundamental rights and legal requirements contained in Title VI of the Civil Rights Act of 1964 and the National Environmental Policy Act (NEPA). The Executive Order directs that "each Federal agency and State Highway Administration/Department of Transportation make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations". Other documents which have been issued to further clarify the Executive Order are: the US Department of Transportation's (DOT) Order on Environmental Justice, whose latest order (USDOT Order 5610.2(a) was issued May 2012; the Council on Environmental Quality's (CEQ) "Environmental Justice: Guidance Under the National Environmental Policy Act", dated December 10, 1997; and the Federal Highway Administration's (FHWA) Order on Environmental Justice, whose latest order (FHWA Order 6640.23A) was issued June 2012.

VDOT is committed to the principles of environmental justice (EJ) and is assessing and documenting the impacts of transportation projects on minority and low-income populations as a normal part of our environmental analysis efforts. A key aspect of an EJ analysis is to ensure the involvement of affected communities in the project development process. These guidelines are meant to provide Environmental, Planning, Right of Way, Location and Design, Civil Rights and any other applicable divisions (from this point forward referred to as “the project team”) with a consistent framework for both preparing an EJ analysis and developing an effective public involvement strategy. They contain only principles and general procedures, which means that the specific approach must be tailored to the unique circumstances of each project and those communities affected by it. If the procedures do not seem appropriate for a particular project, then the team should develop a more suitable approach.

The guidelines apply to projects requiring all types of NEPA documentation (Environmental Impact Statements, Environmental Assessments, Categorical Exclusions or environmental reevaluations). The identification of minority or low-income populations actually begins during systems planning by the Metropolitan Planning Organization (MPO) or VDOT's Transportation and Mobility Planning Division but is also carried out by Environmental, Location and Design and Right of Way. This information will be used and supplemented during the environmental inventory and alternatives development phases of the project development process as additional data, analysis and public input are refined. Decision-makers will be better informed about the important issues and concerns of low income and minority populations to be considered along with other factors in determining project location, design and mitigation. The EJ analysis during project development will be conducted concurrently with other technical environmental analyses during the Stage One Reporting stage.

An EJ analysis must be completed for each build alternative. Additionally, the No-Build alternative must be carefully considered as well. For example, it's possible that not building transportation improvements could impact minority or low-income populations (i.e., increased

noise or air pollution, limited access to employment, etc.). A clearly written description of all EJ findings must be included in the environmental document.

II. ENVIRONMENTAL JUSTICE AND TITLE VI

The EJ Executive Order supplements the existing requirements of Title VI of the Civil Rights Act. Title VI says that each Federal agency is required to ensure that no person on grounds of race, color, or national origin is excluded from participation in, denied the benefits of, or in any other way subjected to discrimination under any program or activity receiving Federal assistance. Supplemental legislation provides these same protections from discrimination based on sex, age, and disability.

The concept of environmental justice is intended to ensure that procedures are in place to further protect groups which have been traditionally underserved. The fundamental principles of environmental justice are:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations.
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

The major similarities and differences between the EJ Executive Order and Title VI are described below:

SIMILARITIES	DIFFERENCES
Both address nondiscrimination. Both capture minority populations. Both are rooted in the constitutional guarantee (14th Amendment) that all citizens are created equal and are entitled to equal protection. Both address involvement of impacted citizens in the decision-making process through meaningful involvement and participation.	EJ covers minority and low-income, while Title VI and supplemental legislation cover race, color, national origin, sex, age, disability, limited English proficiency and low income. EJ is an executive order (an order of the President of the United States), while Title VI is a law (an act of Congress). EJ mandates a process, while Title VI prohibits discrimination.

A listing of existing laws and regulations addressing environmental justice and Title VI is included at the end of these guidelines.

III. DEFINITIONS

For your information, the following definitions are provided. They have been taken directly from the US DOT Order on Environmental Justice:

Low-Income
A person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

Minority
A person who is:

- Black (a person having origins in any of the black racial groups of Africa);
- Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
- Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
- American Indian and Alaskan Native (a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition)

Low-Income-Population
Any readily identifiable group of low-income persons who live in geographic proximity and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

Minority-Population
Any readily identifiable groups of minority persons who live in geographic proximity and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

Adverse Effects

The totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to:

- Bodily impairment, infirmity, illness or death
- Air, noise, and water pollution and soil contamination
- Destruction or disruption of man-made or natural resources
- Destruction or diminution of aesthetic values
- Destruction or disruption of community cohesion or a community's economic vitality
- Destruction or disruption of the availability of public and private facilities and services
- Vibration

- Adverse employment effects
- Displacement of persons, businesses, farms, or nonprofit organizations
- Increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community
- Denial of, reduction in, or significant delay in the receipt of benefits of DOT programs, policies, or activities

Disproportionately High and Adverse Effects on Minority and Low-Income Populations

An adverse effect:

1. Is predominately borne by a minority population and/or a low-income population, or
2. Will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

IV. PUBLIC OUTREACH

Public involvement is the foundation to effectively integrating environmental justice concerns into transportation decision-making. It is not a separate task, but must be fully integrated within the full range of VDOT's processes. Outreach to the public is already a critical component of VDOT's project development process (as outlined in the Public Involvement Guide); environmental justice simply requires us to ensure that minority and low-income populations are included in this public outreach.

The public can provide valuable input and assist in validating information obtained from secondary sources such as census data. They can play an integral role in identifying issues and concerns of their communities, cataloging community resources and past actions affecting their quality of life, suggesting project alternatives, and negotiating avoidance, minimization, mitigation, and enhancements.

A primary goal of environmental justice is to engage those groups traditionally underrepresented in the project development process. For each project, the team should proactively reach out to the minority or low-income communities identified during systems planning and the environmental inventory and alternatives development stages. It doesn't matter whether the study area is predominantly minority or low-income, or if there is only a small EJ community. Outreach is still required to get them involved in the project development process. This outreach effort begins early in the project (i.e., in the same time frame as focus group formation) and continues throughout the process. In order to be effective, your public involvement strategy should be tailored to use adaptive or innovative approaches that overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decision-making process.

Each project team will need to develop its own outreach strategy thoughtfully, based on the characteristics of the particular study area. There is no 'cookie-cutter' approach, so each project may need to be treated somewhat differently.

Your goal should be to identify minority and low-income populations, bring them into the project development process, and ensure that reasonable efforts are made to address their concerns and provide them meaningful opportunities to influence transportation decisions. It is essential that VDOT visits minority and low income communities prior to the project development stage in order build and establish a relationship so that people in the community will begin to trust VDOT and be willing to share their concerns and their needs. This doesn't mean that your project outreach is directed only toward EJ communities to the exclusion of other communities. The outreach strategies listed below can be applied to all communities, not strictly to EJ communities.

Listed below is a menu of possible tools and strategies which may be useful in identifying, contacting, and engaging the public in the project development process. Remember, you don't have to use all of these strategies; you should use only those which are appropriate for your project and study area:

- For the following agencies, organizations and businesses, consider posting fliers and notices on bulletin boards; including information in church bulletins, homeowner association newsletters, etc.; offering to make project presentations; etc.:
    - Homeowner/community associations
    - Community action agencies
    - Religious organizations (churches, mosques, synagogues, etc.)
    - Civil rights organizations
    - Minority business associations
    - Chambers of Commerce
    - Business and trade organizations (e.g., Washington Board of Trade)
    - Environmental and environmental justice organizations
    - Rural/agricultural organizations
    - Ethnic stores/shops
    - Universities, colleges, vocational and local schools
    - Fraternities/sororities
    - Senior citizen groups (e.g., senior centers, county Office of Aging)
    - Community/recreational centers

- Publish ads and notices in newspapers, radio and other media, particularly media targeted to minority and low-income populations
- In addition to ads and notices, actively pursue having articles about the project published in local newspapers
- Publish ads not just in the legal section of the newspapers, but also in more 'popular' sections
- Include minority or low-income people on project focus groups

- Depending on the make-up of the particular project area, consider translating documents, notices and hearings for limited English-speaking populations
- For public meetings and brochures:
  Include a slide asking for input from minority and low-income communities
  Include wording in brochures soliciting input and information

- If at all possible, hold public meetings in locations that are accessible to transit
- Hold meetings at times and locations that are convenient for the attendees
- If appropriate, consider using an independent facilitator at community meetings, task force meetings, etc.
- Consider providing a minute-taker at key community meetings and providing copies of the minutes to attendees and other interested people
- Hold neighborhood open-houses or small informal group meetings
- In any notices for EJ community meetings, ask if there are unique needs/concerns (i.e., interpreter, etc.)
- Consider adding wording in project Initiation Ads and/or project mail-back cards to solicit input on, and active involvement from, minority/low-income/other populations - wording would have to be sensitive to any perception of discrimination
- Use the internet and other electronic media (e.g., VDOT web-site, some colleges and local schools have web-sites with bulletin boards, local governments)
- Place public meeting/workshop brochures, fliers and newsletters in the management offices of apartment buildings occupied by minority or low-income people
- Provide public meeting/workshop brochures, fliers and newsletters at local festivals and fairs
- Post signs in buses
- Distribute public meeting notices at bus/Metro stops
- Post notices in local libraries
- Contact school PTAs - they may be willing to have a presentation at one of their regular meetings
- Conduct in-street interviews to identify local issues/concerns
- Set up informational kiosks in malls, libraries, etc.

Possible innovative/unique ideas for atypical projects:

- Open a project field office in a minority or low-income area
- Hold workshops with affected populations by focusing more on the alternative(s) having the most impact on them.
- Use questionnaires to identify concerns of affected populations (issues, impacts, benefits, etc.) Any questionnaire would have to be developed and distributed early, so that ample time would be available to compile, analyze and use the data.
- Put out fliers and do a "road show" in communities, parks, festivals, malls, etc.
- To keep impacted communities involved and informed during final design and construction, consider having a community representative attend certain team meetings, developing flyers/brochures, etc.

V. IDENTIFICATION OF MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

The identification of minority or low-income populations will begin during systems planning by the Metropolitan Planning Organization (MPO) or Planning District Commissions and VDOT's pre-construction divisions which include the Transportation and Mobility Planning Division, Location and Design, Environmental and Right of Way. This information developed during planning will be used and supplemented during the project development process as additional data, analysis and public input are refined to be included in the NEPA and other environmental assessment documents. As more information becomes available and the alternatives are developed, the locations of populations will continue to be refined.

You need to be sensitive to the fact that you are identifying both minority and low-income populations, so don't just concentrate on minority communities. Also, remember that there are many wealthy minority communities and many poor non-minority communities.

A. Environmental Inventory

For environmental inventory purposes, the main sources of information regarding locations of minority or low-income populations are census data.

B. Census Data

Because census data is so readily available and easy to use, it is typically the first information gathered when trying to determine if there are minority or low-income populations in the project study area. However, census data is just the starting point used to "flag" census areas that potentially contain minority or low-income populations. You have to keep in mind that even census areas with a small minority or low-income percentage may contain a protected population in your study area - in some cases; a group of a few homes could be considered a population. "Disproportionately high and adverse effects", not size, are the basis for environmental justice. A small minority or low-income population in the project area does not eliminate the possibility of a disproportionately high and adverse effect on that population. That's why it is critical to continue gathering additional information from various sources in order to successfully locate and refine the geographic locations of the populations.

- Determine whether you will use census "tracts" or "blocks". Generally, data based on census tracts should be used for larger project areas. For smaller project areas (like intersection improvements), data based on the smaller census blocks would probably be more appropriate. (* It is the recommendation of FHWA that community profiles be created for each district because it is communities that are being affected.)
- Once the project study area is determined, identify all census tracts/blocks which overlap with it.

- Determine the minority or low-income percentage for each census tract/block.

  1) Minority Percentage

  If there is more than one minority group in your study area, the minority percentage should be based on the aggregate of all minority people. For example, if the percentage of Black persons in the identified census tract/block is 20% and the percentage of Hispanic persons is 20%, then the total of 40% should be used for the minority percentage.

  2) Low-Income Percentage

  Census data provides the percentage of people below the poverty level (but does not actually provide the dollar amount of that poverty level). The dollar amount is defined by the Department of Health and Human Services. The data is revised annually and can be accessed at www.aspe.hhs.gov or www.census.gov. In order to be sensitive to low-income communities, do not include the poverty level dollar amount in the environmental document; you should simply keep the information in your project files. Be sure to identify the poverty level associated with the year of the census data being used (e.g., if you are using 1990 census data, use the corresponding 1990 poverty level).

  Keep in mind that local jurisdictions may define their own 'poverty level'; however, you are to use the poverty level defined by the Department of Health and Human Services in order to maintain consistency between various jurisdictions.

- Calculate the average minority percentage and average low-income percentage for your entire study area by averaging the individual tract/block percentages.
- Determine which census tracts/blocks should be "flagged" because they could contain minority or low-income populations by comparing the minority or low-income percentage of each individual census tract/block to the average percentage for the study area. If this individual percentage is "meaningfully greater" than the average percentage, then a minority or low-income population is potentially located within that census tract/block.

  On a project-by-project basis, the project team should define "meaningfully greater" and document the rationale. For example, if the minority percentage for a census tract is 10% and the study area average is 5%, this 5% difference could be "meaningfully greater" because it represents a doubling of the average. However, if the minority percentage for a census tract is 75% and the study area average is 70%, this 5% difference is probably not "meaningfully greater" since it represents only a small increase over the average.

