FHWA Title VI Program
Implementation Plan

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Table of Contents

I. Policy Statement .......................................................................................................................... 2
II. Standard USDOT Title VI Assurances .................................................................................... 3
III. Organization and Staffing ........................................................................................................ 9
IV. Program Area Review Procedures ......................................................................................... 13
V. Sub-recipient Review Procedures ............................................................................................ 28
VI. Data Collection ...................................................................................................................... 28
VII. Training ................................................................................................................................ 28
IX. Complaint Procedures ........................................................................................................... 30
X. Dissemination of Title VI Information .................................................................................... 30
XI. Limited English Proficiency ................................................................................................... 31
XII. Environmental Justice .......................................................................................................... 32
XIII. Review of STA Directives ................................................................................................... 32
XIV. Compliance and Enforcement Procedures ............................................................................ 33
XV. Appendices ............................................................................................................................ 33
Appendix A - MDT Nondiscrimination and Disability Accommodation Notice ....................... 34
Appendix B - MDT OCR Nondiscrimination Complaint Procedure; Montana State EEO, Nondiscrimination, and Harassment Prevention Policy ........................................................................... 39
Appendix C – MDT Environmental Manual Chapter 24: Environmental Justice ....................... 51
Appendix D - Public Meeting Protocol; Title VI Public Meeting/Hearing Form ....................... 61
Appendix E – CTEP Civil Rights Preconstruction Agenda .......................................................... 64
Appendix F – ADA, EEO, Title VI, and Title VII Informational Complaint Form ...................... 71
Introduction

Montana Department of Transportation (MDT) is committed to conducting all business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination on the grounds of race, color, national origin, parental/marital status, pregnancy, childbirth or any condition related to pregnancy or childbirth, religion/creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, national origin, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service, or veterans status by its employees or anyone with whom MDT does business.

The primary purpose of the Office of Civil Rights (OCR) is to monitor all MDT activities to ensure compliance with applicable nondiscrimination Acts and Regulations of the United States and of the State of Montana. This Implementation Plan focuses on policies and procedures utilized by OCR to ensure compliance with Title VI requirements.

OCR continues to work creating, revising, and updating its policies and procedures relating to the administration of the Title VI program as needed. This year, OCR’s focus in relation to Title VI requirements has been on revising its complaint procedures, and providing training to MDT employees on nondiscrimination issues, and developing a stronger conflict resolution/mediation program.

If you have any questions relating to this Implementation Plan please contact Nicole Cosby, Title VI, Title VII, and Equal Employment Opportunity (EEO) Specialist Supervisor at (406) 444-6334 or nicosby@mt.gov.
I. Policy Statement

Title VI Policy Statement

Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall on the grounds of race, color, or national origin be discriminated against under any program or activity receiving Federal financial assistance. The Federal Aid Highway Act of 1973 (23 U.S.C. 324) added “sex” as a protected status in all Federal Highway Administration (FHWA) activities. The Title VI Program also refers, where appropriate, to other Federal civil rights statutes. The State of Montana forbids discrimination in many areas through its Constitution, codes and rules.

Title VI was amended by the Civil Rights Restoration Act of 1987 (P.L. 100-259), effective March 22, 1988, which added section 606, expanding the definition of the terms “programs and activities” to include all of the operations of an educational institution, government entity, or private employer that receives federal funds if any one operation receives federal funds.

The Montana Department of Transportation (MDT) is a State governmental entity. It is the policy of MDT to ensure compliance with Title VI of the Civil Rights Act of 1964 and all related statutes of regulations in all programs and activities.

MDT assures that no person shall, as provided by Federal and State civil rights laws, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity. MDT further ensures every effort will be made to ensure nondiscrimination in all programs and activities, whether those programs and activities are federally funded or not.

The Department recognizes the need for continuous Title VI training for Department personnel. When MDT distributes federal-aid funds to another governmental entity, MDT will include Title VI language in all written agreements and will monitor compliance.

The MDT Director has delegated the authority to administer and monitor the Title VI Program as promulgated under Title VI of the Civil Rights Act of 1964 and any subsequent legislation to the OCR Operations Chief. The Title VI Coordinator will provide technical assistance on a department-wide basis.

[Signature and date]
The Montana Department of Transportation, (hereinafter referred to as the "Recipient") hereby agrees to comply with the following Federal statutes, U.S. Department of Transportation and Federal Highway Administration Regulations, and the policies and procedures promulgated by the Federal Highway Administration, as a condition to receipt of Federal funds.

**TITLE VI OF THE CIVIL RIGHTS ACT of 1964**

Title VI of the Civil Rights Act of 1964, as amended, provides that no person shall on the ground of race, color, national origin, sex, age, and handicap/disability, 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 Civil Rights Restoration Act of 1987 amended Title VI to specify that entire institutions receiving Federal funds, whether schools and colleges, government entities or private employers, must comply with Federal civil rights laws, rather than just the particular programs or activities that receive the funds.

Nondiscrimination programs require that Federal-aid recipients, sub-recipients, and contractors prevent discrimination and ensure nondiscrimination in all programs and activities, whether those programs and activities are federally funded or not. If a unit of a State or local government is extended Federal-aid and distributes such aid to another governmental entity, all of the operations of the recipient and sub-recipient are covered. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such entity received Federal financial assistance (FHWA Notice N 4720.6, September 2, 1992).
ASSURANCES
49 CFR PART 21.7

The Montana Department of Transportation HEREBY GIVES ASSURANCES:

That no person shall on the grounds or race, color, national origin, sex, age, and handicap/disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by the recipient regardless of whether those programs and activities are federally-funded or not. Activities and programs which the recipient hereby agrees to carry out in compliance with Title VI and related statutes include but are not limited to:

1. List all major programs and activities of the recipient.

2. That it will promptly take any measures necessary to effectuate this agreement.

3. That each program, activity, and facility as defined at 49 CFR 21.23(b) and (e), and the Civil Rights Restoration Act of 1987 will be (with regard to a program or activity) conducted or will be (with regard to a facility) operated in compliance with the nondiscriminatory requirements imposed by, or pursuant to, this agreement.

4. That these assurances are given in consideration of and for obtaining all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the recipient by the Federal Highway Administration and is binding on it, other recipients, sub- grantees, contractors, subcontractors, transferees, and successors in interest. The person or persons whose signatures appear below are authorized to sign these assurances on behalf of the Recipient.

5. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and in adapted form in all proposals for negotiated agreements:

6. The Recipient, in accordance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d- 4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any
contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 23 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, handicap/disabled in consideration for an award.

7. That the Recipient shall insert the clauses of MDT Nondiscrimination and Disability Accommodation Notice (See, Appendix A) of this agreement in every contract subject to the Act and the Regulations.

8. The Recipient agrees that the United States has a right to seek judicial enforcement regarding any matter arising under the Act, the Regulations, and this agreement.

IMPLEMENTATION PROCEDURES
23 CFR PART 200

This agreement shall serve as the recipient’s Title VI plan pursuant to 23 CFR 200 and the Title VI Implementation Guide.

For the purpose of this agreement, "Federal Assistance" shall include:

- grants and loans of Federal funds.
- the grant or donation of Federal property and interest in property.
- the detail of Federal personnel.
- the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient; and
- any Federal agreement, arrangement, or other contract which has, as one of its purposes, the provision of assistance.

The recipient shall:

1. Issue a policy statement, signed by the head of the recipient, which expresses its commitment to the nondiscrimination provisions of Title VI. The policy statement shall be circulated throughout the recipient's organization and to the public. Such information shall be published where appropriate in languages other than English.
2. Take affirmative action to correct any deficiencies found by the Federal Highway Administration within a reasonable time period, not to exceed 90 days, in order to implement Title VI compliance in accordance with this agreement. The head of the recipient shall be held responsible for implementing Title VI requirements.

3. Establish a civil rights unit and designate a coordinator who has a responsible position in the organization and easy access to the head of the recipient. This unit shall contain a Title VI Equal Employment Opportunity Supervisor, who shall be responsible for initiating and monitoring Title VI activities and preparing required reports.

4. Adequately staff the civil rights unit to effectively implement the civil rights requirements.

5. Process complaints of discrimination consistent with the provisions contained in this agreement. Investigations shall be conducted by civil rights personnel trained in discrimination complaint investigations. Identify each complainant by race, color, national origin, sex, age, handicap/disability; the nature of the complaint, the date the complaint was filed, the date the investigation was completed, the disposition, the date of the disposition, and other pertinent information. A copy of the complaint, together with a copy of the recipient's report of investigation, will be forwarded to OCR within 60 days of the date the complaint was received by the recipient.

6. Collect statistical data (race, color, national origin, sex, age, handicap/disability) of participation in, and beneficiaries of the programs and activities conducted by the recipient.

7. Conduct Title VI reviews of the recipient and sub-recipient contractor program areas and activities. Revise where applicable, policies, procedures and directives to include Title VI requirements.

8. Conduct training programs on Title VI and related statutes.

9. Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.

   (a) **Accomplishment Report**
   
   List major accomplishments made regarding Title VI activities. Include instances where Title VI issues were identified, and discrimination was
prevented. Indicate activities and efforts the Title VI EEO Specialist Supervisor and program area personnel have undertaken in monitoring Title VI. Include a description of the scope and conclusions of any special reviews conducted by the Title VI EEO Specialist Supervisor. List any major problem (identified and corrective action taken. Include a summary and status report on any Title VI complaints filed with the recipient.

(b) **Annual Work Plan**
Outline Title VI monitoring and review activities planned for the coming year; state by which each activity will be accomplished and target date for completion.

**DISCRIMINATION COMPLAINT PROCEDURE**

Any person who believes that he or she, individually, as a member of any specific class, or in connection with any disadvantaged business enterprise, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, as amended, may file a complaint with the recipient. A complaint may also be filed by a representative on behalf of such a person. All complaints will be referred to the recipient's Title VI EEO Specialist Supervisor for review and action.

To have the complaint considered under this procedure, the complainant must file the complaint no later than 180 days after the date of the alleged act of discrimination; or where there has been a continuing course of conduct, the date on which that conduct was discontinued. In either case, the recipient or his/her designee may extend the time for filing or waive the time limit in the interest of justice, specifying in writing the reason for so doing.

Complaints shall be in writing and shall be signed by the complainant and/or the complainant’s representative. Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the recipient, the person shall he interviewed by the Title VI EEO Specialist Supervisor. If necessary, the Title VI EEO Specialist Supervisor will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled in the usual manner.

Within 10 days, the Title VI EEO Specialist Supervisor will acknowledge receipt of the allegation and then provide notice to the complainant of action taken or proposed action to
process the allegation, and advise the complainant of other avenues of redress available, such as the Federal Highway Administration and the U.S. Department of Transportation.

Generally, the following information will be included in every notification to the OCR:

- Name, address, and phone number of the complainant.
- Names and address(es) of alleged discriminating official(s).
- Basis of complaint (i.e., race, color, national origin, sex, age, disability/handicap);
- Date of alleged discriminatory act(s).
- Date of complaint received by the recipient.
- A statement of the complaint.
- Other agencies (state, local or Federal) where the complaint has been filed; and
- An explanation of the actions the recipient has taken or proposed to resolve the issue raised in the complaint.

Within 60 days, the Title VI EEO Specialist Supervisor will conduct and complete an investigation of the allegation based on the information obtained, will render a recommendation for action in a report of findings to the head of the recipient. The complaint should be resolved by informal means whenever possible. Such informal attempts and their results will be summarized in the report of findings.

Within 90 days of receipt of the complaint, the head of the recipient will notify the complainant in writing of the final decision reached, including the proposed disposition of the matter. The notification will advise the complainant of his/her appeal rights with the U.S. Department of Transportation, or the Federal Highway Administration, if they are dissatisfied with the final decision rendered by the recipient.

**Sanctions**

In the event the recipient fails or refuses to comply with the terms of this agreement, the Federal Highway Administration may take any or all of the following sanctions:

- Cancel, terminate, or suspend this agreement in whole or in part.
- Refrain from extending any further assistance to the recipient under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from the recipient.
- Take such other action that may be deemed appropriate under the circumstances, until compliance or remedial action has been accomplished.
by the recipient.
- Refer the case to the Department of justice for appropriate legal proceedings.

SIGNED FOR THE FEDERAL HIGHWAY ADMINISTRATION:

Original Signatures on File
______________________ Division Administrator  Date____________________

SIGNED FOR THE MONTANA DEPARTMENT OF TRANSPORTATION:

III. Organization and Staffing
The OCR is administratively attached to the Professional Services Division. However, the OCR Operations Chief receives direction and independent access to the Director.

The Office of Civil Rights houses the following programs and activities:

**Disadvantaged Business Enterprise (DBE) Program** – The program is staffed by three DBE specialists and is responsible for certifying all eligible DBEs and providing supportive services to the certified DBEs.

**Small Business Enterprises (SBE)** – The program is a partner program to the DBE program, and it is staffed with the same staff that administers the DBE program. They are responsible for certifying all eligible SBE’s and providing supportive services to the certified SBEs.

**External ADA Specialist** – Responsible for implementing the ADA transition plan and assuring compliance with ADA design standards on all MDT projects.
**Internal ADA Program** - Housed in the Human Resources and Occupational Safety Division, but oversight and compliance of the Internal ADA program is conducted by the OCR staff.

**Affirmative Action Officer** – Responsible for evaluation MDT’s policies and procedures to promote utilization of underrepresented groups by the department.

**Contractor Compliance** – Tasked with assuring compliance with state and federal regulations by all contractors doing work or business with MDT.

**Title VI, Title VII, and EEO Specialist Supervisor** – Assures compliance with state and federal civil rights and equal employment requirements. Administers the Title VI and Title VII programs, processes discrimination complaints, and provides guidance on policy and procedure.

**On the Job Training Program(s)** – Program requires MDT to implement job training programs to provide traditionally underrepresented groups with opportunities in highway construction. We currently have 5 OJT programs that we administer. Out of the 5 programs 3 are delivered through our tribal colleges. We have 1 administered through our Contractor Compliance and the other is a summer program for youth, National Summer Transportation Institute, (NSTI).

