



MONTANA

Department of Transportation

Language Assistance Plan

Ensuring Meaningful Access
for Limited English Proficient Individuals

July 2023

OFFICE OF CIVIL RIGHTS
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Part A: Introduction

MDT Mission & Vision

The mission of the Montana Department of Transportation (MDT) is to plan, build, operate, and maintain a safe and resilient transportation infrastructure to move Montana forward. The department's guiding vision to accomplish this mission is that MDT will set the gold standard for a highly effective, innovative, and people-centric department of transportation.

The core values that guide all MDT employee behavior, actions and approach are:

- We are **B**usiness focused,
- We **U**nify the organization,
- We **I**nnovate at all levels,
- We **L**ead by example,
- We are **D**edicated to MDT,
- We **E**mpower our employees,
- We **R**espect each other, and
- We **S**erve Montana with pride.

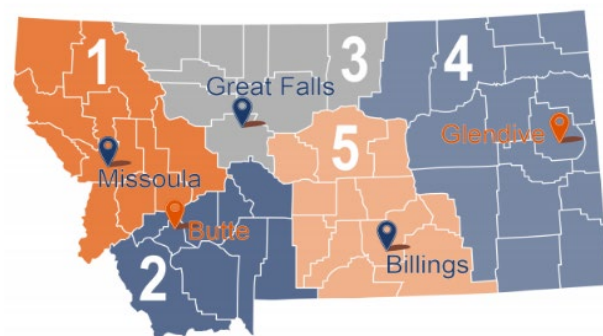
Team MDT – We are **B.U.I.L.D.E.R.S.**

Organization

MDT is responsible for the planning, design, maintenance, operation, and management of Montana's state-owned roadways, walkways, rest areas, airports, and numerous public-use facilities. The departmental structure helps staff at the state, regional, and local level efficiently deliver transportation improvements, comply with relevant rules and regulations, and maintain and operate transportation infrastructure to enable daily movement of goods and people across the state.

Each division within the department provides a critical function toward meeting MDT's mission of ensuring Montana's transportation network continues to remain a quality resource for all users, and support the growth of businesses, communities, and the Montana way of life. MDT's leaders, employees, and partners are focused on the future of our state and finding the best ways to move Montana forward, together.

Montana's geographic and demographic diversity means regions in Montana face different travel demands and transportation challenges. To address these unique challenges, the state is split into five transportation districts, each managed by district administrators focused on the individual transportation needs within their jurisdiction.



District 1 - Missoula
Phone: 406.523.5800

District 2 - Butte
Phone: 406.494.9600

District 3 - Great Falls
Phone: 406.454.5880

District 4 - Glendive
Phone: 406.345.8200

District 5 - Billings
Phone: 406.252.4138

Part B: Purpose of the Language Assistance Plan

As a recipient of federal financial assistance, MDT is required to comply with Title VI of the Civil Rights Act of 1964 and related statutes, regulations, and authorities, and to deliver its federally assisted programs, services, and activities (Program(s))¹ in a fair and nondiscriminatory manner. This includes taking reasonable steps to provide limited English proficient (LEP) individuals with meaningful access to all MDT Programs. LEP individuals do not speak English as their primary language and have limited ability to speak, read, write or understand English. The purpose of the MDT Language Assistance Plan (LAP or Plan) is to ensure MDT communicates effectively with LEP individuals.

Meaningful access means providing language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access denotes access that is not significantly restricted, delayed, or inferior compared to access provided to English proficient individuals.

This LAP provides guidance to MDT Programs for identifying LEP individuals, implementing language assistance measures, and defining staff responsibilities related to providing meaningful access for LEP individuals.²

¹ Program(s) include any activities, benefits, information, programs, projects or services provided by or delivered from any MDT division or district office.

² For the convenience of subrecipients and to optimize compliance with LAP/LEP requirements, MDT has arranged for subrecipients' no-cost use of MDT's contracted services for language assistance. Notwithstanding this arrangement, subrecipients remain responsible for complying with their respective LAP/LEP requirements. See e.g., *USDOT Federal Transit Administration (FTA) Circular 4702.1B*, Chapter III-7 through III-9.

MDT subrecipients may reference this Plan to address LAP/LEP responsibilities. In referencing this Plan, subrecipients must independently ensure compliance with the subrecipient's specific LAP/LEP requirements.

For further questions regarding this Plan, please contact:

Kim Vietz, Title VI Specialist
MDT Office of Civil Rights
406-444-6334
kvietz@mt.gov

Part C: Authorities and Guidance

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.”

Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency,” 65 FR 50121 (August 16, 2000) is directed at implementing the protections afforded by Title VI of the Civil Rights Act of 1964 and related regulations. It prohibits recipients of Federal financial assistance from discriminating based on national origin by failing to provide meaningful access to services to LEP individuals. This protection requires that LEP individuals be provided an equal opportunity to benefit from or have access to services that are normally provided in English.

U. S. Department of Justice (USDOJ) LEP Guidance,³ “Enforcement of Title VI of the Civil Rights Act of 1964 - National Origin Discrimination Against Persons with Limited English Proficiency,” (August 11, 2000) directs each Federal agency to examine the services it provides and to develop and implement a system by which LEP individuals can meaningfully access those services and requires federal fund recipients to take reasonable steps to ensure meaningful access to Programs for LEP individuals.

USDOT LEP Guidance,⁴ “Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons,” (December 14, 2005) requires USDOT recipients take reasonable steps to ensure meaningful access to Programs for LEP individuals.

USDOT FTA Circular 4702.1B, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” (October 1, 2012). Chapter III, part 9, requires federal fund recipients and subrecipients take reasonable steps to ensure meaningful access to Programs for LEP individuals.

USDOT Federal Motor Carrier Safety Administration (FMCSA), “English Language Proficiency Testing and Enforcement Policy,” MC-ECE-2016-006 (June 15, 2016); (FMCSA LEP Memorandum)⁵ removes the requirement to place drivers of commercial

³ [Executive Order 13166 and USDOJ LEP Guidance](#)

⁴ [USDOT LEP Guidance](#)

⁵ FMCSA LEP Memorandum is Attachment B

motor vehicles (CMV) out of service for English Language Proficiency (ELP) violations, changes the standards for determining non-compliance with 49 CFR 391.11(b)(2), and confirms MCS officers may use communication tools to interact with CMV drivers.

Part D: Determining MDT's Obligation to Provide LEP Services (Four-Factor Analysis)

MDT uses the following four factors to evaluate its obligation to provide LEP services:⁶

Factor 1. The number or proportion of LEP persons eligible to be served or likely to be encountered by MDT program staff.

Factor 2. The frequency with which LEP individuals interact with the program.

Factor 3. The nature and importance of the program, activity, or service provided by the program.

Factor 4. The resources available to MDT's programs and resource costs.

The following four-factor analysis provides an agency-wide assessment for all of MDT's Programs. If sections of this assessment do not apply to specific programs, MDT program staff should work with OCR to conduct a more specific four-factor analysis to determine appropriate steps to ensure meaningful access for LEP individuals.

Factor 1: The number or proportion of LEP individuals eligible to be served or likely to be encountered by MDT staff

Programs that encounter a greater number of LEP individuals are more likely to require language assistance services.⁷ Since MDT Programs serve both Montana residents and non-residents, this analysis considers resident and non-resident LEP individuals.

Montana Residents

MDT evaluated the following external data sources from [LEP.gov Data and Language Maps](#) to determine the best resources to evaluate the number of residents likely to be served or encountered by MDT Programs:

- Federal Government LEP Map Apps.
- [U.S. Census Bureau LEP Data.](#)
- U.S. Department of Health and Human Services LEP data.⁸
- U.S. Department of Education (USDOE) LEP data.
- Non-Governmental LEP Data and Maps.

See also, Attachment D: Resources. In addition, MDT consulted the Montana Department of Administration and the Montana Department of Commerce Census and Economic Information Center (CEIC).⁹ MDT also reviewed data from the Montana Office of Public

⁶ See four-factor analysis in USDOJ and USDOT LEP Guidance

⁷ USDOT LEP Guidance

⁸ [Resource for Entities Covered by Section 1557 of the Affordable Care Act Estimates of at Least the Top 15 Languages Spoken by Individuals with Limited English Proficiency for the 50 States, The District of Columbia, and the U.S. Territories](#)

⁹ The CEIC is the official State Data Center for Montana. The State Data Center program is one of the [Census Bureau's](#) partnerships to make data available locally.

Instruction. MDT determined that US Census Bureau and CEIC census data from the 2021 ACS 5-Year Estimates yielded the most accurate information.¹⁰

Statewide census data indicated 0.76% of Montanans spoke English less than very well with Spanish (0.3%) being the most commonly spoken non-English language. Census data in Attachment A, listed by county, identified 11 (of 56) counties in Montana where more than 1% of the population spoke English less than very well; however, no geographic area had a language use percentage other than English greater than 2.8%.¹¹

USDOE data from Fall 2019 indicates that 2.4% of Montana's public school students were English learners.¹²

Non-Residents

Several MDT programs that interact with LEP individuals are not included in these external data sources as the individuals do not reside in Montana. In June 2022, to better understand and capture interactions with these populations, MDT surveyed its employees to determine the total number of interactions between staff and LEP individuals within the past year.¹³

Factor 2: The frequency with which LEP individuals come in contact with MDT Programs

MDT utilized data from its employee survey to assess the frequency with which LEP individuals come in contact with MDT Programs.

