

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

1. PURPOSE AND AUTHORITY.

This Order sets forth U.S. Department of Transportation (Department or DOT) policy to consider environmental justice principles in all DOT programs, policies, and activities. The Order:

- describes how the objectives of environmental justice will be integrated into planning and programming, rulemaking, and policy formulation;
- sets forth steps to identify and addresses, as appropriate, disproportionately high and adverse effects on minority populations or low-income populations through environmental justice analyses conducted as part of the planning and project delivery process for federally funded or approved transportation projects;
- specifies the measures to be taken to address instances of disproportionately high and adverse effects; and
- requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations.

The Order has been revised in two important ways. First, it affirms that the Order should be carried out in a simple, transparent manner as part of the planning and project delivery process for federally funded transportation projects, avoiding unnecessary procedural steps or regulatory requirements that could result in costly delays. This modification is consistent with Executive Order 13771 (“Reducing Regulations and Controlling Regulatory Costs”), which recognizes that government regulations or orders can have unintended consequences of adding time and complexity without adding value.

Second, the Order has been revised to ensure that when determining if impacts on minority populations and low-income populations are disproportionately high and adverse, the Department considers the benefits, including but not limited to, economic benefits of transportation programs, policies, and activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population. Economic benefits include, but are not limited to, any measures or actions that would help alleviate poverty. This modification underscores, in a manner consistent with Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”), that transportation projects can provide economic opportunities and

benefits, such as better access to jobs, increased commercial activity, more housing options, access to healthcare facilities and recreational activities, and higher standards of living.

Finally, this Order is intended to further the mission of the Department, which is “to ensure our Nation has the safest, most efficient and modern transportation system in the world, which improves the quality of life for all American people and communities, from rural to urban, and increases the productivity and competitiveness of American workers and businesses.”¹

2. CANCELLATIONS. This Order cancels and supersedes DOT Order 5610.2A dated May 2, 2012, entitled “Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.”
3. SCOPE. This Order applies to the Office of the Secretary, DOT’s Operating Administrations, and all other DOT components.
4. EFFECTIVE DATE. This Order is effective upon its date of execution.
5. POLICY.
 - a. It is the policy of DOT to execute all appropriate policies and processes while evaluating the human health and environmental costs and benefits of transportation projects, and that costs and benefits with respect to job opportunities, economic growth, opportunities to alleviate poverty, and community impacts that accrue primarily to low-income populations and minority populations must be considered in keeping with the Department’s obligations under statutory and other mandates, including Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.”
 - b. In complying with this Order, DOT shall rely upon existing authority to collect data and conduct research associated with environmental justice concerns as appropriate. Whenever practicable, consistent with statutory requirements, and as appropriate, DOT shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons adversely or positively affected by DOT programs, policies, and activities to ensure that disproportionately high and adverse effects on minority populations and low-income populations are identified and addressed, along with the identification of benefits that may result from the project, and use such information in complying with this Order.
 - c. Implementation of this Order will ensure that minority populations and low-income populations are given the opportunity to be meaningful and informed participants in agency decision making. This policy is supported by the Department’s efforts to streamline and improve the environmental review process, producing documents and information that are accurate, comprehensive, concise, understandable, and readily

¹ See <https://www.transportation.gov/transition/mission-history-goals>

accessible to the public so that minority populations and low-income populations can more feasibly and meaningfully participate.

- d. The Order should be carried out in a simple, transparent manner that avoids adding unnecessary procedural or regulatory steps or causing undue delay in the planning and project delivery process for federally funded transportation projects. The Order should not be interpreted to impose procedural or regulatory requirements that provide no benefit in the decision-making process. The Order should be carried out in a manner that considers the impact that delays in project delivery, rulemaking, or guidance may have on the economic vitality of minority populations and low-income populations.
- e. In determining the impact of a transportation project on a minority population or low-income population, DOT shall consider the benefits of a transportation project where minority populations and low-income populations benefit, at a minimum, to the same level as the general population, along with any disproportionately high and adverse environmental impacts to those populations. Adverse impacts may include, but are not limited to, noise, water pollution, soil contamination, a denial of or a reduction in transportation services, and destruction or disruption of community cohesion or a community's economic vitality. The benefits may include, but are not limited to, economic opportunities, such as increased access to jobs, healthcare facilities, recreational activities, increased commercial activity, or any actions or project components that will help alleviate poverty that primarily benefit the affected minority populations or low-income populations. These benefits can empower members of minority populations and low-income populations to improve the quality of their lives, raise the standard of living of their families, and more fully participate in our economy.