Specific responsibilities of the Title VI, Title VII, and EEO Specialist Supervisor and their staff are:

- Assure that the necessary Title VI State Assurances have been signed.
- Administer the Title VI Program.
- Take affirmative action to correct any deficiencies found by FHWA within a reasonable time period, not to exceed 90 days.
- Conduct annual reviews of all pertinent program areas.
- Develop procedures for prompt processing and disposition of Title VI complaints received directly by the State.
- Develop procedures for the collection of statistical data (race, color, age, disability/handicap, sex, and national origin) of participants in, and beneficiaries of State highway programs.
- Conduct Title VI reviews of sub-recipients including cities, counties, consultant contractors, suppliers, universities, colleges, planning agencies, and other recipients of Federal-aid highway funds.
- Review State program directives in coordination with State program officials and, where applicable, include Title VI and related requirements.
- Conduct training programs on Title VI and related statutes for State program and civil rights officials, as well as sub-recipients and stakeholders.
- Prepare a yearly report of Title VI accomplishments for the past year and goals for the next year.
- Submit an annual Title VI implementing plan to the Division Office for approval or disapproval.
- Develop Title VI information for dissemination to the public and, where appropriate, in languages other than English.
- Establish procedures for pre-award and post-award approval reviews.
- Establish procedures to identify and eliminate discrimination when found to exist.
- Establish procedures for promptly resolving deficiency status within a period not to exceed 90 days.
- Ensures that nondiscrimination and ADA notices, which includes Title VI requirements are made part of all contracts entered into by MDT. (See Appendix A).
- Supervises Affirmative Action and Contractor Compliance staff.

IV. Program Area Review Procedures

This section highlights divisions, bureaus, and units of MDT that assist OCR in accomplishing its goal of monitoring civil rights compliance by collecting data, conducting audits, and alerting OCR of any potential violations or issues. OCR is working on strengthening the cooperation and collaboration with these units.

Federal regulations require OCR to conduct an annual review of other MDT’s program areas that assist OCR in meeting its Title VI requirements. On an ongoing basis, OCR reviews all MDT contracts and Memoranda of Understanding (MOU) to make sure that nondiscrimination requirements are made part of all contracts and MOUs put out by the department. In addition, OCR reviews all submitted Title VI Public Meeting/Hearing forms for possible violations. Finally, OCR encourages all MDT staff to inform OCR of any potential complaints and violations. If any potential violations or complaints are reported, the Title VI, Title VII, and EEO Specialist Supervisor works with that division, bureau, or unit to address the problem and to educate the staff on relevant issues.

Administration Division

The Administration Division consists of three bureaus:

Accounting Controls Bureau

The Accounting Controls Bureau (ACB) is responsible for establishing internal control structures, developing, and implementing accounting policies, ensuring proper
accounting treatment of transactions, developing and implementing MDT's accounting structure, and providing technical oversight to departmental financial functions.

The ACB consists of two sections: Accounting Controls Section and Purchasing Services Section.

**Accounting Controls Section**

Accounting Controls Section engages specific positions such as District Financial Officers and Financial Contacts to aid in managing the accounting treatment and oversight for MDT’s programs and assists with the complex programs of the department.

**Purchasing Services Section**

Purchasing Services Section is responsible for all of MDT's commodity purchases, contracted services, and building construction procurement activities. In addition, the Section provides procurement training to MDT staff. The Section ensures that all formal solicitations include approved Title VI language and provides solicitations in alternative accessible formats upon request. The Section ensures solicitations are posted to the Department of Administration (DOA) website as prescribed by Montana law. Letters are sent to vendors who may be interested. Vendors may be selected from the DOA vendor list, the MDT vendor list, the DBE Directory, Chamber of Commerce referrals, the phone book, or local business advertisements. Solicitations are available on the DOA website. Alternative accessible formats are available upon request to the Section.

**Budget and Planning Bureau**

The Budget and Planning Bureau maintains financial planning processes and systems that MDT divisions need to conduct financial analyses. The primary functions of the Bureau are department-wide budget development and fiscal programming. The Bureau has two distinct sections to meet the above responsibilities. Staff members from both sections are available to answer questions and provide training as needed.

**Budget Section**

The Budget Section is responsible for the development and monitoring of the Department’s operating budget, tentative construction plans, director reports, long-range financial planning, and setting budget procedures for the agency. The section is involved firsthand with the executive planning processes (EPP); fiscal note development and financing; and funding structures and models for MDT programs.
**Fiscal Programming Section**

The Fiscal Programming Section is responsible for developing, obtaining approval, and monitoring the fiscal aspects of implementing the Transportation Construction Program (TCP) for the State of Montana. The Section also develops and maintains various financial information systems; coordinates MDT’s use of these systems, and uses the information from these systems to analyze, report, and frame departmental recommendations regarding the use of available fiscal resources.

**Fiscal Operations Bureau**

The Fiscal Operations Bureau consists of the Accounting Systems Operations Section, Collections Section, Motor Fuels Section, and Payroll Section. The Bureau is responsible for establishing and maintaining a variety of accounting functions for MDT such as payroll and benefits, accounts payables, receivables, collections, and management of the gasoline and special fuel tax. The Bureau develops and implements accounting policy and procedure, conducts financial monitoring, and ensures the department’s internal accounting and financial information systems comply with state and federal regulations and align with the Division’s accounting operational goals, objectives and priorities.

**Motor Fuels Section**

The Motor Fuels Section ensures that all fuel taxes legally owed to the state by licensed and unlicensed distributors are properly collected and remitted. Processes and approves licenses for gasoline and special fuel distributors, compressed natural gas dealers and liquid petroleum gas dealers. Provides education and training services for both internal and external customers on motor fuel tax laws. Administers the Alcohol Tax Incentive Administration Act of 1983 that provides for payments to Montana ethanol producers. Coordinates the administrative rule process that pertains to motor fuels. Coordinates the dyed fuel enforcement program. Verifies refund requests of fuel tax from aviation and railroad users before they are issued. Coordinates the first step in the dispute resolution process, which conducts reviews involving motor fuel appeals.

**Collection Section**

The Collection Section reports according to the International Fuel Tax Agreement which includes distribution and processing of motor fuel tax returns. Distributes fuel tax refund applications, processing, and payment of the refunds.

OCR monitors the activities of the Administration Division by making sure the Purchasing Section includes approved Title VI language in all solicitations put out by the department by requiring that all contracts are co-signed by OCR.
Aeronautics Division

The Aeronautics Division oversees the maintenance and operation of state-owned airports and the various components of airport infrastructure, including visual and electronic navigation facilities and flying aids; fosters and promotes aviation and aviation safety through educational efforts and programs; is responsible for all airport inspections; provides technical and engineering assistance as requested; produces aviation publications for pilot use; registers aircraft and pilots in accordance with Montana laws and regulations; and coordinates and supervises statewide aerial search and rescue operations. In accordance with the maintenance and safety aspects of the Division’s overall mission, it administers a loan and grant program to municipal governments to fund airport development projects.

The Division serves in a liaison capacity between the State and various entities including the U. S. Department of Transportation, other federal and state entities and commercial airlines to assure the retention and continuation of airline services to the rural communities of the State.

OCR has several direct and indirect controls on the Aeronautics Division. OCR directly monitors all proposals put out by the division to make sure that they conform to Title VI requirements by requiring that all contracts be co-signed by OCR. In addition, the Division relies on several other MDT bureaus and units. For example, the Division relies upon the services of the Purchasing Services Section and Public Involvement Unit to ensure public meetings are advertised in accordance with MDT policy; and the Consultant Design Bureau to ensure Title VI requirements are met in consultant contracts. This mechanism allows OCR indirect control of the Division since OCR had direct controls established over the bureaus and units on which the Division relies to conduct its business.

Highways and Engineering Division

The Highways and Engineering Division assists the OCR by ensuring Title VI compliance in all activities related to design, construction, and preservation of Montana’s highway system. The Highways Bureau works in conjunction with other bureaus within MDT, such as Civil Rights and Environmental Services, to ensure that location and design conform to applicable Title VI requirements. The Engineering Division (headed by the Chief Engineer) is comprised of three parts that have significant potential Title VI impact: Preconstruction, Construction, and Research Section. Preconstruction is comprised of Bridge Bureau, Consultant Design Bureau, Highways Bureau, Right-of-Way Bureau, and Traffic Safety Bureau. Construction is comprised of Contract Plans Bureau, Construction Administration Services Bureau, Construction Engineering Services Bureau, and Materials Bureau.
PRECONSTRUCTION

Consultant Design Bureau

Consultant Selection

Consultant Selection Procedures are administered by Consultant Design and are intended to eliminate unfair advantage and provide equal economic opportunity for all qualified consultants. Consultant Design contracts are not awarded to the lowest bidder as are construction contracts because they are governed by different laws. Consultant Design contracts are awarded based on the “Brooks Act” in federal law that requires open competition based on demonstrated competence and qualifications at a fair price.

Consultant Selection procedures allow for two separate selection processes, the biennial Pre-Qualification process (used since 1999) and the Request for Qualifications/ Request for Proposal (RFQ/RFP) process. The Pre-Qualification process is used for most consultant selections. It greatly speeds up the time required to select consultants, especially when a large number of projects is involved; the RFQ/RFP process is generally used for large, complex projects or projects that are not compatible with the categorized disciplines in the pre-qualification process.

The pre-qualification process compiles a rating for each respondent consultant in each discipline and the consultants are then ranked on a roster. The Consultant Selection Board (CSB) then meets and uses the discipline-specific rosters to select consultants for projects throughout the year. As the need for projects come up, the CSB short-lists three consultants from the appropriate pre-qualified roster and selects one with which to enter contract negotiations. MDT then enters into negotiations with the top-rated firm. If a fair and reasonable price cannot be agreed upon, MDT begins negotiations with the next highest qualified firm.

The RFQ/RFP process solicits statements of qualifications for specific projects through letters to consultants who have requested to be on a mailing list and on the MDT website at http://svc.mt.gov/gsd/OneStop/SolicitationDefault.aspx. RFQ/RFPs are sent to some or all consultant firms on MDT’s mailing list, depending on the subject work type. Then the top ranked consultants from the RFQ may be asked to provide final proposals (RFP) that are then rated and used to select a firm for contract negotiations. The Consultant Selection Board has final approval in the RFQ/RFP process also.
A firm is placed on the mailing list when they submit a standard form 330 which can be done at any time. Interested parties may request inclusion on the mailing list by accessing http://www.mdt.mt.gov/business/contracting/mailinglist.shtml.

Both processes rate responses on the same criteria which are typically: quality of firm and personnel (30%), capability and capacity of firm (35%), and record of past performance (30%). The remaining 5% for location is incorporated later in the prequalification process and as needed in the RFQ/RFP process, after project needs have been identified, and location can be factored in.

Consultant selection is dependent upon both state and federal requirements. Title VI requires that “all persons” have a right to participate in federal aid programs. MDT has chosen to deal with this requirement by assigning a minimal weight (5%) to location as a consideration in the selection process. Specific Title VI Assurances are included in all RFPs and in all executed consultant contracts.

OCR monitors the activities of the Consultant Design Bureau by periodically reviewing consultant contractors to ensure that all Title VI requirements are met. OCR reviews consultant contracts to determine compliance with Title VI contract specifications.

**Right-of-Way Bureau (ROW)**

The ROW Bureau ensures that appraisals, acquisitions, relocations, and land sales are conducted on a non-discriminatory basis by standardization of procedures, uniformity of administration, and published information that concerns Title VI considerations in brochures and public notices.

When language or other barriers, such as age, are identified, ROW personnel (including contractors) employ interpreters, tribal members, relatives and/or friends of the client to assist with negotiations and other issues.

Title VI and Title VII EEO training is regularly provided to all ROW staff at the annual ROW academy or other MDT training venue. In addition, OCR periodically reviews randomly selected ROW files to assure compliance with all required regulations.

**ROW Real Estate Appraisals**

When it becomes necessary to hire fee appraisers, MDT uses the State required contracted services procedures. Certified DBE appraisers are solicited for these projects.

**ROW Real Estate Acquisitions**
MDT and Consultant Acquisition agents exclusively handle real estate acquisitions and an acquisition history is completed for every contact with landowners. Field ROW Supervisors and Headquarters ROW staff review completed acquisition documents to ensure all customers have been given fair and equal treatment. Acquisition brochures are made available at public meetings and at the beginning of negotiations. Alternate accessible format statements are included on the brochures.

**ROW Relocation Assistance and Advisor Services**

When relocation actions are necessary, affected individuals are informed of their rights at public hearings prior to the acquisition phase of project development. Relocation brochures and formal written notices are provided at public hearings, at the beginning of negotiations and during the vacancy phase. Alternate accessible format statements are included on the brochures.

All relocated persons are given assistance on an individual basis according to ROW manual procedures. Documentation is maintained on all relocation assistance activities. This documentation is reviewed by Field ROW Supervisors and Helena Acquisition Section to ensure all customers have been given fair and equal treatment.

Issuance of 90-day notices, final notices, and extensions of occupancy are uniformly applied to all persons being relocated by a project.

Fair housing requirements are covered in detail in MDT’s relocation brochure, discussed with Realtors, and explained to affected individuals when offers are made.

**ROW Property Management**

Property Management policies, procedures, and statutes are uniformly applied to ensure customers are given fair and equal treatment.

**Community Transportation Enhancement Section (CTEP)**

The Community Transportation Enhancement Program (CTEP) is a section within the Consultant Design Bureau. CTEP sub-allocates funds to all local units of government including counties, first-, second-, and third-class cities and tribal governments to design and construct transportation enhancement projects.
Currently this includes all 56 counties and 49 cities, and the 7 Indian Reservations within the state. This program places the responsibility for compliance with all federal, state and local requirements upon local government, the final federal fund recipient. Title VI reviews are conducted by the Title VI Coordinator at selected local governments annually.

CONSTRUCTION

The Construction Bureaus (which are under the Construction Engineer), principally through Contract Plans Bureau, ensure that open, free and competitive bidding processes are in place by providing accessible locations and by assuring construction contracts are awarded based on low bid, responsibility, responsiveness, bonding, insurance and DBE requirement compliance.

When applicable, race conscious DBE goals are established by the OCR in all federal-aid contracts prior to bid letting.

The Construction Bureaus comply with Title VI by reviewing all sub-contracts submitted by prime contractors for the FHWA Form PR-1273 and the appropriate wage decision.

Contract Plans Bureau

Contract Plans Bureau edits, compiles and distributes bid packages for highway construction projects across the state. Advertising is accomplished via the Internet and newspapers having major circulation throughout the State, via a mailing list which anyone can request to be put on, and to out-of-state plan rooms as requested.

Contract Plans’ staff provides support and training in the use and implementation of the mandatory electronic bidding system (Expedite TM Bidding software). Special efforts have been made to provide training to Indian reservations. Accessible computers and printers are available for public use in the Contract Plans Bureau office. Staff members allow the public to access their computers. Desk arrangements allow handicapped access. Staff members contact OCR staff if any unique accommodations requests arise.

