



The State of Montana
DEPARTMENT OF TRANSPORTATION

TITLE VI

Limited English Proficiency Plan

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TABLE OF CONTENTS

Montana DOT Limited English Proficiency Plan.....	1
EXECUTIVE SUMMARY	2
BACKGROUND	2
ANALYSIS.....	3
PROCESS	4
ANALYSIS.....	4
1. The number or proportion of LEP persons serviced or encountered in the eligible service population.....	4
2. The frequency with which LEP individuals come in contact with the program.	5
3. The nature and importance of the program, activity or service provided by the program.	6
4. The resources available to the recipient and cost.....	6
CONCLUSION:.....	8
APPENDIX A	8
TITLE VI COMPLAINT PROCEDURES	8
TITLE VI PERIODIC REPORT.....	8
TITLE VI PUBLIC MEETING FORM	8
TITLE VI ENVIRONMENTAL CHECKLIST	8

Montana DOT Limited English Proficiency Plan

Limited English Proficiency Plan Montana Department of Transportation Civil Rights Bureau Revised May 15, 2012

Executive Order 13166 implements Title VI of the Civil Rights Act of 1964 by requiring meaningful access to all federally financially assisted programs and activities by persons with limited English proficiency (LEP).

Limited English proficiency is defined as “individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English.” LEP individuals are entitled by EO 13166 to language assistance with respect to a particular type of service, benefit or encounter. FHWA has mandated that “...recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge....”

Options for MDT include:

- Multi-language flashcards that MDT staff could use to identify the driver’s language, then access to an interpreter (available as “I Speak” cards at <http://www.lep.gov/ISpeakCards2004.pdf>).
- Using family members to interpret for LEP individuals
- <http://www.lep.gov> should be accessed as statewide and district-wide LEP populations are identified.
- Contract for Deaf/ Hard of Hearing Services.
- Creating and maintaining an “MDT Interpreters List.”

Under the DOJ guidance, MDT is obligated to determine the extent of its obligation to provide LEP services: This determination requires a flexible and fact-dependent analysis on a case-by-case basis of four factors:

1. The number of proportion of LEP persons serviced or encountered in the eligible service population.
2. The frequency with which LEP individuals come in contact with the program.
3. The nature and importance of the program, activity or service provided by the program.
4. The resources available to the recipient and cost.

The MDT Interpreters List has been developed, distributed to MCS, will be updated as new information is received, and included on the MDT Title VI Internet site. MDT enforces LEP in the same manner as Title VI. LEP is included as review criteria in all Title VI compliance reviews. CRB will continue to monitor LEP requirements both internally and in federal aid reviews of local governments and contractors.

EXECUTIVE SUMMARY

Executive Order 13166¹ implements Title VI of the Civil Rights Act of 1964 by requiring meaningful access to all federally financially assisted programs and activities by persons with limited English proficiency (LEP).

Limited English proficiency is defined as “individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. LEP individuals are entitled by EO 13166 to language assistance with respect to a particular type of service, benefit or encounter.² FHWA has mandated that “...recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge....”³

Options for MDT include:

- o Multi-language flashcards that MCS could use to identify the driver’s language, then access to an interpreter (available as “I Speak” cards at <http://www.lep.gov/ISpeakCards2004.pdf>.)
- o Using family members to interpret for LEP individuals
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Attachments:

Limited English Proficiency Analysis – 2010 Census (4/2012)

MDT Interpreters List (8/11/2011)

It is intended that this Limited English Proficiency Plan (LEP) be a living document, to change as circumstances require. This plan should properly be included in the MDT Title VI plan, as other states have already done.

BACKGROUND

Executive Order 13166⁴ implements Title VI of the Civil Rights Act of 1964 by requiring meaningful access to all federally financially assisted programs and activities by persons with limited English proficiency (LEP). On June 18, 2002, the Department of Justice (DOJ) published a model DOJ LEP guidance that requires consistent federal wide compliance standards applicable to recipients of federal financial assistance.⁵

Limited English proficiency is defined as “individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. LEP individuals are entitled by EO 13166 to language assistance with respect to a particular type of service, benefit or encounter.⁶ FHWA has mandated that “...recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide, free of charge....”⁷

State (Montana) or local "English-only" laws do not relieve an entity that receives federal funding from its responsibilities under federal anti-discrimination laws.⁸

ANALYSIS

Under the DOJ guidance, MDT is obligated to determine the extent of its obligation to provide LEP services: This determination requires a flexible and fact-dependent analysis on a case-by-case basis of four factors⁹:

1. The number of proportion of LEP persons serviced or encountered in the eligible service population.
2. The frequency with which LEP individuals come in contact with the program.
3. The nature and importance of the program, activity or service provided by the program.
4. The resources available to the recipient and cost.

