

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Docket No. DOT-OST-2012-0044

Department of Transportation Updated Environmental Justice Order 5610.2(a)

AGENCY: Office of the Secretary of Transportation, DOT

ACTION: Final DOT Environmental Justice Order

SUMMARY:

The Department of Transportation (the Department or DOT) is issuing an update to Departmental Order 5610.2(a) (Actions to Address Environmental Justice in Minority Populations and Low-Income Populations). This Order updates the Department's original Environmental Justice Order, which was published April 15, 1997. The Order continues to be a key component of the Department's strategy to promote the principles of environmental justice in all Departmental programs, policies, and activities.

DOT Order 5610.2(a) sets forth the DOT policy to consider environmental justice principles in all (DOT) programs, policies, and activities. It describes how the objectives of environmental justice will be integrated into planning and programming, rulemaking, and policy formulation. The Order sets forth steps to prevent disproportionately high and adverse effects to minority or low-income populations through Title VI analyses and environmental justice analyses conducted as part of Federal transportation planning and NEPA provisions. It also describes the specific measures to be taken to address instances of disproportionately high and adverse effects and sets forth relevant definitions.

This updated Order reaffirms DOT's commitment to environmental justice and clarifies certain aspects of the original Order, including the definitions of "minority" populations in compliance with the Office of Management and Budget's (OMB) Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity of October 30, 1997. The revisions clarify the distinction between a Title VI analysis and an environmental justice analysis conducted as part of a NEPA review, and affirm the importance of considering environmental justice principles as part of early planning activities in order to avoid disproportionately high and adverse effects. The updated Order maintains the original Orders general framework and procedures and DOT's commitment to promoting the principles of environmental justice in all DOT programs, policies, and activities.

This Order is effective upon its date of issuance.

FOR FURTHER INFORMATION CONTACT: Beth Osborne, Deputy Assistant Secretary for Transportation Policy, telephone (202) 366-8979, or EJ@dot.gov, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington DC 20590

Order 5610.2(a)

Subject: Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

1. Purpose and Authority

a. This Order updates and clarifies environmental justice procedures for the Department in response to the Memorandum of Understanding on Environmental Justice signed by heads of Federal agencies on August 4, 2011, DOT's revised environmental justice strategy issued on March 2, 2012, and Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.

The Department's original Environmental Justice Order, issued April 15, 1997, was a key component of the Department's original strategy and established procedures to be used by DOT to comply with Executive Order 12898. This revised Order continues to be a key component of DOT's environmental justice strategy. It updates and clarifies certain aspects of the original Order while maintaining its general framework and procedures and DOT's commitment to promoting the principles of environmental justice in all DOT programs, policies, and activities. Relevant definitions are in the Appendix.

b. Executive Order 12898 requires each Federal agency, to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of its programs, policies, and activities on minority populations and low-income populations in the United States. Compliance with this DOT Order is a key element in the environmental justice strategy adopted by DOT to implement the Executive Order, and can be achieved within the framework of existing laws, regulations, and guidance.

c. Consistent with paragraph 6-609 of Executive Order 12898, this Order is limited to improving the internal management of DOT and is not intended to, nor does it, create any rights, benefits, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the Department, its Operating Administrations, its officers, or any person. Nor should this Order be construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Department, its Operating Administrations, its officers or any other person.

2. Scope

This Order applies to the Office of the Secretary, DOT's Operating Administrations, and all other DOT components.

3. Effective Date

This Order is effective upon its date of issuance.

4. Policy

a. It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies, and activities. This will be done by fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI), the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59; SAFETEA-LU) and other DOT statutes, regulations and guidance that address or affect infrastructure planning and decision-making; social, economic, or environmental matters; public health; and public involvement.

b. In complying with this Order, DOT will rely upon existing authority to collect data and conduct research associated with environmental justice concerns. To the extent permitted by existing law, and whenever practical and appropriate to assure that disproportionately high and adverse effects on minority or low income populations are identified and addressed, DOT

shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons adversely affected by DOT programs, policies, and activities, and use such information in complying with this Order.

5. Integration with Existing Operations

a. The Office of the Secretary and each Operating Administration shall determine the most effective and efficient way of integrating the processes and objectives of this Order with their existing regulations and guidance.

b. In undertaking the integration with existing operations described in paragraph 5a, DOT shall observe the following principles:

(1) Environmental justice principles apply to planning and programming activities, and early planning activities are a critical means to avoid disproportionately high and adverse effects in future programs, policies, and activities. Planning and programming activities for policies, programs, and activities that have the potential to have a disproportionately high and adverse effect on human health or the environment shall include explicit consideration of the effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by members of minority populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential effects, alternatives, and mitigation measures).

(2) Steps shall be taken to provide the public, including members of minority populations and low-income populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities, including information that will address the concerns of minority and low-income populations regarding the health and environmental impacts of the proposed action.

c. Future rulemaking activities undertaken pursuant to DOT Order 2100.5 (which governs all DOT rulemaking), and the development of any future guidance or procedures for DOT programs, policies, or activities that affect human health or the environment, shall address compliance with Executive Order 12898 and this Order, as appropriate.

d. The formulation of future DOT policy statements and proposals for legislation that may affect human health or the environment will include consideration of the provisions of Executive Order 12898 and this Order.

