

due on September 11, 2001, that were sent by facsimile if the date recorded on the facsimile transmission is September 12, 2001.

5. Where MSPB case files of parties located in the World Trade Center or the Pentagon were destroyed by the attacks, MSPB judges may grant appropriate continuances until the case files can be reconstructed or dismiss cases without prejudice to their later refile. MSPB offices will also assist the parties in reconstructing case files.

The Board and its employees throughout the country intend to accommodate parties to MSPB cases whose ability to pursue those cases was affected by the attacks on September 11, 2001. Where the variations from normal case processing procedures set forth above do not cover the circumstances in an individual case, the individual circumstances will be considered on a case-by-case basis. The Board and MSPB judges may waive any Board regulation the application of which is not required by law.

Dated: September 20, 2001.

Robert E. Taylor,
Clerk of the Board.

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

National Historical Publications and Records Commission; Services for Persons With Limited English Proficiency; Comment Request

AGENCY: National Archives and Records Administration.

ACTION: Notice.

SUMMARY: The National Archives and Records Administration (NARA) is publishing policy guidance on Title VI's prohibition against national origin discrimination under any program or activity that receives NARA financial assistance through the National Historical Publications and Records Commission (NHPRC) as such policy affects persons with limited English proficiency (LEP). The public is invited to comment on NHPRC-assisted programs and activities available to persons with LEP and on steps that NHPRC could take to ensure that persons with LEP have meaningful access to such services. NHPRC will use the information gathered from this notice and other outreach efforts to improve its plan to improve access to these programs and activities by eligible LEP persons.

DATES: This guidance is effective immediately. Written comments must be submitted on or before November 26, 2001. NARA will review all comments and determine whether modifications to the policy guidance are necessary.

ADDRESSES: Interested persons should submit written comments to: Comments on Services for Persons with Limited English Proficiency, ATTN: Diane Dimkoff (NWCC), Room 2400, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001; or faxed to 301-713-7482. You may also comment via the Internet to [comments@nara.gov]. Please submit Internet comments within the body of your email message or attach comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Limited English Proficiency" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Diane Dimkoff at 301-713-6107.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Diane Dimkoff by telephone, or by fax at 301-713-7482. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

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, on the basis of race, color, or national origin, be denied the benefits of, be excluded from participation in, or be subject to discrimination under any program or activity that receives federal financial assistance.

The purposes of this policy guidance are to clarify the responsibilities of recipients of federal financial assistance from NARA's National Historical Publications and Records Commission, and to assist them in fulfilling their responsibilities to persons with limited English proficiency, pursuant to Title VI of the Civil Rights Act of 1964 and its implementing regulations.

Dated: September 18, 2001.

John W. Carlin,

Archivist of the United States.

Guidance to Recipients of the National Historical Publications and Records Commission Federal Financial Assistance: Providing Meaningful Access to Individuals With Limited English Proficiency ("LEP Guidance For NHPRC Recipients")

I. Introduction

This guidance is based on Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, and regulations that implement Title VI. Title VI was intended to eliminate barriers based on race, color, and national origin in Federally-assisted programs or activities. In certain circumstances, failing to ensure that persons with LEP can effectively participate in or benefit from Federally-assisted programs and activities or imposing additional burdens on persons with LEP constitutes national origin discrimination.

In August, 2000, the President signed Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency. Under that Executive Order, every Federal agency that provides financial assistance to non-Federal entities must issue guidance on how their recipients can, consistent with long-standing obligations under Title VI and their fundamental mission, provide reasonable, yet meaningful access to persons with LEP.

The essence of the meaningful access requirement is "reasonableness." In some circumstances, a NHPRC recipient directly serving significant numbers of LEP persons may be obligated to provide language assistance services, including, as appropriate, written translations of documents, procedures and/or forms critical to accessing NHPRC-supported archives. In many other circumstances, however, NHPRC recipients will have little or no obligation to provide language services beyond those many already provide.

This does not mean, however, that the four-factor analysis set out in this Guidance should be read as limiting recipient discretion to provide language assistance services in an effort to broaden its services to the communities it serves. Recipients are encouraged to exercise their flexibility under this Guidance to beyond mere minimal compliance and to create model programs for LEP access.

