

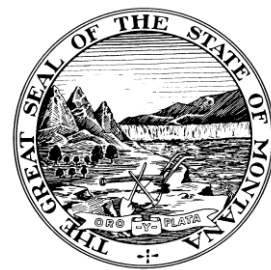


*The State of Montana*  
**DEPARTMENT OF TRANSPORTATION**

# FHWA TITLE VI PLAN

**CIVIL RIGHTS BUREAU**  
**2701 PROSPECT AVENUE – PO BOX 201001**  
**HELENA, MONTANA 59620-1001**

**Telephone: Voice (406) 444-6331**  
**TTY 1-800-335-7592 or (406) 444-7696**



**Revised October 2010**

[http://www.mdt.mt.gov/business/contracting/docs/civil/fhwa\\_title\\_vi\\_plan.pdf](http://www.mdt.mt.gov/business/contracting/docs/civil/fhwa_title_vi_plan.pdf)

# TABLE OF CONTENTS

<b>OVERVIEW</b> .....	<b>1</b>
<b>PURPOSE</b> .....	<b>1</b>
<b>APPLICATION</b> .....	<b>1</b>
<b>AUTHORITIES</b> .....	<b>1</b>
<b>MONTANA DEPARTMENT OF TRANSPORTATION ADMINISTRATIVE     RESPONSIBILITIES REQUIRED BY 23 CFR PART 200</b> .....	<b>4</b>
<b>CIVIL RIGHTS BUREAU (CRB) TITLE VI COORDINATOR     RESPONSIBILITIES</b> .....	<b>4</b>
<b>DIVISION/ UNIT/ DISTRICT TITLE VI REPRESENTATIVE     RESPONSIBILITIES</b> .....	<b>4</b>
<b>GENERAL PROGRAM AREA RESPONSIBILITIES</b> .....	<b>6</b>
<b>ADMINISTRATION DIVISION</b> .....	<b>6</b>
<b>AERONAUTICS DIVISION</b> .....	<b>6</b>
<b>DIRECTOR’S OFFICE</b> .....	<b>6</b>
<b>DISTRICT OPERATIONS</b> .....	<b>6</b>
<b>ENGINEERING DIVISION</b> .....	<b>6</b>
<b>HUMAN RESOURCES DIVISION</b> .....	<b>6</b>
<b>INTERNAL AUDIT UNIT</b> .....	<b>6</b>
<b>MAINTENANCE DIVISION</b> .....	<b>6</b>
<b>MOTOR CARRIERS SERVICES DIVISION</b> .....	<b>6</b>
<b>RAIL, TRANSIT, AND PLANNING DIVISION</b> .....	<b>7</b>
<b>SPECIFIC AREA RESPONSIBILITIES</b> .....	<b>8</b>
<b>ADMINISTRATION DIVISION</b> .....	<b>8</b>
Fiscal Operations Bureau .....	<b>8</b>
Fuel Tax Management and Analysis Bureau (FTMA) .....	<b>8</b>
Accounting Controls Bureau, Purchasing Services Section .....	<b>9</b>
<b>AERONAUTICS DIVISION</b> .....	<b>9</b>
<b>DIRECTOR’S OFFICE</b> .....	<b>10</b>
Internal Audit Unit .....	<b>10</b>
Public Information / Public Involvement Units .....	<b>10</b>
State Highway Traffic Safety Office .....	<b>11</b>
<b>DISTRICT RESPONSIBILITIES</b> .....	<b>12</b>
<b>ENGINEERING DIVISION</b> .....	<b>13</b>
<b>Preconstruction</b> .....	<b>13</b>

Preconstruction: Consultant Design Bureau - Consultant Selection Procedures .....	13
Preconstruction: Right-of-Way Bureau (ROW).....	14
Real Estate Appraisals.....	14
Real Estate Acquisitions .....	15
Relocation Assistance and Advisor Services .....	15
Property Management .....	15
Preconstruction – Community Transportation Enhancement Section (CTEP).....	15
<b>Construction .....</b>	<b>16</b>
Construction: Contract Plans Bureau .....	16
<b>Research Section.....</b>	<b>17</b>
<b>HUMAN RESOURCES DIVISION .....</b>	<b>17</b>
Workforce Planning Bureau.....	17
Occupational Safety & Health Section .....	18
Civil Rights Bureau.....	18
Americans with Disabilities Act (ADA) Program .....	18
Disadvantaged Business Enterprise (DBE) Program.....	19
<b>MAINTENANCE DIVISION .....</b>	<b>19</b>
<b>MOTOR CARRIER SERVICES DIVISION.....</b>	<b>20</b>
<b>RAIL, TRANSIT, AND PLANNING DIVISION .....</b>	<b>20</b>
Transit Section and Rail Planner.....	22
Environmental Services Bureau.....	23
<b>TITLE VI/ADA SECTION 504 - COMPLAINT PROCEDURES.....</b>	<b>25</b>
<b>PROCEDURE .....</b>	<b>25</b>
<b>TITLE VI/ADA Section 504 PROGRAM COMPLAINT FORM.....</b>	<b>27</b>
<b>TITLE VI ASSURANCES .....</b>	<b>28</b>
<b>DOT (FHWA) TITLE VI ASSURANCE.....</b>	<b>28</b>
<b>APPENDIX A – NON-DISCRIMINATION NOTICE.....</b>	<b>31</b>
<b>APPENDIX B – REAL PROPERTY .....</b>	<b>33</b>
<b>APPENDIX C – REAL PROPERTY .....</b>	<b>34</b>
<b>DOT (FTA) TITLE VI ASSURANCE .....</b>	<b>36</b>
<b>49 CFR 21 .....</b>	<b>37</b>
<b>IMPACTS OF THE CIVIL RIGHTS RESTORATION ACT OF 1987</b>	
<b>ON FHWA PROGRAMS.....</b>	<b>53</b>
<b>LIMITED ENGLISH PROFICIENCY .....</b>	<b>56</b>
<b>ENVIRONMENTAL JUSTICE .....</b>	<b>57</b>

## 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 Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123) added "sex" and "creed" as protected status in all Federal Aviation Administration (FAA) 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 or activities" to include all of the operations of an educational institution, governmental entity, or private employer that receives federal funds if any one operation receives federal funds.

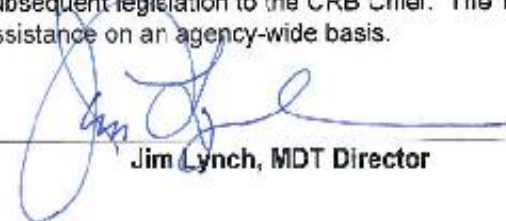
The Montana Department of Transportation (MDT) is a State governmental entity. It is the policy of MDT to ensure compliance with Title VI of the Civil Rights Act of 1964 and all related statutes or regulations in all programs and activities.

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 non-discrimination in all programs and activities, whether those programs and activities are federally funded or not.

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

Title VI activities are delegated by the Civil Rights Bureau (CRB). Title VI responsibilities are delegated to the appropriate District / Division program managers. The CRB charges them with the responsibility to develop and implement procedures and guides to adequately monitor their programs. In turn, the CRB conducts periodic compliance reviews to assure implementation is adequate.

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 CRB Chief. The Title VI Coordinator will provide technical assistance on an agency-wide basis.

  
\_\_\_\_\_  
Jim Lynch, MDT Director

10/5/2010  
\_\_\_\_\_  
Date

## **SPECIFIC PROHIBITED DISCRIMINATORY PRACTICES**

Examples of specific prohibited discriminatory practices include, but are not limited to:

- Denial to an individual of any service, financial aid, or other benefit provided under the program;
- Distinctions in the quality, quantity, or manner in which the benefit is provided;
- Segregation or separate treatment in any part of the program;
- Restriction in the enjoyment of any advantages, privileges, or other benefits provided to others;
- Different standards or requirements for participation;
- Methods of Administration which, directly or through contractual relationships, would defeat or substantially impair the accomplishment of effective nondiscrimination;
- Discrimination in any activities related to highway and infrastructure or facility built or repaired in whole or in part with Federal funds; and/or
- Discrimination in any employment resulting from a program, the primary purpose of which is to provide employment.

# OVERVIEW

## PURPOSE

To provide guidelines for:

1. Implementing the Federal Highway Administration (FHWA), and Federal Aviation Administration (FAA) Title VI compliance programs under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations. Differences between the requirements of the federal agencies will be indicated in this Plan;
2. Conducting Title VI program compliance reviews; and
3. Processing Title VI complaints pursuant to the requirements of FHWA, FTA, and FAA.

## APPLICATION

The provisions of this Title VI Plan apply to all recipients of federal assistance with and through MDT. A “recipient” includes any public or private entity or any individual receiving the benefits of any federal-aid highway assistance, transit, or aeronautics program and to all phases of MDT operations.