- VDOT and Other Agencies

  The project team should use a common sense approach when determining what further level of effort is appropriate for identifying EJ populations. For example, if the census data tells you that your project is in a mostly minority area, you may not need to use the

other sources discussed below to identify minority populations - in essence, your entire project area would be a minority population. However, you would still need to go beyond just the census data to identify low-income populations.

Even if a census tract/block has a small percentage of minority or low-income persons - and is therefore not identified during Step 1 above - it is possible that a population(s) may still be located in that census tract/block. For example, a 5% Asian American population may be entirely located in one particular community, thus qualifying as a minority population. Therefore, you cannot rely on census data alone to identify populations. A site visit is an essential step to identifying populations.

At a minimum, you should also contact the following sources, via phone conversations, meetings (including project team meetings) or correspondence:

- Local planning and transportation staff, including MPOs
- VDOT Divisions
  1) Environmental
  2) Transportation and Mobility Planning
  3) Right-of-Way and Utilities
  4) Location & Design
  5) Civil Rights

In any conversations with or letters to the above sources, you must be careful to include the following information so they understand why you are collecting EJ information. Information regarding the locations of EJ communities may raise sensitive issues, so you shouldn't just request locations of EJ communities without explaining why you need the information and what you will be doing with it.

- Provide the purpose/background of environmental justice (reference the Executive Order)
- Emphasize that you are looking for information on both minority and low-income populations - and that they are not the same thing.
- Explain what the four minority groups are and what the poverty level is.
- Request information on the location of minority or low-income populations, based on their knowledge of the project study area.

C. Alternatives Development

After the environmental inventory stage, as preliminary/conceptual alternatives are developed, other sources of information must be used to confirm and further refine the locations of minority and low-income populations. As described earlier, public involvement is a critical component to this effort. The project team will need to determine, based on each particular project, which sources are appropriate to contact.

This contact can be made via formal written correspondence (letters, flyers, etc.), meetings/presentations, phone calls and/or e-mails - the team needs to determine which method

is most appropriate for a particular source. Some sources, such as religious groups and schools, in addition to providing race and national origin information about the people attending their services or classes, may also be able to provide information about any low-income communities they may assist. Keep in mind that it's very important to maintain a record of all sources you contact, as well as the input each source provides to you.

Possible additional information sources include, but are not limited to:

- Homeowner/community associations
- Community action agencies
- Religious organizations (churches, etc.)
- Civil rights organizations
- Transportation and Mobility Planning Division (GIS and other data)
- Right of Way and Utilities Division
- Environmental
- State and local tax and financing agencies
- Minority business associations
- Chambers of Commerce
- Business and trade organizations (e.g., Washington Board of Trade)
- Environmental and environmental justice organizations
- Rural/agricultural organizations
- Economic and job development agencies (e.g., Welfare to Work)
- Ethnic stores/shops
- Universities, colleges, vocational and local schools
- Fraternities/sororities
- Senior citizen groups (e.g., senior centers, county Office of Aging)
- Community/recreational centers

NOTE: For purposes of a secondary and cumulative effects analysis (SCEA), census data only will be used to identify minority or low-income populations since this data is existing and readily available. Each census tract which overlaps with the SCEA geographic boundary should be identified. Then the individual minority and low-income percentages for each tract are to be compared to the average study area percentages as determined in FHWA's Environmental Regulations - 23 CFR 771 (you do not need to calculate the average percentages for the entire SCEA boundary). Those individual tracts with percentages meaningfully greater than the study area average percentage will be considered to have minority or low-income populations.

D. Documentation

In the "Affected Environment" section of the environmental document, you will need to carefully discuss your findings regarding minority and low-income populations. While the project files should include all details of your efforts to identify minority or low-income populations in the study area (letters written to agencies/organizations, phone memos, responses or non-responses, etc.), the environmental document should only provide a summary.

- Clearly state whether minority or low-income populations have been identified in the project study area.
- Describe how you concluded whether or not there are minority or low-income populations.
- Describe the results of the census data assessment.
- List all of the agencies, organizations and/or other groups which were contacted and describe how they were contacted (letter, phone call, meeting, etc.).
- Summarize the responses received and/or issues identified.
  The most effective way to display this information is in a matrix format.
- If minority or low-income populations are identified, characterize them by describing their make-up, size, general location, age, etc. It's recommended that study area mapping showing all locations of EJ populations not be included in the environmental document.

VI. ASSESSMENT OF DISPROPORTIONATELY HIGH AND ADVERSE IMPACTS

The definition of adverse effects (see Section II) encompasses a wide variety of potential impacts, including those to human health, the natural and social environment, the economy, community function, etc. It also includes the denial, reduction or delay in receiving benefits, which should be addressed like any other impact. For an EJ analysis, you'll need to consider all of these.

There is no magic formula for determining if a minority or low-income community will experience disproportionately high and adverse impacts due to your project. Since each project - and each minority or low-income community - is different, the team will have to carefully consider many factors in making its determination. You will need to use an approach that combines both qualitative and quantitative information to support your conclusion.

Keep in mind that the EJ analysis must be done for each alternative, including the No-Build. The No-Build alternative is defined as no other improvements being done except maintenance to the existing road. Even under the No-Build, minority or low-income populations may be affected. Impacts such as increased noise, air pollution, congestion, travel times, etc. must be considered and documented appropriately.

One of the most important factors to consider is whether and how the community itself believes it will be impacted. What one community perceives as an impact, another may perceive as a benefit. It is also possible that, within the same community, the same action may be perceived by various segments as both an impact and a benefit. Therefore, it is imperative that you work with the EJ community to see how they feel about the project.

A. Analysis of Disproportionately High and Adverse Effects

Since a one-size-fits-all approach will not work, the Environmental Division and other pre-construction divisions will need to address a variety of questions and considerations in order to conclude if the project will have disproportionately high and adverse impacts (including denial, reduction or delay in receiving benefits) on an EJ population. You will, in essence, be assessing the context and intensity of effects on EJ populations as compared to non-EJ populations.

- You will need to carefully consider all of the items below, since no single item will lead to a supportable conclusion:
- **Is the adverse effect predominantly borne by the EJ population? For example, are more** minority or low-income people impacted than non- minority or non-low-income people? Is the percentage of minority or low-income people impacted greater than the percentage of minority or low-income people in the study area? Be very cautious when using numbers like this, since numbers alone can be misleading (*It is important to actually do a site visit of communities and neighborhoods).

- Will the adverse effect on the EJ population be appreciably more severe or greater in magnitude than the adverse effect on the non-minority or low-income population? In other words, will the EJ population carry an unfair portion of the impact? For example, if there are ten EJ residences and ten non-EJ residences will each experience noise levels above the federal standard, but noise at the EJ residences will increase by twenty decibels and noise at the non-EJ residences will increase by ten decibels, there may be a disproportionate impact.
- Does the project impact a resource that is especially important to EJ populations? Does it serve an especially important social, religious or cultural function for the EJ community? For example, is a park which is used regularly for cultural festivals being impacted by the project?
- Are there mitigations, enhancement measures or offsetting project benefits (see Section VI) to the affected EJ population? These should be taken into account when assessing if there are disproportionately high and adverse effects.
- Have you assessed the type and severity of adverse effects on non-EJ populations? In order to determine if there are disproportionately high and adverse effects on EJ populations, you will have to take into consideration the comparative impacts in non-EJ areas.

Keep in mind that, while the identification of a disproportionately high and adverse effect on a low-income or minority population does not preclude the project from going forward, it should heighten our attention to alternatives (including alternative sites), mitigation strategies, monitoring needs and preferences expressed by the affected community or population.

Note: In the secondary and cumulative effects analysis (SCEA), you will need to consider the same questions and considerations listed above in order to determine if there are disproportionately high and adverse effects on EJ populations within the SCEA boundary.

B. Documentation

Your conclusions regarding impacts on minority or low-income populations must be thoroughly explained in the "Environmental Consequences" section of the environmental document.

- The final environmental document should clearly conclude whether or not a disproportionately high and adverse impact on any minority or low-income population is likely to result. This conclusion must be reached for each alternative, including the No-Build. Remember to take into account mitigations, enhancement measures or offsetting project benefits (see Section VI) to the affected EJ population.
- Whether or not you choose an alternative in disproportionately high and adverse impacts on minority or low-income populations, you need to supply supporting information to document how you reached that conclusion for each alternative - you have to "make your case".
- Present the analysis you completed and the issues you considered in order to reach your conclusions as concisely as possible. Include a description of impacts (type and severity), any offsetting benefits and mitigations/enhancements, comparison of impacts on EJ and non-EJ populations, etc.
- Document the efforts made to interact with the affected communities, the issues/concerns identified, results of the interaction, etc. Examples of interaction could include meetings to determine whether a community considers a project's effects to be impacts or benefits, correspondence discussing potential mitigation or enhancement measures, etc. A helpful way to present this information would be in a matrix format, which should be included in the appendix of the environmental document. The information in the matrix could include meeting dates, correspondence dates, responses received, issues/concerns identified by the community, etc. You may also want to include copies of important minutes in the appendix.
- When mapping is necessary in order to clearly illustrate the effect of a project on an EJ population, mapping may be included in the environmental document; otherwise, document the impacts textually. Remember to be sensitive to the concerns of the affected communities when determining what type of mapping, if any, will be provided.

VII. AVOIDANCE, MINIMIZATION, MITIGATION AND ENHANCEMENT

If you determine that your project appears to have a disproportionately high and adverse impact on a minority or low-income population, you will then need to consider how the magnitude and severity of the impact can be prevented or reduced. The approach is first to avoid impacts if possible, then minimize impacts, then mitigate unavoidable impacts. Enhancements should also be considered. The definitions of these terms and examples (from the Federal Highway Administration's "Community Impact Assessment" booklet) are provided below:

A. Definitions

- Avoid - to alter a project so an impact does not occur (i.e., shift an alignment to avoid displacements, redesign a road segment as an underpass to avoid cutting off access to a community facility, etc.)
- Minimize - to modify the project to reduce the severity of an impact (i.e., shift an alignment to reduce displacements, alter an alignment to increase the distance between the facility and residences to decrease noise impacts, phase the project to minimize impedance to business access during peak shopping periods, limit interchanges to minimize incompatible land use development, etc.)
- Mitigate - to take an action to alleviate or offset an impact or to replace an appropriated resource (i.e., set aside land for a park or add to public recreation areas to replace lost facilities, erect sound barriers to mitigate noise impacts, provide a bicycle/pedestrian overpass or underpass to provide access to public facilities, etc.)
- Enhance - to add a desirable or attractive feature to the project to make it fit more harmoniously into the community; this will not replace lost resources or alleviate project impacts (i.e., provide signing to recognize specific cultural or historic resources, develop bicycle trails or pathways adjacent to roadways, plant trees and add park benches, add public artwork or a façade to a transportation facility to match the aesthetic design goals of the community, etc.)

B. Considerations in Determining Appropriate Avoidance, Minimization, Mitigation and Enhancement Measures:

- Remember to take mitigation, enhancements and project benefits into account when you are assessing if there will ultimately be a disproportionately high and adverse impact on an EJ population.
- Another important consideration is the fairness in distribution of avoidance, minimization, mitigation and enhancement measures between EJ and non-EJ communities. When considering these measures for an EJ community vs. the entire project area, keep in mind that the measures should be proportional to the level of impact on each.
- A disproportionately high and adverse effect on an EJ population can only be carried out if further avoidance, minimization and mitigation measures are not practicable. In determining whether a measure is 'practicable', the social, economic (including costs) and

environmental effects of avoiding, minimizing or mitigating the adverse effects can be taken into account.

You can use experience on other projects to determine what measures may be considered practicable. You should also take into account the nature and severity of the disproportionate impacts when determining what is practicable. For example, it may be appropriate to go beyond 'the norm' depending on how disproportionate the impact is.

Throughout this effort, keep in mind that you may be able to eliminate, reduce or mitigate the initial disproportionate impacts to such a degree that the impacts to the EJ population are now proportional.

C. Coordination with the Impacted EJ Community

The most important consideration in developing avoidance, minimization, mitigation and enhancement measures is how the impacted EJ community feels about them. Throughout the process, you must consult with and elicit the views of the affected populations. Otherwise, you might unknowingly propose a mitigation measure which impacts the community in a different way. Also, if the same community is composed of various minority groups or income levels, each component may have separate (and possibly conflicting) issues or concerns to be considered by the project team.

You should be encouraging the members of the EJ communities that may suffer a disproportionately high and adverse impact to help develop and comment on possible avoidance/minimization alternatives as early as possible in the process.

In addition to community meetings and correspondence, you may want to consider using community questionnaires to solicit input on proposed mitigation and enhancement strategies and to suggest their own strategies, based on the EJ community's perception of impacts. Any questionnaire would have to be developed and distributed early, so that ample time would be available to compile, analyze and use the data.

Once you have worked with the affected EJ communities to determine the appropriate avoidance, minimization, mitigation and enhancement measures, you should continue to keep them informed about the project status and progress throughout the design and construction phases.

Possible Mitigation Strategies (to be coordinated with the affected community):

- Keep the impacted minority or low-income population informed (status, progress, design changes, etc.) during final design and construction of the project; this could be accomplished by posting/mailing notices, meeting with the community, having a community representative serve a liaison role and attend construction partnering meetings, etc.
- Provide noise walls (appropriateness to be discussed with Noise Committee)
- Provide landscaping/visual screening

- Provide lighting
- Provide sidewalk improvements
- Provide multi-modal improvements (i.e., bus shelters, bicycle/pedestrian facilities)
- Build or rehabilitate community parks or recreation centers
- If relocations are required, attempt to relocate to the same area if possible to preserve community cohesiveness
- Documentation - For each alternative, you will need to clearly explain in the "Environmental Consequences" section of the environmental document any avoidance, minimization, mitigation and enhancement measures which have been adopted.
- Document the strategies taken to reduce, avoid or mitigate impacts to EJ communities. The discussion of these strategies should be clearly 'linked' to the associated community impacts. If appropriate, include a discussion of how these strategies helped turn a disproportionate adverse impact into a proportionate adverse impact.
- Include a summary of the public interaction used to develop and/or review the various strategies.
- If necessary in order to clearly illustrate the strategies and results, mapping may be included in the environmental document; otherwise, document the information textually.