OCR relies on Contract Plans’ administrative staff to monitor the activities and practices of the bidding, advertising, and distribution process for compliance with Title VI Requirements. Any suspect violations must be reported to OCR. OCR also acts in an advisory capacity to help resolve potential issues. OCR instructs Contract Plans’ administrative staff to evaluate their activities based on the following:

- Special efforts to accommodate protected groups with regard to the physical location of the bid opening.
- Training practices in the use and implementation of the mandatory electronic bidding system (Expedite TM Bidding software).
- State and federal mandates that address legal advertising, with emphasis on communicating project information to protected groups.
- That all Title VI related documents are included in bid packages, publications, and legal advertisements. Prime contracts are reviewed pursuant to federal aid regulations for detail including the PR-1273, wage rates, and appropriate DBE goals.
- Emerging technological advances to provide for more equitable access for both handicapped and non-handicapped individuals to project information and support data using electronic communication. MDT capability to provide Braille documents is currently limited by available equipment and funds.
- As Read and Transportation Commission Award reports, for potential Title VI impact.

Research Section

The Research Section is responsible for contracting research projects through its Research Program, conducting an Experimental Projects Program, and performing technology transfer activities related to both programs. Solicitations for research projects are distributed to tribal governments, universities, public and tribal colleges, private consultants, and any group or individual who has either submitted an idea in the past or expressed an interest in being placed on the mailing list.

The Research Section contracts with various government and private entities to conduct research projects and with Montana State University to conduct the Local Technical Assistance Program (LTAP). LTAP provides training and various educational materials to local governments in Montana. (The Tribal Technical Assistance Program (TTAP) is administered through another agency.)

MDT Purchasing Services Section or Consultant Design Bureau requirements are used to solicit and select private contractors to perform research projects. MDT Research requirements are used for contracting with various public entities to perform research projects.

The OCR monitors mailing lists and conducts periodic reviews to ensure that protected groups have equal access to research opportunities information.

Rail, Transit and Planning Division

Rail, Transit, and Planning Division (RTPD) provides a broad range of multi-modal transportation planning functions and analyses to enable project selection and programming for MDT's short and long-range transportation and grant programs. The principal duties in this Division which have Title VI impacts are planning, public
involvement, contractual/consultant services procurement, grant/sub-grant recipients, equipment procurement, rail transit, special studies and suballocated pass-through funding to governmental subdivisions. The impacts of these areas are incorporated in the Process Handbook for Transportation Planning program description. At a minimum, RTPD ensures that:

- Grant and sub-grant programs for non-governmental organizations are publicized through the State to assure that protected groups receive appropriate notification and are able to participate in identified programs.
- Existing statistical data identifying concentrations of protected group populations is used in the development of MDT Public Involvement Strategies; and
- Procurement of consultant services and equipment will be accomplished in accordance with State and Federal law (see Purchasing section of this Plan).

The statewide transportation planning process includes the development, administration, and update of highway, transit, rail, and bicycle/pedestrian plans and programs in accordance with federal and state laws, regulations, and policies. The process relies heavily on cyclical and ongoing public involvement efforts to involve stakeholders, the public, and other state, tribal and local agencies and governments in the decision-making process. Products include plans, reports, and studies that guide MDT decision makers in carrying out MDT’s statutory responsibilities as the Montana agency responsible for comprehensive statewide transportation planning and policy.

Transit Section and Rail Planner

The Transit (Urban) Section, and the MDT’s Rail Planner are responsible for ensuring that Montana residents are aware of transit and rail issues and programs and that the benefits of MDT’s services are equitably distributed. This objective is accomplished by publicizing the availability of assistance in regional, local and minority newspapers, the MDT newsletter, and direct mail. Staff solicits participation from throughout Montana including the seven Indian reservations. Staff also provides opportunities to participate in the transit and rail planning and decision-making processes through public meetings, surveys, toll-free telephone numbers, and consultant studies. Interpreters will be used to aid those with special needs.

To prevent discriminatory treatment of protected groups, staff ensures that applicants and recipients of assistance have access to processes for corrective or remedial actions. Complaint procedures are in place that will facilitate a resolution of problems at the lowest possible level. Staff also ensures that decisions on locations of services and facilities and the level and quality of transit services comply with Title VI requirements.
Transit (Urban) Section staff and the Rail Planner are also involved in the following activities:

- Review data to determine if concentrations of Title VI protected populations exist and may affect decision-making.
- Review (by Urban) of Metropolitan Planning Organization (MPO) Title VI plans to ensure the plans effectively address and comply with Title VI requirements.
- Review of FTA Section 5310 and 5311 transportation providers on a three-year rotational basis with one-third being reviewed each year.
- Reviews of MPOs (by Urban) on a three-year rotational basis to ensure compliance with Title VI requirements.
- Review of urban areas without formal transportation plans as appropriate or as changes in federal-aid property projects may dictate; and
- Other RTPD Title VI activities.

The Bicycle and Pedestrian Transportation Program is a part of the RTPD. It is tasked with institutionalizing bicycle and pedestrian modes and to target bicycle-related and pedestrian improvements.

The OCR Small Business Program (DBE and SBE) and Title VI staff monitors Title VI and small business compliance in applicable areas by submitting Periodic Reports, and conducting Division internal reviews and external compliance reviews (which include metropolitan planning organizations (Urban), transit providers, and urban areas) as necessary.

Environmental Services Bureau

The Environmental Services Bureau is responsible for all environmental documentation. The documentation meets the requirements of the National Environmental Policy Act (NEPA) and Montana Environmental Policy Act (MEPA) for transportation highway projects including Community Impact Assessments. For more information on Environmental Services Bureau see the Environmental Justice section of this plan.

The Environmental Services Engineering Section Supervisor or the Environmental Services Bureau Chief reviews all Section work. The review covers the completeness, accuracy, and documentation of all studies relating to Title VI issues and their relationship with each project. Any issues are reported to OCR. Major transportation project environmental documentation is also reviewed for overall content by MDT’s Legal Services and various design sections of MDT. The Title VI Coordinator reviews selected draft environmental documents for Title VI compliance.
**State Highway Traffic Safety Section**

The State Highway Traffic Safety Section’s (SHTSS) mission is to reduce the number and severity of traffic crashes, injuries and fatalities on Montana highways. SHTSS conducts several programs with multiple projects that focus primarily on impaired driving prevention and occupant protection, and other traffic safety related problem areas using National Highway Traffic Safety Administration (NHTSA) funds.

Using federal funds, the SHTSS contracts with other state government agencies, local government agencies, and non-governmental entities to provide highway traffic safety, enforcement, and education programs within the state. At least 75% of all federal funds apportioned to Montana under 23 USC §402 are expended annually. The SHTSS invites law enforcement agencies to conduct overtime activities for highway traffic safety programs. Funding is distributed to local agencies based upon population size and crash rates, with areas having the highest crash rates/fatalities assigned priority. Funding is not distributed based upon sex, race, color, or national origin.

In Federal Fiscal Year (FFY) 2007, SHTSS was awarded grant funding from NHTSA for the specific purpose of prevention of racial profiling. SHTSS has been collaborating with MDT management, law enforcement, tribal representatives, minority organizations, other state agencies, and others to implement programs that meet the intent of the funding.

Traffic safety related funds not involving law enforcement are awarded based upon selection of grant applications that contribute to reducing traffic fatalities and injuries that meet the goals and objectives of the Comprehensive Highway Safety Plan. This is done without regard to sex, race, color, or national origin. The Contractor funded with NHTSA monies will not participate either directly or indirectly in discrimination that is prohibited by 49 CFR §26.5. Applications are made available on the MDT website (http://www.mdt.mt.gov/safety/safetyprg.shtml) that allows all interested parties equal opportunity to apply. The website is advertised on SHTSS’s written material, public announcements, and by staff contacts with the public.

All contracts provided to those receiving NHTSA funds include assurances and certification notices to the contractor that consist of contract language on compliance with Title VI of the Civil Rights Act of 1964 for Federal-aid contracts. Grant recipients are responsible for compliance with all federal, state and local requirements.
The OCR Title VI staff ensures that Title VI language is added in SHTSS’s Operating Procedures as it relates to the allocation of grant funds and grant management. OCR monitors compliance by requiring that OCR co-sign on grant awards.

The OCR Title VI staff will handle any formal complaints and investigations of program participants. Formal complaints against a local government and sub-recipients will be referred directly to the OCR. The OCR Chief will approve finalizations of investigations.

**Human Resources and Occupational Safety Division (HR)**

Human Resources Generalists have frequent contact with both employees and supervisors which allows them to be among the first to know if a possible violation is taking place. The Human Resources Generalists are tasked with alerting OCR whenever they hear anything from either supervisors or employees that might be indicative of possible civil rights violations. In addition, the Human Resource Generalists are instructed to forward any civil rights complaints to OCR. Human Resources staff also assists in civil rights investigations by providing personnel information about individuals involved in the investigation. The Human Resources staff assists OCR in carrying out its Nondiscrimination responsibilities relating, but not limited to, recruitment and selection, and training.

*Workforce Planning Section*

The Workforce Planning Section is housed within HR and administers MDT’s training programs in addition to conducting recruitment, selection, and succession planning in a non-discriminatory, fair, and consistent manner. The Section works with District and Divisional Human Resource staff to proactively recruit qualified applicants. OCR through the Affirmative Action Program reviews recruitment and selection data, exit interviews, promotions, and termination records to monitor compliance with Title VI and Title VII and other civil rights requirements.

**Occupational Safety & Health Bureau**

The Occupational Safety & Health Bureau, which is also housed within HR, administers MDT’s safety and occupational safety and health programs. The Bureau develops and presents safety training; formulates and implements policies for protection for the public and reducing costs associated with accidental losses, tort liability and compliance with regulations.

Both Bureaus contract for training products/services and professional services using public and private sector providers (including the National Highway Institute). The Purchasing Services Section in Administration Division handles requests for quotes and
requests for proposals. All contracts are approved by OCR as containing the appropriate language for Title VI compliance.

**Maintenance Division**

Service level guidelines are established by Maintenance Chiefs, District Administrators, and the Maintenance Division Administrator. These guidelines prescribe uniform service levels and winter hours of service for the traveling public.

Winter road reports are provided to the traveling public. Telecommunication Devices for the Deaf (TDD) are available for public use and are included at rest area locations along interstate highways.

Purchasing Services Section requirements are utilized when maintenance contracts are advertised and awarded.

Each District’s Maintenance Supervisor(s) monitors written reports, public comments, and performs road inspections to ensure all members of the public receive equal road maintenance services. The Maintenance Supervisors are instructed to report any possible Title VI and other civil rights violations and complaints to OCR for processing.

**Motor Carrier Services Division (MCS)**

MCS is responsible for commercial vehicle licensing, registration, permit issuance, and commercial vehicle safety and enforcement of federal and state motor carrier laws and regulations. MCS’s customers include interstate and intrastate commercial motor carriers, contractors, loggers, and farm trucking operations. This division issues commercial vehicle registrations, licenses, safety credentials, over-dimensional, overweight, and other permits.

Instructional manuals are provided to the public and are available in alternate formats. Language explaining the availability of accommodations, including the Telecommunication Devices for the Deaf (TDD) phone number (TTY (800) 335-7592, or by calling Montana Relay at 711), is printed on all public documents. The Trucker’s Handbook provides an overview of motor carrier regulations and lists sources for obtaining additional information such as telephone and cell-phone numbers of permanent weigh stations and areas patrolled by each MCS Patrol Officer. The handbook is available in both hard copy and on the Internet.

The Getting Started booklet provides new and existing commercial motor carriers with information about federal safety and hazardous materials regulations, state safety laws, and rules required to safely and legally operate on Montana highways. The booklet is available in hardcopy, CD, and MDT’s web site via the Internet. MCSAP also conducts carrier training upon request from the industry.
Administrative Rule changes are noticed for public hearing as required by state statute. MDT is required to conduct a small business analysis if a proposed rule change significantly and directly impacts small businesses. Informal meetings are conducted to solicit information pertaining to proposed legislation or rule changes and to inform and explain the proposed changes.

MCS Officers ensure that the motor carrier industry complies with all State and Federal vehicle licensing, oversize, and overweight regulations by inspecting documents and weighing vehicles at permanent weighing facilities and by random stops by MCS Patrol. MCS Officers and Motor Carrier Safety Assistance Program (MCSAP) Inspectors also conduct commercial vehicle and driver safety inspections. Concentrated special assignments are also conducted in areas where no permanent weigh station facility is located or where a weigh station is easily bypassed.

The OCR periodically reviews procedures to assure proper compliance with regulations and works with staff to ensure all public meetings, weigh stations, MCS headquarters and district offices, and MCSAP offices have current Title VI brochures.

**Public Involvement Coordinator**

The Public Involvement Coordinator or his designee attends all public meeting and hearings and ensures that the meetings are held in compliance with Title VI and ADA requirements. The Public Involvement Coordinator is responsible for filling out and submitting to OCR the Title VI Public Meeting/Hearing Form after each public meeting/hearing.

**District Responsibilities**

Each of the five MDT Districts relies upon the Purchasing Services Section to administer MDT’s purchasing procedures connected with procuring items and equipment costing greater than $5,000 purchased by MDT. District purchasing policy adheres to the Headquarters’ Purchasing Bureau’s Procedures Manual. In cases when leasing is required, the District utilizes a format provided by MDT’s Purchasing Services Section that includes the necessary Title VI language.

Schedules of public meetings, open houses and forums should be coordinated between the MDT Public Information Office and either the District Preconstruction Engineer, Area Engineer, Project Design Engineer, Consultant Project Engineer, or the appropriate MDT Design Project Manager. The nearest location or town offering accessible facilities for all protected groups is selected. Consideration for meeting time and location is given to assure all protected groups have an opportunity to participate. Documentation is maintained to assure these considerations have been accomplished.
OCR monitors District activities in the following way:

- Either the Administrative Support Supervisor, District Financial Officer, District Purchasing Agent, or District Preconstruction Engineer is responsible to report any Title VI compliance issues as they relate to purchase orders and agreement requirements.
- District Construction personnel are responsible to report any Title VI compliance issues regarding construction documents (state and contractor) and operations.
- Persons scheduling public meetings, open houses, and forums are responsible for Title VI compliance. The District is responsible for periodic reporting of this activity.
- Purchasing Services Section ensures appropriate Title VI language is contained in contracts issued by the District.

VI. Sub-recipient Review Procedures

Currently, CTEP recipients are required to comply with and follow the Civil Rights Agenda for Federal Aid CTEP Projects. (See Appendix E).