## AUTHORITIES

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4; Uniform Relocation Assistance Act of 1970, 42 U.S.C. 4601 to 4655; 23 U.S.C. 109h; 23 U.S.C. 324; 49 CFR 21; US DOT Orders 1050.2, 1000.12; and 23 CFR 200; UMTA Circular 4702.1A; FAA Advisory Circular 150/5100-15A; Urban Mass Transportation Act of 1964, as amended; DOT Orders 1000.12 and 1050.2.

Other federal statutes with related authority that may apply:

Title VII of the 1964 Civil Rights Act as amended;  
Age Discrimination in Employment Act (45 CFR 90)  
The Americans with Disabilities Act of 1990; ADA Amendments Act of 2008  
Environmental Justice Act, Executive Order 12898  
Civil Rights Restoration Act of 1987 (P.L. 100-259)  
Limited English Proficiency, Executive Order 13166  
Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123)

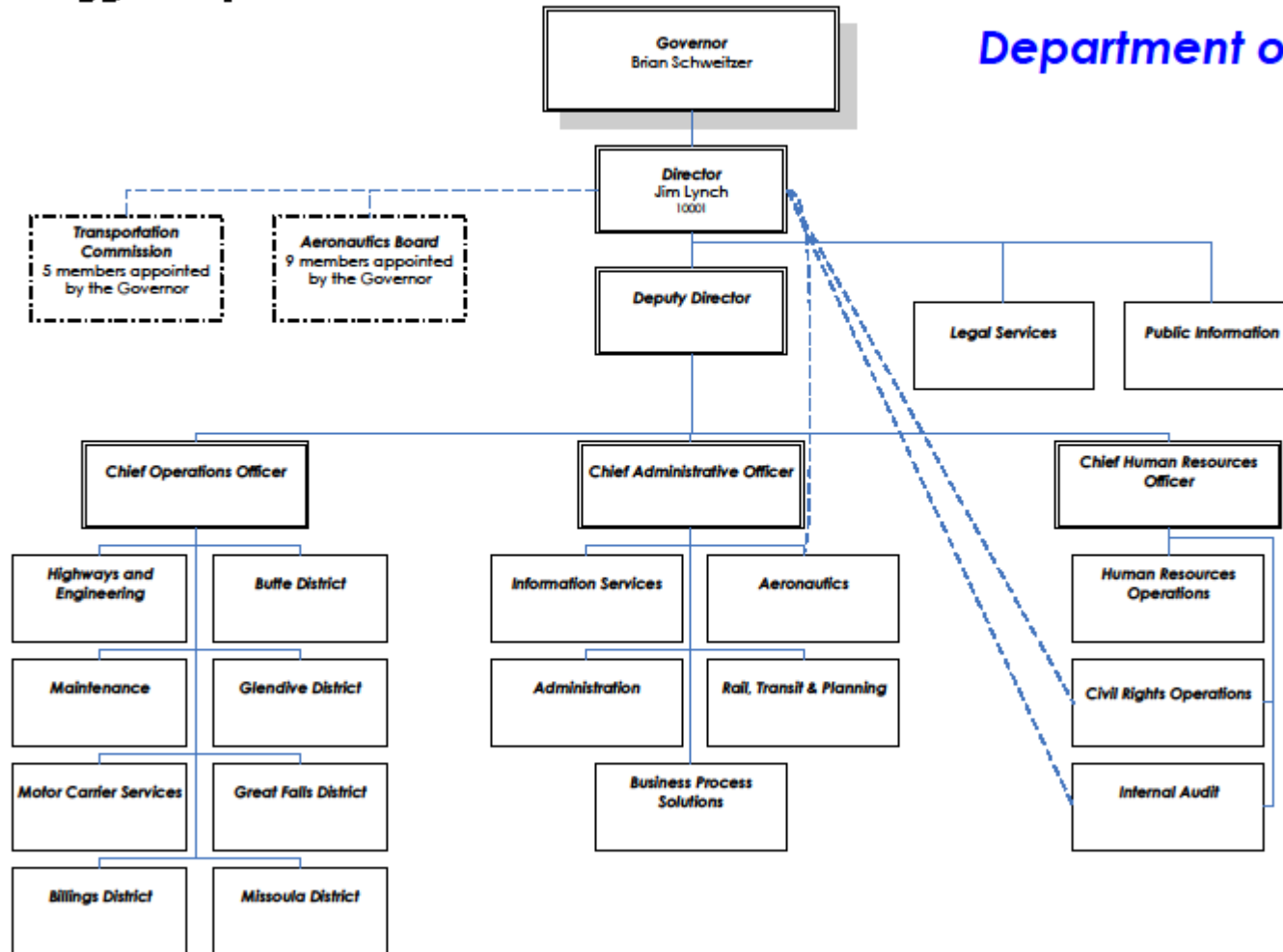
Applicable Montana non-discrimination statutes include:

The Montana Human Rights Act, Title 49, Chapter 2, M.C.A. and  
Governmental Code of Fair Practices, Title 49, Chapter 3, M.C.A.



# Montana Department of Transportation

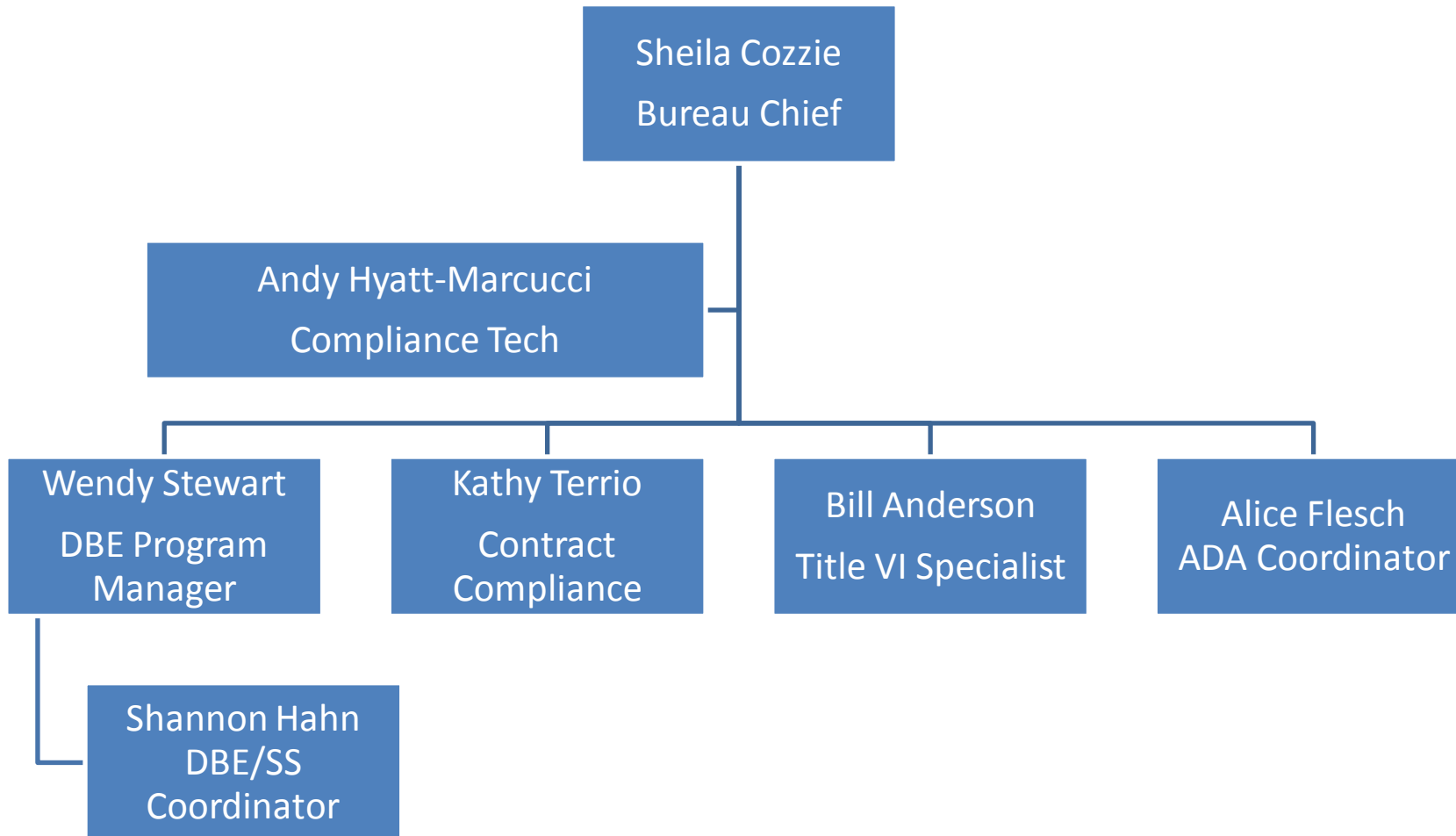
## Department outline



# - Position Number

April 12, 2009

# Civil Rights Bureau



## **MONTANA DEPARTMENT OF TRANSPORTATION ADMINISTRATIVE RESPONSIBILITIES REQUIRED BY 23 CFR PART 200**

1. "Establish a Civil Rights Unit and designate a coordinator who has a responsible position and easy access to the Director. The Coordinator shall be responsible for initiating and monitoring Title VI activities and preparing required reports."
2. The CRB must be "adequately staffed to effectively implement the requirements."