- Of the 747 MDT employee survey respondents, 3.8% reported interactions with Spanish speaking LEP individuals during the year. MDT employee respondents reported Spanish as the language most frequently encountered.
 - 26% of MDT employee respondents that work directly or indirectly with members of the public encountered at least one LEP individual during the survey period.
 - MDT district office employees generally reported 5 or fewer encounters per year with LEP individuals. Most of these encounters involved serving the traveling public.
 - Motor Carrier Services (MCS) employees were the most likely to encounter LEP individuals, as 50% of MCS respondents encountered LEP individuals more than 26 times in a year. MCS respondents reported languages most frequently encountered as: Arabic, French, Punjabi, Russian, Spanish, and Urdu.

MDT reviewed survey results from the Yellowstone Airport in West Yellowstone, Montana and Yellowstone National Park (YNP). Both MDT Yellowstone Airport and YNP Visitor Use

¹⁰ FHWA has also endorsed the use of ACS Table C16001 when conducting a [Limited English Proficiency Data Collection Walkthrough](#) (walkthrough). While the walkthrough is not intended as guidance, MDT can use it as an aid to develop its Plan. MDT evaluated the data from ACS Table C16001 and S1601 because it had the most recent data (2021) and provided data at the county level.

¹¹ ACS Table C16001 as refined by CEIC to be Montana-specific is available upon request.

¹² [USDOE English Learners in Public Schools by State](#)

¹³ MDT Limited English Proficiency Survey (June 2022) is available upon request.

Study (2016)¹⁴ respondents reported languages most frequently encountered as Mandarin and Spanish.

MDT also surveyed transit subrecipients in November 2022. The survey results indicated the following:

- 32% of MDT subrecipient respondents reported encountering at least one LEP individual (e.g., subrecipients answered “1-5 encounters” or “more than 26 encounters”) in the past year, most often a transit rider.
 - Subrecipient respondents reported Spanish as the language most frequently encountered.

Factor 3: The nature and importance of the program or service provided by the program to people’s lives

The more important the program, or the greater the possible consequences of the contact to LEP individuals, the greater the need for language assistance services. MDT staff must determine whether denial or delay of access to programs could have serious implications for the LEP individual. Although all MDT Programs are important, generally, programs related to accessing benefits, opportunities, or rights are considered high importance.

Areas of high importance typically are:

- Programs that serve higher minority or LEP populations (i.e., Indian reservations); and
- Programs where the population is non-residential (e.g., airports, Motor Carrier Services, and district staff assisting the traveling public).

Factor 4: The resources available to MDT Program staff and resource costs

The frequency and importance of MDT Program encounters for Montana’s LEP populations will dictate the level of language services it should commit to provide. Some language services can be provided at little or no cost. Each Program should carefully explore the most cost-effective means of delivering competent and accurate language services by:

- Taking an inventory of the language assistance measures currently being provided, along with associated costs.
- Contacting OCR to determine what, if any, additional services are needed to provide meaningful access.
- Considering cost-effective practices for providing language services

Montana’s demographic does not meet the threshold for written translation in any languages¹⁵; however, the survey indicated that MDT Programs do encounter LEP individuals and need to be equipped to provide meaningful access. MDT provides the Language Identification and Assistance Guide to MDT employees, which prepares them to know when and how to provide interpretation services when interacting with LEP individuals.

¹⁴ YNP Visitor Use Study is available upon request.

¹⁵ See Safe Harbor for Written Translations under Element II.

Language assistance measures should be based on what is necessary and reasonable after considering the four-factor analysis. See Element II, Language Assistance Measures on page 9 for further information.

Part E: Elements of MDT's Language Assistance Plan

Based upon the findings in the four-factor analysis, MDT staff will implement language assistance measures to address the identified needs of LEP populations served. MDT uses the following five elements from USDOT LEP Guidance to implement its Plan:

- I. Identifying the Language Needs of LEP Individuals.
- II. Implementing Language Assistance Measures.
- III. Training Staff to Implement the Plan.
- IV. Providing Notice to LEP Individuals.
- V. Monitoring and Updating the LAP.

Element I: Identifying Language Needs of LEP Individuals

MDT's assessment of the number of LEP individuals eligible to be served or encountered and the frequency of encounters is documented through the four-factor analysis in Part D of this Plan.