VII. Data Collection

OCR uses the U.S. Census Bureau data to collect statistical data about the race, color, religion, sex, and national origin of participants in, and beneficiaries of Montana’s highway program. For the purposes of the Environmental Justice Analysis, MDT’s Environmental Services Bureau also obtains data from the Federal, Tribal, State and local health, environmental, social services, and economic development agencies; Metropolitan Planning Organizations; and public involvement and outreach within the affected communities.

OCR tracks Title VI and Title VII complaint information using the following log sheet:

<table>
<thead>
<tr>
<th>Case #</th>
<th>Protected Class on which complaint is based</th>
<th>Nature of the Complaint</th>
<th>Date Filed</th>
<th>Date Investigation Complete</th>
<th>Authority</th>
<th>Date Received &amp; Date Closed</th>
<th>Notes</th>
</tr>
</thead>
</table>

VIII. Training

Civil Rights training is prepared and conducted by the Title VI, Title VII, and EEO Specialist Supervisor and staff. The Department of Administration and MDT both require
all staff to complete 2-hour online non-discrimination training each year. MDT’s current internal policy requires that all MDT employees receive Civil Rights Training every two (2) years and these trainings are specific and in-depth trainings on certain protections complaints that have been received from the previous year. Training is offered throughout the state at various times throughout the year. In addition, all new employees receive EEO Nondiscrimination training as part of their New Employee Orientation.

Internal training is currently conducted in a classroom setting. During the training, employees are presented with the pertinent civil rights information and then asked to participate in a question guided discussion about various civil rights issues present in the workplace. During the presentation, each attendee receives a printout of the presentation materials, a copy of the Civil Rights Complaint Form, and the Title VI, Title VII, and EEO Specialist Supervisor’s business card. Presentation materials are provided in alternative accessible formats upon request. OCR is currently working toward expanding trainings to include online formats. In addition, OCR provides customized on demand training to anyone who requests it. Training may be requested by either supervisors or employees by contacting OCR.

External Training for sub-recipients is conducted through webinars, Skype or classroom setting. During the training, sub-recipients are presented with the pertinent civil rights information and then asked to participate in a question guided discussion about various civil rights issues present in the workplace. During the presentation, each attendee receives a printout of the presentation materials, a copy of the Civil Rights Complaint Form, and the Title VI, Title VII, and EEO Specialist Supervisor’s business card, or other relevant staff who may also conduct trainings. Presentation materials are provided in alternative accessible formats upon request. OCR is currently working toward expanding trainings to include online formats. In addition, OCR provides customized on demand training to anyone who requests it. Training may be requested by either supervisors or employees by contacting OCR.

Currently, sub-recipient trainings include:

a) Yearly transit provider’s trainings that have attendance from representatives from all local transit providers. At this training there is an in-depth explanation of ADA, Title VI, nondiscrimination, and recipient’s responsibilities directly related to the above-mentioned areas.

b) Yearly EEO training is facilitated by the Contract Compliance and the EEO Specialist Supervisor. During this training Title VI requirements that sub-recipients must adhere to are explained in addition to EEO submission processes and requirements.

c) DBE Summit Conference includes EEO, Title VI, and ADA training and requirements for sub-recipients. Additionally, at each summit one topic such as
human resource policies are covered in depth to better help sub-recipients understand their obligations and responsibilities.

d) Additional training and or support materials are provided to any sub-recipient upon request.

IX. Complaint Procedures

See Appendix B for complaint procedure, policy, and complaint form. All investigations are conducted by personnel trained in compliance investigations. MDT accepts all complaints both verbal and or in writing. Upon the receipt of all FHWA Title VI complaints, copies will be made and forwarded to the Regional FHWA office for review and processing. MDT does not make any jurisdictional reviews, nor do they offer any recommendations. If a complaint is received orally vs writing, MDT will complete the complaint form on behalf of the individual filing the complaint to fully capture all the complaints contact information and complaint details for review by the Regional FHWA office.

X. Dissemination of Title VI Information

This section provides a brief overview of the Department's public involvement activities. For more information about MDT's Public Involvement Initiatives please visit: http://www.mdt.mt.gov/pubinvolve/ which includes a Draft Public Involvement Plan.

The Public Information and Public Involvement units are responsible for ensuring that Montana citizens are aware of transportation issues/ projects and afforded the opportunity to participate in public involvement activities (public informational meetings, public hearings, i.e. Environmental Assessment hearings, comment periods, etc.).

The Public Information Unit provides media support for the department. The Public Information Officer (PIO) acts as the director's spokesperson and coordinates marketing activities; manages media contacts; writes speeches and press releases; and assists staff when media issues arise. In addition, the PIO coordinates publication of the Interchange, MDT's online employee newsletter, every payday.

The Public Involvement Unit works to increase public awareness of upcoming projects and to provide the public with ample opportunity to become involved in shaping project design and development. This is primarily accomplished through two mechanisms:

1. Public meetings

The Public Involvement Coordinator organizes public meetings for upcoming road projects throughout the state, working with district staff and MDT consultants to ensure that MDT provides ample opportunity for public input and comment. (See Appendix D for
Public Meeting Protocol. Notice of public meetings/hearings (display ads) are also created within the Public Involvement Unit and submitted via email to the various media outlets (newspapers, television, and radio stations) within the project’s area announcing the upcoming meeting/hearing. Display ads are usually run twice in the regional newspapers. Community officials, i.e. county commissioners, city commissioners, tribal transportation planners, etc. are notified within this e-mail distribution list as well. The Coordinator ensures that provisions are made for special meeting accommodations for protected groups or individuals (with sufficient notice to obtain it, ideally 48 hours). Accommodations include, but are not limited to, translators, sign language interpreters, etc. The Coordinator will frequently moderate or facilitate public meetings/hearings along with the project manager. Additionally, OCR will notify community partners (schools, churches, low-income healthcare centers, low-income housing units, senior centers, mental health facilities, tribal offices, and shelters) in areas where projects have: significant low income, minority, elderly, disabled populations, or boarding Tribal reservations with additional public notice to ensure distribution of notice to these community members.

2. News releases

The Public Involvement Coordinator prepares and distributes news releases to the region’s public media outlets and community/county officials announcing proposed projects such as: total reconstructions, paving or overlay projects, railroad crossings, bridge replacements, temporary detours, etc. as well as public informational meetings and public hearings. Special formats of all written documents are provided on request. Direct mail letters and/or postcards may also be used to notify interested/affected parties regarding upcoming public meetings or hearings.

In addition, OCR publishes an informational brochure which is made available to the public and to MDT employees. (See Appendix F for sample of current complaint form). OCR is currently working on updating the brochure. Once the updated brochure is published, the old brochure will be taken out of circulation and the new brochures will be distributed.

Lastly, pertinent information is distributed to the public and MDT employees via the MDT Internet and Intranet webpages.

XI. Limited English Proficiency

OCR uses the U.S. Census Bureau data to determine the linguistic make up of participants in and beneficiaries of Montana’s highway projects. If interpretation or translation services are requests, OCR maintains a list of interpreters and translators who agreed to provide services upon request.
XII. Environmental Justice

The Environmental Services Bureau is responsible for all environmental documentation which includes the Environmental Justice Analysis. The documentation meets the requirements of the National Environmental Policy Act (NEPA) and Montana Environmental Policy Act (MEPA) for transportation highway projects including Community Impact Assessments.

In Montana, the areas of concern for Title VI issues are primarily on Indian reservations and urban areas, which are categorized as follows:

1) Reservation lands
2) Tribal lands outside a reservation
3) Minority/low income neighborhoods

Potential impacts of transportation projects and alternatives are evaluated. Potential for adverse impact is rare since most projects follow existing transportation corridors or are in rural non-developed areas.

After appropriate analysis, evaluation, and determination of appropriate mitigation for the impacts of a transportation project and alternatives on neighborhoods, the following statements with appropriate explanations and documentation will be incorporated into the final environmental report when applicable. The statements will be included for Categorical Exclusions.

“This project will not induce significant land use changes or promote unplanned growth. There will be no significant effects on access to adjacent properties or present traffic pattern.

This project will not create disproportionately high and adverse human health or environmental effects on minority and low-income populations (E.O. 12898) and complies with Title VI of the Civil Rights Act of 1964 (42 U.S.C.2000d).”

Procedures for studying neighborhood impacts are included in the environmental manual at http://www.mdt.mt.gov/publications/manuals.shtml#env. For a full description of the process which is used to conduct Environmental Justice Analysis see Appendix C.

XIII. Review of STA Directives

All Department directives are discussed at monthly Administrator meetings at which OCR Chief is a member and is able to voice any concern relating to nondiscrimination requirements. In addition, all directives are reviewed by MDT’s legal team and if any civil
rights issues are involved OCR is notified and is provided an opportunity to consult on the issue.

### XIV. Compliance and Enforcement Procedures

Trends and patterns of discrimination are identified by complaints that are received in OCR along with identified state and national trends. Once a trend or pattern is identified, MDT immediately addresses it and works to eliminate any discrimination through staff training. An example of this is when it was nationally identified that racial profiling appeared to have a pattern of discrimination throughout law enforcement. Thereafter, an intensive three-hour racial profiling training was created for all Motor Carrier Service staff.

Compliance reviews of sub-recipients is currently conducted at the preconstruction stage of CTEP project, and the Civil Rights Agenda for Federal Aid Projects is closely followed and instituted at the preconstruction phase of project through completion.

### XV. Appendices

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>MDT Nondiscrimination and Disability Accommodation Notice</td>
</tr>
<tr>
<td>B</td>
<td>MDT OCR Nondiscrimination Complaint Procedure; Montana State EEO, Nondiscrimination, and Harassment Prevention Policy.</td>
</tr>
<tr>
<td>C</td>
<td>MDT Environmental Manual Chapter 24: Environmental Justice</td>
</tr>
<tr>
<td>D</td>
<td>Public Meeting Protocol; Title VI Public Meeting/Hearing Form</td>
</tr>
<tr>
<td>E</td>
<td>CTEP Civil Rights Preconstruction Agenda</td>
</tr>
<tr>
<td>F</td>
<td>ADA, EEO, Title VI, and Title VII Informational Complaint Form</td>
</tr>
</tbody>
</table>
Appendix A - MDT Nondiscrimination and Disability Accommodation Notice

MDT NONDISCRIMINATION AND DISABILITY ACCOMMODATION NOTICE

Montana Department of Transportation (“MDT”) is committed to conducting all of its business in an environment free from discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination and protections are all inclusive (hereafter “protected classes”) by its employees or anyone with Whom MDT does business:

<table>
<thead>
<tr>
<th>Federal protected classes</th>
<th>State protected classes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race, color, national origin, sex, sexual orientation, gender identity, age, disability, &amp; Limited English Proficiency</td>
<td>Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, national origin, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran status</td>
</tr>
</tbody>
</table>

For the duration of this contract/agreement, the PARTY agrees as follows:

(1) Compliance with Regulations: The PARTY (hereinafter includes consultant) will comply with all Acts and Regulations of the United States and the State of Montana relative to Non-Discrimination in Federally and State-assisted programs of the U.S. Department of Transportation and the State of Montana, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

(2) Non-discrimination:
   a. The PARTY, with regard to the work performed by it during the contract, will not discriminate, directly or indirectly, on the grounds of any of the protected classes in the selection and retention of subcontractors, including procurements of materials and leases of equipment, employment, and all other activities being performed under this contract/agreement.
   b. PARTY will provide notice to its employees and the members of the public that it serves that will include the following:
      i. Statement that PARTY does not discriminate on the grounds of any protected classes.
ii. Statement that PARTY will provide employees and members of the public that it serves with reasonable accommodations for any known disability, upon request, pursuant to the Americans with Disabilities Act as Amended (ADA).

iii. Contact information for PARTY’s representative tasked with handling non-discrimination complaints and providing reasonable accommodations under the ADA.

iv. Information on how to request information in alternative accessible formats.

c. In accordance with Mont. Code Ann. § 49-3-207, PARTY will include a provision, in all of its hiring/subcontracting notices, that all hiring/subcontracting will be on the basis of merit and qualifications and that PARTY does not discriminate on the grounds of any protected class.

(3) Participation by Disadvantaged Business Enterprises (DBEs):

a. If the PARTY receives federal financial assistance as part of this contract/agreement, the PARTY will make all reasonable efforts to utilize DBE firms certified by MDT for its subcontracting services. The list of all currently certified DBE firms is located on the MDT website at mdt.mt.gov/business/contracting/civil/dbe.shtml

b. By signing this agreement, the PARTY assures that:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

c. PARTY must include the above assurance in each contract/agreement the PARTY enters.

(4) Solicitation for Subcontracts, Including Procurement of Materials and Equipment:
In all solicitations, either by competitive bidding, or negotiation, made by the PARTY 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 PARTY of the PARTY’s obligation under this contract/agreement and all Acts and Regulations of the United States and the State of Montana related to Non-Discrimination.

(5) Information and Reports: The PARTY will provide all information and reports required by the Acts, 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 MDT or relevant US DOT 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 PARTY will so certify to MDT or relevant US DOT Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

(6) Sanctions for Noncompliance: In the event of a PARTY’s noncompliance with the Non-discrimination provisions of this contract/agreement, MDT will impose such sanctions as it or the relevant US DOT Administration may determine to be appropriate, including, but not limited to:

a. Withholding payments to the PARTY under the contract/agreement until the PARTY complies; and/or
b. Cancelling, terminating, or suspending the contract/agreement, in whole or in part.

(7) Pertinent Non-Discrimination Authorities:
During the performance of this contract/agreement, the PARTY, for itself, its assignees, and successor in interest, agrees to comply with the following non-discrimination statues and authorities; including but not limited to:

Federal

- 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);
- 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 prohibits 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 CFR 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 prevents 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.).
- Executive Order 13672 prohibits discrimination in the civilian federal workforce on the basis of gender identity and in hiring by federal contractors on the basis of both sexual orientation and gender identity.

State

- Mont. Code Ann. § 49-3-205 Governmental services.
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

(8) Incorporation of Provisions: The PARTY will include the provisions of paragraph one through seven in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and/or directives issued pursuant thereto. The PARTY will take action with respect to any subcontract or procurement as MDT or the relevant US DOT Administration may direct as a means of enforcing such provisions
including sanctions for noncompliance. Provided, that if the PARTY becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the PARTY may request MDT to enter into any litigation to protect the interests of MDT. In addition, the PARTY may request the United States to enter into the litigation to protect the interests of the United States.
The Montana Department of Transportation ("MDT") is committed to conducting business in an environment free of discrimination, harassment, and retaliation. In accordance with State and Federal law, MDT prohibits any and all discrimination on the grounds of:

- Race, color, national origin, parental/marital status, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, religion/creed, social origin or condition, genetic information, sex, sexual orientation, gender identification or expression, national origin, ancestry, age, disability mental or physical, political or religious affiliations or ideas, military service or veteran's status (hereafter “protected classes”).

by its employees or anyone with whom MDT chooses to do business. MDT employees, contractors, employees of contractors, and external customers may file a complaint of discrimination or harassment based on any protected class.

