

Draft Title VI Guidance Documents

Questions and Answers

The U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) published two draft Title VI guidance documents in the *Federal Register* on June 27, 2000. EPA will accept public comments over a 60-day period, until August 28, 2000. The draft documents are entitled:

- C *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (“Draft Recipient Guidance”), and
- C *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (“Draft Revised Investigation Guidance”).

More information about the EPA draft guidance documents is available on the EPA Office of Civil Rights Web site at <http://www.epa.gov/civilrights>. Electronic copies of the draft guidance documents are also available on the EPA OCR Web site.

Background

In February 1998, the U.S. Environmental Protection Agency (EPA) issued its *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (*Interim Guidance*) for public comment. The *Interim Guidance* provided an initial framework for EPA’s Office of Civil Rights (OCR) to process complaints filed under Title VI of the Civil Rights Act of 1964 (Title VI) that allege discriminatory environmental and health effects from environmental (pollution control) permits issued by EPA financial assistance recipients. EPA revised the *Interim Guidance* and has recently published two draft Title VI guidance documents for public comment. This “Question and Answer” style document provides responses to the various issues that have been raised by the public throughout the guidance drafting process.

Questions and Answers

1. What has EPA released related to Title VI?

The Title VI guidance documents recently released by EPA include: a preamble; two guidance documents - *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (“Draft Revised Investigation Guidance”), and *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (“Draft Recipient Guidance”); and one background reference document summarizing and addressing issues raised during the *Interim Guidance*’s public comment period, meetings with various stakeholders, and the internal EPA and Department of Justice review processes.

2. What kinds of discrimination does Title VI prohibit?

Title VI itself prohibits intentional discrimination. In addition, the Supreme Court has stated that Title VI authorizes agencies to adopt implementing regulations that also prohibit actions that have discriminatory effects. EPA's Title VI implementing regulations cover both intentional discrimination and actions that have discriminatory effects.

3. What process did EPA use to develop these draft guidance documents?

Issuance of the *Interim Guidance* opened a continuing dialogue with stakeholders that helped to shape the Agency's *Draft Revised Investigation Guidance*. EPA provided a 90-day comment period on the *Interim Guidance* during which more than 120 written comments were received from a broad range of interested parties.

Community groups, environmental justice organizations, state and local governments, industry, academia, and other interested stakeholders also contributed to the development of the draft guidance documents as part of the Title VI Implementation Advisory Committee established under the National Advisory Council for Environmental Policy and Technology. EPA asked this committee to recommend approaches that EPA recipients could use to address Title VI concerns early in the permitting process and to help refine the *Interim Guidance*.

Over the past two years, EPA has also met with other members from a broad range of stakeholder groups to discuss their concerns about Title VI issues. For example, in September 1999, EPA held a facilitated meeting with community, state and local government, and industry representatives to receive feedback on a range of draft policy options under consideration during the revision of the *Interim Guidance*.

4. Did EPA rely on the Executive Order on environmental justice to issue these guidance documents?

No. Title VI of the Civil Rights Act of 1964 and EPA's Title VI implementing regulations prohibit discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance in their programs or activities, and provide the authority to issue these guidance documents. In addition, the Department of Justice, which coordinates the Federal government's Title VI work, issued regulations that provide, in part, that "Federal agencies shall publish Title VI guidelines for each type of program to which they extend financial assistance."

The Executive Order on environmental justice (Executive Order 12898) directs Federal agencies, to the extent permitted by existing law, to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

5. Who is the intended audience of the *Draft Revised Investigation Guidance*?

This document describes procedures EPA staff may use to perform investigations of Title VI administrative complaints. It only applies to EPA. It also provides information to the public concerning EPA's internal investigation process.

6. Who is the intended audience of the *Draft Recipient Guidance*?

The *Draft Recipient Guidance* was written at the request of states, for recipients of EPA financial assistance who implement environmental permitting programs. EPA's Title VI implementing regulations state that, "recipient means, for the purposes of this regulation, any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance."

7. What is the purpose of the *Draft Revised Investigation Guidance*?

The *Draft Revised Investigation Guidance* provides an more detailed framework for the EPA Office of Civil Rights to process administrative complaints filed under Title VI alleging discrimination by recipients during their environmental permitting process. The document describes procedures EPA staff may use to perform investigations of Title VI administrative complaints that allege adverse disparate impacts caused by recipients' permitting decisions. The *Draft Revised Investigation Guidance*, after revision following the public comment period and publication in final form, will replace the *Interim Guidance*.