ACS and employee survey data will not provide Title VI demographic data for all situations. Some Title VI impacts, such as right of way/relocations and public involvement, will require MDT to conduct surveys to collect demographic data from impacted persons.¹⁶

Environmental Project Assessment

MDT considers environmental justice (EJ) on all projects through its environmental review process to determine if the project impacts a community with LEP individuals and the appropriate level of language services required. The EJScreen tool and the Screening Tool for Equity Analysis of Projects (STEAP) are external data sources available to MDT staff for use on a project level to determine the number or proportion of LEP individuals in a geographic area:

- [EJScreen](#): A mapping tool created by the U.S. Environmental Protection Agency based on nationally consistent data and an approach that combines environmental and demographic indicators in maps and reports. The functions include automated demographic reporting for a geographic area around an identified project area.
- [STEAP](#): A tool created by the Federal Highway Administration to estimate the socioeconomic characteristics of the resident population surrounding a proposed project location. It generates an equity analysis report that may also be useful in grant applications.

Public Engagement

MDT's public involvement process ensures consistent communication that informs the public and stakeholders from initial project development through the completion of construction. To enhance communication on a project specific and statewide level, MDT contracts with seven public involvement firms. As described further in Element III on page 10, OCR trains MDT employees and public involvement firms on LEP requirements,

¹⁶ FHWA [Limited English Proficiency Data Collection Walkthrough](#)

including language assistance measures in Element II and public notice requirements for public engagement in Element IV.

Element II: Language Assistance Measures

MDT uses various language assistance services to ensure meaningful access for LEP individuals. Language assistance measures should follow USDOT LEP guidance and be based on what is necessary and reasonable after considering the four-factor analysis in Part D of this Plan.

Safe Harbor for Written Translations

MDT follows USDOT LEP guidance regarding “safe harbor” provisions for translation of written documents. Under these provisions the following actions are considered strong evidence of compliance with USDOT’s written-translation obligations:

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries <i>and</i> more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries <i>and</i> 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries <i>and</i> less than 1,000 in number	No written translation is required.

Based on MDT’s analysis of ACS data identifying language spoken at home, MDT does not meet the threshold requiring written translations of vital documents; however, MDT has arranged to provide interpretation and translation services to LEP individuals to ensure meaningful access to MDT Programs.

Language Assistance Measures

- MDT’s Language Identification and Assistance Guide (Guide) equips employees to identify the primary language of the LEP individual (“I Speak...”¹⁷) and how to obtain interpretation services via Language Link. For MCS officers, MDT included in the Guide an explanation of why a driver is receiving a Commercial Vehicle Safety Alliance inspection and what documents are being requested. This information is translated into the six most common languages encountered by MCS officers (Arabic, French, Punjabi, Russian, Spanish, and Urdu).
- MDT’s Yellowstone Airport uses universal airport signage and graphics to assist with airport terminal and landside wayfinding. The signs are used internationally and can help passengers identify where airport services are located without having to read or understand English.
- MDT contracts with Language Link¹⁸ to deliver interpretation and translation services in more than 300 languages and dialects. Language Link is available 24

¹⁷“I Speak...” is translated into 71 languages, including those from Montana’s tribal communities.

¹⁸ Language Link partners with other federal, state, and local government entities and maintains certifications and standards within its industry. MDT employees should refer to the Guide, MDT website, or contact MDT OCR for more information on how to use this service.

hours a day, 7 days a week, year-round. MDT's contract also includes these services for its subrecipients.

How to Assist LEP Individuals

Necessary language assistance may vary depending on the type of interaction.

LEP Callers and LEP Individuals who have In-Person Contact with Staff: MDT employees should use the Language Identification and Assistance Guide to determine the primary language of the LEP individual and contact Language Link to provide interpretation.

To ensure the best interaction when working with interpreters, MDT employees should:

- Briefly tell the interpreter the nature of the call.
- Speak directly to the LEP individual and not to the interpreter.
- Pause at the end of a complete thought.
- Provide the interpreter with clarification or repetition as requested to ensure accuracy.

Written Communication from LEP Persons: Written translation requests may take up to five (5) business days to receive from the date of request. To provide timely service, MDT staff should call the LEP individual using Language Link to respond. For formal written responses that need to be translated, contact MDT OCR to request a translation from Language Link.

Element III: Training Staff

MDT employees need to know their obligations to provide meaningful access to programs for LEP individuals. MDT will provide training for all employees, which includes:

- Review of MDT's current LAP, LEP policies and procedures.
- Requirements for providing meaningful access.
- How to work effectively with LEP individuals and interpreters.
- Coordinating with OCR to document LEP interactions.
- How to use available resources including the Language Identification and Assistance Guide and Language Link.

