

Chapter 24

**ENVIRONMENTAL JUSTICE**

**MDT ENVIRONMENTAL MANUAL**

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## Chapter 24

# ENVIRONMENTAL JUSTICE

### 24.1 OVERVIEW

#### 24.1.1 Background

Environmental justice is the fair treatment of people of all races, cultures and incomes with respect to the development, adoption, implementation and enforcement of environmental laws and policies. Executive Order 12898, issued in 1994, directs each Federal agency to "...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..." The Executive Order reinforces antidiscrimination provisions established under Title VI of the 1964 *Civil Rights Act* and adds consideration of low-income populations. Title VI declares a National policy that discrimination on the ground of race, color or national origin shall not occur in connection with programs and activities receiving Federal financial assistance. The US Environmental Protection Agency's "Environmental Justice" website includes the following definition:

*Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.*

Pursuant to the requirements in Executive Order 12898, the US Department of Transportation (DOT), in 1997, issued DOT Order 5610.2 to incorporate environmental justice principles into existing DOT programs, policies and activities. The Federal Highway Administration (FHWA), in 1998, issued DOT Order 6640.23 to address environmental justice requirements in FHWA programs, policies and activities.

According to information on the FHWA "Environmental Justice" website, because the nondiscrimination requirements of Title VI extend to all programs and activities of State DOTs and their respective sub-recipients and contractors, the concepts of environmental justice apply to all State projects, including those that do not involve Federal-aid funds.

This Chapter provides guidance and procedures for identifying minority and low-income populations that MDT projects potentially may affect and for addressing environmental justice principles in accordance with Title VI, Executive Order 12898, DOT Order 5610.2, DOT Order 6640.23 and associated implementing directives and guidance.

#### 24.1.2 FHWA Environmental Justice Principles and Definitions

##### 24.1.2.1 Principles

Information on the FHWA "Environmental Justice" website identifies the following fundamental environmental justice principles:

- to avoid, minimize or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations;
- to ensure the full and fair participation by all potentially affected communities in the transportation decision-making process; and
- to prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

The website information affirms that consideration of environmental justice applies to project development and environmental review under the *National Environmental Policy Act* (NEPA) (42 USC 4321, et seq.), regardless of the level of environmental processing. It also affirms that environmental justice applies to preliminary design, final design engineering, right-of-way, construction, operations and maintenance.

#### 24.1.2.2 Definitions

DOT Order 6640.23 includes the following definitions that apply for purposes of the policies and procedures it establishes for FHWA compliance with Executive Order 12898:

1. Low-Income. A household income at or below the Department of Health and Human Services poverty guidelines.
2. Minority. A person who is:
  - Black (having origins in any of the black racial groups of Africa);
  - Hispanic (of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);
  - Asian American (having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands);
  - American Indian and Alaskan Native (having origins in any of the original people of North America and who maintains cultural identification through Tribal affiliation or community recognition); or
  - Native Hawaiian or other Pacific Islander (having origins in any of the original peoples of Hawaii, Guam, Samoa or other Pacific Islands).
3. Low-Income Population. Any readily identifiable group of low-income persons who live in geographic proximity and, if circumstances warrant, geographically dispersed/transient persons (e.g., migrant workers, Native Americans) who will be similarly affected by a proposed FHWA program, policy or activity.
4. Minority Population. Any readily identifiable groups of minority persons who live in geographic proximity and, if circumstances warrant, geographically dispersed/transient persons (e.g., migrant workers, Native Americans) who will be similarly affected by a proposed FHWA program, policy or activity.

5. 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 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 FHWA programs, policies or activities.
  
6. Disproportionately High and Adverse Effect on Minority and Low-Income Populations. An adverse effect that:
  - is predominantly borne by a minority population and/or a low-income population; or
  - 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 populations that are not minority and/or low-income.
  
7. Programs, Policies and/or Activities. All projects, programs, policies and activities that affect human health or the environment and that are undertaken, funded 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 a single project, program, policy or activity for purposes of DOT Order 6640.23.

The procedures in [Section 24.3](#) of this Chapter apply the above principles and definitions for addressing environmental justice in the development and implementation of MDT highway projects.

## 24.2 LAWS, REGULATIONS AND GUIDANCE

### 24.2.1 Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”

This Executive Order, signed February 11, 1994, directs each Federal agency to 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.