8. How does the new *Draft Revised Investigation Guidance* differ from the *Interim Guidance* issued in February 1998?

In response to comments received by EPA, the *Draft Revised Investigation Guidance* differs from the *Interim Guidance* by providing more detail and clarity and by including expanded discussions of mitigation, informal resolution, and adverse disparity analysis. It also defines terms through examples and a glossary. Additionally, it more clearly explains the various steps of an investigation and the actions that may be considered at each stage (e.g., how a finding of adverse impact is expected to be reached, or when an allegation will likely be dismissed). It also includes a flowchart showing the steps of the Title VI investigation process.

9. Does the Title VI guidance prevent issuing permits in brownfields areas that are being redeveloped?

No. Further, no complaints have been filed under Title VI in connection with Brownfields Pilot Projects redevelopment sites and none of the Title VI complaints filed with the EPA Office of Civil Rights has held up redevelopment in our cities. The Brownfields Program emphasis on community involvement, throughout the life cycle of the activity, has helped mitigate the need for community members to seek redress of their grievances through civil rights complaints because the community plays an integral part in the process and has a stake in the outcome.

10. What happens to a facility's permit during an EPA investigation of a Title VI complaint?

The filing or acceptance for investigation of a Title VI complaint will not suspend or reverse an issued permit, since EPA's Title VI investigation process is focused on the actions of recipients, not of permit applicants.

11. Does EPA represent the recipient or the complainant in the investigatory process?

Neither. During a Title VI investigation EPA represents the interests of the Federal government by ensuring that recipients of EPA financial assistance meet the nondiscrimination obligations required under Title VI and EPA's Title VI implementing regulations. Therefore, EPA represents neither the recipients nor the complainants in an investigation.

12. Will EPA consider evidence submitted by recipients or complainants during an investigation?

Yes. EPA encourages recipients and complainants to provide information or documents such as data analysis and studies for review and consideration by OCR.

13. Does compliance with existing Federal and state environmental regulations constitute compliance with Title VI?

A recipient's Title VI obligation exists independent from Federal or state environmental laws governing its permitting program. Recipients may have policies and practices that are compliant with Federal or state regulations but that have discriminatory effects (such as an adverse disparate impact) on certain populations based on race, color, or national origin, and are therefore noncompliant with Title VI.

14. Does the *Draft Revised Investigation Guidance* allow EPA to consider cumulative impacts in determining adverse impacts?

In investigating complaints which allege cumulative impacts, OCR expects to consider cumulative impacts to the extent feasible in determining when adverse impacts exist.

OCR's ability to do this will often depend upon the availability of data and appropriate assessment tools.

15. Does Title VI apply to Federally-recognized Indian tribes?

The *Draft Revised Investigation Guidance* does not address complaints against EPA recipients that are Federally-recognized Indian tribes. That subject will be addressed by EPA in separate guidance because the applicability of Title VI to Federally-recognized tribes involves unique issues of Federal Indian law. EPA has consulted with Federally-recognized tribes on this issue and now plans to address the issue in collaboration with the U.S. Department of Justice.

16. What is informal resolution and how does it impact a Title VI investigation?

Informal resolution methods may include a recipient attempting to resolve the complaint directly with the complainant, before EPA makes a finding concerning a Title VI allegation. This process may also incorporate formal alternative dispute resolution (ADR) approaches, or the use of third party mediators, to help identify and resolve complainants' concerns. EPA encourages the use of informal resolution methods to resolve Title VI complaints.

17. What is the purpose of the *Draft Recipient Guidance*?

The *Draft Recipient Guidance* was written for the recipients of EPA financial assistance that implement environmental permitting programs. It provides a framework to help recipients address situations that might otherwise result in the filing of complaints alleging violations of Title VI and EPA's Title VI implementing regulations. In particular, it provides a framework designed to improve a recipient's existing programs or activities and reduce the likelihood or necessity for persons to file Title VI administrative complaints with EPA alleging either: (1) discriminatory human health or environmental effects resulting from the issuance of permits; or (2) discrimination during the permitting public participation process. Cooperative efforts between permitting agencies and communities, whether or not in the context of Title VI-related approaches, frequently offer a means of addressing potential problems.