OCR will annually assess agency employee training needs for providing meaningful access to LEP individuals, including training of management staff and new employees.

Element IV: Providing Notice to LEP Persons

Any facilities where MDT interacts with the public in-person should have a "Public Notice of Rights Under Title VI" posted clearly and conspicuously. Based on MDT's four-factor analysis and USDOT's safe harbor guidance, notices will be published in English. MDT will also post the Point to Your Language Poster¹⁹, a resource from Language Link, in all public-serving facilities. Staff should use the Language Identification and Assistance Guide in interactions with LEP individuals. If staff experience an increase in LEP individuals

¹⁹ Point to Your Language Poster is Attachment C.

accessing MDT programs, they should work with OCR to document and determine if additional resources should be provided to ensure meaningful access.

Tribal Communities

MDT acknowledges tribal languages may be spoken in reservation communities or elsewhere in Montana. MDT employees can use Language Link to assist with interpretation or translation services.

Public Engagement

MDT must consider LEP communities during all public engagement planning. If LEP communities were not previously included in the MDT assessment, employees should contact OCR to document the four-factor analysis and determine the level and type of language assistance necessary for a particular public engagement plan or activity.

MDT employees should be prepared to provide language assistance via Language Link throughout the public engagement process, whether the public engagement is virtual or in person. The Guide provides information on how to connect to Language Link through a virtual platform. Staff should determine what information the LEP individual is interested in receiving. If the information is not readily available in other languages, staff should request the LEP individual's contact information and follow up with the requested information in a timely manner.

MDT employees conducting outreach should regularly assess the needs of the populations frequently encountered or affected by their program to determine whether translation of outreach materials is needed. Community organizations may help determine what outreach materials are most helpful to translate, and some translations may be more effective when done in conjunction with other outreach methods, including utilizing ethnic media, schools, and religious or community organizations to help spread a message.

Websites and Online Documents

Generally, MDT websites are considered a statewide resource, and the four-factor analysis should use statewide LEP data to determine necessary translations. However, where MDT employees determine a more specific LEP audience is likely to visit their webpage(s), the four-factor analysis should include a demographic analysis limited to that audience. For example, a district maintaining a project-specific webpage should consider the population likely to be affected by the project.

Element V: Monitoring and Updating the LAP

OCR will be responsible for reviewing changes in demographics and types of language assistance services to update and implement the LAP on an annual basis. This includes 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 individuals.
- Availability of resources, including technological advances and sources of additional resources, and the costs imposed.
- Whether existing assistance is meeting the needs of LEP individuals.
- Whether staff knows and understands the LAP and how to implement it.

- Whether identified sources for assistance are still available and viable.

Any changes will be reflected in future Plan updates.

Attachment A: ACS Tables

As shown below, Census data indicates 0.76% of Montanans speak English less than very well with Spanish (0.3%) being the most commonly spoken non-English language.

Montana & Counties: Population 5 years and over that speaks English less than very well

Data Source: 2021 American Community Survey (ACS) 5-year

Table: C16001

CEIC refined ACS Table C16001 to be Montana-specific (April 6, 2023). The below table is an excerpt from the CEIC document. The full document is available upon request.

Geography Name	Language	% of Population 5 years and over that speak English less than very well
Montana	All Languages other than English	0.76%
Montana	Arabic	0.02%
Montana	Chinese (incl. Mandarin, Cantonese)	0.06%
Montana	French, Haitian, or Cajun	0.02%
Montana	German or other West Germanic languages	0.10%
Montana	Korean	0.01%
Montana	Other and unspecified languages	0.04%
Montana	Other Asian and Pacific Island languages	0.06%
Montana	Other Indo-European languages	0.03%
Montana	Russian, Polish, or other Slavic languages	0.05%
Montana	Spanish	0.30%
Montana	Tagalog (incl. Filipino)	0.02%
Montana	Vietnamese	0.03%

ACS Table C16001 includes the primary language spoken for the state and countywide population who speak English less than very well. ACS Table S1601 combines all LEP individuals by county, regardless of primary language spoken. MDT evaluated both ACS Tables and due to smaller LEP populations, MDT chose to review counties by all LEP populations within a county instead of by individual primary language. As shown below, in 11 of the 56 counties in Montana more than 1% of the population spoke English less than very well; however, no geographic area had a language use percentage other than English greater than 2.8%.

Montana & Counties: Population 5 years and over that speaks English less than very well

Data Source: 2021 American Community Survey (ACS) 5-year

Table: S1601

CEIC refined ACS Table S1601 to be Montana-specific (April 6, 2023). The below table is an excerpt from the CEIC document. The full document is available upon request.

