U.S. Department of Transportation
Office of the Secretary of Transportation

ORDER

DOT 5610.2

Subject: ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

1. PURPOSE. This Order establishes procedures for the Department of Transportation (DOT) 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 economic effects, of its programs, policies, and activities on minority populations and low-income populations in the United States.

2. REFERENCE. Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.

3. SCOPE. Consistent with EO 12898, this Order is limited to improving the internal management of the Department and is not intended to, or 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 the Order by the Department, its operating administrations, its officers, or any other person.

4. DEFINITIONS. The definitions used in this Order are intended to be consistent with the definitions for EO 12898 that have been issued by the Council on Environmental Quality (CEQ) and the Environmental Protection Agency (EPA). To the extent that the following definitions vary from the CEQ and EPA definitions, they reflect further refinements deemed necessary to tailor the definitions to fit within the context of the DOT program:

   a. Department of Transportation (DOT) means the Office of the Secretary (OST), DOT operating administrations, and all other DOT organizational components.

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

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All Operating Administrations

OPI: Assistant Secretary for Trasnportation Policy

c. Minority means a person who is:

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

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

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

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

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 means 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.

5. POLICY.

a. It is the policy of DOT to promote the principles of environmental justice (as embodied in EO 12898) through the incorporation of those principles in all DOT programs, policies, and activities. This shall be done by fully considering environmental justice principles throughout planning and decisionmaking 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 Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and other DOT statutes, regulations, and guidance that address or affect infrastructure planning and decisionmaking; social, economic, or environmental matters; public health; and public involvement.

b. DOT shall 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.

6. INTEGRATION WITH EXISTING OPERATIONS.

a. OST 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 6a, DOT shall observe the following principles:

(1) Planning and programming 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 shall 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, Policies and Procedures for Simplification, Analysis, and Review of Regulations, dated May 22, 1980, 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 EO 12898 and this Order, as appropriate.

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

7. ONGOING DOT RESPONSIBILITY. Compliance with EO 12898 is an ongoing DOT responsibility. DOT shall 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 EO 12898. This Order does not alter existing assignments or delegations of authority to the operating administrations or other DOT organizational components.

8. PREVENTING DISPROPORTIONATELY HIGH AND ADVERSE EFFECT.

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.

b. It is DOT policy to actively administer and monitor its operations and decisionmaking to assure that nondiscrimination is 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, ISTEA, and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements shall be administered so as to identify, early in the development of the program, policy, or activity, the risk of discrimination so that positive corrective action can be taken. In implementing these requirements, the following information should be obtained where relevant, appropriate, and practical:

(1) population served and/or affected by race, color, or national origin, and income level;

(2) proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin; and

(3) present and proposed membership by race, color, or national origin, in any planning or advisory body which is part of the program.

c. Statutes governing DOT operations shall 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 EO 12898;

(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 EO 12989; and

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

9. ACTIONS TO ADDRESS DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS

a. Following the guidance set forth in this Order, the head of each operating administration and the responsible officials for other DOT organizational components shall determine whether programs, policies, and activities for which they are responsible will have an adverse impact on minority and low-income populations and whether that adverse impact 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 taken 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. Heads of operating administrations and other responsible DOT officials shall 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 shall 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. Heads of 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") shall only be carried out 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 statues 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 paragraph 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.

10. IMPLEMENTATION. Within six months of the effective date of this Order, each operating administration shall provide a report to the Assistant Secretary for Transportation Policy and the Director of the Departmental Office of Civil Rights describing the procedures it has developed to integrate, or how it is integrating, the processes and objectives set forth in this Order into its operations.

FOR THE SECRETARY OF TRANSPORTATION:

Frank E. Kruesi
Assistant Secretary
for Transportation Policy