18. Are recipients required to adopt any of the approaches and activities listed in the *Draft Recipient Guidance*?

No. The document provides examples and suggestions only, and recognizes that individual recipients may have different needs and concerns. The approaches and activities in the guidance are flexible and are not intended to represent all possible approaches or activities a recipient may adopt. Recipients may wish to develop an appropriate mix of Title VI approaches and activities that would be most effective for them, and need not adopt any of the suggestions mentioned in the document. This mix may also include other

programs or initiatives that recipients have developed on their own to address Title VI issues.

19. What is the effect of the EPA Title VI appropriations rider, and how does it relate to the guidance documents?

The U.S. House of Representatives has, for the third consecutive year, issued legislative rider language that prevents EPA from conducting investigations using the *Interim Guidance* for complaints received since the effective date of the initial bill, *i.e.*, October 21, 1998. Once the *Draft Revised Investigation Guidance* is finalized, EPA will be able to conduct investigations on permit-related complaints received after this date.

20. What effect will the draft guidance documents have on the existing backlog of Title VI complaints?

EPA is committed to addressing the existing backlog of Title VI complaints, and has doubled its Title VI resources (*i.e.*, staff and contract dollars) over the past two years to address Title VI concerns. Staff resources that have been devoted to the development of the draft guidance documents will be refocused on case investigations. Additionally, EPA will devote substantial contractor resources to support data analyses, bundle complaints by similar issues, *e.g.*, air emissions cases, utilize regional and media office expertise to analyze technical issues, work to promote alternative dispute resolution for newer complaints, and continue to assess lessons learned to increase the overall efficiency of case processing.

21. How can I comment on the *Draft Revised Investigation Guidance* and the *Draft Recipient Guidance*?

EPA will accept written comments on the draft guidance documents for a 60-day period following publication in the *Federal Register*. All comments must be received in writing by the EPA Office of Civil Rights by August 28. Public comments should be mailed to:

Title VI Guidance Comments
U.S. Environmental Protection Agency
Office of Civil Rights (1201A)
1200 Pennsylvania Avenue NW
Washington, DC 20460

Comments may also be submitted electronically to the following e-mail address: civilrights@epa.gov. Please include your name and address, and, optionally, your affiliation.

In addition, EPA's Office of Civil Rights will coordinate seven public listening sessions across the country to receive additional feedback during the 60-day comment period. The dates and locations of the six listening sessions are: June 26 in Washington, D.C.; July 17 in Dallas, TX; July 18 in Chicago, IL; August 1 in New York, NY; August 2 in Los Angeles, CA; August 3 in Oakland, CA; and August 9 in Philadelphia, PA. More information about the listening sessions may be found on the EPA Office of Civil Rights Web site at <http://www.epa.gov/civilrights/t6pubmtgs.htm>.

Public Listening Sessions on Draft Title VI Guidance Documents

| Date | Location/Time(s) | Contact |
|----------------|---|---|
| June 26, 2000 | Ronald Reagan Building Polaris Suite (concourse level) 1300 Pennsylvania Ave NW Washington, DC 9 am - 12 noon, and 6 - 9 pm | Mavis Sanders (202) 564-7272 |
| July 17, 2000 | EPA Region 6 office 1445 Ross Ave, 12 th floor Dallas, TX 4 - 7 pm | Manisha Patel (214) 665-2770 |
| July 18, 2000 | EPA Region 5 office 77 West Jackson Blvd, Room 331 Chicago, IL 5 - 8 pm | Ann Coyle (312) 886-2248 |
| August 1, 2000 | EPA Region 2 office 290 Broadway, Room 27A New York, NY 4 - 7 pm | Doug White (212) 637-5032 |
| August 2, 2000 | Carson Community Center Hall A 801 East Carson St Los Angeles, CA 6 - 9 pm | Carla Moore (415) 744-1938 or Joann Asami (415) 744-1359 |
| August 3, 2000 | Henry J. Kaiser Convention Center 10 10th St Oakland, CA 6 - 9 pm | Carla Moore (415) 744-1938 or Joann Asami (415) 744-1359 |
| August 9, 2000 | EPA Region 3 office 1650 Arch St Shenandoah Room (4 th Floor) Philadelphia, PA 4 - 7 pm | Daniel Isales (215) 814-2647 |