### 24.2.2 42 USC 2000(d) – 2000(d)(1) “Civil Rights”

These Parts of the *United States Code* (USC) codify the provisions of Title VI of the *1964 Civil Rights Act*. This Statute declares it to be the policy of the United States that discrimination on the ground of race, color or national origin shall not occur in connection with programs and activities receiving Federal financial assistance. It also authorizes and directs the involved Federal departments and agencies to take action to carry out this policy. Title VI prohibits discrimination, whether intentional or where the unintended effect is unduly burdensome.

US Department of Transportation (DOT) regulations implementing Title VI are provided in Title 49 of the *Code of Federal Regulations* (CFR), Part 21 “Nondiscrimination in Federally-assisted Programs of the Department of Transportation – Effectuation of Title VI of the *Civil Rights Act* of 1964.” FHWA regulations implementing Title VI are provided in 23 CFR 200 “Title VI Program and Related Statutes – Implementation and Review Procedures.”

### 24.2.3 23 USC 139 “Efficient Environmental Reviews for Project Decision-Making”

For projects involving preparation of an environmental impact statement (EIS) and for environmental assessments (EA) being prepared in accordance with the FHWA “SAFETEA-LU Environmental Review Process Final Guidance,” this Part of the USC requires that, at appropriate times during the study process, the lead agency or agencies for the project collaborate with agencies serving as participating agencies to determine the methodologies to be used and the level of detail required for assessing impacts, including environmental justice impacts. See [Chapters 11 “Preparing Environmental Documentation,”](#) [13 “Environmental Assessment/FONSI”](#) and [14 “Environmental Impact Statement/ROD”](#) for further guidance on this requirement.

### 24.2.4 DOT Order 5610.2 “Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”

This April 15, 1997 Order clarifies and reinforces Title VI responsibilities and addresses effects on low-income populations. It also summarizes and expands upon the requirements of Executive Order 12898 and generally describes the process for incorporating environmental justice principles into all existing DOT programs, policies and activities.

### **24.2.5 DOT Order 6640.23 “FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”**

This December 2, 1998 Order establishes policies and procedures for the FHWA to use in complying with Executive Order 12898 “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” In addition to providing definitions for implementing environmental justice in FHWA programs, policies and activities (see [Section 24.1.2](#)), other key provisions of the Order include:

1. Those indicating FHWA will identify and avoid discrimination and disproportionately high and adverse effects on minority and low-income populations by:
  - identifying and evaluating environmental, public health and interrelated social and economic effects of FHWA programs, policies and activities;
  - 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 FHWA programs, policies and activities, where permitted by law and consistent with EO 12898;
  - considering alternatives to proposed programs, policies and activities, where these alternatives would result in avoiding and/or minimizing disproportionately high and adverse human health or environmental impacts, consistent with EO 12898; and
  - 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 and low-income populations in considering alternatives during the planning and development of alternatives and decisions.
2. Those directing FHWA managers and staff to use the guidance in the Order to accomplish the following objectives:
  - Ensure that FHWA programs, policies and activities for which they are responsible do not have a disproportionately high and adverse effect on minority or low-income populations
  - When determining whether a particular program, policy or activity will have disproportionately high and adverse effects on minority and/or low-income populations, take into account mitigation and enhancement measures and potential offsetting benefits to the affected minority 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 areas that are not minority or low-income areas.
  - Ensure that 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.

- 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:
  - + a substantial need for the program, policy or activity exists, based on the overall public interest; and
  - + alternatives that would have less adverse effects on protected populations have either adverse social, economic, environmental or human health impacts that are more severe or would involve increased costs of extraordinary magnitude.
- Ensure that any relevant finding identified during implementation of the Order is included in the planning or NEPA documentation prepared for the appropriate program, policy or activity.

#### **24.2.6 Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency”**

This Executive Order, signed August 11, 2000, directs each Federal agency to prepare a plan to ensure meaningful access to its Federally conducted programs and activities by eligible persons who, because of national origin, are limited in their English proficiency. The provisions of this Order have implications for conducting public involvement activities for projects affecting minority and low-income persons and populations that have limited English proficiency.

#### **24.2.7 CEQ “Environmental Justice – Guidance Under the National Environmental Policy Act”**

This December 10, 1997 publication, issued by the Council on Environmental Quality (CEQ), provides guidance for addressing environmental justice as a part of the process for NEPA compliance. The guidance includes helpful information on “Principles for Considering Environmental Justice under NEPA,” “Considering Environmental Justice in Specific Phases of the NEPA Process,” addressing environmental justice “Where No EIS or EA is Prepared,” and “Guidance for Agencies on Key Terms in Executive Order 12898.”