Note: Even when VDOT has no responsibility to mitigate impacts not caused by the project, we may encourage other public/private groups to partner together to improve the quality of life in EJ communities.

Once the mitigation commitments have been made in the final environmental document, they are to be recorded in the Environmental Compliance and Considerations Checklists and discussed at the project transition meeting between the planning and design divisions. Planning staff will continue to be involved in the project during final design to ensure that the commitments are incorporated into the construction documents.

VIII. EXISTING LAWS AND REGULATIONS

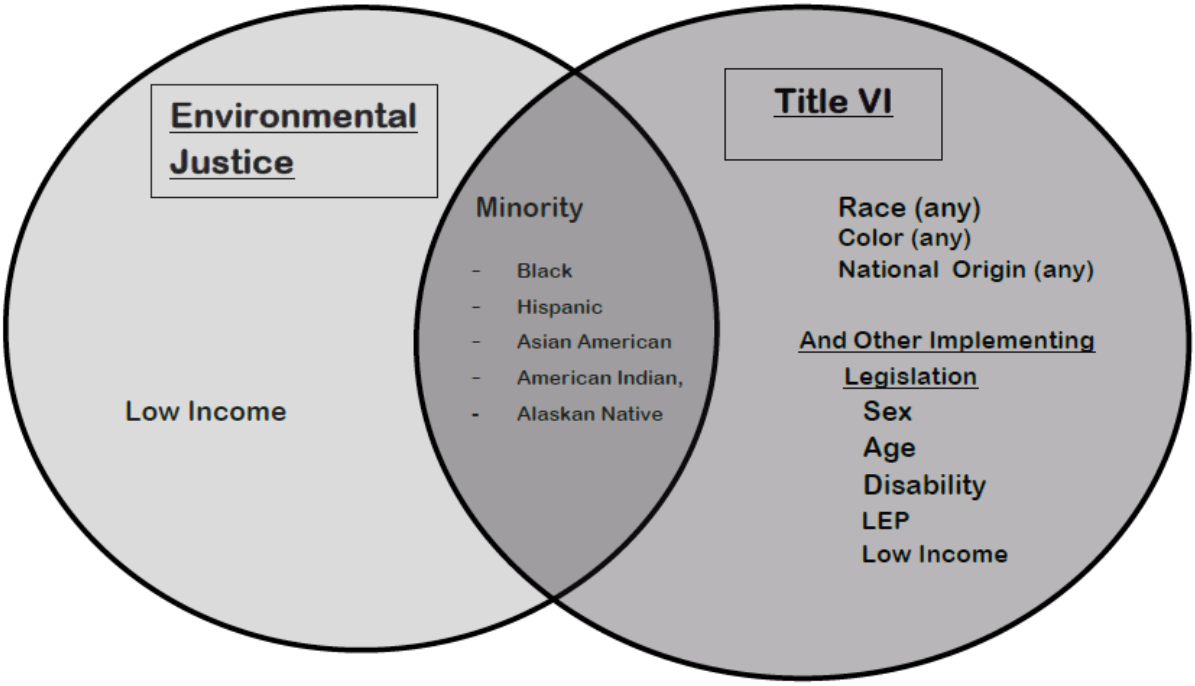
- Environmental Justice Executive Order 12898
- US DOT EJ Order, April 1997
- FHWA EJ Order, December 1998
- Title VI Act of 1964
- 23 USC 109(h)
- US DOT Title VI Regulations [49 CFR 21.5 (b)(2)(3)] - addresses contracts and site selections
- Civil Rights Restoration Act of 1987
- National Environmental Policy Act of 1969
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- 23 USC 324 - addresses discrimination on the basis of sex
- Section 504 of the Rehabilitation Act of 1973 (29 USC 790) - addresses discrimination of the basis of disability

- Age Discrimination Act of 1975 (42 USC 6101) - addresses discrimination on the basis of age
- Fair Housing Act of 1988 - addresses discrimination on the basis of religion
- Religious Freedom Restoration Act of 1993 - addresses discrimination on the basis of religion
- 23 CFR 450 - FHWA Planning Regulations
- 23 CFR 771 - FHWA Environmental Regulations

IX. ADDITIONAL SOURCES OF INFORMATION

"Community Impact Assessment: A Quick Reference for Transportation" (FHWA, 9/96)
"Community Impact Mitigation Case Studies" (FHWA, 5/98)
"Transportation & Environmental Justice Case Studies" (FHWA, 12/00)
"Assistance for Reviewing the Application of Title VI and Environmental Justice in the Transportation Planning Process" (FHWA, 2001)
"Environmental Justice Guidance Under the National Environmental Policy Act" (CEQ, 12/97)
"Environmental Policy Statement" (FHWA, 1994)
"EPA Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Review" (EPA, 4/98)
OMB Bulletin 00-02, "Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement" (OMB, 3/00)
Technical Advisory 6640.8A "Guidance for Preparing and Processing Environmental and 4(f) Documents" (FHWA, 10/87)
FHWA Environmental Justice web site: www.fhwa.dot.gov/environment/ej2.htm

X. INTEGRATION OF ENVIRONMENTAL JUSTICE AND TITLE VI COVERAGE



XI. APPENDIX –A

FEDERAL-AID POLICY GUIDE 23 CFR 771
October 14, 1997

OPI: HEP-31

PART 771 - ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Sec.

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771.123 Draft environmental impact statements.

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771.127 Record of decision.

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771.130 Supplemental environmental impact statements.

771.131 Emergency action procedures.

771.133 Compliance with other requirements.

771.135 Section 4(f) (49 U.S.C 303).

771.137 International actions.

Authority: 42 U.S.C. 4321 et seq.; 23 U.S.C. 109, 110 128, 138 and 315; 49 U.S.C. 303(c), 5301(e), 5323, and 5324; 40 CFR part 1500 et seq.; 49 CFR 1.48(b) and 1.51.

Source: 52 FR 32660, Aug. 28, 1987, unless otherwise noted.

Sec. 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969 as amended (NEPA), and the regulation of the Council on Environmental Quality (CEQ), 40 CFR 1500-1508. This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of highway and urban mass transportation projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h), 128, 138, and 49 U.S.C. 303, 1602(d), 1604(h), 1604(i), 1607a, 1607a-1 and 1610.

Sec. 771.103 [Reserved]

Sec. 771.105 Policy.

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation. [] FHWA and UMTA have supplementary guidance on the format and content of NEPA documents for their programs. This includes a list of various environmental laws, regulations, and Executive Orders which may be applicable to projects. The FHWA Technical Advisory T6640.8A, October 30, 1987, and the UMTA supplementary guidance are available from the respective FHWA and UMTA headquarters and field offices as prescribed in 49 CFR Part 7, Appendices D and G.

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, State, and local environmental protection goals.

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions.

(d) Measures necessary to mitigate adverse impacts be incorporated into the action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when the Administration determines that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action; and

(2) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the Administration will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.

(e) Costs incurred by the applicant for the preparation of environmental documents requested by the Administration be eligible for Federal assistance.

(f) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this

regulation.

[52 FR 32660, Aug. 28, 1987; 53 FR 11065, Apr. 5, 1988.

Sec. 771.107 Definitions.

The definitions contained in the CEQ regulation and in Titles 23 and 49 of the United States Code are applicable. In addition, the following definitions apply.

(a) Environmental studies--The investigations of potential environmental impacts to determine the environmental process to be followed and to assist in the preparation of the environmental document.

(b) Action--A highway or transit project proposed for FHWA or UMTA funding. It also includes activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(c) Administration action--The approval by FHWA or UMTA of the applicant's request for Federal funds for construction. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(d) Administration--FHWA or UMTA, whichever is the designated lead agency for the proposed action.

(e) Section 4(f) -- Refers to 49 U.S.C. 303 and 23 U.S.C. 138. [] Section 4(f), which protected certain public lands and all historic sites, technically was repealed in 1983 when it was codified, without substantive change, as 49 U.S.C. 303. This regulation continues to refer to Section 4(f) because it would create needless confusion to do otherwise; the policies Section 4(f) engendered are widely referred to as "Section 4(f)" matters. A provision with the same meaning is found at 23 U.S.C. 138 and applies only to FHWA actions.

Sec. 771.109 Applicability and Responsibilities.

(a) (1) The provisions of this regulation and the CEQ regulation apply to actions where the Administration exercises sufficient control to condition the permit or project approval. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan are not subject to this regulation.

(2) This regulation does not apply to, or alter approvals by the Administration made prior to the effective date of this regulation.

(3) Environmental documents accepted or prepared by the Administration after the effective date of this regulation shall be developed in accordance with this

regulation.

(b) It shall be the responsibility of the applicant, in cooperation with the Administration, to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished as a part of its program management responsibilities that include reviews of designs, plans, specifications, and estimates (PS&E), and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement, followed by reviews of designs and construction inspections.

(c) The Administration, in cooperation with the applicant, has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant will be determined by the Administration in accordance with the CEQ regulation:

(1) Statewide agency. If the applicant is a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or is a local unit of government acting through a statewide agency, and meets the requirements of section 102(2)(D) of NEPA, the applicant may prepare the environmental impact statement (EIS) and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document. All FHWA applicants qualify under this paragraph.

(2) Joint lead agency. If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and the applicant may prepare the EIS and other environmental documents as joint lead agencies. The applicant shall initially develop substantive portions of the environmental document, although the Administration will be responsible for its scope and content.

(3) Cooperating Agency. Local public agencies with special expertise in the proposed action may be cooperating agencies in the preparation of an environmental document. An applicant for capital assistance under the Urban Mass Transportation Act of 1964, as amended (UMT Act), is presumed to be a cooperating agency if the conditions in paragraph (c) (1) or (2) of this section do not apply. During the environmental process, the Administration will determine the scope and content of the environmental document and will direct the applicant, acting as a cooperating agency, to develop information and prepare those portions of the document concerning which it has special expertise.

(4) Other. In all other cases, the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role.

(d) When entering into Federal-aid project agreements pursuant to 23 U.S.C. 110, it shall be the responsibility of the State highway agency to ensure that the project is constructed in accordance with and incorporates all committed environmental impact mitigation measures listed in approved environmental documents unless the State requests and receives written Federal Highway Administration approval to modify or delete such mitigation features.

Sec. 771.111 Early coordination, public involvement, and project development.

(a) Early coordination with appropriate agencies and the public aids in determining the type of environmental document an action requires, the scope of the document, the level of analysis, and related environmental requirements. This involves the exchange of information from the inception of a proposal for action to preparation of the environmental document. Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) The Administration will identify the probable class of action as soon as sufficient information is available to identify the probable impacts of the action. For UMTA, this is normally no later than the review of the transportation improvement program (TIP) and for FHWA, the approval of the 105 program (23 U.S.C. 105).

(c) When FHWA and UMTA are involved in the development of joint projects, or when FHWA or UMTA acts as a joint lead agency with another Federal agency, a mutually acceptable process will be established on a case-by-case basis.

(d) During the early coordination process, the Administration, in cooperation with the applicant, may request other agencies having special interest or expertise to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Other States, and Federal land management entities, that may be significantly affected by the action or by any of the alternatives shall be notified early and their views solicited by the applicant in cooperation with the Administration. The Administration will prepare a written evaluation of any significant unresolved issues and furnish it to the applicant for incorporation into the environmental assessment (EA) or draft EIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each EIS or finding of no significant impact (FONSI) shall:

(1) Connect logical termini and be of sufficient length to address environmental

matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR 1502.20) may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and area wide air quality and land use implications of the major alternatives. The second tier would address site specific details on project impacts, costs, and mitigation measures.

(h) For the Federal-aid highway program:

(1) Each State must have procedures approved by the FHWA to carry out a public involvement/public hearing program pursuant to 23 U.S.C. 128 and 40 CFR parts 1500 through 1508.

(2) State public involvement/public hearing procedures must provide for:

(i) Coordination of public involvement activities and public hearings with the entire NEPA process.

(ii) Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.

(iii) One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic, environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.

(iv) Reasonable notice to the public of either a public hearing or the opportunity for a public hearing. Such notice will indicate the availability of explanatory information. The notice shall also provide information required to comply with public involvement requirements of other laws, Executive Orders, and regulations.

(v) Explanation at the public hearing of the following information, as appropriate:

(A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,

(B) The project's alternatives, and major design features,

(C) The social, economic, environmental, and other impacts of the project,

(D) The relocation assistance program and the right-of-way acquisition process.

(E) The State highway agency's procedures for receiving both oral and written statements from the public.

(vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing.

(3) Based on the reevaluation of project environmental documents required by Sec. 771.129, the FHWA and the State highway agency will determine whether changes in the project or new information warrant additional public involvement.

(4) Approvals or acceptances of public involvement/public hearing procedures prior to the publication date of this regulation remain valid.