Geographic Area Name	% of Population 5 years and over that speak English less than very well
Montana	0.76%
Beaverhead County	1.19%
Big Horn County	0.27%
Blaine County	0.32%
Broadwater County	0.25%
Carbon County	0.71%
Carter County	0.00%
Cascade County	0.95%
Chouteau County	0.36%
Custer County	0.99%
Daniels County	0.12%
Dawson County	0.22%
Deer Lodge County	0.56%
Fallon County	0.00%
Fergus County	0.56%
Flathead County	0.70%
Gallatin County	0.62%
Garfield County	0.00%
Glacier County	2.03%
Golden Valley County	1.13%
Granite County	0.32%
Hill County	0.42%
Jefferson County	0.74%
Judith Basin County	0.10%
Lake County	1.59%
Lewis and Clark County	0.64%
Liberty County	2.07%
Lincoln County	0.79%
McCone County	0.47%
Madison County	1.81%
Meagher County	0.00%
Mineral County	0.00%
Missoula County	1.18%
Musselshell County	0.52%
Park County	0.59%
Petroleum County	0.00%
Phillips County	0.00%
Pondera County	2.41%
Powder River County	0.25%
Powell County	0.24%

Geographic Area Name	% of Population 5 years and over that speak English less than very well
Prairie County	0.51%
Ravalli County	0.31%
Richland County	0.86%
Roosevelt County	0.43%
Rosebud County	0.79%
Sanders County	0.28%
Sheridan County	0.42%
Silver Bow County	1.38%
Stillwater County	0.21%
Sweet Grass County	0.55%
Teton County	0.24%
Toole County	1.61%
Treasure County	0.00%
Valley County	0.06%
Wheatland County	0.00%
Wibaux County	2.80%
Yellowstone County	0.61%

Attachment B: FMCSA LEP Memorandum



U.S. Department
of Transportation

Federal Motor Carrier
Safety Administration

Memorandum

ACTION: English Language Proficiency
Subject: Testing and Enforcement Policy
MC-ECE-2016-006

Date: JUN 15 2016

From: *W. Quade* William A. Quade
Associate Administrator for Enforcement

Reply to
Attn. of:

To: All FMCSA Staff

PURPOSE:

This policy memorandum provides guidance to Federal Motor Carrier Safety Administration (FMCSA) personnel conducting safety investigations, audits, and inspections of commercial motor vehicles (CMV) and drivers using the Commercial Vehicle Safety Alliance's (CVSA) North American Inspection Standards. This policy removes the requirement to place drivers out of service for English Language Proficiency (ELP) violations and changes the Agency's standard for determining non-compliance with the ELP requirements at 49 CFR § 391.11(b)(2) based on direction from the Office of the Secretary (OST) and the U.S. Department of Justice (DOJ).

CANCELLATION:

This policy memorandum supersedes the policy memoranda issued on this subject titled, "Placing Drivers Out of Service for Violating 49 CFR 391.11(b)(2) English Language Proficiency" dated July 20, 2007, and "49 CFR Section 391.11(b)(2) English Language Proficiency" dated February 1, 2008.

BACKGROUND:

Section 391.11(b)(2) of the Federal Motor Carrier Safety Regulations requires drivers operating CMVs in interstate commerce to "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 required reports and records."

Additionally, on April 26, 1995, the North American Free Trade Agreement, Land Transportation Standards Subcommittee on Commercial Motor Vehicle and Driver Standards and Motor Carrier Compliance agreed to a resolution on language proficiency of CMV vehicle drivers as follows: "That in recognition of the three countries' language differences it is the responsibility of the driver and the motor carrier to be able to communicate in the country in which the driver/carrier is operating so that safety is not compromised."

CVSA amended its out-of-service (OOS) criteria, effective April 1, 2005, to include violations of 49 CFR Section 391.11(b)(2). In a July 20, 2007, policy memorandum, the Office of Enforcement issued guidance instructing inspectors to cite drivers and/or motor carriers for

violations of 49 CFR 391.11(b)(2) when a driver fails to communicate in English sufficiently to understand and respond to official inquiries and directions, and to place the driver out-of-service. The same memorandum provided guidance and an assessment tool to confirm a driver's ability to communicate English sufficiently to understand and respond to official inquiries and directions.

In a second ELP policy memorandum, effective February 1, 2008, FMCSA staff and enforcement personnel were provided a tool specifically for evaluating a driver's ability to understand U.S. highway traffic signs. The 2008 policy allowed the driver to explain his/her understanding of the highway traffic signs in a language other than English, provided the inspector is able to understand the explanation.