#### **24.2.8 Community Impact Assessment: A Quick Reference for Transportation (FHWA-PD-96-036)**

This September 1996 publication issued by the FHWA includes guidance for addressing environmental justice in project development as a component of the community impact assessment process.

**24.2.9 FHWA “Environmental Justice” Website**

This website, accessible through the FHWA website, includes links to a range of environmental justice topics including the following:

- an overview of Transportation and Environmental Justice;
- facts (Nondiscrimination: Title VI and Environmental Justice, Environmental Justice Legislation and Guidance, Questions and Answers on Environmental Justice and Title VI);
- case studies;
- effective practices;
- training; and
- resources.

## 24.3 PROCEDURES

### 24.3.1 Information Gathering

The Preliminary Field Review (PFR) is the initial step in the analysis of environmental justice for a proposed project. The Design Team (DT) notifies and invites appropriate MDT personnel, including the Project Development Engineer (PDE) within the MDT Environmental Services Bureau (ESB) to the field review. The PDE reviews the list of ESB attendees and includes others as necessary to ensure appropriate ESB personnel are in attendance. The PDE participates in the PFR to make a preliminary evaluation of available information on the project scope and the potential of project alternatives to involve disproportionately high and adverse effects on minority and/or low-income populations. Following the field review, the DT prepares a PFR Report summarizing the issues discussed during the PFR, including environmental justice issues. The DT distributes the final PFR Report for review and comment. Within ESB, the PDE serves as the document champion to collect and coordinate comments from the other Sections. The PDE compiles the comments into a PFR review memorandum for signature by the Environmental Services Bureau Chief.

Following the PFR, the PDE coordinates with the DT in defining the potential impact area for analysis of environmental justice issues. For projects subject to the requirements of 23 USC 139 "Efficient Environmental Reviews for Project Decision-Making," the PDE, in cooperation with FHWA, also collaborates with participating agencies in determining the appropriate methodologies to be used and the level of detail required in the analysis of environmental justice impacts of project alternatives.

The PDE identifies the geographic region that incorporates the anticipated communities to be affected by the project. Typically, this includes communities within and immediately surrounding the project study area. If a project may have social consequences for communities well beyond the immediate geographic area, the PDE expands the area for environmental justice analysis to include these other communities. The area for environmental justice analysis may change as information is collected and variations in project scope/alternatives are considered.

The PDE gathers demographic information for determining the composition of potentially affected populations; geographic distribution by race, ethnicity and income; and presence of minority and/or low-income populations.

The PDE obtains the information from a range of sources including:

- the US Census Bureau website;
- Federal, Tribal, State and local health, environmental, social service and economic development agencies;
- Metropolitan Planning Organizations (MPO); and
- public involvement and outreach within the affected communities.

US Census data is available at the census tract, census block and block group level. US Census publications on social, economic and housing characteristics discuss Area Classifications and explain how these classifications are defined. US Census data also includes

economic census data and Topologically Integrated Geographic Encoding and Referencing (TIGER) files. The TIGER files are a digital database that can be used with mapping or Geographic Information System (GIS) software to show geographic distribution of populations and other census data.

Depending upon the project's scope and complexity, the PDE gathers county level to block level census data on demographics and earnings. The level of detail is commensurate with the anticipated impacts of the project on minority and/or low-income populations. US Census Bureau information for demographics and earnings is available in the Decennial Census – Summary File 1 and Summary File 2 and American Community Survey – Selected Data Profiles, both of which are accessible through the US Census Bureau website. The PDE uses the source that provides the more recent data.

Other data can supplement US Census data if it has a sound basis and gives an accurate assessment of income levels. In some instances, population characteristics can be derived from information available from MPOs, councils of government and city or county agencies. Other local sources of information include State and local tax and financing agencies, economic and job development agencies, social service agencies, local health organizations, school districts, local public agencies and community action agencies.

The PDE uses the most up-to-date data available; considering the basic assumptions used in compiling the data and the purposes for which the original data was collected.

The PDE also coordinates with State and local government officials and planning agencies to gather information on other past, present or reasonably foreseeable future projects that would affect areas of the proposed highway project.