(i) Applicants for capital assistance in the UMTA program achieve public participation on proposed projects by holding public hearings and seeking input from the public through the scoping process for environmental documents. For projects requiring EISs, a public hearing will be held during the circulation period of the draft EIS. For all other projects, an opportunity for public hearings will be afforded with adequate prior notice pursuant to 49 U.S.C. 1602(d), 1604(i), 1607a(f) and 1607a-1(d), and such hearings will be held when anyone with a significant social, economic, or environmental interest in the matter requests it. Any hearing on the action must be coordinated with the NEPA process to the fullest extent possible.

(j) Information on the UMTA environmental process may be obtained from: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, DC 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Environmental Policy, Federal Highway Administration, Washington,

DC 20590.

Sec. 771.113 Timing of Administration activities.

(a) The Administration in cooperation with the applicant will perform the work necessary to complete a FONSI or an EIS and comply with other related environmental laws and regulations to the maximum extent possible during the NEPA process. This work includes environmental studies, related engineering studies, agency coordination and public involvement. However, final design activities, property acquisition (with the exception of hardship and protective buying, as defined in Sec. 771.117(d)), purchase of construction materials or rolling stock, or project construction shall not proceed until the following have been completed:

(1) (i) The action has been classified as a categorical exclusion (CE), or

(ii) A FONSI has been approved, or

(iii) A final EIS has been approved and available for the prescribed period of time and a record of decision has been signed;

(2) For actions proposed for FHWA funding, the FHWA Division Administrator has received and accepted the certifications and any required public hearing transcripts required by 23 U.S.C. 128;

(3) For activities proposed for FHWA funding, the programming requirements of 23 CFR part 450, Subpart B, and 23 CFR part 630, Subpart A, have been met.

(b) For FHWA, the completion of the requirements set forth in paragraphs (a)(1) and (a)(2) of this section is considered acceptance of the general project location and concepts described in the environmental document unless otherwise specified by the approving official. However, such approval does not commit the Administration to approve any future grant request to fund the preferred alternative.

(c) Letters of Intent issued under the authority of Section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multi-year capital transit projects. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

Sec. 771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) Class I (EISs). Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

(1) A new controlled access freeway.

(2) A highway project of four or more lanes on a new location.

(3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guide-way transit).

(4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

(b) Class II (CEs). Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in Sec. 771.117(c). When appropriately documented, additional projects may also qualify as CEs pursuant to Sec. 771.117(d).

(c) Class III (EAs). Actions in which the significance of the environmental impacts is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required.

Sec. 771.117 Categorical exclusions.

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area, do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; and do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by Section 4(f) of the DOT Act or

section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulation (Section 1508.4) and Sec. 771.117(a) of this regulation and normally do not require any further NEPA approvals by the Administration:

(1) Activities which do not involve or lead directly to construction, such as planning and technical studies; grants for training and research programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required in the planning process pursuant to 23 U.S.C. 134; approval of statewide programs under 23 CFR part 630; approval of project concepts under 23 CFR part 476; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions which establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

(3) Construction of bicycle and pedestrian lanes, paths, and facilities.

(4) Activities included in the State's "highway safety plan" under 23 U.S.C. 402.

(5) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.

(7) Landscaping.

(8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.

(9) Emergency repairs under 23 U.S.C. 125.

(10) Acquisition of scenic easements.

(11) Determination of payback under 23 CFR part 480 for property previously acquired with Federal-aid participation.

(12) Improvements to existing rest areas and truck weigh stations.

(13) Ridesharing activities.

(14) Bus and rail car rehabilitation.

(15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.

(16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.

(17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities which themselves are within a CE.

(18) Track and rail bed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(d) Additional actions which meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval. The applicant shall submit documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing).

(2) Highway safety or traffic operations improvement projects including the installation of ramp metering control devices and lighting.

(3) Bridge rehabilitation, reconstruction or replacement or the construction of grade separation to replace existing at-grade railroad crossings.

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of

right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes; advance land acquisition loans under section 3(b) of the UMT Act. Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(e) Where a pattern emerges of granting CE status for a particular type of action, the Administration will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

Sec. 771.119 Environmental assessments.

(a) An EA shall be prepared by the applicant in consultation with the Administration for each action that is not a CE and does not clearly require the preparation of an EIS, or where the Administration believes an EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant, in consultation with the Administration, shall, at the earliest appropriate time, begin consultation with interested agencies and others to advise them of the scope of the project and to achieve the following objectives: determine which aspects of the proposed action have potential for social, economic, or environmental impact; identify alternatives and measures which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant shall accomplish this through an early coordination process (i.e., procedures under Sec. 771.111) or through a scoping process. Public involvement shall be summarized and the results of agency coordination shall be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. The UMTA applicants may circulate the EA prior to Administration approval provided that the document is clearly labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of availability of the EA, briefly describing the action and its impacts, shall be sent by the applicant to the affected units of Federal, State and local government. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(e) When a public hearing is held as part of the application for Federal funds, the EA shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The notice of the public hearing in local newspapers shall announce the availability of the EA and where it may be obtained or reviewed. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the availability of the EA unless the Administration determines, for good cause, that a different period is warranted. Public hearing requirements are as described in Sec. 771.111.

(f) When a public hearing is not held, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action, advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines, for good

cause, that a different period is warranted.

(g) If no significant impacts are identified, the applicant shall furnish the Administration a copy of the revised EA, as appropriate; the public hearing transcript, where applicable; copies of any comments received and responses thereto; and recommend a FONSI. The EA should also document compliance, to the extent possible, with all applicable environmental laws and Executive orders, or provide reasonable assurance that their requirements can be met.

(h) When the Administration expects to issue a FONSI for an action described in Sec. 771.115(a), copies of the EA shall be made available for public review (including the affected units of government) for a minimum of 30 days before the Administration makes its final decision (See 40 CFR 1501.4(e)(2).) This public availability shall be announced by a notice similar to a public hearing notice.

(i) If, at any point in the EA process, the Administration determines that the action is likely to have a significant impact on the environment, the preparation of an EIS will be required.

Sec. 771.121 Findings of no significant impact.

(a) The Administration will review the EA and any public hearing comments and other comments received regarding the EA. If the Administration agrees with the applicant's recommendations pursuant to Sec. 771.119(g), it will make a separate written FONSI incorporating by reference the EA and any other appropriate environmental documents.

(b) After a FONSI has been made by the Administration, a notice of availability of the FONSI shall be sent by the applicant to the affected units of Federal, State and local government and the document shall be available from the applicant and the Administration upon request by the public. Notice shall also be sent to the State intergovernmental review contacts established under Executive Order 12372.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the other agency's FONSI. If the Administration determines that this element of the project and its environmental impacts have been adequately identified and assessed, and concurs in the decision to issue a FONSI, the Administration will issue its own FONSI incorporating the other agency's FONSI. If environmental issues have not been adequately identified and assessed, the Administration will require appropriate environmental studies.

Sec. 771.123 Draft environmental impact statements.

(a) A draft EIS shall be prepared when the Administration determines that the action is likely to cause significant impacts on the environment. When the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent

(40 CFR 1508.22) for publication in the Federal Register. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the Notice of Intent, the Administration, in cooperation with the applicant, will begin a scoping process. The scoping process will be used to identify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through public and agency involvement procedures required by Sec. 771.111. For UMTA, scoping is achieved by soliciting agency and public responses to the action by letter or by holding scoping meetings. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The draft EIS shall evaluate all reasonable alternatives to the action and discuss the reasons why other alternatives, which may have been considered, were eliminated from detailed study. The draft EIS shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive Orders to the extent appropriate at this stage in the environmental process.

(d) An applicant which is a "statewide agency" may select a consultant to assist in the preparation of an EIS in accordance with applicable contracting procedures. Where the applicant is a "joint lead" or "cooperating" agency, the applicant may select a consultant, after coordination with the Administration to assure compliance with 40 CFR 1506.5(c). The Administration will select any such consultant for "other" applicants. (See Sec. 771.109(c) for definitions of these terms.)

(e) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the cover sheet.

(f) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The draft EIS shall be circulated for comment by the applicant on behalf of the Administration. The draft EIS shall be made available to the public and transmitted to agencies for comment no later than the time the document is filed with the Environmental Protection Agency in accordance with 40 CFR 1506.9. The draft EIS shall be transmitted to:

(1) Public officials, interest groups, and members of the public known to have an interest in the proposed action or the draft EIS;

(2) Federal, State and local government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the action. Copies shall be provided directly to appropriate State and local agencies, and to the State intergovernmental review contacts established under Executive Order 12372; and

(3) States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

(h) The UMTA requires a public hearing during the circulation period of all draft EISs. FHWA public hearing requirements are as described in Sec. 771.111(h). Whenever a public hearing is held, the draft EIS shall be available at the public hearing and for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be mentioned, and public comments requested, in any public hearing notice and at any public hearing presentation. If a public hearing on an action proposed for FHWA funding is not held, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(i) The Federal Register public availability notice (40 CFR 1506.10) shall establish a period of not less than 45 days for the return of comments on the draft EIS. The notice and the draft EIS transmittal letter shall identify where comments are to be sent.

(j) For UMTA funded major urban mass transportation investments, the applicant shall prepare a report identifying a locally preferred alternative at the conclusion of the Draft EIS circulation period. Approval may be given to begin preliminary engineering on the principal alternative(s) under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures.

These studies will be used to prepare the final EIS or, where appropriate, a supplemental draft EIS.

Sec. 771.125 Final environmental impact statements.

(a) (1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the

Administration. The final EIS shall identify the preferred alternative and evaluate all reasonable alternatives considered. It shall also discuss substantive comments received on the draft EIS and responses thereto, summarize public involvement, and describe the mitigation measures that are to be incorporated into the proposed action. Mitigation measures presented as commitments in the final EIS will be incorporated into the project as specified in Sec. 771.109(b). The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders, or provide reasonable assurance that their requirements can be met.

(2) Every reasonable effort shall be made to resolve interagency disagreements on actions before processing the final EIS. If significant issues remain unresolved, the final EIS shall identify those issues and the consultations and other efforts made to resolve them.

(b) The final EIS will be reviewed for legal sufficiency prior to Administration approval.

(c) The Administration will indicate approval of the EIS for an action by signing and dating the cover page. Final EISs prepared for actions in the following categories will be submitted to the Administration's Headquarters for prior concurrence:

(1) Any action for which the Administration determines that the final EIS should be reviewed at the Headquarters office. This would typically occur when the Headquarters office determines that (i) additional coordination with other Federal, State or local governmental agencies is needed; (ii) the social, economic, or environmental impacts of the action may need to be more fully explored; (iii) the impacts of the proposed action are unusually great; (iv) major issues remain unresolved; or (v) the action involves national policy issues.

(2) Any action to which a Federal, State or local government agency has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(3) Major urban mass transportation investments as defined by UMTA's policy on major investments (49 FR 21284; May 18, 1984).

(d) The signature of the UMTA approving official on the cover sheet also indicates compliance with section 14 of the UMT Act and fulfillment of the grant application requirements of Sections 3(d)(1) and (2), 5(h), and 5(i) of the UMT Act.

(e) Approval of the final EIS is not an Administration Action (as defined in Sec. 771.107(c)) and does not commit the Administration to approve any future grant request to fund the preferred alternative.

(f) The initial printing of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and

individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(g) The final EIS shall be transmitted to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy, no later than the time the document is filed with EPA. In the case of lengthy documents, the agency may provide alternative circulation processes in accordance with 40 CFR 1502.19. The applicant shall also publish a notice of availability in local newspapers and make the final EIS available through the mechanism established pursuant to DOT Order 4600.13 which implements Executive Order 12372. When filed with EPA, the final EIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at institutions such as local government offices, libraries, and schools, as appropriate.

Sec. 771.127 Record of decision.

(a) The Administration will complete and sign a record of decision (ROD) no sooner than 30 days after publication of the final EIS notice in the Federal Register or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD will present the basis for the decision as specified in 40 CFR 1505.2, summarize any mitigation measures that will be incorporated in the project and document any required section 4(f) approval in accordance with Sec. 771.135(l). Until any required ROD has been signed, no further approvals may be given except for administrative activities taken to secure further project funding and other activities consistent with 40 CFR 1506.1.

(b) If the Administration subsequently wishes to approve an alternative which was not identified as the preferred alternative but was fully evaluated in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised ROD shall be subject to review by those Administration offices which reviewed the final EIS under Sec. 771.125(c). To the extent practicable the approved revised ROD shall be provided to all persons, organizations, and agencies that received a copy of the final EIS pursuant to Sec. 771.125(g).

Sec. 771.129 Re-evaluations.

(a) A written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the Administration if an acceptable final EIS is not submitted to the Administration within 3 years from the date of the draft EIS circulation. The purpose of this evaluation is to determine whether a supplement to the draft EIS or a new draft EIS is needed.

(b) A written evaluation of the final EIS will be required before further approvals may be granted if major steps to advance the action (e.g., authority to undertake final design, authority to acquire a significant portion of the right-of-way, or approval of the plans,

specifications and estimates) have not occurred within three years after the approval of the final EIS, final EIS supplement, or the last major Administration approval or grant.

(c) After approval of the EIS, FONSI, or CE designation, the applicant shall consult with the Administration prior to requesting any major approvals or grants to establish whether or not the approved environmental document or CE designation remains valid for the requested Administration action. These consultations will be documented when determined necessary by the Administration.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988]

Sec. 771.130 Supplemental environmental impact statements.

(a) A draft EIS, final EIS, or supplemental EIS may be supplemented at any time. An EIS shall be supplemented whenever the Administration determines that:

(1) Changes to the proposed action would result in significant environmental impacts that were not evaluated in the EIS; or

(2) New information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.