6. Ongoing DOT Responsibility

Compliance with Executive Order 12898 is an ongoing DOT responsibility. DOT will continuously monitor its programs, policies, and activities to ensure that disproportionately high and adverse effects on minority populations and low-income populations are avoided, minimized or mitigated in a manner consistent with this Order and Executive Order 12898. This Order does not alter existing assignments or delegations of authority to the Operating Administrations or other DOT components.

7. Preventing Disproportionately High and Adverse Effects

- a. Under Title VI, each Federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. This statute affects every program area in DOT. Consequently, DOT managers and staff must administer their programs in a manner to assure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination by any program or activity of DOT because of race, color, or national origin. While Title VI is a key tool for agencies to use to achieve environmental justice goals, it is important to recognize that Title VI imposes statutory and regulatory requirements that are broader in scope than environmental justice. There may be some overlap between environmental justice and Title VI analyses; however, engaging in environmental justice analysis under Federal transportation planning and NEPA provisions will not necessarily satisfy Title VI requirements. Similarly, a Title VI analysis would not necessarily satisfy environmental justice requirements, since Title VI does not include low-income populations. Moreover, Title VI applies to all Federally-funded projects and activities, not solely those which may have adverse human health or environmental effects on communities.

b. It is DOT's policy to actively administer and monitor its operations and decision-making to assure that nondiscrimination and the prevention of disproportionately high and adverse effects are an integral part of its programs, policies, and activities. DOT currently administers policies, programs, and activities which are subject to the requirements of NEPA, Title VI, URA, SAFETEA-LU and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered so as to identify, early in the development of the program, policy or activity, the risk of discrimination and disproportionately high and adverse effects so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate and practical:

--Population served and/or affected by race, color or national origin, and income level;

--Proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin, and income level;

--Present and proposed membership by race, color, or national origin, in any planning or advisory body that is part of the program, policy or activity.

c. Statutes governing DOT operations will be administered so as to identify and avoid discrimination and avoid disproportionately high and adverse effects on minority populations and low-income populations by:

(1) identifying and evaluating environmental, public health, and interrelated social and economic effects of DOT programs, policies, and activities,

(2) proposing measures to avoid, minimize and/or mitigate disproportionately high and adverse environmental and public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by DOT programs, policies, and activities, where permitted by law and consistent with the Executive Order,

(3) considering alternatives to proposed programs, policies, and activities, where such alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with the Executive Order, and

(4) eliciting public involvement opportunities and considering the results thereof, including soliciting input from affected minority and low-income populations in considering alternatives.

8. Actions to Address Disproportionately High and Adverse Effects

a. Following the guidance set forth in this Order and its Appendix, the head of each Operating Administration and the responsible officials for other DOT components shall determine whether programs, policies, or activities for which they are responsible will have

an adverse human health or environmental effect on minority and low-income populations and whether that adverse effect will be disproportionately high.

b. In making determinations regarding disproportionately high and adverse effects on minority and low-income populations, mitigation and enhancements measures that will be implemented and all offsetting benefits to the affected minority and low-income populations may be taken into account, as well as the design, comparative impacts, and the relevant number of similar existing system elements in non-minority and non-low-income areas.

c. The Operating Administrators and other responsible DOT officials will ensure that any of their respective programs, policies or activities that will have a disproportionately high and adverse effect on minority populations or low-income populations will only be carried out if further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a mitigation measure or an alternative is “practicable,” the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

d. The Operating Administrations and other responsible DOT officials will also ensure that any of their respective programs, policies, or activities that will have a disproportionately high and adverse effect on populations protected by Title VI (“protected populations”) will only be carried if:

(1) a substantial need for the program, policy, or activity exists, based on the overall public interest; and

(2) alternatives that would have less adverse effects on protected populations (and that still satisfy the need identified in subparagraph d(1) above), either

(a) would have other adverse social, economic, environmental or human health impacts that are severe; or

(b) Would involve increased costs of extraordinary magnitude.

e. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT programs, policies, or activities under these authorities.

Nothing in this Order adds to or reduces existing Title VI due process mechanisms.

f. The findings, determinations, and/or demonstration made in accordance with this section must be appropriately documented, normally in the environmental impact statement or other NEPA document prepared for the program, policy, or activity, or in other appropriate planning or program documentation.

Appendix

1. Definitions

The following terms were used in this Order shall have the following meanings:

a. DOT means the Office of the Secretary, DOT Operating Administrations, and all other DOT components.

b. Low-Income means a person whose median household income is at or below the Department of Health and Human Services poverty guidelines.

c. Minority means a person who is:

(1) Black: a person having origins in any of the black racial groups of Africa;

(2) Hispanic or Latino: a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(3) Asian American: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent;

(4) American Indian and Alaskan Native: a person having origins in any of the original people of North America, South America (including Central America), and who maintains cultural identification through tribal affiliation or community recognition; or

(5) Native Hawaiian and Other Pacific Islander: people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

d. Low-Income Population means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.

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

f. Adverse effects means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources;

destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

g. Disproportionately high and adverse effect on minority and low-income populations means an adverse effect that:

(1) is predominately borne by a minority population and/or a low-income population, or

(2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

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

i. Regulations and guidance means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

May 2, 2012

Ray LaHood
Secretary of Transportation