These factors should be applied to the various kinds of contact that MDT has with the public to assess language needs and decide what reasonable steps should be taken to ensure meaningful access for LEP persons. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis.¹⁰

The model DOJ LEP guidance includes a section regarding “safe harbors” for written translations of vital material. A “safe harbor” means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient’s written-translation obligations.

- A. The recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally, or
- B. If there are fewer than 50 persons in a language group that reaches the five percent trigger in (A), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials free of cost.

These “safe harbor” provisions apply to the translation of written documents only and have been rejected by some federal agencies. They do not affect the requirement to provide meaningful access to LEP individuals

through competent oral interpreters where oral language services are needed and are reasonable.¹¹

PROCESS

Once the necessity of a LEP plan is established, it is then necessary to implement an effective plan of language assistance. This consists of:

1. Identifying specific LEP individuals who need language assistance (see steps 1 through 3 of analysis).
2. Ways in which language assistance measures will be provided (see step 4 of analysis).
3. Train staff about procedures and how to work effectively with them.
4. Notify LEP persons that services are available and offered free of charge.
5. Monitor and update LEP plan.

ANALYSIS

1. The number or proportion of LEP persons serviced or encountered in the eligible service population.

States operating statewide programs should assess statewide language groups to identify potentially significant LEP populations, and ensure that local offices conduct similar surveys of their local service populations.¹² In MDT's case, this requires statewide analysis and then individual district analysis.

- What prior experiences with LEP have MDT staff encountered and what is the breadth and scope of language services that have been needed?
 - A recurring situation arises with Canadian truck drivers who do not speak English and pass through Montana. MCS officers have repeatedly expressed their frustration with trying to communicate with these individuals, and then later finding a Title VI complaint has been filed against them. This issue is discussed further below.
 - Title VI field reviews indicate no LEP issues have arisen in those areas, despite substantial non-English speaking populations who speak little or no English.
- What LEP populations may have been underserved because of language barriers?
 - Title VI reviews of MDT units thus far have not indicated any LEP service issues. Right of Way particularly deals with older Native Americans who have limited or no English. This issue is routinely resolved by getting a tribal family member to interpret. However, non-biased interpreters are available through the Interpreters List or other avenues.
 - Transit operators have not reported any LEP-related issues and field reviews have not indicated any LEP-related issues.
- What is latest census data statewide? District wide?
 - That data is attached. Significantly, LEP regulations are applicable in areas with a dense population. Montana's average number of persons per square mile is 6.76. In 2010, the most populated counties by persons per square mile (ppsm) were:
 - Yellowstone – 49.1 ppsm in 2000; 56.2 ppsm in 2010.
 - Silver Bow-Butte – 48.2 ppsm in 2000; 47.6 in 2010.
 - Missoula – 36.9 ppsm in 2000; 42.1 in 2010.
 - Cascade - 29.9 ppsm in 2000; 30.1 ppsm in 2010.

- Gallatin – 26 ppsm in 2000; 34.4 ppsm in 2010.
 - Lake – 17.7 ppsm in 2000; 19.3 ppsm in 2010.
 - Lewis & Clark – 16.1 ppsm in 2000; 18.3 ppsm in 2010.
 - Ravalli – 15.1 ppsm in 2000; 16.8 ppsm in 2010.
 - Flathead – 14.6 ppsm in 2000; 17.9 ppsm in 2010.
 - Anaconda-Deer Lodge – 12.8 ppsm in 2000; 12.6 ppsm in 2010.
 - Jefferson – 6.1 ppsm in 2000; 6.9 ppsm in 2010.
 - Hill – 5.8 ppsm in 2000; 5.6 ppsm in 2010.
 - Lincoln – 5.4 ppsm in 2010.
 - Park – 5.6 ppsm in 2010.
 - The 42 other counties had fewer than 5 persons per square mile. Montana’s overall PPSM figure is 7.35 ppsm.
- Analysis of the 2010 census is reflected on the attached spreadsheet entitled, “Limited English Proficiency Analysis – Census 2010.”¹³
 - Population shifts did not seem to influence the higher population areas as much. Rankings of population indicate the more urbanized counties continued their higher PPSM ratio.

