



U.S. DEPARTMENT OF
TRANSPORTATION

**Federal Highway
Administration**

Order

Subject: **FHWA Actions to Address
Environmental Justice in Minority Populations
and Low-Income Populations**

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6640.23A		HEP

Par.

1. What is the purpose of this directive?
2. Does this directive cancel an existing FHWA directive?
3. What authorities govern this directive?
4. What is the scope of this directive?
5. What definitions are used in this directive?
6. What is the FHWA's policy concerning Environmental Justice?
7. How are Environmental Justice Principles integrated into existing operations?
8. What are the FHWA's responsibilities?
9. Where can I obtain additional guidance?

1. **What is the purpose of this directive?** This FHWA directive establishes policies and procedures for the Federal Highway Administration (FHWA) to use in complying with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898), dated February 11, 1994.

2. **Does this directive cancel an existing FHWA directive?** Yes. This directive cancels [FHWA Order 6640.23 FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations](#), dated December 2, 1998.

3. **What authorities govern this directive?**

- a. [Executive Order \(EO\) 12898](#), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (EO 12898), issued February 11, 1994. EO 12898 requires Federal agencies to achieve environmental justice by identifying and addressing disproportionately high and adverse human health or environmental effects, including the interrelated social and economic effects of their programs, policies, and activities on minority populations and low-income populations in the United

States. As indicated in the EO, the foregoing requirements are to be carried out to the greatest extent practicable and permitted by law and consistent with the principles set forth in the report on the National Performance Review. Compliance with this FHWA Order is a key element in the environmental justice strategy adopted by FHWA to implement EO 12898, and can be achieved within the framework of existing laws, regulations, and guidance.

- b. [Department of Transportation \(DOT\) Order 5610.2\(a\)](#), Final DOT Environmental Justice Order, issued May 2, 2012.
 - c. [Title VI of the Civil Rights Act of 1964](#) (Title VI).
 - d. [Title 23, United States Code \(U.S.C.\), Section 109\(h\)](#).
 - e. [National Environmental Policy Act](#) (NEPA).
 - f. [Title 49, Code of Federal Regulations \(CFR\), Part 21.9\(b\)](#).
 - g. [23 CFR 200.9\(b\)\(4\)](#).
 - h. [Uniform Relocation Assistance and Real Property Acquisition Act of 1970](#) (Uniform Act)
4. **What is the scope of this directive?** Consistent with paragraph 6-609 of EO 12898 and DOT Order 5610.2(a), this directive is limited to improving the internal management of the FHWA 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 FHWA, its officers, or any person. This directive should not be construed to create any right to judicial review involving the compliance or noncompliance with this directive by FHWA, its officers, or any other person.
5. **What definitions are used in this directive?** The following terms, where used in this directive, shall have the following meanings¹:
- a. **FHWA.** The Federal Highway Administration as a whole and one or more of its individual components.

¹ These definitions are intended to be consistent with the draft 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 these definitions vary from the CEQ and EPA draft definitions, they reflect further refinements deemed necessary to tailor the definitions to fit within the context of the FHWA program.

- b. **Low-Income.** A person whose median household income is at or below the Department of Health and Human Services poverty guidelines.
- c. **Minority.** 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: a person having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands.
- d. **Low-Income Population.** 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 FHWA program, policy, or activity.
- e. **Minority Population.** 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 FHWA program, policy, or activity.
- f. **Adverse Effects.** 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 human-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 FHWA programs, policies, or activities.

- g. **Disproportionately High and Adverse Effect on Minority and Low-Income Populations.** 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 nonminority population and/or non-low-income population.
- h. **Programs, Policies, and/or Activities.** All projects, programs, policies, and activities that affect human health or the environment, and that are undertaken, funded (in whole or in part), or approved by FHWA. These include, but are not limited to, permits, licenses, and financial assistance provided by FHWA. Interrelated projects within a system may be considered to be a single project, program, policy, or activity for purposes of this directive.
- i. **Regulations and Guidance.** Regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by FHWA.

6. **What is FHWA's policy concerning Environmental Justice?**

- a. It is FHWA's longstanding policy to actively ensure nondiscrimination in federally funded activities. Furthermore, it is FHWA's continuing policy to identify and prevent discriminatory effects by actively administering its programs, policies, and activities to ensure that social impacts to communities and people are recognized early and continually throughout the transportation decisionmaking process--from early planning through implementation. Should the potential for discrimination be discovered, action to eliminate the potential shall be taken.
- b. EO 12898, DOT Order 5610.2(a), and this directive reaffirm the principles of Title VI and related statutes, NEPA, 23 U.S.C. 109(h), and other Federal environmental laws, emphasizing the incorporation of those provisions with the environmental and transportation decisionmaking processes.