Filing a complaint with the Office of Civil Rights ("OCR") does NOT prohibit the complainant from filing a complaint with Montana Human Rights Bureau ("HRB"), Equal Employment Opportunity Commission ("EEOC"), U.S. Department of Transportation ("USDOT"), US Department of Justice ("DOJ"), any other appropriate body or tribunal, or seeking the advice of personal counsel. The remedy available may vary based on the legal authority under which the complaint is brought.

Filing a Complaint

OCR adopts the "Initiating an Internal Complaint" procedures outlined in Administrative Rules of Montana 2.21.4019, with the following modifications:

- All complaints must be filed within 180 days of the alleged discriminatory conduct.
Given the serious nature of allegations alleging civil rights complaints, complaints should be in writing and signed. Complainants are encouraged, but not required, to use OCR’s complaint form. Complaints may be:

**mailed to:** MDT Office of Civil Rights, PO BOX 201001, Helena, MT 59620

**hand-delivered to:** MDT Office of Civil Rights, 2701 Prospect Avenue, Helena, MT 59620

**emailed to:** OCR Title VI, Title VII, and EEO Specialist Supervisor at nicosby@mt.gov.

OCR investigators will assist complainants in producing written complaints for investigation.

MDT employees may **not** use working time to prepare or file a civil rights complaint.

All complaints filed with OCR alleging discrimination and/or harassment based on a protected class will be investigated by OCR. MDT internal complaints dealing solely with human resources issues (i.e. ineffective management, personality conflicts, poor job performance) will be handled by the appropriate MDT Human Resources Division (HR) personnel.

**Investigating a Complaint**

OCR adopts the “Investigating a Complaint” procedures outlined in Administrative Rules of Montana 2.21.4020 with the following modifications:

- If a determination is made that an investigation is warranted, the complainant, the accused, and the relevant MDT administrator\(^1\) will be notified in writing, which will include a case reference number that will be included on all documents pertaining to that case.
- If at any point during the investigation the complainant stops cooperating with the OCR investigator or becomes otherwise unresponsive, the OCR investigator may close the investigation at his/her discretion, provided complainant was given a reasonable opportunity to correct his/her actions.

All investigations consist of interviewing witnesses and collecting and reviewing any relevant documents. Investigatory interviews may be conducted in person or over the phone. The OCR investigator will determine the form of the interview at his/her discretion.

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\(^1\) For complaints filed by external customers, the appropriate employer, contractor, or grant recipient will be notified.
After the interview, the OCR investigator will create an Interview Summary which the interviewee may review for any errors or omissions. Once the interviewee is satisfied that the Interview Summary represents an accurate documentation of the statements they made to the investigator on the day of interview, the OCR investigator will ask the interviewee to sign the Interview Summary. The Interview Summary will become part of the investigative file and will be incorporated into the final report. If the interviewee refuses to sign the Interview Summary, that fact will be noted on the Interview Summary document, which will nonetheless be included in the investigative file. During the course of the investigation, follow up interviews or the production of additional documents might become necessary. OCR asks for prompt response to these requests to assure that all investigations are resolved in a timely manner.

Confidentiality

OCR conducts all investigations in accordance with ARM 2.21.4022. It is OCR’s policy to keep confidential all investigations and relevant documents. However, it might be necessary for OCR to reveal the identity of the parties involved to OCR Operations Chief, MDT Director, MDT legal staff, or persons at the organization or institution under investigation. The complainant does have the right to have their identity withheld during the course of the investigation. If the complainant wishes to have their identity withheld, complainant should inform the investigator of that fact at the outset of the investigation. The complainant should be aware that having the identity withheld may hinder the progress of the investigation.

Timelines

OCR strives to complete all investigation within 120 days of receipt of complaint. This time period may be changed at the discretion of the OCR investigator and the business needs of MDT.

Throughout the course of the investigation, the OCR investigator will provide periodic updates to the OCR Operations Chief. The OCR Operations Chief is responsible for monitoring the progress of the investigation to assure it is conducted in compliance with these guidelines and all applicable statutes and regulations.

Investigation Conclusions and Remedies

Upon conclusion of an investigation, the OCR investigator will make a “cause” or “no-cause” determination and will provide recommendations based on the finding as stated in the Final Determination Report. All effected parties will be notified in writing about the outcome of the investigation. A copy of the Final Determination Report will be provided to the complainant. If a “cause” determination is made, the matter will be resolved by informal means whenever possible. However, formal action may be recommended:
For MDT internal complaints: up to and including termination, as outlined in the state discipline policy.

For MDT external complaints: up to the maximum penalty provided by applicable statute or regulation including debarment or withholding of funding.

The final determination report will be reviewed by the OCR Operations Chief, MDT Director, and MDT legal counsel. What action will be taken will be determined by the MDT Director, and MDT legal counsel based upon the information provided by OCR investigator and or the OCR Operations Chief in the final determination report.

Post Investigation Actions

OCR adopts the Post-Investigation Actions procedures outline in Administrative Rules of the State of Montana 2.21.4021 with the following modifications:

- The role of HR or the ADA Coordinator in this ARM is addressed and handled by the Office of Civil Rights.
- A Final Determination Conference may be held at the discretion of the OCR Operations Chief and the MDT Director.
- The case will be considered closed once a finding has been made or applicable disciplinary action was taken.
- Copies of the Final Determination will not be provided to the parties except to the Complainant. However, parties are welcome to read the report at the OCR office. No electronic copies will be provided.
- If the complainant is not satisfied with the outcome of OCR’s investigation, complainant may pursue any other avenues available to him/her including filing a complaint with HRB, EEOC, applicable federal agency, or federal or state district court. Upon request by the complainant, and in compliance with applicable state and federal law, the OCR investigatory file and accompanying report may be transmitted to such other agency as will be performing further investigation. It is the responsibility of the complainant to monitor all filing deadlines with all other state or federal agencies.

For questions, comments, or concerns contact OCR Title VI, Title VII, and EEO Specialist Supervisor at:
Phone: (406) 444-6334 TTY: (800) 335-7592; Montana Relay at 711; Email: nicosby@mt.gov
For ADA accommodations contact Alice Flesch at: (406) 444 - 9229 or aflesch@mt.gov
THIS DOCUMENT IS AVAILABLE IN ACCESSIBLE FORMATS UPON REQUEST.
EEO, Nondiscrimination, and Harassment Prevention Policy

Resource: Administrative Rules of the State of Montana (ARM)
Human Resources/ Employee Benefits

State Human Resources includes policies in administrative rules (ARM) when the policy may affect the public or be used by persons who are not currently employees. The policies that only affect state employees are not included in ARM. This policy is in ARM. This is a reproduction created for your convenience, but it is not the official version. Links to the ARM and Montana Code Annotated (MCA) are embedded throughout the document. You may also find the official ARM website at http://www.mtrules.org.

2.21.4001 SHORT TITLE
(1) This subchapter may be cited as the Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy.

2.21.4002 POLICY AND OBJECTIVES
(1) These rules establish the minimum requirements for implementing and maintaining an equal opportunity program that promotes compliance with:
(a) federal laws and regulations prohibiting illegal discrimination including the Genetic Information Nondiscrimination Act of 2008 (GINA);
(b) the Montana Human Rights Act, Title 49, MCA;
(c) the Governmental Code of Fair Practices, Title 49, chapter 3, MCA; and
(d) and the Governor's Executive Order 41-2008, Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention.
(2) These rules establish complaint procedures to promote prompt and equitable resolution of discrimination complaints.
(3) These rules cover all agencies in Montana’s executive branch except:
(a) the Montana University System;
(b) the Montana State Fund;
(c) elected officials:
(d) personal appointed staff of elected officials; and
(e) any other position specifically excluded under 2-18-103 and 2-18-104, MCA.

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND NONDISCRIMINATION
(1) The executive branch is committed to equal opportunity, nondiscrimination, and harassment prevention in all aspects of employment and in programs, services, and activities offered to the public.
(2) Agency managers, as defined by the agency in policy or rule to promote consistency with internal policies and procedures, may not tolerate discrimination or harassment based on an individual's race, color, national origin, age, physical or
mental disability, marital status, religion, creed, sex, sexual orientation, political beliefs, genetic information, veteran’s status, culture, social origin, or condition, or ancestry. Likewise, agency management may not tolerate discrimination or harassment because of a person’s marriage to or association with individuals in one of the previously mentioned protected classes.

(3) Agency managers may use a bona fide occupational qualification (BFOQ) where the reasonable demands of a position require a distinction based on age, physical or mental disability, marital status, sex, religion, or national origin. A BFOQ is a legal exception to an otherwise discriminatory hiring practice. Exceptions are strictly construed, as provided in 49-2-303, MCA, and the burden rests with the agency to demonstrate the exemption should be granted. Federal and state laws prohibit BFOQs based on race or color.

(4) To promote a work and customer service environment free from discrimination, agency managers shall:
   (a) base hiring decisions on individual competencies and qualifications.
   (b) promote an inclusive work environment where individuals are afforded every opportunity to reach their fullest potential.
   (c) recognize individual differences as a key element of organizational and team success.
   (d) treat individuals with dignity and respect; and
   (e) value the rights of all Montanans to benefit from equal access to employment and programs, services, and activities offered to the public.

(5) Agency managers who observe behaviors that may be viewed as discriminatory shall stop the behavior and notify their agency’s EEO officer, Americans with Disabilities Act (ADA) coordinator, or human resources manager.


2.21.4008 RESPONSIBILITIES

(1) The Department of Administration shall:
   (a) periodically review and update equal opportunity (EO) standards, guidelines, and administrative processes and procedures;
   (b) assist agencies in maintaining an effective EO program;
   (c) provide annual utilization analysis reports to agencies;
   (d) provide EEO analyses, reports, and technical assistance to agencies;
   (e) recommend strategies to promote diversity and overcome potential barriers to employment; and
   (f) design and develop equal opportunity training.

(2) Executive branch department heads shall:
   (a) appoint an EEO officer responsible for:
      (i) managing the agency's EEO program;
      (ii) training employees on EO; (iii) assisting employees and managers with resolving EO issues;
   (iv) conducting internal investigations; and
   (v) developing written EEO action plans; and
   (b) appoint an ADA coordinator responsible for:

   ...
(i) training employees on the ADA, disability awareness, and reasonable accommodations;
(ii) conducting self-evaluations to assess accessibility of programs, services, and activities; and
(iii) assisting with reasonable accommodation requests.

(3) Agency managers shall:
(a) retain electronic records for all jobs recording the sex, race, and ethnic group of employees and applicants as provided in 49-2-102, MCA, and the Uniform Guidelines on Employee Selection Procedures (1978); 43 FR 38295 (August 25, 1978);
(b) provide reasonable accommodations, upon request, for qualified individuals with disabilities and for applicants and employees based on their religious practices, unless doing so would create an undue hardship;
(c) post the state's EO policy poster and complaint-resolution procedures, including contact information for the agency EEO officer and ADA coordinator, in areas frequented by employees and the public;
(d) provide a copy of these rules to all employees;
(e) provide EO and harassment prevention training to all new employees within 90 days of hire or within [six months of the effective date of these rules] for current employees who have not yet received training;
(f) provide EO and harassment prevention refresher training for all employees every three years or more frequently as needed; and
(g) document all training in the employee's personnel file.


2.21.4009 COMPLIANCE WITH THE FEDERAL GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (GINA)

(1) To comply with GINA, which prohibits discrimination based on genetic information with respect to employment or state-sponsored group health plans, agency managers may not:
(a) request, require, or purchase genetic information about employees or their family members; or
(b) use genetic information to:
(i) discriminate against an individual in hiring, discharge, compensation, terms, conditions, or privileges of employment;
(ii) make decisions about admission to apprenticeship and training programs, including on-the-job training;
(iii) limit, segregate, or classify an individual;
(iv) fail or refuse to refer an individual for employment;
(v) deprive an individual of employment opportunities; or
(vi) acquire health insurance or set premiums under the group health plan.
(2) Requests for genetic information include, but are not limited to:
(a) conducting Internet searches on individuals in a way that is likely to result in obtaining genetic information;
(b) knowingly or purposefully listening to third-party conversations or searching…
an individual's personal effects for the purpose of obtaining genetic information; and (c) requesting information about an individual's current health status in a way that is likely to result in obtaining genetic information.

(3) To avoid inadvertently receiving genetic information, agency representatives who request medical information as part of an employment-related medical exam or a medical certification in response to a request for sick leave, leave qualifying under the Family Medical Leave Act, or a reasonable accommodation request under the Americans with Disabilities Act, shall include the following statements verbatim in their written request for medical information:

(a) "The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. To comply with this law, we ask you not to provide any genetic information when responding to this request for medical information."

(b) "Genetic information, as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services."

(c) "Genetic test means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes."

(4) Agency managers may not ask probing questions of an individual if they inadvertently learn of a health condition of an applicant, employee, or the health condition of a family member.

(a) Probing questions include, but are not limited to, asking the individual whether other family members have the condition or whether the individual has been tested for the condition. These questions are likely to result in the acquisition of genetic information.

(5) Agency representatives possessing genetic information about an employee shall maintain the information as confidential in compliance with ARM Title 2, chapter 21, subchapter 66, Employee Records Management Policy.


2.21.4013 HARASSMENT

(1) Harassment, including sexual harassment, consists of, but is not limited to, oral, written, or electronic communications (for example, voice mails, e-mails, text messages, or other social networking tools) in the form of repeated and unwelcomed jokes, slurs, comments, visual images, or innuendos based on a protected class. Even mutually agreeable behavior, or behavior accepted between two or more people, can be offensive to others; for this reason, it is prohibited in the workplace.

(2) Sexual harassment is a form of discrimination that includes unwelcome verbal or physical conduct of a sexual nature when:

(a) submission to the conduct is implicitly or explicitly made a term or condition
of employment;
   (b) submission to or rejection of the conduct is used as the basis for an employment decision affecting the individual; or
   (c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

   (3) Agency managers may not tolerate any behavior that negatively focuses on a protected class. Although a behavior or pattern of behavior might not constitute illegal discrimination, it might still violate this rule.