### **CIVIL RIGHTS BUREAU (CRB) TITLE VI COORDINATOR RESPONSIBILITIES**

1. Develop procedures for prompt processing and disposition of Title VI complaints.
2. Conduct Title VI reviews of program areas.
3. Conduct annual reviews of special emphasis program areas to determine effectiveness.
4. Review MDT program directives and include Title VI and related requirements.
5. Conduct Title VI training for State program staff.
6. Prepare an annual Title VI accomplishments report and work plan by October 1.
7. Submit an updated Title VI plan within FHWA time frames.
8. Disseminate Title VI information to the general public.
9. Establish procedures for pre-grant and post-grant approval reviews of MDT programs and applicants; i.e., highway location, design and relocation, and persons seeking contracts with MDT.
10. Establish procedures to identify and eliminate discrimination when found to exist.
11. Establish procedures for promptly resolving deficiency status through voluntary means, if possible.

### **DIVISION/ UNIT/ DISTRICT TITLE VI REPRESENTATIVE RESPONSIBILITIES**

1. Complete Title VI Public Meeting Form for each public meeting not already covered, and submit electronically to Coordinator. (For purposes of this requirement, a "public meeting" is any meeting or hearing for which there is an open invitation [via news release, paid advertising and/or letter of invitation] to the general public [not just contractors] to attend for the purpose of informing the public and/or soliciting input from the public.)

2. Complete and submit Title VI Periodic Report every four months.
3. Report all written Title VI complaints immediately to Coordinator.
4. Seek opportunities to train staff/public on Title VI and notify Coordinator.
5. Attend Title VI Representative meeting once every four months.
6. Ensure current Title VI pamphlets are available at all unit public meetings and hearings and in unit area.
7. As necessary, work with consultants to ensure all public meetings and hearings have Title VI pamphlets and a public meeting form will be completed by consultant or MDT staff present at meeting/hearing and submitted to the Coordinator.
8. Monitor Division activities for potential Title VI impact and consult with MDT Title VI Coordinator as necessary.

# **GENERAL PROGRAM AREA RESPONSIBILITIES**

## **ADMINISTRATION DIVISION**

Ensures Title VI compliance with MDT's procurement of supplies and services. Also ensures Title VI compliance in administration of the International Fuel Tax Agreement (IFTA) tax processing procedures, dealer and distributor licensing, and the fuel tax refund program.

## **AERONAUTICS DIVISION**

Ensures Title VI compliance that relates to maintenance and operation of state-owned airports and the various components of airport infrastructure.

## **DIRECTOR'S OFFICE**

Ensures Title VI compliance in media contact, public informational meetings and hearings, response to citizen complaints, internal audit, and highway traffic safety,

## **DISTRICT OPERATIONS**

Rely upon Accounting Controls Bureau, Purchasing Services Section, to ensure Title VI compliance in the purchase of goods and services and in contract requirements. District staff ensures Title VI compliance in public meetings/hearings and response to citizen complaints.

## **ENGINEERING DIVISION**

Ensures Title VI compliance in all activities including recruitment, Pre-construction (e.g., Right of Way, Consultant Design including the Community Transportation Enhancement Program (CTEP), Construction (e.g., bid advertising and contracting); and Research.

## **HUMAN RESOURCES DIVISION**

Civil Rights Bureau ensures Title VI compliance in the implementation of Agency wide Title VI requirements including but not limited to the Disadvantaged Business Enterprise (DBE) Program, Americans with Disabilities Act (ADA), training activities and complaint investigations.

## **INTERNAL AUDIT UNIT**

Ensures facilitation of public audits in a fair and equitable manner.

## **MAINTENANCE DIVISION**

Ensures facilitation of the summer and winter maintenance of Montana's highway infrastructure in a fair and equitable manner and Title VI compliance in all activities including training.

## **MOTOR CARRIERS SERVICES DIVISION**

Ensures Title VI compliance in all commercial vehicle licensing, registration, and permit issuance, enforcement, commercial vehicle safety, and response to citizen complaints.

## **RAIL, TRANSIT, AND PLANNING DIVISION**

Ensures Title VI compliance in the transportation planning process and in related programs such as rail and transit. This includes necessary environmental documentation to meet the requirements of the National Environmental Policy Act (NEPA) and the Montana Environmental Policy Act (MEPA), including Community Impact Assessments and Title VI reviews of appropriate cities, counties, rail and transit providers and consultant contracts.

# **SPECIFIC AREA RESPONSIBILITIES**

## **ADMINISTRATION DIVISION**

The Administration Division consists of four bureaus; however, only the Fiscal Operations, Fuel Tax Management and Analysis, and Accounting Controls Bureaus have Title VI impacts.

### **Fiscal Operations Bureau**

The Fiscal Operations Bureau is responsible for:

- International Fuel Tax Agreement reporting which includes distribution and processing of motor fuel tax returns; and
- Distribution of fuel tax refund applications, processing and payment of the refunds.

### **Fuel Tax Management and Analysis Bureau (FTMA)**

The FTMA is responsible for:

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

## **Accounting Controls Bureau, Purchasing Services Section**

The Montana Department of Administration (DOA) has delegated authority to procure supplies and services to the Accounting Controls Bureau, Purchasing Services Section.

The Purchasing Services Section ensures all formal solicitations include approved Title VI language. The Section ensures solicitations are posted to the 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.

### *Monitoring*

Monitoring for Title VI compliance after issuance of a purchase order is the responsibility of the requesting party.

## **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.

### *Monitoring*

Aeronautics relies upon:

- Purchasing Services Section and Public Involvement Unit to ensure public meetings are advertised in accordance with MDT policy.
- Consultant Design Bureau to ensure Title VI requirements are met in consultant contracts.
- CRB to ensure all proposals conform to Title VI requirements.

## **DIRECTOR'S OFFICE**

### **Internal Audit Unit**

The Internal Audit Unit selects audits randomly or based on requests from other entities. The Unit makes every effort to ensure protected individuals or groups are selected neither more nor less frequently than other citizens.

### **Public Information / Public Involvement Units**

The Public Information / 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:

#### **Public meetings**

The Public Involvement Coordinator organizes certain 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. 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.

#### **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.

### **State Highway Traffic Safety Office**

The State Highway Traffic Safety Office's (SHTSO) mission is to reduce the number and severity of traffic crashes, injuries and fatalities on Montana highways. SHTSO 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 SHTSO 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 SHTSO invites law enforcement agencies to conduct overtime activities for highway traffic safety programs rather than having the agencies submit applications for funding as the general public must do. 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 FFY 2007, SHTSO was awarded grant funding from NHTSA for the specific purpose of prevention of racial profiling. SHTSO has been working with MDT management, law enforcement, tribal representatives, minority organizations, other state agencies, and others to discuss options for developing appropriate programs.

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 SHTSO'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.

### *Monitoring*

The Title VI Representative will ensure that Title VI language is added in SHTSO's Operating Procedures as it relates to the allocation of grant funds and grant management.

## **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.

### *Monitoring*

1. 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.
2. District Construction personnel are responsible to report any Title VI compliance issues regarding construction documents (state and contractor) and operations.
3. Persons scheduling public meetings, open houses, and forums are responsible for Title VI compliance. The District Title VI Representative is responsible for periodic reporting of this activity.
4. Purchasing Services Section ensures appropriate Title VI language is contained in contracts issued by the District. The District Title VI Representative reports any Title VI compliance issues.
5. Specific duties of District Title VI Representatives are included in this Plan under the section entitled "Division/ District Title VI Responsibilities".

## **ENGINEERING DIVISION**

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**

#### **Preconstruction: Consultant Design Bureau - Consultant Selection Procedures**

Consultant Selection Procedures are administered by Consultant Design and 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/maillinglist.shtml>.

Both processes rate responses on the same criteria which is 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.

DBE goals are established as required in proposed contracts prior to RFP announcements. Specific Title VI Assurances are included in all RFPs and in all executed consultant contracts.

### *Monitoring*

The MDT Title VI Coordinator reviews consultant contractors periodically to ensure that all Title VI requirements are met. CRB reviews consultant contracts to determine compliance with Title VI contract specifications.

### **Preconstruction: 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.

EEO training is regularly provided to all ROW staff at the annual ROW academy or other MDT training venue.

### ***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.

### ***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.

### ***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.

### ***Property Management***

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

### ***Monitoring***

The ROW Title VI Representative periodically reviews randomly-selected files to assure compliance with all required regulations.

### **Preconstruction – 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 on the basis of low bid, responsibility, responsiveness, bonding, insurance and DBE requirement compliance.

When applicable, race conscious DBE goals are established by the CRB 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.

### **Construction: 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. 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 Civil Rights Bureau staff if any unique accommodations requests arise.

#### *Monitoring*

To determine Title VI compliance, Contract Plans' administrative staff evaluates the activities and practices of the bidding, advertising and distribution process by reviewing:

- 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;
- 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.