The PDE analyzes the information obtained to determine if minority populations and/or low-income populations exist in the study area; see [Section 24.1.2.2](#). If the results indicate there are no minority and/or low-income populations in the study area, the PDE documents the basis for the determination in the project file and provides a copy of the documentation to the DT.

If the results indicate there are minority and/or low-income populations within the project's potential impact area, the PDE documents the geographic distribution of the populations in the study area by race, ethnicity, national origin and income level. The PDE includes the documentation in the project file and provides a copy to the DT.

### **24.3.2 Analysis and Findings**

For projects determined to involve potential effects on minority and/or low-income populations, the PDE coordinates with the DT in analyzing the project's effects on those populations. This analysis addresses beneficial and adverse environmental effects, including human health, economic and social effects, and direct, indirect and cumulative effects, including the potential for environmental justice effects because of induced growth. It also addresses the potential for project alternatives to result in disproportionately high and adverse effects on minority and/or low-income populations.

To identify disproportionately high and adverse effects on minority and/or low-income populations, the PDE evaluates the nature and magnitude of the project's environmental and

health effects, and how they are distributed within the affected communities. The PDE then considers the results of the evaluation in the context of the definitions provided in DOT Order 6640.23; see [Section 24.1.2.2](#).

If the analysis identifies disproportionately high and adverse effects on minority and/or low-income populations, the PDE coordinates with the DT to identify and evaluate measures to avoid, minimize and/or mitigate those effects.

The PDE ensures the environmental justice analysis recognizes that impacts within minority populations and/or low-income populations may be different from impacts on the general population due to a community's distinct cultural practices. For example, data on different patterns of living (e.g., subsistence fish, vegetation or wildlife consumption; use of well water in rural communities) may be relevant to the analysis.

The PDE also conducts the analysis in a manner that considers potential environmental justice issues without regard to the size of the affected minority and/or low-income population, recognizing that disproportionately high and adverse effects are the basis for environmental justice, not the size of the affected population. A very small minority or low-income population in the project study area does not eliminate the possibility of a disproportionately high and adverse effect on these populations. The PDE considers the comparative effects on minority and/or low-income populations in relation to the effects on populations that are not minority and/or low-income.

Throughout the project development process, the PDE coordinates to arrange public involvement opportunities for potentially affected minority and/or low-income populations that:

- provide meaningful access to public information concerning the project's human health and environmental effects; and
- solicit input from affected minority and/or low-income populations regarding the development and analysis of project alternatives, assessment of effects and measures to avoid, minimize and mitigate disproportionately high and adverse effects on those populations.

The PDE plans and conducts public involvement and outreach activities, in compliance with the requirements of Executive Order 13166 "Improving Access to Services for Persons with Limited English Proficiency." The PDE apprises the DT of all input received from affected minority and/or low-income populations regarding project alternatives, environmental effects and/or impact avoidance, minimization and mitigation measures. The PDE coordinates with the DT in responding to the input.

The PDE documents the results of the environmental justice analysis for each alternative under consideration. The documentation includes information on:

- the affected minority and/or low-income populations (e.g., geographic distribution in the study area by race, ethnicity, national origin and income level);
- views received from affected minority and/or low-income populations regarding project alternatives, environmental effects and measures to avoid, minimize or mitigate disproportionately high and adverse effects on those populations;

- effects of the project alternatives (and the preferred alternative, when applicable), on minority and/or low-income populations, including identification of disproportionately high and adverse effects and discussion of proposed measures for minimizing or mitigating those effects; and
- as applicable, discussion of the rationale for recommending an alternative that involves disproportionately high and adverse effects on minority and/or low-income populations.

The PDE ensures the results of the environmental justice analysis, including proposed mitigation measures, are appropriately reflected in the project environmental documentation (see Chapters 11 “Preparing Environmental Documentation,” 12 “Categorical Exclusion,” 13 “Environmental Assessment/FONSI” and 14 “Environmental Impact Statement/ROD”) and included in the project file.

### **24.3.3 Mitigation and Commitments**

The PDE and DT ensure the project plans accurately reflect mitigation measures that are to be implemented for the project. To the extent possible, the PDE and DT should prepare the contract documents using the *MDT Standard Specifications* to minimize the need for special provisions.

The District Environmental Engineering Specialist monitors project construction to ensure that all mitigation measures are implemented in accordance with the approved project plans.