   (4) Agency managers who observe behaviors that could be viewed as discrimination or harassment shall stop the behavior and notify their agency's EEO officer, ADA coordinator, or human resources manager.


2.21.4014 RETALIATION

   (1) Agency managers may not retaliate or allow, condone, or encourage others to retaliate against any customer, applicant, or current or former employee for opposing unlawful discriminatory practices, filing a discrimination complaint or participating in a discrimination proceeding, including testifying in court.

   (2) Agency managers who become aware of retaliation shall inform the agency's human resource manager, human resource staff, EEO officer, or ADA coordinator. The human resource manager, human resource staff, EEO officer, or ADA coordinator shall advise management on the appropriate course of action.


2.21.4019 INITIATING AN INTERNAL COMPLAINT

   (1) Agency managers shall encourage employees, applicants, clients, and customers who believe they have been discriminated against or harassed to contact their supervisor, another manager, or the agency's EEO officer, ADA coordinator, or human resources staff.

   (2) Complaints may be oral or in writing; however, complainants are encouraged to use the Department of Administration's complaint form found at http://hr.mt.gov/hrpp/policies.mcpx.

   (3) For complaints not submitted on a complaint form, the agency representative receiving the complaint shall obtain and document the following information:

   (a) name, address, and phone number(s) of the complainant(s);
   (b) date(s), time(s), and location(s) of the alleged discriminatory behavior or conduct;
   (c) name(s), if known, of the accused(s);
   (d) description of the behavior or conduct that resulted in an alleged violation;
   (e) whether the alleged discrimination was based on a protected class; and
   (f) names of potential witnesses who may have heard or observed the alleged discriminatory conduct or behavior.
(4) Agency representatives who receive a complaint or become aware of allegations of discrimination or harassment shall promptly notify the human resource manager, EEO officer, or ADA coordinator, regardless of their perception of the validity of the complaint.

(5) The human resource manager, EEO officer or ADA coordinator, legal counsel, and appropriate manager shall meet to discuss the appropriate course of action. If the complaint is against any of these individuals, that individual is excluded from the meeting. The discussion must focus on measures to stop the alleged behavior, a review of the investigative process, and management's role in the process.

(6) If management determines an internal investigation would not be appropriate because of a potential conflict, they may request assistance from the State Human Resources Division or other outside source.

(7) The human resource manager or human resource staff, as appropriate, shall coordinate with the investigator and advise management throughout the course of the investigation.


2.21.4020 INVESTIGATING A COMPLAINT

(1) The EEO officer, ADA coordinator, or another representative chosen by management shall begin an investigation upon receiving a complaint.

(2) Before the investigation begins, the appropriate manager shall separately explain the following to the complainant and accused:

(a) the investigation process and anticipated timelines;
(b) what retaliation is and that it is unacceptable behavior; and
(c) expectations and consequences of discussing the complaint with anyone other than the investigator, management, union representative, or legal counsel.

(3) Agency managers shall provide:

(a) periodic updates to the complainant and the accused; and
(b) documentation of their initial meeting and all subsequent follow-up action to the investigator.

(4) The investigator shall:

(a) gather evidence to determine a "cause" or "no-cause" finding;
(b) coordinate with the agency's legal counsel before conducting interviews and throughout the investigation; and
(c) provide periodic updates to the agency's human resource manager.


2.21.4021 POST-INVESTIGATION ACTIONS

(1) After receiving the final report, the appropriate manager shall promptly inform the complainant and accused of the outcome of the investigation in writing.

(2) In the case of a cause finding, the appropriate agency manager shall:

(a) take appropriate disciplinary action, if necessary, according to the ARM Title 2, chapter 21, subchapter 65, Discipline Policy;
(b) advise the complainant corrective action to stop the behavior has been taken, but not disclose the details or nature of disciplinary action;
(c) reemphasize that retaliation is unacceptable behavior; and
(d) contact the complainant within 30 days to ensure the behavior has stopped and no retaliation has occurred.

(3) In the case of a no-cause finding, the appropriate agency manager shall contact the complainant within 30 days to ensure the complainant has not experienced retaliation.


2.21.4022 CONFIDENTIALITY REQUIREMENTS
(1) Agency managers shall make every attempt to protect the privacy of individuals involved in the complaint process; however, individual privacy cannot be guaranteed.

(2) Agency managers may not prohibit employees from discussing a complaint or ongoing investigation with coworkers unless management conducts an individualized assessment and demonstrates that one of the following factors exists:
(a) there are witnesses in need of protection;
(b) evidence is in danger of being destroyed;
(c) testimony is in danger of being fabricated; or
(d) there is a need to prevent a cover-up.

(3) Agency managers shall document their rationale for requiring that employees refrain from discussing a complaint or ongoing investigation.

(4) The human resource staff shall maintain the investigative report and supporting documents in a secure, confidential case file separate from the regular employee file.

History: 2-18-102, MCA; IMP, 2-18-102, MCA; NEW, 2011 MAR p. 1672, Eff. 8/26/11; AMD, MAR p. 110, Eff. 2/1/13.)

2.21.4027 TRACKING AND REPORTING INTERNAL COMPLAINTS
(1) Agency EEO officers shall track internal complaints using the Complaint Tracking Sheet located on the State Human Resources Division website: http://hr.mt.gov/hrpp/policies.mcpx. EEO officers shall provide quarterly summaries of internal complaints to the State Human Resources Division no later than the fifteenth day of each quarter.

(2) The report must include:
(a) the total number of complaints;
(b) whether the complainant and accused was an employee, customer, or client;
(c) the protected class or basis of the complaint;
(d) the reason for complaint (for example, employment-related, denied access to a program or service, or inappropriate comment); and
(e) the outcome of the complaint.

(3) The report is for tracking purposes only and may not include confidential information such as names of individuals involved.

(4) The State Human Resources Division shall collect and analyze the data to:
(a) assess program effectiveness;
(b) develop or modify existing policies, procedures, and guides; and
(c) promote compliance with applicable laws, regulations, and policies.


2.21.4028 INITIATING AN EXTERNAL COMPLAINT

(1) In addition to the internal complaint process, complaints may be filed with the following agencies:

(a) Montana Human Rights Bureau, 1625 11th Avenue, P.O. Box 1728, Helena, MT 59624-1728, (406) 444-2884, (800) 542-0807, TTY (406) 444-0532; or

(2) Jurisdiction may vary based on the nature of the complaint. For example, neither the Human Rights Bureau nor the EEOC considers complaints based on sexual orientation, culture, social origin or condition, or ancestry.

(3) The Human Rights Bureau must receive the complaint within 180 days of when the alleged discriminatory practice occurred or was discovered unless the person has filed an internal complaint. A person who files an internal complaint under these rules has 180 days from the conclusion of the internal investigation to file a complaint with the Human Rights Bureau if management completes the investigation within 120 days of when the alleged discriminatory practice occurred or was discovered. If management does not complete the investigation within 120 days, the person must file a complaint with the Human Rights Bureau within 300 days of when the alleged discriminatory practice occurred or was discovered.

(4) The EEOC must receive the complaint within 300 calendar days from the date the discrimination took place if the Human Rights Bureau enforces a law prohibiting employment discrimination against the same protected class. Otherwise, the complaint must be filed with the EEOC in 180 days.


2.21.4029 RULE VIOLATIONS

(1) Employees who violate these rules are subject to discipline, up to and including discharge under ARM Title 2, chapter 21, subchapter 65, Discipline Policy. A rule violation includes managers who allow discrimination to occur or fail to take appropriate action to correct inappropriate behavior, including discrimination or harassment.

(2) Failure to conduct an investigation in a proper and timely manner, interference with an investigation, failure to cooperate with an investigator, or making a false statement to an investigator may result in disciplinary action, up to and including discharge.

## Table of Contents

Section Page

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.1</td>
<td>OVERVIEW</td>
<td>24-1</td>
</tr>
<tr>
<td>24.1.1</td>
<td>Background</td>
<td>24-1</td>
</tr>
<tr>
<td>24.1.2</td>
<td>FHWA Environmental Justice Principles and Definitions</td>
<td>24-1</td>
</tr>
<tr>
<td>24.1.2.1</td>
<td>Principles</td>
<td>24-1</td>
</tr>
<tr>
<td>24.1.2.2</td>
<td>Definitions</td>
<td>24-2</td>
</tr>
<tr>
<td>24.2</td>
<td>LAWS, REGULATIONS AND GUIDANCE</td>
<td>24-4</td>
</tr>
<tr>
<td>24.2.1</td>
<td>Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”</td>
<td>24-4</td>
</tr>
<tr>
<td>24.2.2</td>
<td>42 USC 2000(d) – 2000(d)(1) “Civil Rights”</td>
<td>24-4</td>
</tr>
<tr>
<td>24.2.3</td>
<td>23 USC 139 “Efficient Environmental Reviews for Project Decision-Making”</td>
<td>24-4</td>
</tr>
<tr>
<td>24.2.4</td>
<td>DOT Order 5610.2 “Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”</td>
<td>24-4</td>
</tr>
<tr>
<td>24.2.5</td>
<td>DOT Order 6640.23 “FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”</td>
<td>24-4</td>
</tr>
<tr>
<td>24.2.6</td>
<td>Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency”</td>
<td>24-5</td>
</tr>
<tr>
<td>24.2.7</td>
<td>CEQ &quot;Environmental Justice – Guidance Under the National Environmental Policy Act”</td>
<td>24-6</td>
</tr>
<tr>
<td>24.2.8</td>
<td>Community Impact Assessment: A Quick Reference for Transportation (FHWA-PD-96-036)</td>
<td>24-6</td>
</tr>
<tr>
<td>24.2.9</td>
<td>FHWA “Environmental Justice” Website</td>
<td>24-7</td>
</tr>
<tr>
<td>24.3</td>
<td>PROCEDURES</td>
<td>24-8</td>
</tr>
<tr>
<td>24.3.1</td>
<td>Information Gathering</td>
<td>24-8</td>
</tr>
<tr>
<td>24.3.2</td>
<td>Analysis and Findings</td>
<td>24-9</td>
</tr>
<tr>
<td>24.3.3</td>
<td>Mitigation and Commitments</td>
<td>24-11</td>
</tr>
</tbody>
</table>
Chapter 24
ENVIRONMENTAL JUSTICE

24.1 OVERVIEW

24.1.1 Background

Environmental justice is the fair treatment of people of all races, cultures and incomes with respect to the development, adoption, implementation and enforcement of environmental laws and policies. Executive Order 12898, issued in 1994, directs each Federal agency to “…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….” The Executive Order reinforces antidiscrimination provisions established under Title VI of the 1964 Civil Rights Act and adds consideration of low-income populations. Title VI declares a National policy that discrimination on the ground of race, color or national origin shall not occur in connection with programs and activities receiving Federal financial assistance. The US Environmental Protection Agency’s “Environmental Justice” website includes the following definition:

"Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

Pursuant to the requirements in Executive Order 12898, the US Department of Transportation (DOT), in 1997, issued DOT Order 5610.2 to incorporate environmental justice principles into existing DOT programs, policies and activities. The Federal Highway Administration (FHWA), in 1998, issued DOT Order 6640.23 to address environmental justice requirements in FHWA programs, policies and activities.

According to information on the FHWA “Environmental Justice” website, because the nondiscrimination requirements of Title VI extend to all programs and activities of State DOTs and their respective sub-recipients and contractors, the concepts of environmental justice apply to all State projects, including those that do not involve Federal-aid funds.

This Chapter provides guidance and procedures for identifying minority and low-income populations that MDT projects potentially may affect and for addressing environmental justice principles in accordance with Title VI, Executive Order 12898, DOT Order 5610.2, DOT Order 6640.23 and associated implementing directives and guidance.

24.1.2 FHWA Environmental Justice Principles and Definitions

24.1.2.1 Principles

Information on the FHWA “Environmental Justice” website identifies the following fundamental environmental justice principles:

- 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; and
• to prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

The website information affirms that consideration of environmental justice applies to project development and environmental review under the **National Environmental Policy Act (NEPA)** (42 USC 4321, et seq.), regardless of the level of environmental processing. It also affirms that environmental justice applies to preliminary design, final design engineering, right-of-way, construction, operations and maintenance.

### 24.1.2.2 Definitions

DOT Order 6640.23 includes the following definitions that apply for purposes of the policies and procedures it establishes for FHWA compliance with Executive Order 12898:

1. **Low-Income.** A household income at or below the Department of Health and Human Services poverty guidelines.

2. **Minority.** A person who is:
   - Black (having origins in any of the black racial groups of Africa);
   - Hispanic (of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
   - Asian American (having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);
   - American Indian and Alaskan Native (having origins in any of the original people of North America and who maintains cultural identification through Tribal affiliation or community recognition); or
   - Native Hawaiian or other Pacific Islander (having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands).

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

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

5. **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; and
- the denial of, reduction in or significant delay in the receipt of, benefits of FHWA programs, policies or activities.

6. Disproportionately High and Adverse Effect on Minority and Low-Income Populations. An adverse effect that:
- is predominantly borne by a minority population and/or a low-income population; or
- 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 populations that are not minority and/or low-income.

7. Programs, Policies and/or Activities. All projects, programs, policies and activities that affect human health or the environment and that are undertaken, funded or approved by FHWA. These include, but are not limited to, permits, licenses and financial assistance provided by FHWA. Interrelated projects within a system may be considered a single project, program, policy or activity for purposes of DOT Order 6640.23.

The procedures in Section 24.3 of this Chapter apply the above principles and definitions for addressing environmental justice in the development and implementation of MDT highway projects.

24.2 LAWS, REGULATIONS AND GUIDANCE

24.2.1 Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”

This Executive Order, signed February 11, 1994, directs each Federal agency to 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.

24.2.2 42 USC 2000(d) – 2000(d)(1) “Civil Rights”

These Parts of the United States Code (USC) codify the provisions of Title VI of the 1964 Civil Rights Act. This Statute declares it to be the policy of the United States that discrimination on the ground of race, color or national origin shall not occur in connection with programs and activities receiving Federal financial assistance. It also authorizes and directs the involved Federal departments and agencies to take action to carry out this policy. Title VI prohibits discrimination, whether intentional or where the unintended effect is unduly burdensome.