### *Monitoring*

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

## **HUMAN RESOURCES DIVISION**

### **Workforce Planning Bureau**

The Workforce Planning Bureau administers MDT's training programs and administers recruitment, selection, and succession planning processes in a non-discriminatory, fair, and consistent manner. The Bureau works with District and Divisional Human Resource staff to proactively recruit qualified applicants.

## **Occupational Safety & Health Section**

The Occupational Safety & Health Section administers MDT's safety and occupational safety and health programs. The section develops and presents safety training; formulates and implements policies for protection for the general public and reducing costs associated with accidental losses, tort liability and compliance with regulations.

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

### *Monitoring*

Purchasing Services Section ensures that all contracts contain the Title VI provisions. The Title VI Coordinator, as a member of Human Resources Division, monitors activities for Title VI compliance.

## **Civil Rights Bureau**

The Civil Rights Bureau (CRB) is responsible for developing and implementing the agency-wide Title VI Plan, enforcing requirements of the ADA, conducting Division/District Title VI reviews (including recipients of pass through funding) and managing the DBE Program. All corrective actions necessary as a result of review findings will be reduced to writing and delivered to the entity reviewed within 90 days of the review. All non-construction contracts will be reviewed and approved by CRB to ensure incorporation of appropriate Title VI language. Complaints will be processed in accordance with 49 CFR §21.11, subject to individual agency (FHWA, FTA, or FAA) requirements.

### ***Americans with Disabilities Act (ADA) Program***

The ADA (1990) prohibits discrimination against people with disabilities including transportation, public services, and public accommodations. The MDT ADA Program Specialist works to ensure compliance with ADA requirements.

ADA requires:

- Nondiscrimination based on disability;
- That MDT will provide a fully accessible transportation system. MDT transportation facilities are planned, designed, constructed, and maintained with accessibility in mind;
- MDT's state and local partners have accessible programs and services;
- Transportation-related public meetings will be accessible and public announcements offer reasonable accommodation when the meetings pertain to a project that receives federal aid or is federally mandated.

## ***Disadvantaged Business Enterprise (DBE) Program***

The MDT DBE Program has been approved by FHWA, FTA, and FAA.

To ensure that bidding opportunities are made available for minority and women owned businesses, the DBE Program will:

- Seek out minority and women-owned businesses for certification;
- Publish a directory of certified firms;
- Monitor participation levels in Federal-aid construction contracts and consultant contracts;
- Participate in goal-setting meetings to establish goals on Federal-aid construction projects and consultant contracts, and ensure input from appropriate tribal officials for reservation projects;
- Monitor work performed by certified firms and prime contractors, and provide technical assistance to contractors.

The definition of “construction” for DBE purposes includes virtually all MDT activities, including Maintenance, Purchasing, CTEP, Transit, etc.

### **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.

#### *Monitoring*

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.

## **MOTOR CARRIER SERVICES DIVISION**

The Motor Carrier Services Division (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.

Administrative Rule changes are noticed for public hearing as required by state statute. 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.

### *Monitoring*

The Division Title VI Representative 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 pamphlets.

## **RAIL, TRANSIT, AND PLANNING DIVISION**

Rail, Transit, and Planning Division (RTPD) is subject to both FTA and FHWA Title VI responsibilities. 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 areas 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 sub allocated 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.

FTA regulations governing Section 5310 funds (elderly and disabled transportation) and Section 5311 funds (non-urban transportation) require that the state management plan include:

- A description of the process by which the state develops the annual program of projects submitted to FTA as part of its Section 5311 grant application, especially the method used to ensure fair and equitable distribution of funds, including to Native American tribes where present.
- A description of the state's efforts to assist sub-recipients<sup>1</sup> in applying for Section 5311 funds, especially any efforts made to assist minority applicants.
- A description of the state's criteria for selecting transit providers to participate in the program, especially its efforts to include sub-recipients serving significant minority populations.
- A description of the state's ongoing process to monitor sub-recipient's compliance with Title VI, such as ongoing site visits to each sub-recipient, review checklists, etc.

---

<sup>1</sup> "Sub-recipient" is a local government or other entity receiving pass-through federal funds from MDT.

## **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 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 concentration 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;
- Urban areas without formal transportation plans are reviewed 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.

## *Monitoring*

The RTPD retains a Title VI Representative on staff. This Representative monitors Title VI and DBE compliance in all Division areas by conducting Division internal reviews and external compliance reviews which include metropolitan planning organizations (Urban), transit providers, and urban areas as necessary.

The RTPD Title VI Representative will assist in conducting formal complaint investigations of program participants. Formal complaints against a local government and sub-recipients will be referred directly to the CRB. The CRB Chief will do final approval on the investigation process.

Transit related formal complaints filed against MDT will be investigated by MDT and a written report will be sent to FTA. Formal complaints related to FHWA funding will be investigated immediately with a written report subsequently sent to FHWA.

## **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.

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

In all cases, the impact of transportation projects and alternatives is evaluated when projects involve neighborhoods. However, neighborhood cases are rare since most projects follow existing transportation corridors or are in rural non-developed areas.

After appropriate analysis, evaluation, and determination of 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 all 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)*.”

The following procedures are used in studying neighborhood impacts. MDT will:

- Send requests to city/county governments, Indian tribes and the Bureau of Indian Affairs (BIA) for information and Cooperating Agency status.
- Coordinate requests and documentation for Indian reservations, tribal lands and other protected group populations with the MDT Tribal Affairs Coordinator and/or the Civil Rights Bureau.
- Determine if there is a protected group population that will be affected by the project, and identifying impacts. Identify appropriate avenues of mitigation.
- Be present at public involvement activities when applicable.
- Present mitigation steps at public involvement activities as necessary; and
- Document the process for the National Environmental Policy Act and Montana Environmental Policy Act.

The Engineering, Resource, and Hazardous Waste Sections of Environmental Services Bureau all contract for additional services to complete transportation projects. These contracts are normally awarded through the Consultant Design Bureau, Purchasing Services Section, or the DOA Purchasing Bureau (larger projects).

### *Monitoring*

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.

Major transportation project environmental documentation is also reviewed for overall content by Legal Services and various design sections of MDT. The Title VI Coordinator will review selected draft environmental documents for Title VI compliance.

## TITLE VI/ADA SECTION 504 - COMPLAINT PROCEDURES

This section outlines the Title VI complaint procedures related to providing programs, services, and benefits. However, it does not deny the complainant the right to file formal complaints with the Montana Human Rights Bureau, Equal Employment Opportunity Commission, FHWA, FTA, FAA, or to seek private counsel for complaints alleging discrimination, intimidation or retaliation of any kind that is prohibited by law.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs receiving federal financial assistance<sup>2</sup>. Executive Order 12898 (Environmental Justice) prohibits discrimination based on low income status.

### PROCEDURE

1. Any person believing they have been subjected to discrimination as noted below may file a written complaint with the MDT Civil Rights Bureau (CRB). Complainants have the right to complain directly to the appropriate federal agency. Federal and State law requires complaints be filed within 180 calendar days of the last alleged incident.
  - For FHWA, complaints may be based on race, color, national origin, sex or low income status;
  - For FTA, complaints may be based on race, color, national origin, or low income status;
  - For FAA, complaints may be based on race, color, national origin, sex, creed, or low income status.
2. Within five working days of receipt of a written Title VI complaint the CRB Chief will notify the MDT Director of the complaint.
  - FHWA-related complaints received directly by MDT and not by FHWA will be investigated by CRB.
  - FHWA-related complaints received by FHWA will be investigated by FHWA unless delegated to CRB for investigation.
  - All FAA- or FTA- related complaints against MDT will be investigated by CRB.
  - All Title VI complaints against State sub-recipients, regardless of which federal agency is involved, will be investigated by CRB.
3. Within five working days of receipt of a complaint against a State sub-recipient, an investigation by the CRB will begin. The Division Equal Employment Opportunity (EEO) Representative may participate in the investigation.

---

<sup>2</sup> FHWA also includes “sex” as protected status. FAA also includes “sex” and “creed” as protected status.

4. A written investigation report will be prepared by the investigator. The report shall include a narrative description of the incident, identification of persons interviewed, findings and recommendations for disposition.
5. The CRB Chief will review the report. A copy of the report will be provided to the complainant and the respondent. Each will have five working days from receipt of the report to respond. If either party responds negatively or has additional information to provide, an informal meeting will be arranged by the CRB Chief. If neither party responds, the report will be forwarded to the MDT Director for final internal action.
6. The investigation report with recommendations and corrective actions taken will be forwarded within 60 days of the date the complaint was received by MDT to the FHWA Division office, the FTA Regional office, or the FAA Regional office as appropriate, the complainant and the respondent.
7. Complainants will be advised of their appeal rights to the appropriate federal agency.

**TITLE VI/ADA Section 504 PROGRAM COMPLAINT FORM**

**Montana Department of Transportation  
Civil Rights Bureau  
2701 Prospect Avenue, PO Box 201001, Helena, MT 59620-1001  
(406) 444-6331  
TTY: (800) 335-7592 or Montana Relay at 711**

The Title VI Program prohibits discrimination on the basis of protected status or retaliation in any programs receiving federal financial assistance.