Additionally, on October 1, 2014, FMCSA published regulatory guidance titled, "Driver Qualifications; Regulatory Guidance Concerning the Applicability of Language Requirement to Drivers Who Do Not Meet the Hearing Standard" [79 FR 59139]. This guidance explained that the English language rule should not be construed to prohibit operation of a commercial motor vehicle (CMV) by hearing impaired drivers who can read and write in the English language but do not speak, for whatever reason, and were granted exemptions by FMCSA. Specifically, the guidance advises that a driver who is granted an exemption from 49 CFR 391.41(b)(11) would not be considered unqualified under the English language proficiency requirement in 49 CFR 391.11(b)(2) if the driver is capable of reading and writing in the English language. In that circumstance, the hearing impaired driver satisfies the English language requirement.

More recently, CVSA members voted to remove 49 CFR 391.11(b)(2) from their out of service criteria because they could not substantiate the safety impacts. This change went into effect on April 1, 2015. As a result, FMCSA is formally canceling its policy of citing non-compliance with this regulation as an OOS violation, effective immediately.

In addition, FMCSA Grant Applicants are required to sign the FMCSA Title VI Program Assurance, which includes as authorities Title VI of the Civil Rights Act of 1964 (Title VI) and Executive Order #13166 (Limited English Proficiency or LEP). As a result, FMCSA Recipient-conducted enforcement activities (to include inspection activities) are to be implemented in a non-discriminatory manner that comports with the National Origin protection under Title VI generally and affording reasonable accommodation to LEP drivers specifically.

POLICY:

Formal driver interviews to confirm ELP will not be conducted during roadside inspections.

If the driver can communicate sufficiently to complete the inspection or investigation, he/she should not be cited for violations of 391.11(b)(2). If the driver cannot read, write, or speak English, but can communicate sufficiently with the inspector/investigator, he/she should not be cited for a violation of 391.11(b)(2).

Tools to facilitate communication such as interpreters, I-Speak cards, cue cards, smart phone applications, and On-Call Telephone Interpretation Service may be used when interacting with drivers. Federal Highway Administration Recipients (primarily State Departments of

Transportation) are required to have developed Language Access Plans under their Title VI Programs and may be useful resources to contact regarding available LEP tools and resources. Use of these devices does not constitute a violation of 391.11(b)(2).

If a deaf or hard-of-hearing driver has obtained an exemption from the hearing standard under 49 CFR 391.41(b)(11), the deaf or hard-of-hearing driver satisfies the English language requirement, if they can read and write English sufficiently to communicate.

If a non-English speaking driver acknowledges that he/she does not speak English, the driver should be cited for a violation of Section 391.11(b)(2). However, this is no longer an OOS violation.

This policy does not apply to inspections in Puerto Rico, Guam, the Northern Mariana Islands or American Samoa, as each of these territories has an official language in addition to English.

If a driver is cited for a violation of the ELP requirements and the employing motor carrier provides information advising that the employee has completed English language training, it should be considered sufficient documentation for addressing this violation.

If during an investigation, there is a pattern of violations discovered and the motor carrier is also identified for prioritization by the Safety Measurement System through an Alert in the Driver Fitness BASIC, enforcement action on these violations may be considered.

EFFECTIVE DATE:

This policy is effective immediately. Please share this information with the State Motor Carrier Safety Assistance Program lead agency.

If you have any questions or comments regarding application of this policy, please contact Bill Mahorney, Chief, Enforcement Division, at 202-493-0001 or Bill.Mahorney@dot.gov.

Attachment C: Point to Your Language Poster

Point to your language.
An interpreter will be provided at no cost to you.