(b) However, a supplemental EIS will not be necessary where:

(1) The changes to the proposed action, new information, or new circumstances result in a lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS; or

(2) The Administration decides to approve an alternative fully evaluated in an approved final EIS but not identified as the preferred alternative. In such a case, a revised ROD shall be prepared and circulated in accordance with Sec. 771.127(b).

(c) Where the Administration is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if the Administration deems appropriate, an EA to assess the impacts of the changes, new information, or new circumstances. If, based upon the studies, the Administration determines that a supplemental EIS is not necessary, the Administration shall so indicate in the project file.

(d) A supplement is to be developed using the same process and format (i.e., draft EIS, final EIS, and ROD) as an original EIS, except that scoping is not required.

(e) A supplemental draft EIS may be necessary for UMTA major urban mass transportation investments if there is a substantial change in the level of detail on project

impacts during project planning and development. The supplement will address site-specific impacts and refined cost estimates that have been developed since the original draft EIS.

(f) In some cases, a supplemental EIS may be required to address issues of limited scope, such as the extent of proposed mitigation or the evaluation of location or design variations for a limited portion of the overall project. Where this is the case, the preparation of a supplemental EIS shall not necessarily:

(i) Prevent the granting of new approvals;

(ii) Require the withdrawal of previous approvals; or

(iii) Require the suspension of project activities; for any activity not directly affected by the supplement. If the changes in question are of such magnitude to require a reassessment of the entire action, or more than a limited portion of the overall action, the Administration shall suspend any activities which would have an adverse environmental impact or limit the choice of reasonable alternatives, until the supplemental EIS is completed.

Sec. 771.131 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency circumstances (40 CFR 1506.11) shall be referred to the Administration's headquarters for evaluation and decision after consultation with CEQ.

Sec. 771.133 Compliance with other requirements.

The final EIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive orders, and other related requirements. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document constitutes adoption of any Administration findings and determinations that are contained therein. The FHWA approval of the appropriate NEPA document will constitute its finding of compliance with the report requirements of 23 U.S.C. 128.

Sec. 771.135 Section 4(f) (49 U.S.C. 303).

(a) (1) The Administration may not approve the use of land from a significant publicly owned public park, recreation area, or wildlife and waterfowl refuge, or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic, and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes.

(b) The Administration will determine the application of section 4(f). Any use of lands from a section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(c) Consideration under section 4(f) is not required when the Federal, State, or local officials having jurisdiction over a park, recreation area or refuge determine that the entire site is not significant. In the absence of such a determination, the section 4(f) land will be presumed to be significant. The Administration will review the significance determination to assure its reasonableness.

(d) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, section 4(f) applies only to those portions of such lands which function for, or are designated in the plans of the administering agency as being for, significant park, recreation, or wildlife and waterfowl purposes. The determination as to which lands so function or are so designated, and the significance of those lands, shall be made by the officials having jurisdiction over the lands. The Administration will review this determination to assure its reasonableness. The determination of significance shall apply to the entire area of such park, recreation, or wildlife and waterfowl refuge sites.

(e) In determining the application of section 4(f) to historic sites, the Administration, in cooperation with the applicant, will consult with the State Historic Preservation Officer (SHPO) and appropriate local officials to identify all properties on or eligible for the National Register of Historic Places (National Register). The section 4(f) requirements apply only to sites on or eligible for the National Register unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(f) The Administration may determine that section 4(f) requirements do not apply to restoration, rehabilitation, or maintenance of transportation facilities that are on or eligible for the National Register when:

(1) Such work will not adversely affect the historic qualities of the facility that caused it to be on or eligible for the National Register, and

(2) The SHPO and the Advisory Council on Historic Preservation (ACHP) have been consulted and have not objected to the Administration finding in paragraph (f)(1) of this section.

(g) (1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction except as set forth in paragraph (g)(2) of this section. Where section 4(f) applies to archeological sites discovered during construction, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made. The review process, including the consultation with other agencies, will be shortened as appropriate.

> (2) Section 4(f) does not apply to archeological sites where the Administration, after consultation with the SHPO and the ACHP, determines that the archeological resource is important chiefly because of what can be learned by data recovery and has minimal value for preservation in place. This exception applies both to situations where data recovery is undertaken or where the Administration decides, with agreement of the SHPO and, where applicable, the ACHP not to recover the resource.

(h) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (g) of this section, the Administration may permit a project to proceed without consideration under section 4(f) if the property interest in the section 4(f) lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to acquisition.

(i) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be developed by the applicant in cooperation with the Administration. This information should be presented in the draft EIS, EA, or, for a project classified as a CE in a separate document. The section 4(f) evaluation shall be provided for coordination and comment to the officials having jurisdiction over the section 4(f) property and to the Department of the Interior, and as appropriate to the Department of Agriculture and the Department of Housing and Urban Development. A minimum of 45 days shall be established by the Administration for receipt of comments. Uses of section 4(f) land covered by a programmatic section 4(f) evaluation shall be documented and coordinated as specified in the programmatic section 4(f) evaluation.

(j) When adequate support exists for a section 4(f) determination, the discussion in the final EIS, FONSI, or separate section 4(f) evaluation shall specifically address:

> (1) The reasons why the alternatives to avoid a section 4(f) property are not feasible and prudent; and
>
> (2) All measures which will be taken to minimize harm to the Section 4(f) property.

(k) The final Section 4(f) evaluation will be reviewed for legal sufficiency.

(l) For actions processed with EISs, the Administration will make the section 4(f) approval either in its approval of the final EIS or in the ROD. Where the section 4(f) approval is documented in the final EIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property, and proposed to be processed with a FONSI or classified as a CE, shall not proceed until notified by the Administration of section 4(f) approval. For these actions, any required section 4(f) approval will be documented separately.

(m) Circulation of a separate Section 4(f) evaluation will be required when:

(1) A proposed modification of the alignment or design would require the use of section 4(f) property after the CE, FONSI, draft EIS, or final EIS has been processed;

(2) The Administration determines, after processing the CE, FONSI, draft EIS, or final EIS that section 4(f) applies to a property;

(3) A proposed modification of the alignment, design, or measures to minimize harm (after the original section 4(f) approval) would result in a substantial increase in the amount of section 4(f) land used, a substantial increase in the adverse impacts to section 4(f) land, or a substantial reduction in mitigation measures; or

(4) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the section 4(f) evaluation.

(n) If the Administration determines under Sec. 771.135(m) or otherwise, that section 4(f) is applicable after the CE, FONSI, or final EIS has been processed, the decision to prepare and circulate a section 4(f) evaluation will not necessarily require the preparation of a new or supplemental environmental document. Where a separately circulated section 4(f) evaluation is prepared, such evaluation does not necessarily:

(i) Prevent the granting of new approvals;

(ii) Require the withdrawal of previous approvals; or

(iii) Require the suspension of project activities; for any activity not affected by the section 4(f) evaluation.

(o) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed in a tiered EIS.

(1) When the first-tier, broad-scale EIS is prepared, the detailed information

necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation should be made on the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first-tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first-tier stage. This preliminary determination is then incorporated into the first-tier EIS.

(2) A section 4(f) approval made when additional design details are available will include a determination that:

(i) The preliminary section 4(f) determination made pursuant to paragraph (o)(1) of this section is still valid; and

(ii) The criteria of paragraph (a) of this section have been met.

(p) Use. (1) Except as set forth in paragraphs (f), (g)(2), and (h) of this section, "use" (in paragraph (a)(1) of this section) occurs:

(i) When land is permanently incorporated into a transport-ation facility.

(ii) When there is a temporary occupancy of land that is adverse in terms of the statute's preservationist purposes as determined by the criteria in paragraph (p)(7) of this section; or

(iii) When there is a constructive use of land.

(2) Constructive use occurs when the transportation project does not incorporate land from a section 4(f) resource, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features or attributes of the resource are substantially diminished.

(3) The Administration is not required to determine that there is no constructive use. However, such a determination could be made at the discretion of the Administration.

(4) The Administration has reviewed the following situations and determined that

a constructive use occurs when:

(i) The projected noise level increase attributable to the project substantially interferes with the use and enjoyment of a noise-sensitive facility of a resource protected by section 4(f), such as hearing the performances at an outdoor amphitheater, sleeping in the sleeping area of a campground, enjoyment of a historic site where a quiet setting is a generally recognized feature or attribute of the site's significance, or enjoyment of an urban park where serenity and quiet are significant attributes;

(ii) The proximity of the proposed project substantially impairs esthetic features or attributes of a resource protected by section 4(f), where such features or attributes are considered important contributing elements to the value of the resource. Examples of substantial impairment to visual or esthetic qualities would be location of a proposed transportation facility in such proximity that it obstructs or eliminates the primary views of an architecturally significant historical building, or substantially detracts from the setting of a park or historic site which derives its value in substantial part due to its setting.

(iii) The project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site;

(iv) The vibration impact from operation of the project substantially impairs the use of a section 4(f) resource, such as projected vibration levels from a rail transit project that are great enough to affect the structural integrity of a historic building or substantially diminish the utility of the building; or

(v) The ecological intrusion of the project substantially diminishes the value of wildlife habitat in a wildlife or waterfowl refuge adjacent to the project or substantially interferes with the access to a wildlife or waterfowl refuge, when such access is necessary for established wildlife migration or critical life cycle processes.

(5) The Administration has reviewed the following situations and determined that a constructive use does not occur when:

(i) Compliance with the requirements of section 106 of the National Historic Preservation Act and 36 CFR part 800 for proximity impacts of the proposed action, on a site listed on or eligible for the National Register of Historic Places, results in an agreement of "no effect" or "no adverse effect";

(ii) The projected traffic noise levels of the proposed highway project do not exceed the FHWA noise abatement criteria as contained in Table 1, 23 CFR part 772, or the projected operational noise levels of the proposed transit project do not exceed the noise impact criteria in the UMTA guidelines;

(iii) The projected traffic noise levels exceed the relevant threshold in paragraph (p)(5)(ii) of this section because of high existing noise, but the increase in the projected noise levels if the proposed project is constructed, when compared with the projected noise levels if the project is not built, is barely perceptible (3 dBA or less);

(iv) There are proximity impacts to a section 4(f) resource, but a governmental agency's right-of-way acquisition, an applicant's adoption of project location, or the Administration approval of a final environmental document, established the location for a proposed transportation project before the designation, establishment, or change in the significance of the resource. However, if the age of an historic site is close to, but less than, 50 years at the time of the governmental agency's acquisition, adoption, or approval, and except for its age would be eligible for the National Register, and construction would begin after the site was eligible, then the site is considered a historic site eligible for the National Register;

(v) There are impacts to a proposed public park, recreation area, or wildlife refuge, but the proposed transportation project and the resource are concurrently planned or developed. Examples of such concurrent planning or development include, but are not limited to:

> (A) Designation or donation of property for the specific purpose of such concurrent development by the entity with jurisdiction or ownership of the property for both the potential transportation project and the section 4(f) resource, or
>
> (B) Designation, donation, planning or development of property by two or more governmental agencies, with jurisdiction for the potential transportation project and the section 4(f) resource, in consultation with each other;

(vi) Overall (combined) proximity impacts caused by a proposed project do not substantially impair the activities, features, or attributes that qualify a resource for protection under section 4(f);

(vii) Proximity impacts will be mitigated to a condition equivalent to, or better than that which would occur under a no-build scenario;

(viii) Change in accessibility will not substantially diminish the utilization of the section 4(f) resource; or

(ix) Vibration levels from project construction activities are mitigated, through advance planning and monitoring of the activities, to levels that do not cause a substantial impairment of the section 4(f) resource.

(6) When a constructive use determination is made, it will be based, to the extent it reasonably can, upon the following:

(i) Identification of the current activities, features, or attributes of a resource qualified for protection under section 4(f) and which may be sensitive to proximity impacts;

(ii) An analysis of the proximity impacts of the proposed project on the section 4(f) resource. If any of the proximity impacts will be mitigated, only the net impact need be considered in this analysis. The analysis should also describe and consider the impacts which could reasonably be expected if the proposed project were not implemented, since such impacts should not be attributed to the proposed project;

(iii) Consultation, on the above identification and analysis, with the federal, State, or local officials having jurisdiction over the park, recreation area, refuge, or historic site.

(7) A temporary occupancy of land is so minimal that it does not constitute a use within the meaning of section 4(f) when the following conditions are satisfied:

(i) Duration must be temporary, i.e., less than the time needed for construction of the project, and there should be no change in ownership of the land;

(ii) Scope of the work must be minor, i.e., both the nature and the magnitude of the changes to the section 4(f) resource are minimal;

(iii) There are no anticipated permanent adverse physical impacts, nor will there be interference with the activities or purpose of the resource, on either a temporary or permanent basis;

(iv) The land being used must be fully restored, i.e., the resource must be returned to a condition which is at least as good as that which exited prior to the project; and

(v) There must be documented agreement of the appropriate Federal, State, or local officials having jurisdiction over the resource regarding the

above conditions.

[52 FR 32660, Aug. 28, 1987; 53 FR 11066, Apr. 5, 1988, as amended at 56 FR 13279, Apr. 1, 1991]

Sec. 771.137 International-actions.

(a) The requirements of this part apply to:

(1) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(2) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

APPENDIX XII. TECHNICAL ASSISTANCE TOOLS

VDOT EJ TECHNICAL ASSISTANCE TOOL
SOCIAL ELEMENTS

Project Name: _____Project Code:_____

Contact Name: _____

Date Received: _____ Date Reviewed: _____ Reviewer: _____

SAT=Satisfactory; INC = Incomplete; MIS = Missing; N/A = Not Applicable)

Answers are required for questions that have no N/A box.