Name (Print): \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Work Phone: \_\_\_\_\_ Home Phone: \_\_\_\_\_

1. This complaint involves:

- Highway Project/Funds       Transit Project/Funds       Aeronautics Project/Funds

2. Indicate protected status you believe was basis for discrimination:

- Race       Color       Creed       Religion  
 Age       Marital Status       Physical Disability       Sex  
 Mental Disability       Low Income Status       National Origin       Retaliation

3. Explain why you believe discrimination has occurred. Please provide dates, location and time of discrimination. If there are witnesses, please provide names, addresses and telephone numbers. Use the back of this form or additional sheets as necessary.

4. Indicate the person(s) you believe responsible for the discrimination:

Name & Agency: \_\_\_\_\_

Work Location (if known): \_\_\_\_\_

5. What remedy are you requesting? Please be specific.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## TITLE VI ASSURANCES

*Title VI assurances are the foundation of our commitment to non-discrimination. The Montana Department of Transportation deals with Title VI issues through the monitoring of its compliance with the principles specifically set forth in the law.*

*NOTE: FHWA amended its assurance in 1988 to include sex as a protected status.*

### DOT (FHWA) TITLE VI ASSURANCE

The State of Montana, (hereinafter referred to as the “Recipient”) HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-4 (hereinafter referred to as the Act), and all requirements imposed by or pursuant to 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 – Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of sex, race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the Department of Transportation, including the Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the Regulations, a copy of which is attached.

More specifically and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its Federal-aid Highway Program:

1. That the Recipient agrees that each “program” and each “facility” as defined in subsections 21.23(a) and 21.23(b) of the Regulations, will be (with regard to a “program”) conducted, or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations made in connection with the Federal-aid Highway Program and, in adapted form in all proposals for negotiated agreements.

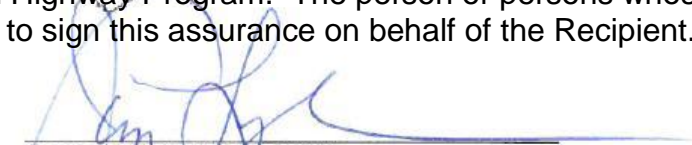
The Montana Department of Transportation in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and

will not be discriminated against on the grounds of sex, race, color, or national origin in consideration for an award.

3. That the Recipient shall insert the clauses of Appendix A of this assurance in every contract subject to the Act and the Regulations.
4. That the clauses of Appendix B of this assurance shall be included as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in Appendix C of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under the Federal-aid Highway Program; and (b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the Federal-aid Highway Program.
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the Act, the Regulations and this assurance.

10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient by the Department of Transportation under the Federal-aid Highway Program and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the Federal-aid Highway Program. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

  
\_\_\_\_\_  
JIM LYNCH, DIRECTOR  
MONTANA DEPT. OF TRANSPORTATION  
DATE 12/12/2007

Attachments

- Appendices A, B, and C
- Department of Transportation Title VI Regulations

## APPENDIX A – NON-DISCRIMINATION NOTICE

During the performance of this Agreement, \_\_\_\_\_ (hereafter in this Section “the Party”), for itself, its assignees and successors in interest, agrees as follows:

### A) COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 FOR FEDERAL-AID CONTRACTS

- (1) Compliance with Regulations: The Party shall comply with all Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, 49 Code of Federal Regulations (CFR), Part 21, as they may be amended (hereafter referred to as the Regulations), which are incorporated by reference and made a part of this Agreement, even if only state funding is here involved.
- (2) Nondiscrimination: The Party, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of sex, race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Party shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR Sec. 21.5.
- (3) Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations, whether by competitive bidding or negotiation by the Party for work to be performed under a subcontract, including procurement of materials or leases of equipment, any potential subcontractor or supplier shall be notified by the Party of the Party's obligations under this Agreement and the Regulations relative to nondiscrimination.
- (4) Information and Reports: The Party will provide all reports and information required by the Regulations, or directives issued pursuant thereto, and permit access to its books, records, accounts, other sources of information and its facilities as may be determined by State or the Federal Highway Administration (FHWA) to be pertinent to ascertain compliance with Regulations or directives. Where any information required of the Party is in the exclusive possession of another who fails or refuses to furnish this information, the Party shall so certify to the Department or the FHWA as requested, setting forth what efforts it has made to obtain the information.
- (5) Sanctions for Noncompliance: In the event of the Party's noncompliance with the nondiscrimination provisions of this Agreement, State may impose sanctions as it or the FHWA determines appropriate, including, but not limited to,
  - (a) Withholding payments to the Party under the Agreement until the Party complies, and/or
  - (b) Cancellation, termination or suspension of the Agreement, in whole or in part.
- (6) Incorporation of Provisions: The Party will include the provisions of paragraphs (1) through (6) in every subcontract, including procurement of

materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The Party will take such action with respect to any subcontract or procurement as the State or the FHWA may direct to enforce such provisions including sanctions for noncompliance: Provided, however, that in the event the Party is sued or is threatened with litigation by a subcontractor or supplier as a result of such direction, the Party may request the State to enter into the litigation to protect the interests of the State, and, in addition, the Party or the State may request the United States to enter into such litigation to protect the interests of the United States.

**B) COMPLIANCE WITH THE MONTANA GOVERNMENTAL CODE OF FAIR PRACTICES, SEC. 49-3-207, MCA**

In accordance with Section 49-3-207, MCA, the Party agrees that for this Agreement all hiring will be made on the basis of merit and qualifications and that there will be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the Agreement.

**C) COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT (ADA)**

- (1) The Party will comply with all regulations relative to implementation of the AMERICANS WITH DISABILITIES ACT.
- (2) The Party will incorporate or communicate the intent of the following statement in all publications, announcements, video recordings, course offerings or other program outputs: **"The Party will provide reasonable accommodations for any known disability that may interfere with a person in participating in any service, program or activity offered by the Party. In the case of documents, recordings or verbal presentations, alternative accessible formats will be provided. For further information call the Party."**
- (3) All video recordings produced and created under contract and/or agreement will be closed-captioned.

**D) COMPLIANCE WITH PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS, 49 CFR PART 26**

Each Agreement the Department signs with a Party (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

**The Party, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Party shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Party 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.**

## APPENDIX B – REAL PROPERTY

The following clauses shall be included in any and all deeds affecting or recording the transfer therein from the United States:

### (GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the State of Montana, will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of Federal Aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation, and also in accordance with and in compliance with all requirements imposed by or pursuant to 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 (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C 2000d to 2000d-4), does hereby demise, release, quitclaim and convey unto the State of Montana all the right, title and interest of the Department in and to said lands described in Exhibit “A” attached hereto and made a part hereof.

### (HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto the State of Montana, and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the State of Montana, its successors and assigns.

The State of Montana, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of sex, race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed [,] [and]\* (2) that the State of Montana shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to 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 – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended [,] and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this deed.\*

\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

## APPENDIX C – REAL PROPERTY

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the State of Montana, pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.,) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 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 – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]\*

That in the event of breach of any of the above nondiscrimination covenants, the State of Montana, shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, or permit, etc.] had never been made or issued.

[Include in deeds]\*

That in the event of breach of any of the above nondiscrimination covenants, the State of Montana, shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the State of Montana and its assigns.

\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purpose of Title VI of the Civil Rights Act of 1964.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the State of Montana, pursuant to the provisions of Assurance 6(b)

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add “as a covenant running with the land”) that (1) no person on the ground of sex, race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any

improvements on, over or under such land and the furnishing of services thereon, no person on the ground of sex, race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the promises in compliance with all other requirements imposed by or pursuant to 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 – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]\*

That in the event of breach of any of the above nondiscrimination covenants, the State of Montana, shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]\*

That in the event of breach of any of the above nondiscrimination covenants, the State of Montana, shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the State of Montana, and it's assigns.

\*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

## **DOT (FTA) TITLE VI ASSURANCE**

*Pursuant to FTA Circular 4702.1A (May 13, 2007), every application for financial assistance from FTA is accompanied by an assurance that the applicant will carry out the program in compliance with Title VI of the Civil Rights Act of 1964. This requirement is fulfilled on an annual basis when the department submits the annual certifications and assurances. The assurances are submitted electronically under the Administrator of the Rail, Transit and Planning Division or the Chief of the Multimodal Planning Bureau's automated signature. A hard copy of the assurance signed by the Chief Legal Counsel is kept on file at the Statewide and Urban Planning Section of Rail, Transit and Planning Division.*

# 49 CFR 21

## TITLE 49--TRANSPORTATION

### Subtitle A--Office of the Secretary of Transportation

#### PART 21\_NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION\_EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Sec.