6. 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, DOT shall observe the following principles:
 - 1) Appropriate planning and project delivery activities are a critical means both to avoid disproportionately high and adverse effects and to maximize potential economic benefits. 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. DOT shall strive to promote the economic opportunities of minority populations and low-income populations. Procedures shall be established or modified, 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) DOT shall ensure comprehensive public engagement, including members of minority populations and low-income populations, and provide meaningful access to public information concerning the human health or environmental costs of DOT programs, policies, or activities. This may include, where practicable, translation of such information to members of minority populations and low-income populations of limited English proficiency, or other enhanced engagement steps designed to ensure that affected minority populations and low-income populations can participate in the transportation planning and decision-making processes. DOT shall also provide the public with meaningful access to public information concerning the economic benefits and costs of DOT programs, policies, and activities. DOT shall engage members of the public, particularly members of minority populations and low-income populations affected by transportation programs, policies, and activities, and permit them to provide input on proposed actions.
 - c. Future rulemaking activities undertaken in accordance with the Department's regulatory policies and procedures, found at 49 CFR Part 5, Subpart B, 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, Executive Order 13771, 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 shall include consideration of the provisions of Executive Order 12898, Executive Order 13771, and this Order.
7. ONGOING DOT RESPONSIBILITY. Compliance with Executive Order 12898 and Executive Order 13771 is an ongoing DOT responsibility. DOT shall continuously monitor its programs, policies, and activities to ensure that disproportionately high and adverse human health and environmental effects on minority populations and low-income populations are avoided, minimized or mitigated in a manner consistent with this Order, Executive Order 12898, and Executive Order 13771. This Order does not alter existing assignments or delegations of authority to the Operating Administrations or other DOT components.
8. PREVENTING DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS.
- a. DOT's policy is to administer and monitor its operations and decision making to prevent disproportionately high and adverse effects. This policy shall be administered to identify, early in the development and planning of the program, policy, or activity, the risk of discrimination and disproportionately high and adverse effects so that positive mitigating actions can be identified and taken as appropriate. In implementing these requirements, the following information should be obtained (including through public comment) where relevant, appropriate and practicable, and consistent with law:
 - 1) Population served and/or affected by the proposed DOT program, policy, or activity, presented by race, color, or national origin, and income level;

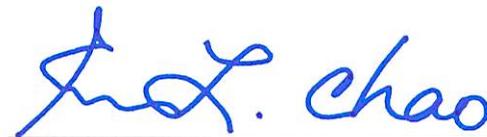
- 2) Proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, color, or national origin, and income level; and
 - 3) Present and proposed membership by race, color, or national origin, in any planning or advisory body that has been established to provide input on the program, policy or activity.
- b. Statutes governing DOT operations shall be administered to identify and avoid, to the extent practicable, relevant, appropriate, and consistent with law, disproportionately high and adverse effects on minority populations and low-income populations by:
- 1) identifying and evaluating environmental, public health, and economic impacts of DOT programs, policies, and activities;
 - 2) proposing measures to avoid, minimize, and/or mitigate disproportionately high and adverse environmental and public health effects for communities, neighborhoods, and individuals affected by DOT programs, policies, and activities, where permitted by law and consistent with Executive Order 12898 and Executive Order 13771;
 - 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 on minority populations or low-income populations, consistent with the Executive Order 12898 and Executive Order 13771; and
 - 4) ensuring public engagement and considering the outcomes thereof, including soliciting input from affected minority populations and low-income populations on proposals and in considering alternatives.

9. 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 populations and low-income populations and whether that adverse effect will be disproportionately high.
- b. The Operating Administrators 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 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, reasonable, or consistent with statutory requirements. In determining whether a mitigation measure or an alternative is practicable, reasonable, or consistent with statutory requirements, the social, economic (including regulatory

costs), and environmental effects—both positive and negative—of avoiding or mitigating the adverse effects shall be considered.

- c. The Operating Administrators and other responsible DOT officials shall also 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 undertaken if:
 - 1) a substantial need for the program, policy, or activity exists, based on the overall public interest;
 - 2) DOT lacks statutory or other authority to avert such effects; and
 - 3) alternatives that would have less adverse effects on protected populations (and that still satisfy the substantial need identified in subparagraph c.(1) above), either:
 - a) would have other adverse social, economic, environmental or human health impacts
 - b) would involve increased costs of extraordinary magnitude; or
 - c) are impracticable, unreasonable, or inconsistent with law.
- d. DOT's responsibilities under Title VI of the Civil Rights Act of 1964 and related statutes and regulations are not limited by this Order, nor does this Order 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.
- e. 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.
- f. The findings, determinations, and/or demonstrations made in accordance with this section must be appropriately documented, normally in the environmental impact statement or other National Environmental Policy Act document prepared for the program, policy, or activity, or in other appropriate planning or program documentation.



Elaine L. Chao
Secretary of Transportation

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 East Asia, Southeast Asia, or South Asia;
 - 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, American Samoa, the Commonwealth of the Northern Mariana Islands, 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 combined negative environmental, human health effects of DOT programs, policies, and 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; and
 - 3) disproportionately falls on minority and/or low-income populations even after benefits, including economic benefits, or the program, policy, or activity that accrue primarily to the affected minority and/or low-income populations are factored into the analysis.
- h. Programs, policies, and/or activities mean all projects, programs, policies, and activities that affect public 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 as a single project, program, policy, or activity for purposes of this activity.
 - i. Regulations and guidance means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.