US Department of Transportation (DOT) regulations implementing Title VI are provided in Title 49 of the Code of Federal Regulations (CFR), Part 21 “Nondiscrimination in Federally-assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964.” FHWA regulations implementing Title VI are provided in 23 CFR 200 “Title VI Program and Related Statutes – Implementation and Review Procedures.”
24.2.3 **23 USC 139 “Efficient Environmental Reviews for Project Decision-Making”**

For projects involving preparation of an environmental impact statement (EIS) and for environmental assessments (EA) being prepared in accordance with the FHWA “SAFETEA-LU Environmental Review Process Final Guidance,” this Part of the USC requires that, at appropriate times during the study process, the lead agency or agencies for the project collaborate with agencies serving as participating agencies to determine the methodologies to be used and the level of detail required for assessing impacts, including environmental justice impacts. See Chapters 11 “Preparing Environmental Documentation,” 13 “Environmental Assessment/FONSI” and 14 “Environmental Impact Statement/ROD” for further guidance on this requirement.

24.2.4 **DOT Order 5610.2 “Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”**

This April 15, 1997 Order clarifies and reinforces Title VI responsibilities and addresses effects on low-income populations. It also summarizes and expands upon the requirements of Executive Order 12898 and generally describes the process for incorporating environmental justice principles into all existing DOT programs, policies and activities.

24.2.5 **DOT Order 6640.23 “FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”**

This December 2, 1998 Order establishes policies and procedures for the FHWA to use in complying with Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” In addition to providing definitions for implementing environmental justice in FHWA programs, policies and activities (see Section 24.1.2), other key provisions of the Order include:

1. Those indicating FHWA will identify and avoid discrimination and disproportionately high and adverse effects on minority and low-income populations by:
   - identifying and evaluating environmental, public health and interrelated social and economic effects of FHWA programs, policies and activities;
   - proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods and individuals affected by FHWA programs, policies and activities, where permitted by law and consistent with EO 12898;
   - considering alternatives to proposed programs, policies and activities, where these alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with EO 12898; and
   - providing public involvement opportunities and considering the results thereof, including providing meaningful access to public information concerning the human health or environmental impacts and soliciting input from affected minority and low-income populations in considering alternatives during the planning and development of alternatives and decisions.
2. Those directing FHWA managers and staff to use the guidance in the Order to accomplish the following objectives:

- Ensure that FHWA programs, policies, and activities for which they are responsible do not have a disproportionately high and adverse effect on minority or low-income populations.
- When determining whether a particular program, policy or activity will have disproportionately high and adverse effects on minority and/or low-income populations, take into account mitigation and enhancement measures and potential offsetting benefits to the affected minority or low-income populations. Other factors that may be taken into account include design, comparative impacts and the relevant number of similar existing system elements in areas that are not minority or low-income areas.
- Ensure that programs, policies, and activities that will have disproportionately high and adverse effects on minority populations and/or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effects are not practicable. In determining whether a mitigation measure or an alternative is “practicable,” the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.
- Ensure that any of their respective programs, policies or activities that have the potential for disproportionately high and adverse effects on populations protected by Title VI (protected populations) will only be carried out if:
  - a substantial need for the program, policy or activity exists, based on the overall public interest; and
  - alternatives that would have less adverse effects on protected populations have either adverse social, economic, environmental, or human health impacts that are more severe or would involve increased costs of extraordinary magnitude.
- Ensure that any relevant finding identified during implementation of the Order is included in the planning or NEPA documentation prepared for the appropriate program, policy or activity.

24.2.6 Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency”

This Executive Order, signed August 11, 2000, directs each Federal agency to prepare a plan to ensure meaningful access to its Federally conducted programs and activities by eligible persons who, because of national origin, are limited in their English proficiency. The provisions of this Order have implications for conducting public involvement activities for projects affecting minority and low-income persons and populations that have limited English proficiency.

24.2.7 CEQ “Environmental Justice – Guidance Under the National Environmental Policy Act”

This December 10, 1997 publication, issued by the Council on Environmental Quality (CEQ), provides guidance for addressing environmental justice as a part of the process for NEPA compliance. The guidance includes helpful information on “Principles for Considering Environmental Justice under NEPA,” “Considering Environmental Justice in Specific Phases of the NEPA Process,” addressing environmental justice “Where No EIS or EA is Prepared,” and “Guidance for Agencies on Key Terms in Executive Order 12898.”
24.2.8 *Community Impact Assessment: A Quick Reference for Transportation (FHWAPD-96-036)*

This September 1996 publication issued by the FHWA includes guidance for addressing environmental justice in project development as a component of the community impact assessment process.

*MDT Environmental Manual Environmental Justice*

October 2010 24-7

24.2.9 *FHWA “Environmental Justice” Website*

This website, accessible through the FHWA website, includes links to a range of environmental justice topics including the following:

- an overview of Transportation and Environmental Justice;
- facts (Nondiscrimination: Title VI and Environmental Justice, Environmental Justice Legislation and Guidance, Questions and Answers on Environmental Justice and Title VI);
- case studies;
- effective practices;
- training; and
- resources.

24.3 PROCEDURES

24.3.1 *Information Gathering*

The Preliminary Field Review (PFR) is the initial step in the analysis of environmental justice for a proposed project. The Design Team (DT) notifies and invites appropriate MDT personnel, including the Project Development Engineer (PDE) within the MDT Environmental Services Bureau (ESB) to the field review. The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance. The PDE participates in the PFR to make a preliminary evaluation of available information on the project scope and the potential of project alternatives to involve disproportionately high and adverse effects on minority and/or low-income populations. Following the field review, the DT prepares a PFR Report summarizing the issues discussed during the PFR, including environmental justice issues. The DT distributes the final PFR Report for review and comment. Within ESB, the PDE serves as the document champion to collect and coordinate comments from the other Sections. The PDE compiles the comments into a PFR review memorandum for signature by the Environmental Services Bureau Chief.

Following the PFR, the PDE coordinates with the DT in defining the potential impact area for analysis of environmental justice issues. For projects subject to the requirements of 23 USC 139 “Efficient Environmental Reviews for Project Decision-Making,” the PDE, in cooperation with FHWA, also collaborates with participating agencies in determining the appropriate methodologies to be used and the level of detail required in the analysis of environmental justice impacts of project alternatives.

The PDE identifies the geographic region that incorporates the anticipated communities to be affected by the project. Typically, this includes communities within and immediately surrounding
the project study area. If a project may have social consequences for communities well beyond the immediate geographic area, the PDE expands the area for environmental justice analysis to include these other communities. The area for environmental justice analysis may change as information is collected and variations in project scope/alternatives are considered.

The PDE gathers demographic information for determining the composition of potentially affected populations; geographic distribution by race, ethnicity and income; and presence of minority and/or low-income populations.

The PDE obtains the information from a range of sources including:
- the US Census Bureau website;
- Federal, Tribal, State and local health, environmental, social service and economic development agencies;
- Metropolitan Planning Organizations (MPO); and
- public involvement and outreach within the affected communities.

US Census data is available at the census tract, census block and block group level. US Census publications on social, economic and housing characteristics discuss Area Classifications and explain how these classifications are defined. US Census data also includes economic census data and Topologically Integrated Geographic Encoding and Referencing (TIGER) files. The TIGER files are a digital database that can be used with mapping or Geographic Information System (GIS) software to show geographic distribution of populations and other census data.

Depending upon the project’s scope and complexity, the PDE gathers county level to block level census data on demographics and earnings. The level of detail is commensurate with the anticipated impacts of the project on minority and/or low-income populations. US Census Bureau information for demographics and earnings is available in the Decennial Census – Summary File 1 and Summary File 2 and American Community Survey – Selected Data Profiles, both of which are accessible through the US Census Bureau website. The PDE uses the source that provides the more recent data.

Other data can supplement US Census data if it has a sound basis and gives an accurate assessment of income levels. In some instances, population characteristics can be derived from information available from MPOs, councils of government and city or county agencies. Other local sources of information include State and local tax and financing agencies, economic and job development agencies, social service agencies, local health organizations, school districts, local public agencies and community action agencies.

The PDE uses the most up-to-date data available; considering the basic assumptions used in compiling the data and the purposes for which the original data was collected.

The PDE also coordinates with State and local government officials and planning agencies to gather information on other past, present or reasonably foreseeable future projects that would affect areas of the proposed highway project.

The PDE analyzes the information obtained to determine if minority populations and/or low-income populations exist in the study area; see Section 24.1.2.2. If the results indicate there are no minority and/or low-income populations in the study area, the PDE documents the basis
for the determination in the project file and provides a copy of the documentation to the DT.

If the results indicate there are minority and/or low-income populations within the project’s potential impact area, the PDE documents the geographic distribution of the populations in the study area by race, ethnicity, national origin and income level. The PDE includes the documentation in the project file and provides a copy to the DT.

24.3.2 Analysis and Findings

For projects determined to involve potential effects on minority and/or low-income populations, the PDE coordinates with the DT in analyzing the project’s effects on those populations. This analysis addresses beneficial and adverse environmental effects, including human health, economic and social effects, and direct, indirect and cumulative effects, including the potential for environmental justice effects because of induced growth. It also addresses the potential for project alternatives to result in disproportionately high and adverse effects on minority and/or low-income populations.

To identify disproportionately high and adverse effects on minority and/or low-income populations, the PDE evaluates the nature and magnitude of the project’s environmental and health effects, and how they are distributed within the affected communities. The PDE then considers the results of the evaluation in the context of the definitions provided in DOT Order 6640.23; see Section 24.1.2.2.

If the analysis identifies disproportionately high and adverse effects on minority and/or low-income populations, the PDE coordinates with the DT to identify and evaluate measures to avoid, minimize and/or mitigate those effects.

The PDE ensures the environmental justice analysis recognizes that impacts within minority populations and/or low-income populations may be different from impacts on the general population due to a community’s distinct cultural practices. For example, data on different patterns of living (e.g., subsistence fish, vegetation or wildlife consumption; use of well water in rural communities) may be relevant to the analysis.

The PDE also conducts the analysis in a manner that considers potential environmental justice issues without regard to the size of the affected minority and/or low-income population, recognizing that disproportionately high and adverse effects are the basis for environmental justice, not the size of the affected population. A very small minority or low-income population in the project study area does not eliminate the possibility of a disproportionately high and adverse effect on these populations. The PDE considers the comparative effects on minority and/or low-income populations in relation to the effects on populations that are not minority and/or low-income.

Throughout the project development process, the PDE coordinates to arrange public involvement opportunities for potentially affected minority and/or low-income populations that:

- provide meaningful access to public information concerning the project’s human health and environmental effects; and
- solicit input from affected minority and/or low-income populations regarding the development and analysis of project alternatives, assessment of effects and measures to avoid, minimize and mitigate disproportionately high and adverse effects on those populations.
The PDE plans and conducts public involvement and outreach activities, in compliance with the requirements of Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency.” The PDE apprises the DT of all input received from affected minority and/or low-income populations regarding project alternatives, environmental effects and/or impact avoidance, minimization and mitigation measures. The PDE coordinates with the DT in responding to the input.

The PDE documents the results of the environmental justice analysis for each alternative under consideration. The documentation includes information on:

- the affected minority and/or low-income populations (e.g., geographic distribution in the study area by race, ethnicity, national origin and income level);
- views received from affected minority and/or low-income populations regarding project alternatives, environmental effects and measures to avoid, minimize or mitigate disproportionately high and adverse effects on those populations;

- effects of the project alternatives (and the preferred alternative, when applicable), on minority and/or low-income populations, including identification of disproportionately high and adverse effects and discussion of proposed measures for minimizing or mitigating those effects; and
- as applicable, discussion of the rationale for recommending an alternative that involves disproportionately high and adverse effects on minority and/or low-income populations.

The PDE ensures the results of the environmental justice analysis, including proposed mitigation measures, are appropriately reflected in the project environmental documentation (see Chapters 11 “Preparing Environmental Documentation,” 12 “Categorical Exclusion,” 13 “Environmental Assessment/FONSI” and 14 “Environmental Impact Statement/ROD”) and included in the project file.

### 24.3.3 Mitigation and Commitments

The PDE and DT ensure the project plans accurately reflect mitigation measures that are to be implemented for the project. To the extent possible, the PDE and DT should prepare the contract documents using the *MDT Standard Specifications* to minimize the need for special provisions.

The District Environmental Engineering Specialist monitors project construction to ensure that all mitigation measures are implemented in accordance with the approved project plans.
Public Meeting Protocol

Our goal is to make each public meeting a positive and informative experience for all attendees (public and staff). In a continuing effort to improve public meetings, the public involvement staff have developed some steps to help you prepare for attending a public meeting as a department representative.

Purpose:
The public meeting is our chance to listen with an open mind to citizen input and possible alternative ideas. They have first-hand knowledge and experience with existing issues. We don’t want to appear to be defensive about our ideas for the project. They often view this as their project since it will create a major change to their environment. Our main task is to listen. Answering questions and providing our proposal is secondary.

Pre-meeting Preparations:
Prior to the meeting night, we will connect with the appropriate staff via phone, meeting or email. This may include presenters and other involved staff, depending on the project.
During the meeting we’ll go over meeting protocol, what to expect, numbers of attendees, and make decisions regarding the following:

- Who will make the introductions?
  - Public involvement staff
  - Presenter
  - Each individual

- What format will the meeting follow?
  - Standard: introductions, presentation, comments/questions, closing
  - Alternatives: open house or other

- Who steers meeting to prevent any one citizen from dominating the floor?
- Who will handle closing/adjourning the meeting?
  - Public involvement staff
  - Presenter
  - Other

Staff attending please:
- Sign meeting attendance list — introduce yourself to the public involvement staff person (if new)
- Expect to be introduced (name, title)
- Sit towards the front of the room (be visible)
- Wear a name badge/logo wear to identify you as MDT staff
- Wear professional attire
- Be prepared to be called on
- Preface remarks with name for the public record
- Speak to be heard (using respectful, responsive language and tone)
- Arrive at least 20 minutes before meeting start
- Stay focused on topic when responding to a question and refrain from digressing
- When making an explanation, avoid using technical terms or acronyms (keep it simple)
- Be prepared to provide handouts if appropriate

Please note the attachments included... this information can also be accessed on the Intranet at http://mdtinfo.mdt.state.mt.us/dir/unique/policy.shtml

If you have comments or suggestions regarding the public meeting protocol, please contact the Public Information Office.
Title VI Public Meeting/Hearing Form

Location: __________________________ District: _________ Date: __________

Project No: ____________ Designation: ____________________________ CN: ______

Title VI Representative: __________________________

Was the following language displayed, stated, or paraphrased to the audience? □ Yes □ No

This meeting is held pursuant to Title VI of the 1964 Civil Rights Act which ensures that no person in the United States shall, as provided by Federal and State Civil Rights laws, be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination on the basis of a protected status during any MDT project. Further information is available in Title VI pamphlets available at the sign-in table.