21.1 Purpose.

21.3 Application of this part.

21.5 Discrimination prohibited.

21.7 Assurances required.

21.9 Compliance information.

21.11 Conduct of investigations.

21.13 Procedure for effecting compliance.

21.15 Hearings.

21.17 Decisions and notices.

21.19 Judicial review.

21.21 Effect on other regulations, forms, and instructions.

21.23 Definitions.

Appendix A to Part 21--Activities to Which This Part Applies

Appendix B to Part 21--Activities to Which This Part Applies When a  
Primary Objective of the Federal Financial Assistance is to  
Provide Employment

Appendix C to Part 21--Application of Part 21 to Certain Federal  
Financial Assistance of the Department of Transportation

Authority: 42 U.S.C. 2000d-2000d-7.

Source: 35 FR 10080, June 18, 1970, unless otherwise noted.

Sec. 21.1 Purpose.

The purpose of this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the Act) to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation.

Sec. 21.3 Application of this part.

(a) This part applies to any program for which Federal financial assistance is authorized under a law administered by the Department, including the types of Federal financial assistance listed in appendix A to this part. It also applies to money paid, property transferred, or other Federal financial assistance extended after the effective date of this part pursuant to an application approved before that effective date. This part does not apply to:

(1) Any Federal financial assistance by way of insurance or guaranty contracts;

(2) Money paid, property transferred, or other assistance extended before the effective date of this part, except where such assistance was subject to the title VI regulations of any agency whose responsibilities

are now exercised by this Department;

(3) Any assistance to any individual who is the ultimate beneficiary; or

(4) Any employment practice, under any such program, of any employer, employment agency, or labor organization, except to the extent described in Sec. 21.5(c).

The fact that a type of Federal financial assistance is not listed in appendix A to this part shall not mean, if title VI of the Act is otherwise applicable, that a program is not covered. Other types of Federal financial assistance under statutes now in force or hereinafter enacted may be added to appendix A to this part.

(b) In any program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving that assistance, the nondiscrimination requirement of this part shall extend to any facility located wholly or in part in that space.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

Sec. 21.5 Discrimination prohibited.

(a) General. No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program to which this part applies.

(b) Specific discriminatory actions prohibited:

(1) A recipient to which this part applies may not, directly or through contractual or other arrangements, on the grounds of race, color, or national origin.

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program; or

(vii) Deny a person the opportunity to participate as a member of a planning, advisory, or similar body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of person to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of persons to be

afforded an opportunity to participate in any such program; may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part.

(4) As used in this section the services, financial aid, or other benefits provided under a program receiving Federal financial assistance include any service, financial aid, or other benefit provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in this paragraph does not limit the generality of the prohibition in paragraph (a) of this section.

(6) Examples demonstrating the application of the provisions of this section to certain types of Federal financial assistance administered by the Department of Transportation are contained in appendix C of this part.

(7) This part does not prohibit the consideration of race, color, or national origin if the purpose and effect are to remove or overcome the consequences of practices or impediments which have restricted the availability of, or participation in, the program or activity receiving Federal financial assistance, on the grounds of race, color, or national origin. Where prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage. Even in the absence of prior discriminatory practice or usage, a recipient in administering a program or activity to which this part applies, is expected to take affirmative action to assure that no person is excluded from participation in or denied the benefits of the program or activity on the grounds of race, color, or national origin.

(c) Employment practices:

(1) Where a primary objective of the Federal financial assistance to a program to which this part applies is to provide employment, a recipient or other party subject to this part shall not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program (including recruitment or recruitment advertising, hiring, firing, upgrading, promotion, demotion, transfer, layoff, termination, rates of pay or other forms of compensation or benefits, selection for training or apprenticeship, use of facilities, and treatment of employees). Such recipient shall take affirmative action to insure that applicants are employed, and employees are treated during employment, without regard to their race, color, or national origin. The requirements applicable to construction employment under any such program shall be those specified in or pursuant to Part III of Executive Order 11246 or any Executive order which supersedes it.

(2) Federal financial assistance to programs under laws funded or

administered by the Department which have as a primary objective the providing of employment include those set forth in appendix B to this part.

(3) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulation tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this regulation applies, the provisions of paragraph (c)(1) of this section shall apply to the employment practices of the recipient or other persons subject to the regulation, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

(d) A recipient may not make a selection of a site or location of a facility if the purpose of that selection, or its effect when made, is to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this rule applies, on the grounds of race, color, or national origin; or if the purpose is to, or its effect when made will, substantially impair the accomplishment of the objectives of this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973; 68 FR 51389, Aug. 26, 2003]

#### Sec. 21.7 Assurances required.

(a) General. (1) Every application for Federal financial assistance to which this part applies, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by, an assurance that the program will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to this part. Every award of Federal financial assistance shall require the submission of such an assurance. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended to the program. The Secretary shall specify the form of the foregoing assurances, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case where Federal financial assistance is provided in the form of a transfer of real property, structures, or improvements thereon, or interest therein, from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. Where no transfer of property

or interest therein from the Federal Government is involved, but property is acquired or improved with Federal financial assistance, the recipient shall agree to include such covenant in any subsequent transfer of such property. When the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant where, in the discretion of the Secretary, such a condition and right of reverter is appropriate to the statute under which the real property is obtained and to the nature of the grant and the grantee. In such event if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Secretary may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as he deems appropriate, to subordinate such right of reversion to the lien of such mortgage or other encumbrance.

(b) Continuing Federal financial assistance. Every application by a State or a State agency for continuing Federal financial assistance to which this part applies (including the types of Federal financial assistance listed in appendix A to this part) shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application: (1) Contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Secretary to give reasonable guarantee that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to this part.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

#### Sec. 21.9 Compliance information.

(a) Cooperation and assistance. The Secretary shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) Compliance reports. Each recipient shall keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under this part. In general recipients should have available for the Secretary racial and ethnic data showing the extent to which members of minority groups are beneficiaries of programs receiving Federal financial assistance.

(c) Access to sources of information. Each recipient shall permit access by the Secretary during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person fails or refuses to furnish this information, the recipient shall so certify in

its report and shall set forth what efforts it has made to obtain the information.

(d) Information to beneficiaries and participants. Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Secretary finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973; 68 FR 51389, Aug. 26, 2003]

#### Sec. 21.11 Conduct of investigations.

(a) Periodic compliance reviews. The Secretary shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) Complaints. Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part may by himself or by a representative file with the Secretary a written complaint. A complaint must be filed not later than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary.

(c) Investigations. The Secretary will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation will include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) Resolution of matters. (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the Secretary will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in Sec. 21.13.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the Secretary will so inform the recipient and the complainant, if any, in writing.

(e) Intimidatory or retaliatory acts prohibited. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

[35 FR 10080, June 18, 1970, as amended by Amdt. 72-2, 38 FR 17997, July 5, 1973]

#### Sec. 21.13 Procedure for effecting compliance.

(a) General. If there appears to be a failure or threatened failure

to comply with this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to: (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) Noncompliance with Sec. 21.7. If an applicant fails or refuses to furnish an assurance required under Sec. 21.7 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph. However, subject to Sec. 21.21, the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application approved prior to the effective date of this part.

(c) Termination of or refusal to grant or to continue Federal financial assistance. No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The Secretary has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part;

(3) The action has been approved by the Secretary pursuant to Sec. 21.17(e); and

(4) The expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action.

Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) Other means authorized by law. No action to effect compliance with title VI of the Act by any other means authorized by law shall be taken by this Department until:

(1) The Secretary has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) The expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days, additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

Sec. 21.15 Hearings.

(a) Opportunity for hearing. Whenever an opportunity for a hearing is required by Sec. 21.13(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either: (1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and Sec. 21.13(c) and consent to the making of a decision on the basis of such information as is available.

(b) Time and place of hearing. Hearings shall be held at the offices of the Department in Washington, D.C., at a time fixed by the Secretary unless he determines that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before the Secretary, or at his discretion, before a hearing examiner appointed in accordance with section 3105 of title 5, United States Code, or detailed under section 3344 of title 5, United States Code.

(c) Right to counsel. In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) Procedures, evidence, and record. (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with sections 554 through 557 of title 5, United States Code, and in accordance with such rules of procedure as are proper (and not inconsistent with this section) relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the officer conducting the hearing. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(e) Consolidated or joint hearings. In cases in which the same or related facts are asserted to constitute noncompliance with this part with respect to two or more Federal statutes, authorities, or other means by which Federal financial assistance is extended and to which

this part applies, or noncompliance with this part and the regulations of one or more other Federal departments or agencies issued under title VI of the Act, the Secretary may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules or procedures not inconsistent with this part. Final decisions in such cases, insofar as this regulation is concerned, shall be made in accordance with Sec. 21.17.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

Sec. 21.17 Decisions and notices.

(a) Procedure on decisions by hearing examiner. If the hearing is held by a hearing examiner, the hearing examiner shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. Where the initial decision is made by the hearing examiner the applicant or recipient may, within 30 days after the mailing of such notice of initial decision, file with the Secretary his exceptions to the initial decision, with his reasons therefor. In the absence of exceptions, the Secretary may, on his own motion, within 45 days after the initial decision, serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of notice of review, the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall, subject to paragraph (e) of this section, constitute the final decision of the Secretary.