The following checklist is guidance. Discipline report writers should adjust contents according to complexity and type of project. Reviewers should use the checklist adjusting its use where appropriate. However, all users should be aware of requirements that are driven by regulations and address those areas accordingly.

I. Studies and Coordination

(Applicable laws: 42 USC 2000d-d4. Title VI of the Civil Rights Act of 1964.40CFR. 1500-1508 (CEQ), 23 CFR 771 (FHWA)

SAT	INC	MIS	N/A		
☐	☐	☐		A.	Describe studies performed and coordination with local agencies. Identify agencies and programs administered.

II. Public Involvement/Interaction

SAT	INC	MIS	N/A		
☐	☐	☐		A.	Description of public involvement/interaction plan. 1. Include any tribal contact and determine if government-to-government consultation is needed. 2. Include any targeted outreach to minority, disable. 3. Include any specific efforts to address limited English proficiency, if applicable.

III. Affected Environment

Report should include a description of each Section 4 (f) resource:

SAT	INC	MIS	N/A		
☐	☐	☐		A.	Community Cohesion. Describe neighborhood population characteristics (e.g., minority, elderly, disabled, transit-dependent, larger family, income, Level, owner/tenant status). Access and linkages With community facilities/services (churches, schools, community centers, gathering places etc.). (If a low-income and/or minority population is Identified, see Environmental Justice.)
☐	☐	☐	☐	B.	Recreation. Describe and show maps of the type and location of parks, recreation areas, recreation areas, recreation trails, and natural landmarks. Include information on:
☐	☐	☐	☐		1. Available activities and facilities.
☐	☐	☐	☐		2. Use and number of users per activity.
☐	☐	☐	☐		3. Unique qualities.
☐	☐	☐	☐		4. Statement of national, state, or local significance as determined by official with jurisdiction.
☐	☐	☐	☐		5. Access.
☐	☐	☐	☐		6. Ownership.
☐	☐	☐	☐		7. Section 4(f) and/or 6(f) applicability.
				C.	Regional and Community Growth. Consider:
☐	☐	☐	☐		1. Local and regional population-breakdown by towns and communities.
☐	☐	☐			2. Population projected changes
☐	☐	☐			a. Ethnic/racial composition.
☐	☐	☐			b. Age/family composition.
☐	☐	☐			c. Income levels/major employment.
☐	☐	☐			d. Limited English composition.
☐	☐	☐			e. Disabled composition.
☐	☐	☐			f. Status of community, if in transition.
				D.	Services. Discuss:
☐	☐	☐			1. Educational facilities and attendance boundaries.
☐	☐	☐	☐		2. Religious institutions.
☐	☐	☐	☐		3. Social institutions (community centers, fraternal organizations, children's homes, etc.).
☐	☐	☐	☐		4. Medical services (hospitals, nursing homes, medical and dental clinics, etc.)
☐	☐	☐			5. Fire and police protection.
☐	☐	☐			6. Public services and utilities (energy, telephone, cable, water, sewer, solid

SAT	INC	MIS	N/A			
						waste, storm water, and other appropriate).
☐	☐	☐	☐		7.	cemeteries.
☐	☐	☐	☐		8.	Government institutions and national defense installations.
☐	☐	☐	☐		9.	Other governmental services. Particularly social service/aid programs and locations as relates to proposed action.
				E.		Pedestrian, Bicyclist, and Transit Facilities.
☐	☐	☐	☐		1.	Describe location and type of existing facilities, including discussion of local plan.
☐	☐	☐	☐		2.	State whether local and land use/recreation plans include bike/pedestrian/transit facilities. Include paratransit where appropriate.
☐	☐	☐	☐		3.	Consider travel times (if available), capacity, circulation, and congestion on other facilities in the region.
☐	☐	☐	☐		4.	Discuss whether new facilities are proposed, include sufficient information to explain the basis for providing them (e.g., proposed bicycle facility is a link in the local plan, a new bus stop is needed, or sidewalks will reduce project access impact).
☐	☐	☐	☐		5.	Discuss safety issues as they relate to pedestrians and bicyclists.
☐	☐	☐	☐		6.	Discuss whether the project has potential to connect existing bike/pedestrian/transit facilities.
				F.		Environmental Justice.
☐	☐	☐	☐		1.	Document the presence of low-income or minority communities.

IV. Impacts

SAT	INC	MIS	N/A			
				A.		Community Cohesion. Consider project effects on the community such as:
☐	☐	☐			1.	Impacts on community life.
☐	☐	☐			2.	Effects on persons and groups.
☐	☐	☐			3.	Changes in social relationships/patterns.
☐	☐	☐	☐		4.	Isolation-community divided or set apart by project.
☐	☐	☐			5.	Redistribution, influx or loss of population.
SAT	INC	MIS	N/A			

SAT	INC	MIS	N/A		
☐	☐	☐	☐		6. Cutting off streets.
☐	☐	☐	☐		7. Separating residences from community facilities.
☐	☐	☐	☐		8. Separating adjoining residential areas.
☐	☐	☐	☐		9. Isolating areas.
☐	☐	☐			10. Increasing automobile dependency.
☐	☐	☐			11. Impact to and availability of affordable and accessible housing supply within the study area.
				B.	Recreation. Consider direct and indirect (growth induced, etc.) impacts on:
☐	☐	☐	☐		1. Facilities/capacity.
☐	☐	☐	☐		2. Access.
☐	☐	☐	☐		3. Aesthetics.
☐	☐	☐	☐		4. Air quality.
☐	☐	☐	☐		5. Noise.
☐	☐	☐	☐		6. Water.
☐	☐	☐	☐		7. Land use in the vicinity.
				C.	Cultural Resources
☐	☐	☐	☐		1. Describe any impacts to tribal areas i.e.: Usual and customary
				D.	Recreational and Community Growth. Consider:
☐	☐	☐	☐		1. Population changes caused by the proposed project. Include estimates on the effects such changes will have on the resource base in his study area. (Where a project induces significant growth, discuss the impacts of such growth under the appropriate headings in this outline. See also E.)
					2. Effect on characteristics of population in the study area.
☐	☐	☐			a. Ethnic/racial composition.
☐	☐	☐			b. Age/family composition.
☐	☐	☐			c. Income levels/major employment.
					3. Effect on population growth patterns.
				E.	Services. Consider the following impacts on each of the services listed in II.D., above.
☐	☐	☐			1. Changes in service travel times.
☐	☐	☐			2. Circuitry of access.
☐	☐	☐			3. Changes in services area.
☐	☐	☐			4. Potential new or additional public facilities And services needed.
				F.	Pedestrian, Transit and Bicyclist Facilities. Consider:
SAT	**INC**	**MIS**	**N/A**		

☐	☐	☐	☐	1. Use projects/capacity – design year data.
☐	☐	☐	☐	2. Safety/travel time.
☐	☐	☐	☐	3. Circulation changes.
☐	☐	☐	☐	4. How changes in accessibility will affect facility users.
				5. Describe provisions included in the project for a reasonable alternative route, or Demonstrate that such a route exists.
☐	☐	☐	☐	
☐	☐	☐	☐	
☐	☐	☐	☐	

V. Mitigation

Consider:

SAT	INC	MIS	N/A		
				A.	Community Cohesion. Describe:
☐	☐	☐	☐		1. Mitigation measurers and commitments.
					2. Mitigation measures considered or available but not included, with reasons why.
				B.	Recreation. Describe:
☐	☐	☐	☐		1. Mitigation measures and commitments.
☐	☐	☐	☐		2. Mitigation measures considered or available but not included, with reasons why.
☐	☐	☐	☐	C.	Regional and Community Growth. Mitigation is normally not applicable.
				D.	Services. Describe:
☐	☐	☐	☐		1. Mitigation measures and commitments.
☐	☐	☐	☐		2. Mitigation measures considered or available but not included, with reasons why.
☐	☐	☐	☐	E.	Pedestrian, Transit and Bicyclist Facilities. Discuss any proposed measure to avoid or reduce adverse impacts on the facility and its users.
☐	☐	☐	☐	F.	Describe efforts to mitigate impacts on any potentially impacted low-income and/or minority communities in the environmental process. (This can be done in separate EJ report)

VI. Summary

Summarize the analysis done and conclusions reached. The summary should include enough detail so that it can be included in the environmental document with only minor modification.

This summary should include:

SAT	INC	MIS	N/A		
☐	☐	☐		A.	The objectives of the project.
				B.	Current land use patterns.
☐	☐	☐		C.	Impacts of all alternatives including the no-build alternative.
☐	☐	☐		D.	Recommended mitigation.
☐	☐	☐		E.	Comparison of alternatives based on impacts and cost effectiveness of mitigation.
☐	☐	☐		F.	Describe public involvement/interaction plan, types of public involvement, timing.

General Comments:-

_____
_____
_____
_____
_____
_____
_____

VDOT EJ TECHNICAL ASSISTANCE TOOL
ECONOMIC ELEMENTS

Project Name: _____ Project Code: _____

Contact Name: _____

Date Received: _____ Date Reviewed: _____ Reviewer: _____

SAT=Satisfactory; INC = Incomplete; MIS = Missing; N/A = Not Applicable)
Answers are required for questions that have no N/A box.

The following checklist is guidance. Discipline report writers should adjust contents according to complexity and type of project. Reviewers should use the checklist adjusting its use where appropriate. However, all users should be aware of requirements that are driven by regulations and address those areas accordingly.

I. Studies and Coordination

(Refer to National Cooperative Highway Research Report-I22, Summary and Evaluation of Economic Consequences of Highway Improvements.)

SAT	INC	MIS	N/A		
				A.	Field interviews with employers in impacted area. Include small, large, minority owned and any unique businesses.
☐	☐	☐	☐		1. Discuss what kind of adverse impact any relocations could have on employees as Well as local economy; i.e.; where do employees live? How do they get to work?
☐	☐	☐	☐	B.	Residents.
☐	☐	☐	☐	C.	County and city government officials.
☐	☐	☐	☐	D.	Local business and economic leaders.
☐	☐	☐	☐	E.	Studies of existing conditions.
☐	☐	☐	☐	F.	New industrial and commercial development in various planning or construction phases.
☐	☐	☐	☐	G.	Market feasibility studies.
☐	☐	☐	☐	H.	Real estate transactions.
☐	☐	☐	☐	I.	Property assessment valuations.
☐	☐	☐	☐	J.	County tax rolls.

II. Affected Environment

SAT	INC	MIS	N/A		
☐	☐	☐		A.	Describe general economic climate of the area.
☐	☐	☐	☐	B.	Include established business districts and Transportation facility related business.

III. Impacts

SAT	INC	MIS	N/A			
				A.		Describe effects on overall business activity of:
☐	☐	☐	☐		1.	Loss of productive business or farm property through induced development.
☐	☐	☐			2.	Increases or decreases in travel time for shipment of goods.
☐	☐	☐	☐		3.	Changes in business and shopping patterns as a result of changes in accessibility; e.,g., effects on highway related businesses.
☐	☐	☐	☐		4.	Loss of business due to construction of alternative on new alignment including any businesses important to low-income and/or minority populations.
				B.		Describe increase, decrease, or change in location In permanent jobs after completion, due to:
☐	☐	☐	☐		1.	Basic industry or commercial location and relocation.
☐	☐	☐	☐		2.	Bypass diversions.
☐	☐	☐	☐		3.	Barrier effects.
☐	☐	☐	☐		4.	Induced growth or development.
☐	☐	☐	☐		5.	Facility relocation.
				C.		Describe effects on property value trends and the Local economy of:
☐	☐	☐	☐		1.	Traffic volumes.
☐	☐	☐	☐		2.	Competing enterprises and centers.
☐	☐	☐	☐		3.	Visibility.
☐	☐	☐	☐		4.	Physical access to facility or property.
☐	☐	☐	☐		5.	Altered commercial sales potential.
☐	☐	☐	☐		6.	Reduced revenue from loss of taxable property to highway right of way.
☐	☐	☐	☐		7.	Changed revenue from in-migration or out-migration of high tax-producing land users.
				D.		Describe these effects on the region:
☐	☐	☐	☐		1.	Effects on bypassed communities and/or businesses.

SAT	INC	MIS	N/A		
☐	☐	☐	☐	2.	Effects on areas in proximity to the facility.
☐	☐	☐	☐	3.	Effects on areas near interchanges or transit stops.

IV. Mitigation

SAT	INC	MIS	N/A		
☐	☐	☐	☐	A.	Mitigation measurers and commitments e.,g., control, commitments to minority/low-income affected community.
☐	☐	☐	☐	B.	Mitigation measurers considered or available but not included, with reasons why.

V. Construction Activity Impacts

(All impacts associated with construction of the project are to be addressed in a "Construction Activity Impacts: section of the environmental document. Provide the following information, as appropriate, for inclusion in that section.)

SAT	INC	MIS	N/A		
				A.	Under **Impacts,** consider temporary construction effects, such as:
☐	☐	☐	☐	1.	Construction expenditures.
☐	☐	☐	☐	2.	Temporary construction revisions to business or farm access.
☐	☐	☐	☐	3.	Temporary jobs created during construction.
☐	☐	☐	☐	4.	Impact of construction expenditures on sales tax revenues (consider multiplier effect).
☐	☐	☐	☐	B.	Under **Mitigation:**
☐	☐	☐	☐	1.	Mitigation measures and commitments; e.g. access provisions, public information program from construction activities.
☐	☐	☐	☐	2.	Mitigation measures considered or available but not included, with reasons why.