- c. Under Title VI, each Federal agency is required to ensure that no person on the grounds 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 applies to every program area in FHWA.
- d. Under EO 12898, each Federal agency must identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. FHWA will implement this EO and the principles of DOT Order 5610.2(a) and EO 12898 by incorporating environmental justice principles in all FHWA programs, policies, and activities within the framework of existing laws, regulations, and guidance.
- e. In complying with this directive, FHWA will rely upon existing authorities to collect necessary data and conduct research associated with environmental justice concerns, including, but not limited to, 49 CFR 21.9(b) and 23 CFR 200.9(b)(4).
- f. The FHWA will administer its governing statutes so as to identify and avoid discrimination and 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 FHWA programs, policies, and activities;
 - (2) proposing measures to avoid, minimize, and/or mitigate disproportionately high and adverse environmental or public health effects and interrelated social and economic effects, and providing offsetting benefits and opportunities to enhance communities, neighborhoods, and individuals affected by FHWA 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, where permitted by law and consistent with EO 12898; and
 - (4) providing public involvement opportunities and considering the results thereof, including providing meaningful access to public information concerning the human health or environmental impacts and soliciting input from affected

minority populations and low-income populations in considering alternatives during the planning and development of alternatives and decisions.

7. **How should Environmental Justice principles be integrated into existing operations?**
 - a. The principles outlined in this directive are required to be integrated into existing operations.
 - b. Future rulemaking activities undertaken, and the development of any future guidance or procedures for FHWA programs, policies, or activities that affect human health or the environment, shall explicitly address FHWA compliance with EO 12898, with DOT Order 5610.2(a), and with this directive.
 - c. The formulation of future FHWA policy statements and proposals for legislation that may affect human health or the environment will include consideration of the provisions of EO 12898 and this directive.

8. **What are the FHWA's responsibilities?** FHWA managers and staff are responsible for the following:
 - a. Under Title VI, FHWA managers and staff must administer their programs in a manner to ensure that no person is excluded from participating in, denied the benefits of, or subjected to discrimination under any program or activity of FHWA because of race, color, or national origin.
 - b. Under EO 12898, FHWA managers and staff must administer their programs to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of FHWA programs, policies, and activities on minority populations and low-income populations.
 - c. The FHWA currently administers policies, programs, and activities that are subject to the requirements of NEPA, Title VI, the Uniform Act, Title 23 of the United States Code, and other statutes that involve human health or environmental matters, or interrelated social and economic impacts. These requirements will be administered to identify the risk of discrimination early in the development of FHWA's programs, policies, and activities 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 that is part of the program.
- d. Following the guidance set forth in this directive, FHWA managers and staff shall ensure that FHWA programs, policies, and activities for which they are responsible do not have a disproportionately high and adverse effect on minority populations or low-income populations.
- e. When determining whether a particular program, policy, or activity will have disproportionately high and adverse effects on minority and low-income populations, FHWA managers and staff should take into account mitigation and enhancement measures and potential offsetting benefits to the affected minority and/or low-income populations. Other factors that may be taken into account include design, comparative impacts, and the relevant number of similar existing system elements in nonminority and non-low-income areas.
- f. The FHWA managers and staff will ensure that the programs, policies, and activities that will have disproportionately high and adverse effects on minority populations and/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 effects 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.
- g. The FHWA managers and staff will also ensure that any of their respective programs, policies, or activities that have the potential for disproportionately high and adverse effects on populations protected by Title VI ("protected populations") will 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 have either:
 - (a) adverse social, economic, environmental, or human health impacts that are severe; or
 - (b) would involve increased costs of an extraordinary magnitude.
 - h. Any relevant finding identified during the implementation of this directive must be included in the planning or NEPA documentation that is prepared for the appropriate program, policy, or activity.
 - i. Environmental and civil rights statutes, along with Executive Orders require that the environmental effects on minority populations and low-income populations be addressed. Under Title VI, each Federal agency is required to ensure that no person on grounds of race, color, or national origin is excluded from participation in, denied the benefits of, or in any other way subjected to discrimination under any program or activity receiving Federal assistance. Therefore, any member of a protected class under Title VI may file a complaint with the FHWA Office of Civil Rights, alleging that he or she was subjected to disproportionately high and adverse health or environmental effects.
9. **Where can I obtain additional guidance?** For more information or additional guidance related to Environmental Justice, please see the FHWA Environmental Justice [web site](#).

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