(b) Decisions on record or review by the Secretary. Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing examiner pursuant to paragraph (a) of this section, or whenever the Secretary conducts the hearing, the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a written copy of the final decision of the Secretary shall be sent to the applicant or recipient and to the complainant, if any.

(c) Decisions on record where a hearing is waived. Whenever a hearing is waived pursuant to Sec. 21.15, a decision shall be made by the Secretary on the record and a written copy of such decision shall be sent to the applicant or recipient, and to the complainant, if any.

(d) Rulings required. Each decision of a hearing examiner or the Secretary shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to this part with which it is found that the applicant or recipient has failed to comply.

(e) Approval by Secretary. Any final decision by an official of the Department, other than the Secretary personally, which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under this part or the Act, shall promptly be transmitted to the Secretary personally, who may approve such decision, may vacate it, or remit or mitigate any sanction imposed.

(f) Content of orders. The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are

consistent with and will effectuate the purposes of the Act and this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to this part, or to have otherwise failed to comply with this part, unless and until it corrects its noncompliance and satisfies the Secretary that it will fully comply with this part.

(g) Post termination proceedings. (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibility to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with this part and provides reasonable assurance that it will fully comply with this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g) (1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying who it believes such official to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record in accordance with rules or procedures issued by the Secretary. The applicant or recipient will be restored to such eligibility if it proves at such a hearing that it satisfied the requirements of paragraph (g) (1) of this section.

While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

#### Sec. 21.19 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

#### Sec. 21.21 Effect on other regulations, forms, and instructions.

(a) Effect on other regulations. All regulations, orders, or like directions issued before the effective date of this part by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the grounds of race, color, or national origin under any program to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for a recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part may be considered to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction before the effective date of this part. Nothing in this part, however, supersedes any of the following (including future amendments thereof): (1)

Executive Order 11246 (3 CFR, 1965 Supp., p. 167) and regulations issued thereunder or (2) any other orders, regulations, or instructions, insofar as such orders, regulations, or instructions prohibit discrimination on the ground of race, color, or national origin in any program or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) Forms and instructions. The Secretary shall issue and promptly make available to all interested persons forms and detailed instructions and procedures for effectuating this part as applied to programs to which this part applies and for which he is responsible.

(c) Supervision and coordination. The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such departments or agencies, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in Sec. 21.17), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs and in similar situations. Any action taken, determination made or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the Secretary of this Department.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

#### Sec. 21.23 Definitions.

Unless the context requires otherwise, as used in this part:

(a) Applicant means a person who submits an application, request, or plan required to be approved by the Secretary, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and "application" means such an application, request, or plan.

(b) Facility includes all or any part of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

(c) Federal financial assistance includes:

(1) Grants and loans of Federal funds;

(2) The grant or donation of Federal property and interests in property;

(3) The detail of Federal personnel;

(4) 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

(5) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(d) Primary recipient means any recipient that is authorized or required to extend Federal financial assistance to another recipient.

(e) Program or activity and program mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3) (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship--

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e) (1), (2), or (3) of this section.

(f) Recipient may mean any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State, territory, possession, the District of Columbia, or Puerto Rico, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

(g) Secretary means the Secretary of Transportation or, except in Sec. 21.17 (e), any person to whom he has delegated his authority in the matter concerned.

[35 FR 10080, June 18, 1970, as amended at 68 FR 51389, Aug. 26, 2003]

#### Appendix A to Part 21--Activities to which This Part Applies

1. Use of grants made in connection with Federal-aid highway systems (23 U.S.C. 101 et seq.).

2. Use of grants made in connection with the Highway Safety Act of 1966 (23 U.S.C. 401 et seq.).

3. Use of grants in connection with the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391-1409, 1421-1425).

4. Lease of real property and the grant of permits, licenses, easements and rights-of-way covering real property under control of the Coast Guard (14 U.S.C. 93 (n) and (o)).

5. Utilization of Coast Guard personnel and facilities by any State, territory, possession, or political subdivision thereof (14 U.S.C. 141(a)).

6. Use of Coast Guard personnel for duty in connection with maritime instruction and training by the States, territories, and Puerto Rico (14 U.S.C. 148).

7. Use of obsolete and other Coast Guard material by sea scout service of Boy Scouts of America, any incorporated unit of the Coast Guard auxiliary, and public body or private organization not organized for profit (14 U.S.C. 641(a)).

8. U.S. Coast Guard Auxiliary Program (14 U.S.C. 821-832).

9. Use of grants for the support of basic scientific research by nonprofit institutions of higher education and nonprofit organizations

whose primary purpose is conduct of scientific research (42 U.S.C. 1891).

10. Use of grants made in connection with the Federal-aid Airport Program (secs. 1-15 and 17-20 of the Federal Airport Act, 49 U.S.C. 1101-1114, 1116-1120).

11. Use of U.S. land acquired for public airports under:

a. Section 16 of the Federal Airport Act, 49 U.S.C. 1115; and

b. Surplus Property Act (sec. 13(g) of the Surplus Property Act of 1944, 50 U.S.C. App. 1622(g), and sec. 3 of the Act of Oct. 1, 1949, 50 U.S.C. App. 1622b).

12. Activities carried out in connection with the Aviation Education Program of the Federal Aviation Administration under sections 305, 311, and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1346, 1352, and 1354(a)).

13. Use of grants and loans made in connection with Urban Mass Transportation Capital Facilities Grant and Loan Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602).

14. Use of grants made in connection with Urban Mass Transportation Research and Demonstration Grant Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1605).

15. Use of grants made in connection with Urban Mass Transportation Technical Studies Grant Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607a).

16. Use of grants made in connection with Urban Mass Transportation Managerial Training Grant Program--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607b).

17. Use of grants made in connection with Urban Mass Transportation Grants for Research and Training Programs in Institutions of Higher Learning--Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1607c).

18. Use of grants made in connection with the High Speed Ground Transportation Act, as amended (49 U.S.C. 631-642).

Appendix B to Part 21--Activities to Which This Part Applies When a Primary Objective of the Federal Financial Assistance is to Provide Employment

1. Appalachia Regional Development Act of 1965 (40 U.S.C. App. 1 et seq.).

Appendix C to Part 21--Application of Part 21 to Certain Federal Financial Assistance of the Department of Transportation

Nondiscrimination on Federally Assisted Projects

(a) Examples. The following examples, without being exhaustive, illustrate the application of the nondiscrimination provisions of this part on projects receiving Federal financial assistance under the programs of certain Department of Transportation operating administrations:

(1) Federal Aviation Administration. (i) The airport sponsor or any of his lessees, concessionaires, or contractors may not differentiate between members of the public because of race, color, or national origin in furnishing, or admitting to, waiting rooms, passenger holding areas, aircraft tie down areas, restaurant facilities, restrooms, or facilities operated under the compatible land use concept.

(ii) The airport sponsor and any of his lessees, concessionaires, or contractors must offer to all members of the public the same degree and type of service without regard to race, color, or national origin. This

rule applies to fixed base operators, restaurants, snack bars, gift shops, ticket counters, baggage handlers, car rental agencies, limousines and taxis franchised by the airport sponsor, insurance underwriters, and other businesses catering to the public at the airport.

(iii) An aircraft operator may not be required to park his aircraft at a location that is less protected, or less accessible from the terminal facilities, than locations offered to others, because of his race, color, or national origin.

(iv) The pilot of an aircraft may not be required to help more extensively in fueling operations, and may not be offered less incidental service (such as windshield wiping), than other pilots, because of his race, color, or national origin.

(v) No pilot or crewmember eligible for access to a pilot's lounge or to unofficial communication facilities such as a UNICOM frequency may be restricted in that access because of his race, color, or national origin.

(vi) Access to facilities maintained at the airport by air carriers or commercial operators for holders of first-class transportation tickets or frequent users of the carrier's or operator's services may not be restricted on the basis of race, color, or national origin.

(vii) Passengers and crewmembers seeking ground transportation from the airport may not be assigned to different vehicles, or delayed or embarrassed in assignment to vehicles, by the airport sponsor or his lessees, concessionaires, or contractors, because of race, color, or national origin.

(viii) Where there are two or more sites having equal potential to serve the aeronautical needs of the area, the airport sponsor shall select the site least likely to adversely affect existing communities. Such site selection shall not be made on the basis of race, color, or national origin.

(ix) Employment at obligated airports, including employment by tenants and concessionaires shall be available to all regardless of race, creed, color, sex, or national origin. The sponsor shall coordinate his airport plan with his local transit authority and the Urban Mass Transportation Administration to assure public transportation, convenient to the disadvantaged areas of nearby communities to enhance employment opportunities for the disadvantaged and minority population.

(x) The sponsor shall assure that the minority business community in his area is advised of the opportunities offered by airport concessions, and that bids are solicited from such qualified minority firms, and awards made without regard to race, color, or national origin.