VI. Summary

Summarize the analysis done and conclusions reached. The summary should include enough detail so that it can be included in the environmental document with only minor modifications.

SAT	INC	MIS	N/A		
☐	☐	☐		A.	The objectives of the project.

SAT	INC	MIS	N/A		
☐	☐	☐		1.	Current economic activity and patterns.
☐	☐	☐		2.	Impacts of all alternative including the no build.
☐	☐	☐		3.	Recommended mitigation.
☐	☐	☐		B.	Alignment with any local comprehensive and/or neighborhood plans.
☐	☐	☐		C.	Comparison of alternatives based on impacts and cost effectiveness of mitigation.

General Comments:_____

VDOT EJ TECHNICAL ASSISTANCE TOOL
RELOCATION

Project Name: _____ Project Code: _____

Contact Name: _____

Date Received: _____ Date Reviewed: _____ Reviewer: _____

SAT=Satisfactory; INC = Incomplete; MIS = Missing; N/A = Not Applicable)
Answers are required for questions that have no N/A box.

Use this form if project displaces homes and/or businesses.

The following checklist is guidance. Discipline report writers should adjust contents according to complexity and type of project. Reviewers should use the checklist adjusting its use where appropriate. However, all users should be aware of requirements that are driven by regulations and address those areas accordingly.

I. Studies and Coordination

(Refer to Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended in 1987.)
Consider:

SAT	INC	MIS	N/A		
☐	☐	☐		A.	Census data.
☐	☐	☐	☐	B.	Social/economic reports.
☐	☐	☐	☐	C.	Contact with community leaders and local officials
☐	☐	☐		D.	Field Surveys.

II. Affected Environment

Discuss (if necessary)

SAT	INC	MIS	N/A		
☐	☐	☐	☐	A.	Characteristics of the affected area, such as minority and ethnic, disabled, elderly, family size, income level, owner/tenant status, and long-term stability of the area (e.g., is the area in transition?)
☐	☐	☐	☐	B.	Numbers, descriptions, types of occupancy, and sizes (number of employees) of business and farms within the area. Describe business or farm products or services, particular requirements, specific availability of replacement sites/buildings.

III. Impacts

SAT	INC	MIS	N/A		
☐	☐	☐	☐	A.	Residential impacts. Include an estimate of the number of households to be displaced and any anticipated relocation problems to the extent such information is available.
					Describe:
☐	☐	☐	☐	1.	Dwelling types(s) i.e., single-family, multi-family, Section 8 or other subsidized housing, etc.
☐	☐	☐	☐	2.	Occupancy type (owner/tenant).
☐	☐	☐	☐	3.	Resident characteristics.
☐	☐	☐	☐	a.	Elderly.
☐	☐	☐	☐	b.	Disabled.
☐	☐	☐	☐	c.	Minorities (racial, ethnics, or religious groups).
☐	☐	☐	☐	d.	Income level (low, middle, high).
☐	☐	☐	☐	e.	Large or small families.
☐	☐	☐	☐	f.	Length of occupancy.
☐	☐	☐	☐	g.	Transit dependency.
☐	☐	☐	☐	h.	Limited English speaking.
☐	☐	☐	☐	B.	Summarize how many minority and/or low-income Households are impacted.
☐	☐	☐	☐	C.	Business, farm, and nonprofit organization impacts.
☐	☐	☐	☐	1.	Estimate of the number, types, and sizes of business, farms, and nonprofit organizations to be displaced. How many of these are minority owned or operated?
☐	☐	☐	☐	2.	The approximate number of employees for each business, farm, and nonprofit organization.

IV. Mitigation

Discuss relocation assistance. (Preparers should consult regional Real Estate Services personnel as early as possible for assistance in preparing relocation information.)

SAT	INC	MIS	N/A		
				A.	Residential.
☐	☐	☐	☐	1.	Describe available housing in the area and the ability to provide suitable relocation

						housing for residents being displaced, including moving existing structures to a new location.
☐	☐	☐	☐		2.	Describe any special advisory or other services that will be necessary for special relocation problems.
☐	☐	☐	☐		3.	Include a statement of commitment to last resort housing when sufficient comparable replacement housing may not be available.
				B.		Business, farm, and nonprofit organizations.
☐	☐	☐	☐		1.	Discuss probable availability of replacement facilities for business and nonprofit organizations, including moving existing structures to a new location.
☐	☐	☐	☐		2.	Discuss potential relocation of farm operations.
☐	☐	☐	☐	C.		Include a statement that the acquisition and relocation program will be conducted in accordance with the Uniform Relocation assistance and Real Property Acquisition Policies Act of 1970, as amended, and that resources are available to all residential and business relocates without discrimination.
☐	☐	☐	☐	D.		Describe specific measures or coordination discuss With local governments, organizations, etc., to Reduce general or specific impacts. Special Financial and incentive programs or opportunities (beyond those provided by the Uniform Relocation Assistance Act) available throughout other agencies or organizations for residential and Business relocates may be unidentified.
☐	☐	☐	☐	E.		Describe any additional mitigation measures and commitments.

V. Construction Activity Impacts

All impacts associated with construction of the project are to be addressed in a "Construction Activity Impacts" section of the environmental document. Provide the following information, as appropriate, for inclusion in that section.

SAT	INC	MIS	N/A			
☐	☐	☐	☐	A.	**Impacts**	Normally not applicable.
☐	☐	☐	☐	B.	**Mitigation**	Normally not applicable.

VI. SUMMARY

Summarize the analysis done and conclusions reached. The summary should include enough detail so that it can be included in the environmental document with only minor modification. The summary should include.

SAT	INC	MIS	N/A		
☐	☐	☐		A.	Objectives of the project.
☐	☐	☐		B.	Current housing availability and vacancy rates.
☐	☐	☐		C.	Impacts of all alternatives including the no-build.
☐	☐	☐		D.	Recommend mitigation and reference to the Uniform Relocation Act.
☐	☐	☐		E.	Comparison of alternatives based on impacts and cost effectiveness of mitigation. Total relocations/ displacements including number or percentage of minority/low-income households/business impacted. Separate into households impacted and business impacted.

General Comments:_____

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VDOT EJ TECHNICAL ASSISTANCE TOOL
ENVIRONMENTAL JUSTICE

Project Name: _____ Project Code: _____

Contact Name: _____

Date Received: _____ Date Reviewed: _____ Reviewer: _____

SAT=Satisfactory; INC = Incomplete; MIS = Missing; N/A = Not Applicable)
Answers are required for questions that have no N/A box. The following checklist is guidance. Discipline report writers should adjust contents according to complexity and type of project. Reviewers should use the checklist adjusting its use where appropriate. However, all users should be aware of requirements that are driven by regulations and address those areas accordingly.

I. Studies and Coordination

Refer to Social and Economic Technical Assistance Tools and the EJ Guidelines. Also refer to 42 USC 2000d-d4, 23 CFR Part 771, Title VI of the Civil Rights Act of 1964, and Presidential Executive Orders 12898 and 13166.

There are three (3) types of environmental documents that require FHWA concurrence and adoption. However, CEs for activities specified under 23 CFR 771.117 (c), normally DO NOT require formal FHWA approval.

Class I: Environmental Impact Statement (EIS)
An EIS is prepared when it is determined through environmental studies, public involvement, and coordination with other Federal, State and local agencies that the project will have a significant impact on the environment. The EIS process requires the preparation of a Notice of Intent (NOI), a Draft Environmental Impact Statement (DEIS), a Final Environmental Impact Statement (FEIS), and a Record of Decision (ROD).

Class II: Categorical Exclusion (CE)
The CE is the most commonly used environmental processing option. The CE is not an environmental document, but a determination that a project will have no significant individual or cumulative SEE impacts. In other words, the project would not have significant impacts on planned growth or land use for the area; does not require the relocation of significant numbers of people; does not have a significant impact on any natural, cultural recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant environmental impacts.

Class III: Environmental Assessment (EA)
The EA is prepared for projects when the significance for the impacts is not known or clearly established. Projects that are not categorical exclusions and do not obviously require an EIS will

require the preparation of an EA to determine the significance of the impacts and whether an EIS should be prepared. The amount of information and degree of analysis that should be performed and included in an EA will depend on the size, type, location, number o reasonable alternatives, potential for significant impacts and other factors of the project.

II. Introduction

To be completed as a sub-set of the Socio-Economic Analysis if demographic analysis has identified low-income and/or minority residents in the project area. These are specific to an EJ analysis, but are to be used in conjunction with the overall Social-Economic-Relocation analysis. It is helpful to include maps highlighting the location of alternatives overlaid with any minority and/or low-income populations residing within the primary study area.

SAT	INC	MIS	N/A		
☐	☐	☐		A.	A definition of populations, which are the subject of EJ analysis; Percentage of low-income and minority populations present within impacted census blocks, block groups, or tracts.
☐	☐	☐		B.	Statement of two-pronged approach; enhanced public involvement (describing outreach to EJ populations), and analysis of impact/avoidance of disproportionate impact.

III. Affected Populations

SAT	INC	MIS	N/A	Definition of area of potential impact	
☐	☐	☐		A.	Documentation of data sources and methods for determination. Census data alone is generally not adequate. Data from public involvement, local comprehensive plans and "windshield surveys" are some examples of where supplemental data can be obtained.
☐	☐	☐		B.	Document the presence of low-income or minority populations. (Identification, description, and location of EJ population.)

IV. Enhanced Public Involvement

SAT	INC	MIS	N/A		
☐	☐	☐		A.	Describe special efforts to address literacy, language, transportation, schedule, childcare, other barriers to involvement.
SAT	INC	MIS	N/A		
☐	☐	☐		B.	Description of target outreach efforts to involve low income/minority population. Describe methods

Used to overcome potential barriers.

C. Documentation of strategy and results (attendance, responses, etc.).

V. Assessment of Impacts

SAT	INC	MIS	N/A		
☐	☐	☐		A.	Definitions of adverse and disproportionate impacts (as per USDOT order.).
☐	☐	☐		B.	Analysis of impacts of each alternative, including No-Build, on EJ population. (Types of impacts as listed in Social-Economic-Relocation checklists)
☐	☐	☐		C.	Documentation of community perception of impacts, positive and negative and severity.
☐	☐	☐		D.	Description of any disproportionately high and adverse impacts on low-income or minority population.
☐	☐	☐		E.	Description of any offsetting benefits should be described.
☐	☐	☐		F.	Conclusion of impacts on EJ population. Are adverse impacts appreciably more severe or greater in magnitude that the adverse impacts that will be suffered by the non-minority/low-income population?

VI. Avoidance, Minimization, Mitigation and Enhancement

SAT	INC	MIS	N/A		
☐	☐	☐		A.	Discussion of any alternatives that avoid such impacts as they pertain to the EJ population. Include discussion of practicability.
☐	☐	☐		B.	Description of efforts to avoid, minimize, mitigate, enhance, or offset project as they pertain to the EJ population.
☐	☐	☐		C.	Description of social, economic, and environmental effects of mitigation measurers as they pertain to the EJ population
☐	☐	☐		D.	Mitigation commitments.
☐	☐	☐		E.	Documentation of community perception of suitability of mitigation proposed.

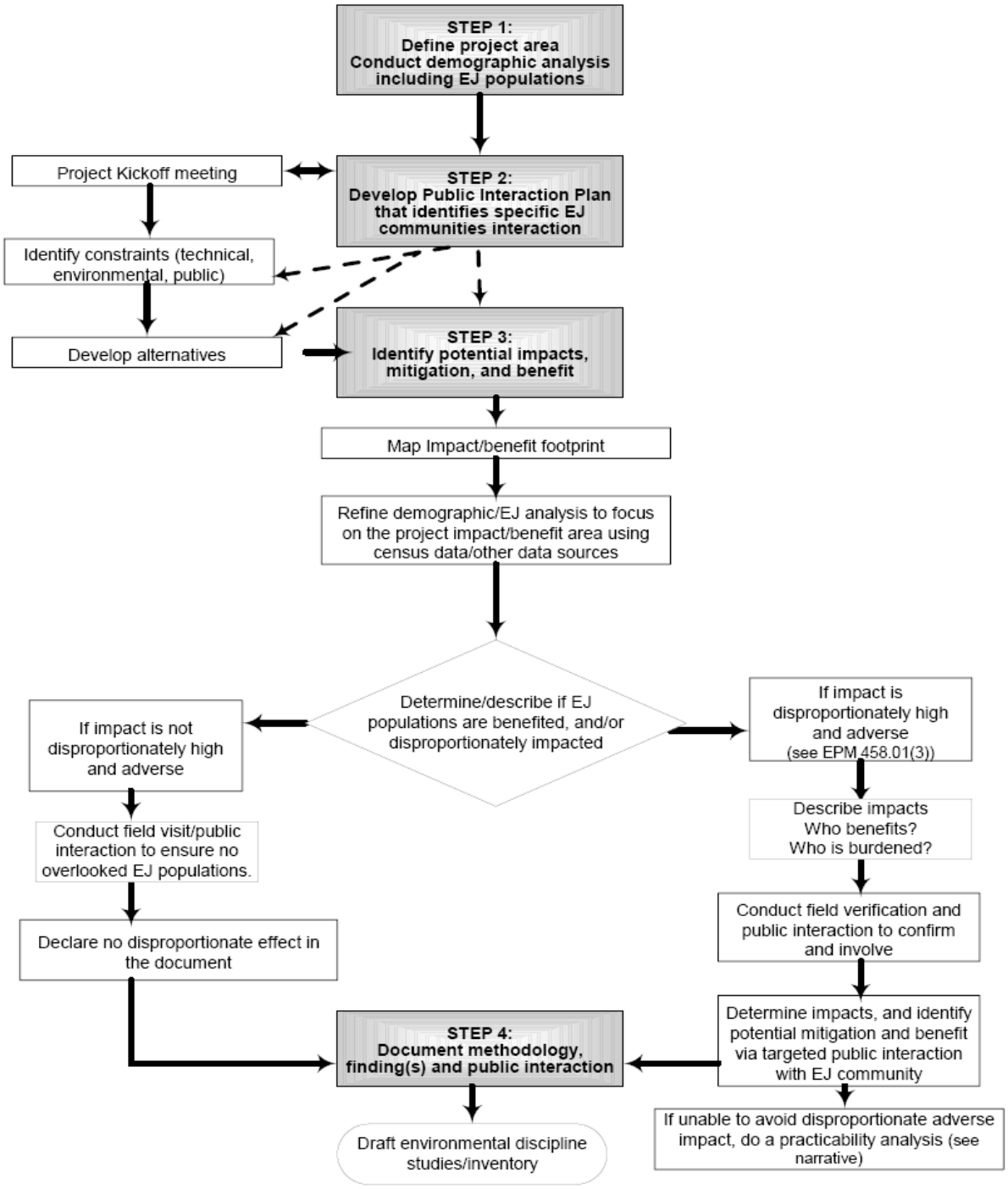
VII. Summary

Summarize the analysis done and conclusions reached. The summary should include enough detail so that it can be included in the final environmental document with only minor modification.