Type of Meeting/Hearing:

□ Informational □ Hearing (Public Input Sought)
□ Scoping □ Other: __________________________

Type of Notice(s) for Meeting/Hearing:

□ Paid Advertising □ Public Service □ Newspaper Landowner letter
□ Television □ Internet □ Radio
□ Direct Mailing (postcard, brochure, etc.) □ Other: __________________________

Will this project / issue impact minority groups?

□ Yes □ No □ Unknown
If yes, please explain. _____

Complete questions below as appropriate:

Will there be:

Relocations? □ Yes □ No □ Unknown
Additional R/W? □ Yes □ No □ Unknown
If yes, please explain. _____

What minority groups were represented?

□ Native American □ Hispanics □ Asians
□ African Americans  □ Unknown  □ Other: ________________________________

The meeting was held within ____ miles of the project site.

**Post Hearing Observations**

Was there a language barrier?  □ Unknown  □ Yes  □ No

Was a translator requested?  □ Yes  □ No

If yes, what language?  ________________________________

Were the facilities accessible to the disabled?  □ Yes  □ No

*(see http://www.ada.gov/business/accessiblemtg.htm)*

If no, please explain:

Were other accommodations requested?  □ Yes  □ No

If yes, please explain:

Were disabled persons present?  □ Unknown  □ Yes  □ No

Were Title VI pamphlets with accessibility statements available?  □ Yes  □ No

How many members of the public attended?  ________

Did any members of the public make comments?  □ Yes  □ No

Were any written Title VI complaints regarding the meeting/project received?  □ Yes  □ No

*[If yes, please submit a copy of the written Title VI complaint to the Title VI Coordinator.]*

What time was the meeting held?  _______ to _______

Per SAFETEA-LU, were any “advanced visualization techniques” used?  □ Yes  □ No

If yes, please describe briefly:

Please submit this completed form electronically to the EEO Title VI Supervisor at

nicosby@mt.gov.
Appendix E – CTEP Civil Rights Preconstruction Agenda

FEDERAL AID

CTEP Civil Rights
Preconstruction Agenda

(Attach to Engineer’s Preconstruction Minutes)

Civil Rights Agenda: Federal-Aid CTEP Projects

Part 1: Project Information
Part 2: EEO Pre-Bid Contract Compliance
Part 3: Labor Compliance
Part 4: EEO Post-Bid Contract Compliance

Alternative Accessible formats of this document are available upon request.
Contact Office of Civil Rights at (406)444-6334
TTY: (800)335-7592, or email: nicosby@mt.gov
Part 1: Project Information

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<td>Estimated Start Date:</td>
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Part 2: EEO Pre-Bid Contract Compliance

- Have wage rates been included with all pre-bid advertising documents? This is required for all on-system federal-aid contracts of $2,000 or more.

- Have the FHWA 1273 (Required Contract Provisions: Federal-Aid Contracts) been included with all pre-bid advertising documents?

- Have Americans with Disabilities Act (ADA) requirements been considered and resolved? If questions, contact Nicole Cosby at (406) 444-6334.

- Have Disadvantaged Business Enterprises (DBE) requirements (DBE Schedule of Participation; DBE Substitution; CUF Monitoring Report; etc.) been considered and resolved? Please submit construction payment amounts to the MDT DBE Specialist monthly at: electronically at: https://app.mdt.mt.gov/spr/

  If questions, contact the MDT DBE Specialist at (406) 444-6337.

Part 3: Labor Compliance

Wage rates and the FHWA 1273 must be physically affixed to the prime and any subcontracts and cannot just be referenced in the contract. This is the Local Entity’s responsibility to assure it is accomplished.

Zone(s):

The zone for this project is included in the contract. Please review for specific classifications zone pay.
Payrolls:

1. Who is the Contractor’s Project Manager? ________________________________

2. Original copy of certified payroll to Local Entity or Consultant

3. Statement of Compliance must be attached to each certified payroll. Be sure the appropriate fringe benefit box has been checked and that the statement is signed.

4. Payroll records must be retained by the contractor for a period of three years.

5. Owners and other salaried supervisors must be shown on the payroll when performing duties on the project site.

6. Prime and each subcontractor must pay employees and submit certified payrolls on a weekly basis.

7. Check the payrolls weekly to ensure the right wages have been paid to each person employed on the project site.

Fringe Benefits:

The contractor has three options:

☐ a. Fringe Benefits may be paid directly to employees each week, in cash, or
☐ b. Fringe Benefits may be paid to a trust fund (approved by U.S.DOL), or
☐ c. Fringe Benefits may be paid in a combination of a. and b. above.

If fringe benefits are paid to a trust fund for which the employee is not a member, the contractor is obligated to provide information to the employee concerning access to the trust fund. This information must be submitted to the Local Entity or Consultant with the first payroll.

Work Week:

General Wage Decisions (attached to the contract) set the Base pay + zone pay + fringe benefits which equals the total wage package. A contractor may opt to pay more than the wage package. 40 hours is a standard workweek. On the 41st hour, overtime (time and a half) must be paid.

Overtime is based on 1.5 x base rate + zone pay, or 1.5 x the higher wage rate the contractor has chosen to pay. Fringe benefits are always paid straight time. Fringe benefits will be indicated on the certified payroll as paid in cash and/or to an approved bona fide fund. In both straight and overtime situations, worker must be paid at least what they would have earned under Davis-Bacon wages.

Legal Deductions:

1. The only legal deductions are FICA (Social Security & Medicare), State (SIT), and Federal (FIT) Taxes.

2. Deductions other than those mentioned above must have sufficient detail included on the payroll or the certificate of compliance to verify each deduction is allowable. The contractor’s fringe benefit program must be outlined on the “Statement of Compliance” and include addresses and amounts.
3. If a deduction for child support or a garnishment occurs, note the deduction on the payroll. Do not send in garnishment documentation.

**Shifting:**

Shifting from the wage rate to the fringe benefits to cover higher fringe benefits than those in the contract is permitted if it is a requirement of a bargaining agreement or other trust fund agreement. The wage/fringe package must remain the same or higher than that in the contract wage rates. Overtime must be calculated on the published Davis-Bacon wage rate or the wage actually being paid if higher than the published rate. Once the overtime rate is calculated, shifting can then occur.

**Work Classifications:**

When a contractor believes a new classification is necessary, the contractor must complete a General Services Administration (GSA) Standard Form SF1444 and submit it to the MDT OCR. The OCR will forward the request to the USDOL for approval. The following criteria should be used to determine if a new classification is warranted:

- The work to be performed by the classification is not performed within an existing classification.
- The classification is utilized in the area by the construction industry.
- The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the determination in other categories.

The form is available at: [https://www.mdt.mt.gov/business/contracting/davisbacon.shtml](https://www.mdt.mt.gov/business/contracting/davisbacon.shtml)

1. Flaggers are covered by Davis-Bacon Wage Rates. (All flaggers must be certified)

2. Foremen and supervisors working with the tools of the trade more than 20% of their work week must be paid a minimum of the appropriate wage rate for the work they are performing. All foremen and superintendents must appear on the certified payroll, even if salaried. **List their days and hours only.**

3. Employees working at other than their assigned classifications for 20% or more of their time must be paid for the work they are performing or at the higher of the two rates.

4. Employees **must** be classified and paid for the work they are performing. The classification codes shown on the payroll must clearly identify the work being performed. **We request that all contractors use the Federal groups from the contract wage rates.** If your computer software will not print them, please write them in.
5. If the contractor uses a classification system other than what is provided in the contract, it must be easily comparable to the Federal group system and must identify the wage decision number. Two copies of the contractor's code conversion sheet must be provided with the FIRST payroll submitted for each project.

*Example:*

- Contractor Code = Federal Code
- Common laborer = Laborer, Group 2

**Site of Work:**

(This may determine whether Federal Davis-Bacon wages apply to particular classifications of workers.)

The site of work is limited to the physical place or places where the construction called for in the contract will remain when work on it has been completed, or other adjacent property used by the contractor or subcontractor which can be reasonably said to be included in the site.

If there is a question as to whether a project is affected by Site of Work regulations, please contact Kathy Terrio at (406) 444-9270 or by email at kterrio@mt.gov.

**Part 4: EEO Post-Bid Contract Compliance**

- Does the prime contractor with contracts of $10,000 or more and all subcontractors have a current annual EEO submission prior to performance of any work?
  - The EEO Submission is available on the MDT Internet site at: [http://www.mdt.mt.gov/publications/docs/forms/dbe/annuaaleeo.pdf](http://www.mdt.mt.gov/publications/docs/forms/dbe/annuaaleeo.pdf)
  - Annual EEO Submissions must be received in Helena and approved prior to the prime or subcontractor beginning work on the project site and annually thereafter as long as that prime or subcontractor works on the project.

- **The Prime Contractor's EEO Officer is ______.** This person is expected to:
  - Attend compliance reviews;
  - Demonstrate what affirmative action the prime and each subcontractor have taken;
  - Provide documentation of all recruitment efforts (including subcontractors).
    - Minority and/or female referral sources can be obtained from MDT Office Civil Rights. The U. S. Department of Labor has held that it shall be no excuse if the union with which the contractor has a bargaining agreement fails to refer a minority or female.
    - Obtain the current annual EEO submissions from the prime contractor and any subcontractors that will be working on the job prior to any work starting. This is required for all prime contractor federal aid contracts of $10,000 or more.

- Schedule the preconstruction conference. Invite the prime contractor and the CTEP Liaison. If any questions, contact Nicole Cosby at 444-6334.
After Work Has Begun:

- Is the project site bulletin board in place with all the correct postings from the prime contractor and each subcontractor? Bulletin Boards must be located in an area accessible to all employees. Three ring notebooks can only be used if the work is mobile such as fencing, striping, or traffic control. Subcontractors may use the Prime's bulletin board as long as the Prime's own information is posted on it.

- Contents of Bulletin Board:
  - Field Interviews are not mandatory. However, interviews may be conducted during working hours by the Office Civil Rights staff, the CTEP Liaison, or the Local Entity.

- On-site EEO Meetings will be conducted: □ weekly, □ every other week, or □ monthly.
  Minutes and attendance roster must be provided to the MDT Inspector. The MDT Inspector shall be notified when the EEO on-site meeting will be held.

- Is the contractor employing a core crew or did new employees get hired for this project? If yes, what good faith efforts were made to recruit qualified minority and female employees?

- Did the prime pay all subcontractors within 7 days after receiving a periodic or final payment? [28-2-2103(2) MCA: No payment is required unless the subcontractor submits a billing statement or invoice.]

If you have questions during the preconstruction conference, please call Nicole Cosby 444-6334; TTY: (800) 335-7592; or email: nicosby@mt.gov
Available from Montana Department of Transportation
Office of Civil Rights:
(406) 444-6331, TTY: (800) 335-7592
or
Website: http://www.mdt.mt.gov/business/contracting/civil/

- Contractor Compliance Manual (labor and EEO)

- DBE Commercially Useful Function Project Site Review

- Payroll Form WH-347/Instructions

- Federal Wage Decisions

- Job Site/ Bulletin Board Postings

- Title VI Complaint Procedures/ Forms

- Title VI Contract Language

- Title VI Public Hearing Form
Appendix F – ADA, EEO, Title VI, and Title VII Informational Complaint Form

Civil Rights Discrimination
Complaint Form

COMPLAINANT INFORMATION

Name: ____________________________
Address: __________________________
Phone No.: ________________________
Email: ____________________________

I am filing a complaint on behalf of:
□ myself  □ someone else

NARRATIVE

BASIS OF COMPLAINT: (Mark all that apply)

Federal & State
□ Race
□ Color
□ National Origin
□ Age
□ Sex
□ Sexual Orientation
□ Gender Identity
□ Disability
□ Low-Income
□ Limited English Proficiency

State Only
□ Sexual Harassment
□ Sexual Orientation or Expression
□ Political Belief
□ Genetic Material
□ Military Service or Veteran Status
□ Physical Disability
□ Mental Disability
□ Marital Status
□ Religion/Creed
□ Pregnancy, Childbirth or Conditions Related to Pregnancy or Childbirth
□ Culture/Social Origin/Acculturation
□ Hostile Work Environment
□ Retaliation

You MUST file your complaint within 180 calendar days of incident. You are not required to use this form to file a complaint. In your complaint, explain in as much detail as possible, how you were discriminated against. Include all relevant names and dates. Attach any additional documentation, as necessary, to your complaint. Someone from the Office of Civil Rights will be in contact with you within 7 business days of receiving the complaint.

Mail, fax or hand deliver complaints to:
Montana Department of Transportation
Office of Civil Rights
2701 Prospect Avenue, PO BOX 201001
Helena, MT 59620-1001
Fax: (406) 444-7243

If you believe discrimination is occurring in any of MDT’s programs or services, please contact:

MDT Office of Civil Rights
2701 Prospect Avenue, PO BOX 201001
Helena, MT 59620-1001
Voice: (406) 444-6334
TTY: (800) 335-7593
Fax: (406) 444-7243

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program, or activity of the Department. Alternative accessible formats (e.g. large print, audio cassettes, etc.) of this document will be provided upon request. For further information, please call (406) 444-6334, or TTY (800) 335-7593 or Montana Relay at 711.

For more information on Title VI and Non-Discrimination at MDT, visit our website: mdt.mt.gov/business/contracting/civil/eeo.shtml

For additional copies of this document or questions, please contact the EEO Specialist at: (406) 444-6334

9/15
Non-Discrimination 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, which also includes FMCSA-only programs or activities (49 CFR Part 303).
- The Age Discrimination Act of 1975, as amended, (42 U.S.C § 6101 et seq.), (prohibits discrimination on the basis of age).

Authorities (continued)

- Titles II and III of the Americans with Disabilities Act, which prohibits 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 CFR 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).
- Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination because of sex in education programs or activities (20 U.S.C. § 1681 et seq.).
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which prevents 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);
- Executive Order 13672 extends protection against discrimination in hiring and employment in the civilian federal workforce by federal contractors on the basis of both sexual orientation and gender identity.
- Mont. Code Ann. § 49-3-205 Governmental services;
- Mont. Code Ann. § 49-3-206 Distribution of governmental funds;
- Mont. Code Ann. § 49-3-207 Nondiscrimination provision in all public contracts.

Montana Department of Transportation (MDT) is committed to conducting all of its business in an environment free of discrimination, harassment, and retaliation. In accordance with State and Federal law MDT prohibits any and all discrimination on the basis of protected classes by its employees or anyone with whom MDT chooses to do business.