(2) Federal Highway Administration. (i) The State, acting through its highway department, may not discriminate in its selection and retention of contractors, including without limitation, those whose services are retained for, or incidental to, construction, planning, research, highway safety, engineering, property management, and fee contracts and other commitments with person for services and expenses incidental to the acquisition of right-of-way.

(ii) The State may not discriminate against eligible persons in making relocation payments and in providing relocation advisory assistance where relocation is necessitated by highway right-of-way acquisitions.

(iii) Federal-aid contractors may not discriminate in their selection and retention of first-tier subcontractors, and first-tier subcontractors may not discriminate in their selection and retention of second-tier subcontractors, who participate in Federal-aid highway construction, acquisition of right-of-way and related projects,

including those who supply materials and lease equipment.

(iv) The State may not discriminate against the traveling public and business users of the federally assisted highway in their access to and use of the facilities and services provided for public accommodations (such as eating, sleeping, rest, recreation, and vehicle servicing) constructed on, over or under the right-of-way of such highways.

(v) Neither the State, any other persons subject to this part, nor its contractors and subcontractors may discriminate in their employment practices in connection with highway construction projects or other projects assisted by the Federal Highway Administration.

(vi) The State shall not locate or design a highway in such a manner as to require, on the basis of race, color, or national origin, the relocation of any persons.

(vii) The State shall not locate, design, or construct a highway in such a manner as to deny reasonable access to, and use thereof, to any persons on the basis of race, color, or national origin.

(3) Urban Mass Transportation Administration. (i) Any person who is, or seeks to be, a patron of any public vehicle which is operated as a part of, or in conjunction with, a project shall be given the same access, seating, and other treatment with regard to the use of such vehicle as other persons without regard to their race, color, or national origin.

(ii) No person who is, or seeks to be, an employee of the project sponsor or lessees, concessionaires, contractors, licensees, or any organization furnishing public transportation service as a part of, or in conjunction with, the project shall be treated less favorably than any other employee or applicant with regard to hiring, dismissal, advancement, wages, or any other conditions and benefits of employment, on the basis of race, color, or national origin.

(iii) No person or group of persons shall be discriminated against with regard to the routing, scheduling, or quality of service of transportation service furnished as a part of the project on the basis of race, color, or national origin. Frequency of service, age and quality of vehicles assigned to routes, quality of stations serving different routes, and location of routes may not be determined on the basis of race, color, or national origin.

(iv) The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin.

(b) Obligations of the airport operator-- (1) Tenants, contractors, and concessionaires. Each airport operator shall require each tenant, contractor, and concessionaire who provides any activity, service, or facility at the airport under lease, contract with, or franchise from the airport, to covenant in a form specified by the Administrator, Federal Aviation Administration, that he will comply with the nondiscrimination requirements of this part.

(2) Notification of beneficiaries. The airport operator shall: (i) Make a copy of this part available at his office for inspection during normal working hours by any person asking for it, and (ii) conspicuously display a sign, or signs, furnished by the FAA, in the main public area or areas of the airport, stating that discrimination based on race, color, or national origin is prohibited on the airport.

(3) Reports. Each airport owner subject to this part shall, within 15 days after he receives it, forward to the Area Manager of the FAA Area in which the airport is located a copy of each written complaint charging discrimination because of race, color, or national origin by any person subject to this part, together with a statement describing all actions taken to resolve the matter, and the results thereof. Each airport operator shall submit to the area manager of the FAA area in

which the airport is located a report for the preceding year on the date and in a form prescribed by the Federal Aviation Administrator.

[35 FR 10080, June 18, 1970, as amended by Amdt. 21-1, 38 FR 5875, Mar. 5, 1973; Amdt. 21-3, 40 FR 14318, Mar. 31, 1975]

# IMPACTS OF THE CIVIL RIGHTS RESTORATION ACT OF 1987 ON FHWA PROGRAMS

September 2, 1992

The Restoration Act applies to all Federal Agency programs nationwide; however, FHWA is the only Agency which has provided written implementation guidance.
---

1. PURPOSE. To provide guidance to Federal Highway Administration (FHWA) field officials, State highway agencies (SHAs), their sub-recipients, and contractors regarding the nondiscrimination requirements of the Civil Rights Restoration Act of 1987.

## 2. BACKGROUND

- a. The Supreme Court's decision in the case of Grove City College v. Bell, 465 U.S. 555 (1984), limited the reach of Federal agency nondiscrimination requirements to those parts of a recipient's operations which directly benefited from Federal assistance. The Civil Rights Restoration Act of 1987 clarified the intent of Congress to include all programs and activities of Federal-aid recipients, sub-recipients and contractors. This statute clarified the intent of Congress as it relates to the scope of Title VI of the Civil Rights Act of 1964 and related nondiscrimination statutes.
- b. Nondiscrimination programs require that Federal-aid recipients, sub-recipients, and contractors prevent discrimination and ensure nondiscrimination in all of their programs and activities, where those programs and activities are federally funded or not. The factors prohibited from serving as a basis for action or inaction which discriminates include race, color, national origin, sex, age, and handicap/disability. The efforts to prevent discrimination must address, but not be limited to a program's impact, access, benefits, participation, treatment, services, contracting opportunities, training opportunities, investigations of complaints, allocations of funds, prioritization of projects, and the functions of right-of-way, research, planning, and design.
- c. Authorities for nondiscrimination include but are not limited to: Title VI of the Civil Rights Act of 1964, the Age Discrimination Acts of 1967 and 1975, Section 504 of the Rehabilitation Acts of 1973, the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, and Title 23, United States Code, Section 324.

## 3. GUIDANCE

- a. The Civil Rights Restoration Act of 1987 amended each of the affected statutes by adding a section defining the word "program" to make clear

that discrimination is prohibited throughout an entire agency if any part of the agency receives Federal financial assistance.

- b. 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 entity which distributes the funds and all of the operations of the department or agency to which the funds are distributed are covered.
- c. Corporations, partnerships, or other private organizations or sole proprietorships are covered in their entirety if such an entity receives Federal financial assistance which is extended to it as a whole or if it is principally engaged in certain types of activities.

### ACTION REQUIRED

- a. FHWA field officials:
  - (i) Inform the States of the existence of the Civil Rights Restoration Act of 1987;
  - (ii) Provide guidance and technical assistance to SHAs upon request;
  - (iii) Inform States of the need to incorporate language in the next scheduled update of their Nondiscrimination ("Title VI") Plans indicating that they are aware of the scope of the nondiscrimination provisions and that they have incorporated a process to inform persons involved in or affected by all of their programs and activities of their rights under Title VI and related nondiscrimination statutes;
  - (iv) Provide and/or coordinate training addressing nondiscrimination program requirements;
  - (v) Provide guidance on how nondiscrimination complaints will be handled; and
  - (vi) If a complaint of discrimination is received from a person who believes that he or she has been subjected to discrimination under any program or activity of a recipient, sub-recipient, or contractors, whether Federal-aid funds are involved in a particular program or activity or not, immediately transmit the complaint to the Director, Departmental Office of Civil Rights, and send a copy of the complaint to HCR-20.

b. State transportation agencies:

- (i) Incorporate appropriate language in updates of Non-discrimination (“Title VI”) Plans to ensure that persons affected by or involved in all of a State’s programs and activities are aware of their rights to not be subjected to discrimination based on race, color, sex, national origin, age, or handicap/disability;
- (ii) Ensure that persons who believe they have been subjected to discrimination are made aware of the avenues of redress available to them and that they are provided advice on the process;
- (iii) Monitor activities and investigate complaints filed against Federal-aid sub-recipients and contractors. The SHAs are also responsible for preventing discrimination in all of their own programs and activities and attempting to informally resolve complaints filed against them throughout the complaint process;
- (iv) Where a complainant lodges a complaint against the SHA, the Federal Highway Administration will conduct or contract for the investigation or, if a class action complaint, a review;
- (v) In instances where the complaint is against a contractor, subcontractor, or sub-recipient, the Federal Highway Administration can defer to the appropriate SHA to schedule and conduct an investigation, although, initially, involvement by Federal Highway Administration may be appropriate to ensure the adequacy of the investigation.

## LIMITED ENGLISH PROFICIENCY

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 MCS could use to identify the driver’s language, then access to an interpreter.
- 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 or 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.

## **ENVIRONMENTAL JUSTICE**

Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994),” was enacted to reinforce Title VI of the Civil Rights Act of 1964.

The Civil Rights Act states, “No person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Executive Order 12898 states, “Each Federal agency shall 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.”

MDT enforces Environmental Justice in the same manner as Title VI. Environmental Justice is included as review criteria in all Title VI compliance reviews, particularly local government reviews.



The Montana Department of Transportation (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 of this information will be provided upon request. For further information, please contact:

Civil Rights Bureau  
Department of Transportation  
2701 Prospect Avenue  
PO Box 201001  
Helena, MT 59620-1001  
(406) 444-6331 Phone  
(406) 444-7685 FAX  
Montana Relay 711  
Website

[www.mdt.mt.gov/business/contracting/civil/titlevi.shtml](http://www.mdt.mt.gov/business/contracting/civil/titlevi.shtml)