<p>Arabic</p> <p>يرجى الإشارة إلى لغتك. سيتم إمدادك بمترجم مجاناً.</p>	<p>Japanese</p> <p>お使いの言語を選択してください。 通訳を無料でご用意できます。</p>
<p>Burmese</p> <p>သင့်ဘာသာစကားကို ညွှန်ပြပါ။ စကားပြန်တစ်ဦးဖြင့် အခမဲ့ ပံ့ပိုးပါမည်။</p>	<p>Polish</p> <p>Wskaż swój język. Zapewnimy ci tłumacza bezpłatnie.</p>
<p>Cantonese</p> <p>請點擊您所選的語言。 我們會為您提供免費傳譯員服務。</p>	<p>Portuguese</p> <p>Indique seu idioma. Você terá direito a um intérprete sem custos.</p>
<p>Farsi</p> <p>به زبان خود اشاره کنید. یک مترجم شفاهی به صورت رایگان در اختیارتان قرار خواهد گرفت.</p>	<p>Punjabi</p> <p>ਆਪਣੀ ਭਾਸ਼ਾ ਦੀ ਚੋਣ ਕਰੋ। ਤੁਹਾਨੂੰ ਦੁਭਾਸ਼ੀਏ ਦੀ ਸੇਵਾ ਮੁਫਤ ਮੁਹੱਈਆ ਕੀਤੀ ਜਾਵੇਗੀ।</p>
<p>French</p> <p>Indiquez votre langue. On vous soumettra gratuitement un interprète</p>	<p>Russian</p> <p>Укажите свой язык. Переводчик будет предоставлен вам бесплатно.</p>
<p>Haitian Creole</p> <p>Montre ki lang ou pale. Y ap ba w yon entèprèt gratis.</p>	<p>Somali</p> <p>Tilmaan luuqaddaada. Turjubaan ayaa si bilaash ah lagugu siin doonaa</p>
<p>Hindi:</p> <p>अपनी भाषा की ओर संकेत करें। आपको दुभाषिण की सेवा मुफ्त प्रदान की जाएगी।</p>	<p>Spanish</p> <p>Señale su idioma. Se le proporcionará un intérprete sin costo para usted.</p>
<p>Hmong</p> <p>Taw tes rau koj hom lus. Yuav muab ib tug neeg txhais lus rau koj tsis tau them nqi.</p>	<p>Tagalog</p> <p>Ituro ang iyong wika. Ilalaan ang isang interpreter nang wala kang babayaran.</p>
<p>Italian</p> <p>Indica la tua lingua. Ti sarà fornito un interprete gratuitamente.</p>	<p>Vietnamese</p> <p>Hãy trỏ tới ngôn ngữ của bạn. Bạn sẽ được cung cấp một thông dịch viên miễn phí.</p>

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Attachment D: Resources

MDT evaluated the following external data sources from [LEP.gov Data and Language Maps](#) to determine the best resources to evaluate the number of individuals likely to be served or encountered by a Program:

- Federal Government LEP Map Apps
 - Refers to U.S. Census Bureau LEP data, which is discussed in the next bullet and U.S. Environmental Protection Agency, Environmental Justice Screening and Mapping Tool (EJScreen), which is explained further on page 9.
- [U.S. Census Bureau LEP Data](#)
 - The most current resources at the statewide level refer to American Community Survey (ACS) data. ACS is a nationwide survey designed to provide communities with reliable and timely social, economic, housing and demographic data every year. No other resource provides such a wealth of social, economic, housing, and demographic information for the nation, states, and substate geographic areas.²⁰
- U.S. Department of Health and Human Services LEP data²¹
 - MDT elected not to use this because data sources were from 2014 ACS and more recent data is available directly from the ACS.
- U.S. Department of Education (USDOE) LEP data
 - Contains [National Center for Education Statistics \(NCES\) for English Language Learners \(ELL\)](#) on a statewide level. An English learner is an individual who has sufficient difficulty speaking, reading, writing, or understanding the English language to be denied the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in the larger U.S. society.²²
 - MDT also evaluated [Montana Office of Public Instruction \(OPI\) data](#) since USDOE data is at a statewide level. Data from OPI is broken down by school district and does not indicate a student's fluency in English nor what language is spoken at home. MDT compiled the OPI data by school district²³, but elected not to use it because the data does not provide the level of information needed for determining LEP populations likely to be served.
- Non-Governmental LEP Data and Maps
 - MDT elected not to use any of the resources listed under this section because data was either provided at the nationwide level, was based on statistics from several years ago, or used ACS data that MDT already evaluated.
- The Census and Economic Information Center (CEIC) within Montana Department of Commerce is the official State Data Center for the state.²⁴ CEIC provides current, easily accessible, and thorough economic and demographic analysis, data, maps, and expert assistance to meet the needs and requests of the people in the State of Montana.²⁵ CEIC prepared census data for MDT from the 2021 ACS 5-Year Estimates, Table C16001 and S1601, which indicate language spoken at home for the population 5 years and older and whether English is spoken "very well" or less than "very well."

²⁰ [Understanding and Using American Community Survey Data](#). Issued September 2020.

²¹ [Resource for Entities Covered by Section 1557 of the Affordable Care Act Estimates of at Least the Top 15 Languages Spoken by Individuals with Limited English Proficiency for the 50 States, The District of Columbia, and the U.S. Territories](#)

²² [USDOE Glossary](#)

²³ MDT's evaluation of OPI data is available upon request.

²⁴ The State Data Center program is one of the [Census Bureau's](#) partnerships to make data available locally.

²⁵ [CEIC Website](#)