County	2000 Rank	2010 Rank (+ = higher rank; - = lower rank)
Anaconda – Deer Lodge	10	10
Cascade	4	-5
Flathead	9	+8
Gallatin	5	+4
Hill	12	12
Jefferson	11	11
Lake	6	6
Lewis & Clark	7	7
Lincoln	Unranked	+14
Missoula	3	3
Park	Unranked	+13
Ravalli	8	-9
Silver Bow	2	2
Yellowstone	1	1

- Is any information available from state or local governments, community agencies, school systems, faith-based organizations, legal aid entities, etc.?
 - Local governments in Butte, Billings, Missoula, and Great Falls have indicated no LEP issues in their planning or construction operations.
 - Title VI reviews in local areas emphasize questions about the issue of LEP and whether remedial solutions are required.
 - Statewide interpreter services are listed and available through the MDT CRB. A copy of that list is available at <http://www.mdt.mt.gov/other/civilrights/external/interpreters-list.pdf>.

2. The frequency with which LEP individuals come in contact with the program.

Motor Carrier Services officers in northwest Montana have encountered numerous instances wherein non-

English speaking truck drivers from Canada have been difficult, if not impossible, to communicate with. MCS officers have needed to be able to communicate with the truck drivers and have been unable to. The number or proportion of LEP persons encountered is undetermined but significant enough to merit substantial attention by the area MCS Captain.

49 CFR 391.11(b)(2) states:

“... a person is qualified to drive a motor vehicle if he/she... can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records...”

According to the January 2011 Bond Schedule, this is a ticketable offense (\$135), and grounds for putting the vehicle “out of service.”

The balance of enforcing MCS regulations versus fear of a Title VI complaint can be efficiently dealt with by providing officers with resources to identify the language of the truck driver at issue and dealing with the MCS issue. Additionally, officers should not be placed in a position wherein their individual status is jeopardized at the expense of violation of MCS regulations. The Interpreters List is available to be referred to.

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

Title VI Coordinators or staff members in the following representative areas indicated limited or no interaction in the past with significant numbers of LEP individuals:

- Right of Way – When individuals are encountered, such as Native American elders, a family or tribal member is called upon to interpret for the right of way negotiation. This has worked in the past few years without incident.
- Construction – No LEP issues were noted during the review.
- Transportation Planning – No LEP issues were noted during the review.
- Consultant Design – No LEP issues were noted during the review.
- Aeronautics – No LEP issues were noted during the review.

LEP will remain an on-going discussion issue in all future Title VI review activities.

4. The resources available to the recipient and cost.

Various resource options for MDT include:

- Multi-language flashcards that MDT could use to identify the driver’s language, then access to an interpreter. Each MDT office that interacts with the public should be equipped with “I Speak” cards that can be used to identify and communicate the language in which an LEP person needs assistance. The cards, which are produced by the U.S. Department of Justice, can be downloaded and copied from <http://www.lep.gov/ISpeakCards2004.pdf>. The issue of cost arises when suitable interpreter services need to be retained.
- Using family members to interpret for LEP individuals. This has been used by Right of Way agents in negotiations, and is successful. There are certain limitations that have been recognized by courts recently. For example, a child interpreting in an adult situation may lead to challenges to the accuracy or trustworthiness of the interpretation. Even an older family member interpreting may be subject to challenge based upon undue interest or subjective interpretation.

- An interagency working group on LEP has developed a website, <http://www.lep.gov>, to assist in disseminating language assistance measures, resources and cost-containment approaches developed with respect to its own federally conducted programs and activities. This web site should be accessed as statewide and district-wide LEP populations are identified. Any measures adopted should be incorporated into this MDT LEP plan.
- Contract for Montana Deaf/ Hard of Hearing Services (MDHHS). This statewide network is based in Great Falls and can be reached at (406) 771-9053 (Voice-TTY-Fax number). As of May 2012, Interpreter fees start at \$50 per hour and emergency services are possible but have to be arranged through MDHHS. Interpreters can be accessed through the Montana School for the Deaf and Blind website at <http://msdb.mt.gov/outreach/resource-interpreters.html>.¹⁴
- The “MDT Interpreters List” was created from an existing Montana Department of Commerce Interpreters list. This is annually updated by contact with each interpreter to note if information is still current, kept on the MDT Title VI website, advertised in a future revision of the MDT Title VI pamphlet, with updates routinely disseminated to interested MDT units (e.g., Motor Carrier Services).