As required under Executive Order 13166 and the companion DOJ LEP Guidance issued in August, 2000,

recipients should apply a four-factor test to decide what steps are necessary and reasonable to provide meaningful access to their programs and activities for persons with LEP. Once the recipient has identified what language services, if any, are reasonable, the recipient should prepare a written policy on language assistance for persons with LEP (an "LEP policy"). This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available language lines to obtain interpreter services.

II. The Four-Factor Analysis

"Reasonable steps to ensure meaningful access" will vary depending on a number of factors. NHPRC recipients should apply the following four factors to the various contacts that they have with the public to decide what reasonable steps they should take to ensure meaningful access for persons with LEP. This balancing test preserves recipient management discretion and flexibility in determining how to best address the language needs of the LEP communities when deciding what documents to translate, and when oral translation is necessary.

A. The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of persons with LEP eligible to be served or encountered by the recipient in carrying out its operations. *The greater the number or proportion of persons with LEP, the more likely language services are needed.*

B. The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, in some fashion, the frequency with which they have contact with LEP language groups. The more frequent the contact, the more likely that language services are needed. The steps that are reasonable for a recipient that serves one person with LEP a year may be very different from those expected from a recipient that serves several persons with LEP each day. For instance, a NHPRC-supported project to arrange and describe a collection consisting primarily of documents originally created in the Spanish language could provide finding aids that are linguistically accessible for Spanish persons with LEP.

C. 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. A recipient should determine if a denial or delay of access to services or information could have serious implications for the LEP individual. This factor weighs heavily in favor of providing language services in situations where the failure to provide such services could have an adverse effect on health, safety, economic security, and other critical areas. Typically, recipients of NHPRC funds provide significant cultural and societal services but such services do not rise to the same level of importance as do the previously mentioned critical areas. In such circumstances, the resources available to the recipient and the cost of providing the services will weigh more heavily in considering what, if any, language services to provide to frequently encountered LEP language groups.

D. The Resources Available to the Recipient

A recipient's level of resources may have an impact on the nature of the steps it should take. Smaller recipient entities with more limited budgets are not expected to provide the same level of language services as larger recipient entities with larger budgets. However, such small recipients should still consider what language services are needed and what they are able to provide. Resource issues can sometimes be minimized by technological advances and sharing of resources and translations.

III. Application of the Four Factors to NHPRC Recipients

NHPRC recipients include, but are not limited to state, county, and local historical societies and archives; universities; colleges; and libraries. All aspects of a program or activity that receives NHPRC assistance are covered by Title VI. Thus, recipient activities vary widely and the results of the application of the four factors varies as well.

NHPRC recipients' Title VI obligations in many cases will be satisfied by making available oral language assistance or commissioning translations on an as-needed basis. There are many circumstances where, after an application and balancing of the four factors noted above, Title VI would

not require translation at all. For instance, based on a typical application of the nature and importance of the activity to persons with LEP and the resources available, Title VI does not require an archivist to translate archived collections, but it does require the implementation of appropriate language assistance measures to permit a person with LEP to have access to publicly accessible archives.

IV. Legal Background

Further legal background for this guidance can be found in the Department of Justice Policy Guidance document, titled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency Policy Guidance", reprinted at 65 FR 50123 (August 16, 2000).

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NUCLEAR REGULATORY COMMISSION

[IA–01–021]

In the Matter of Mr. Virgil J. Hood, Sr.; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Mr. Virgil J. Hood, Sr. was the President and Radiation Safety Officer (RSO) of Moisture Protection Systems Analysts, Inc. (MPSA or the Licensee) formerly located at 1350 Beverly Road, Suite 223, McLean, Virginia 22101. The Licensee was the holder of Byproduct Materials License No. 45–24851–02 (the license), which was issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30 on June 19, 1986 and renewed on January 30, 1992. The license authorized MPSA to possess byproduct material, i.e., a Seaman Nuclear Corporation Model R–50 portable roofing gauge containing a nominal 40 millicuries (mCi) of Americium-241, for use in measuring moisture density of roof surfaces in accordance with the conditions specified in the license. On April 20, 1998, the Licensee's license was revoked.

II

Between December 31, 1997 and January 31, 2001, the NRC Office of Investigations (OI) conducted an investigation to determine the location of a moisture density gauge containing licensed material after the Licensee failed to pay the NRC annual license fee