The summary should include:

SAT	INC	MIS	N/A		
☐	☐	☐		A.	The objectives of the project.
☐	☐	☐		B.	Environmental Justice populations and issues involved.
☐	☐	☐		C.	Impacts of all alternative including the no-build alternative.
☐	☐	☐		D.	Recommended mitigation.
☐	☐	☐		E.	Comparison of alternatives based on impacts and reasonableness of mitigation.
☐	☐	☐		F.	Summarize practicability determination if disproportionately high and adverse effects on minority populations or low-income populations cannot be avoided, minimized or mitigated.

Environmental Justice Analysis – Step-by-Step Flowchart



APPENDIX XIII. CONDUCTING AN ENVIRONMENTAL JUSTICE ANALYSIS STEP-BY-STEP OVERVIEW

Purpose and Requirements

This step-by-step overview provides directions on how to analyze transportation planning and project development effects on minority and low income communities. This condensed guide was developed in accordance with Title VI of the Civil Rights Act of 1964, National Environmental Policy Act (NEPA), Intermodal Surface Transportation Efficiency Act (ISTEA), and the Presidential Executive Order 12898 of 1994 as applicable throughout all stages of project development and construction. This guide acts a general framework for any environmental justice analysis.

VDOT intends this guidance to:

- Provide a consistent approach to conducting an environmental justice analysis.
- Ensure transportation planning and project development are done in a manner that does not have the effect of excluding persons from participation in or receiving program benefits.
- Promote the exchange of lessons learned.
- The step-by-step is a general process to refine an environmental justice (EJ) analysis throughout project development through the planning, environmental, project development, construction, and maintenance process.

Environmental Justice Analysis Overview

The EJ analysis process is composed of four basic steps:

1. Conduct a demographic analysis of the Study Area.
2. Develop a Public Interaction/Involvement Plan (PIP).
3. Determine impact(s), appropriate mitigation, and benefits(s) with regard to EJ populations via public interaction with the potentially affected communities.
4. Document the EJ analysis process.

Step 1 - Demographics

Prior to the project kick off meeting, but after the project is defined, conduct a demographic analysis of the project area, map the results, and develop a PIP based on this analysis. The analysis must identify any environmental justice (EJ) populations, and should include other data elements relevant to the PIP – e.g., age, disability, limited English proficiency, income level.

An EJ community includes individuals and minority populations, i.e., Asians, Blacks, Hispanics, Native Americans, and Pacific Islanders, as well as, low-income populations as defined by Presidential Executive Order 12898.

Step 2 – PIP Development

The PIP will be developed and modified to meet specific public and project needs as the project proceeds through the planning, environmental, project development, construction,

and maintenance process.

The project team, assisted by this step-by-step overview, needs to decide how and where public interaction will occur in addition to circulating the usual reports for review and comment – as required or appropriate for project scoping; constraint identification; alternative development; and impact, mitigation, and benefit identification.

The PIP should:

1. Set public interaction goals and objectives.
2. Identify people and organizations to be reached based on demographics and relevant information.
3. Develop a strategy based on the goals/objectives and characteristics of the target audiences.
4. Incorporate strategies and techniques to aid decision-making.
5. Be evaluated and modified as more information is obtained from the impacted community.
6. Document the public interaction process and its results.

Step 3 - Impact/Mitigation/Benefits

When alternatives are developed, potential impacts, mitigation, and benefits should be identified and mapped prior to producing a draft document. Map the affected geographic areas, and refine the demographic analysis to determine if EJ communities are affected. A disproportionately high and adverse effect on minority and low-income populations means an adverse effect that:

1. Is predominately borne by a minority population and/or a low-income population; or
2. Will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non low-income population.

Disproportionately high and adverse effects on minority populations or low-income populations will only be carried out if further mitigation measures of alternatives that would avoid or reduce the disproportionately high and adverse effects are not "practicable." To determine the practicability of a mitigation measurer or an alternative, take into account the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects. This process should be documented.

The analysis also needs to ensure that any potential for disproportionately high and adverse effects on populations protected by Title VI and EJ ("protected populations") will only be carried out if:

1. A substantial need for the program, policy or activity exists, based on the overall public interest; and

2. Alternatives that would have less adverse effects on protected populations have either:

a) Adverse social, economic, environmental, or human health impacts that are more severe; or
b) Would involve increased costs of an extraordinary magnitude.

A PIP is implemented within these affect EJ communities to obtain feedback on the alternatives, impacts, mitigation and benefits. A correlation should be made between the results of the public interaction, particularly with an adversely impacted EJ community, and the proposed mitigation and benefits.

Step 4 - Document the Process

The EJ analysis process is documented as follows:

- Summarize related laws, regulations and guidance,
- Define "adverse" and "disproportionate" impacts (per USDOT order.)
- Document data sources and methods for determination.
- Describe the study area and its demographics using narrative and maps,
- Summarize public interaction strategy,
- Describe and map impacts, mitigation and benefits and those populations affected,
- Describe specific interactions with the affected communities and results,
- Make an EJ determination(s),
- If the determination result is high and disproportionately adverse, another determination should be made taking into consideration the effect that mitigation and benefits will have.
- If disproportionately high and adverse effects on minority populations or low-income populations cannot be avoided, minimized or mitigated, a practicability determination should be made.

Draft the environmental discipline studies/inventories, and produce a draft environmental/planning document. The EJ determination is done concurrently with preparation of other environmental documents to allow for the inclusion of any related impacts such as noise, air, etc.

APPENDIX L
Data Collection Guidelines

The diversity of Virginia's population reflects the diversity of the population of the entire nation. It is critically important that VDOT and its sub-recipients be innovative in engaging historically under represented populations and businesses in the planning, project development and maintenance processes. According to the census bureau 2010 data, Virginia's total population estimate for 2013 was 8,260,405; females made up 50.1% of the population; people 65 years and older made up 13.4% of the population; Whites (not Hispanic or Latino) made up 63.6% of the population; Blacks or African Americans made up 19.7% of the population; Asians made up 6.1% of the population; Hispanic or Latinos made up 8.6% of the population, Native Hawaiian and Other Pacific Islanders made up 0.1 % of the population and American Indians and Alaska Native made up 0.5% of the population.

Purpose of Collecting Data:

23 U.S.C, 200.9(b)(4) requires the state "develop procedures for the collection of statistical data of participants in and beneficiaries of State highway programs, i.e., relocatees, impacted citizens (race, color, disability, sex, age and national origin) and affected communities." In addition, data collection provides measurable evidence of the Department's performance as it relates to Title VI for annual reports to the FHWA and the Department's efforts to ensure compliance with Title VI.

Objective data is necessary to identify:

1. Transportation needs of all persons within boundaries and plans or projects.
2. Impacts and persons impacted.
3. Persons to include in the decision making process.
4. "Champion(s) for various modes and transportation options.
5. Strategies to address impacts.
6. Alternatives to modes and locations and types of facilities (transit, light rail, van and carpooling, HOV lanes, etc.).
7. Priorities for investments.
8. Sources for financing investments.
9. Strategies to disseminate information.

Based on Title VI implementing regulations, each division/district is required to:

1. Provide for the collection of data and information to permit effective enforcement of Title VI.
2. Collect data about beneficiaries.
3. Analyze the data and information collected.
4. Eliminate discrimination when it is found.
5. Take affirmative measures to ensure nondiscrimination.

Types of data and analysis:

Each division develops a process to collect data with regard to race, color, national origin, sex, disability and age. Data that will be helpful in determining compliance with Title VI:

DATA	ANALYSIS
Population	District and statewide population and growth rates
	District and statewide ethnic composition
	Sex and age distribution
	Number of households by income group
	Median household by income
	Percent of persons below poverty level
	Percent of persons with mobility limitations
	Percent of mobility limitations
	Percent of elderly persons
	Language(s) spoken
	Percent of disabled by types of disability
Mode Choice	Number of trips per capita
	Percent of households with no automobiles
	Percent of households by income groups using various modes of transportation (e.g., bus, carpool, commuter rail, automobile)
	Percent of persons by ethnic, gender and disability group using various modes of transportation (e.g., bus, carpool, commuter rail, automobile)
Transportation System	Transportation system congested
	Delay as a percentage of travel time
	Travel time
	Exposure to transportation hazards (environmental, safety, crime)
	Access to jobs, churches, synagogues, mosques, medical care, schools, emergency services, grocery stores, family
Employment	Present and future location of jobs
	Present and future location of housing
	Present and future location of low-income communities
Other	Public investment per capita (Federal, State and Local)
These are recommendations; data should not be limited to these categories.	

Types of analysis to address compliance with Title VI:

1. Percent of benefits allocated to persons below poverty line vs. persons above poverty line.
2. Distribution of benefits (dollars, facilities, systems, projects) by groups and communities.
3. Impact of investments on income, race, gender, disability and age groups.
4. Allocation of funds by mode (highway, bus, commuter rail, etc.)
5. Projected population increases versus planned facilities and types of facilities.
6. Language needs assessment.

Types of performance indicators:

1. Mobility – ease of movement of people and goods.
2. Accessibility – access to opportunities (jobs, medical care, emergency services, family, shopping, entertainment).
3. Environment – sustainable development and preservation of the existing system and the environment.
4. Cost-effectiveness – maximized return on investment, direct as well as indirect costs associated with air pollution, congestion delay for individuals/businesses.
5. Reliability – system reliability (probability of arriving at destination or even making the trip).
6. Safety – physical design and operation of system (measured in accidents per person a mile) also includes security related to criminal activities on highways as well as on transit systems.
7. Equity – transportation investments and benefits are invested in a manner that meets the needs of all persons.
8. Customer Satisfaction – increased ability to make trips, improved travel time, safety and security, improved access to system.
9. Livable Communities – enhancement of living conditions for communities through transportation policies that provide multi-modal options including non-motorized modes.

Resources for collecting data:

1. Census Data
2. School Districts
3. Transit Ridership Surveys
4. Management Systems (Pavement and Congestion)
5. Land Use Plans
6. Geographic Information Systems
7. Transportation Models
8. Metropolitan Planning Organization Committees (e.g., Citizen Advisory Committees)

How to collect data:

Each division develops a process to collect data for the following basis:

Race	White/Caucasian
	Black/African American
	American Indian/Alaskan Native
	Asian
	Hawaiian/Pacific Islander
	Hispanic/Latino
National Origin	Born in United States, Puerto Rico, Guan, The U.S. Virgin Islands, Northern Marianas or
	Born Abroad of American parent(s)
	Born outside U.S., Puerto Rico, Guam, the U.S. Virgin Islands or Northern Marianas
Does the Person Speak a Language other than English at home?	If yes, what is the language? _____
	No
Sex	Male
	Female
Disability	Yes
	No
Age	_____

How to present/allocate multiple race responses is addressed in Office Management and Budget Bulletin No. 00-02. 1

All of the data collection considerations above apply directly to VDOT programs and when administering new or renewal contracts or applications for grants, permits or loans, an oversight perspective of your sub-recipients must be recognized and applied.

In addition, the U.S. Department of Justice regulations offer the examples below for determining compliance with Title VI:

1. The manner in which services are or will be provided and the related data necessary for determining whether any persons are or will be denied such services

1 Office of Management and Budget Bulletin No. 00-02 establishes multiple race response is acceptable.

on the basis of prohibited discrimination.

2. The population eligible to be served by race, color, national origin, sex, disability and age.
3. Data regarding, covered employment, including use of planned use of bilingual public contact employees servicing beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English.
4. The location of existing or proposed facilities connected with the program and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination.
5. The present or proposed membership, by race, color, national origin, sex, disability and age, in any planning or advisory body which is an integral part of the program.
6. Where location is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color, national origin, sex, disability or age.

Additional data, such as demographic maps, the racial composition of affected neighborhoods or census data, may be necessary or appropriate for understanding information requirements listed above. This type of data is required to the extent that the data is available.

The Title VI Specialist or the Division Administrator of Civil Rights must be promptly notified of any complaint filed against any program and its sub-recipients alleging discrimination on the basis of race, color, national origin, sex, disability or age.