Analysis issues include:

- What are estimated costs of implementation of the LEP requirements?
 - Costs would be minimal for each of these options unless contracted services are utilized.
- What are associated areas of impact, if any, on MDT?
 - No associated areas of impact are identified at this time.
- What is the impact on MDT business processes and functions that LEP requirements make?
 - It appears all impacted areas of MDT have already or would, through use of these options, utilize processes and functions that incorporate LEP concepts.
- What is importance and nature of the activity?
 - All department functions are treated as equally important in consideration of LEP concepts because of the greater mandate of Title VI that no federal aid services are provided in a discriminatory manner.
- What are number or proportion and frequency of contact with LEP persons?
 - Number, proportion and frequency of contact with LEP persons is less than that of a more urbanized, heterogeneous population except with reference to Indian reservations, each of which provides a unique challenge because of the differences in size of non-English speaking population.
 - The highest numbers of persons of non-English languages spoken at home according to the 2010 census are located in::
 - Spanish: Yellowstone, Gallatin, Missoula
 - Indo-European: Missoula, Gallatin, Yellowstone
 - Asian-Pacific: Yellowstone, Missoula, Gallatin
 - Other: Yellowstone, Lake, Butte-Silver Bow

It appears from this that concentrating our resources in these high LEP areas may be advantageous in a time of scarcity of funds.

- What are the costs and availability of resources?
 - Resources in Montana are relatively scarce compared to other states but those resources have been identified and will continue to be updated.
- What benefits will be realized by implementation of the requirements?
 - Benefits are already being recognized because of the pre-existing usage of LEP-related practices in areas such as Right of Way.

- Do the costs versus the benefits indicate LEP requirements will be favorable to MDT?
 - By usage of pre-existing practices and these options involving minimal expense and change in practice, the impact of imposing LEP functions is negligible, but the benefits of acknowledging and responding to all impacted population concerns is identifiable.
- What steps have been taken by MDT to date to implement LEP?
 - The LEP plan is being included in the MDT Title VI plan while the MDT interpreters list has already been implemented and is being phased into the practices of Motor Carriers Services.

CONCLUSION:

The LEP plan will be included in the MDT FHWA and FTA Title VI Plans. The MDT Interpreters List has been developed, distributed to MCS, will be continually updated as new information is received, and will be included on the MDT Title VI Internet site. MDT CRB will continue to monitor LEP requirements both internally and in federal aid reviews of local governments and contractors.

APPENDIX A

TITLE VI COMPLAINT PROCEDURES

Current Procedures and complaint form available from Title VI Coordinator at (406) 444-6331.

TITLE VI PERIODIC REPORT

Current Title VI Periodic Report form available from Title VI Coordinator at (406) 444-6331.

TITLE VI PUBLIC MEETING FORM

Current Title VI Public Meeting form available at http://www.mdt.mt.gov/other/civilrights/external/title_vi_public_hearing_form.docx or from Title VI Coordinator at (406) 444-6331.

TITLE VI ENVIRONMENTAL CHECKLIST

Current Title VI Environmental Checklist available from Title VI Coordinator at (406) 444-6331.

¹ 65 Federal Register 50121 (August 16, 2000)

² 68 FR 32293 (May 29, 2003)

³ 66 FR 6733 (January 22, 2001)

⁴ 65 Federal Register 50121 (August 16, 2000)

⁵ 67 FR 41455 (June 18, 2002)

⁶ 68 FR 32293 (May 29, 2003)

⁷ 66 FR 6733 (January 22, 2001)

⁸ Department of Justice website re: “Commonly Asked Questions and Answers regarding the EO 13166”

⁹ 66 FR 6733 (January 22, 2001)

¹⁰ 68 FR 32295 (May 29, 2003)

¹¹ 68 FR 32291 (May 29, 2003)

¹² 68 FR 32294 (May 29, 2003)

¹³ Spreadsheet prepared by Bill Anderson, Title VI Coordinator, on April 30, 2012.

¹⁴ Website: Montana School for the Deaf and Blind (May 2012)