



Order

U.S. DEPARTMENT OF
TRANSPORTATION

Federal Highway
Administration

Subject

**FHWA ACTIONS TO ADDRESS ENVIRONMENTAL
JUSTICE IN MINORITY POPULATIONS AND
LOW-INCOME POPULATIONS**

Classification Code

Date

December 2, 1998

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5. Preventing Disproportionately High and Adverse Effects
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1. **PURPOSE AND AUTHORITY.**

- a. This Order 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.
- b. EO 12898 requires Federal agencies to achieve environmental justice by identifying and addressing disproportionately high and adverse human health and 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. These requirements are to be carried out to the greatest extent practicable, consistent with applicable statutes and 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.
- c. Consistent with paragraph 6-609 of Executive Order 12898 and the Department of Transportation Order on Environmental Justice (DOT Order 5610.2) dated April 15, 1997, this Order is limited to improving the internal management of the Agency 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 Agency, its officers, or any person. Nor should this Order be

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construed to create any right to judicial review involving the compliance or noncompliance with this Order by the Agency, its operating administrations, its officers, or any other person.

2. DEFINITIONS

The following terms, where used in this Order, shall have the following meanings¹:

- a. FHWA means the Federal Highway Administration as a whole and one or more of its individual components;
- b. Low-Income means a household income at or below the Department of Health and Human Services poverty guidelines;
- c. Minority means a person who is:
 - (1) Black (having origins in any of the black racial groups of Africa);
 - (2) Hispanic (of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - (3) Asian American (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 (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 would be similarly affected by a proposed FHWA 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

¹These 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.

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** 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 FHWA 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 nonminority population and/or nonlow-income population.

- h. **Programs, Policies, and/or Activities** means 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 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 FHWA.

3. **POLICY**

- 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, and this Order are primarily a reaffirmation of the principles of Title VI of the Civil Rights Act of 1964 (Title VI) and related statutes, the National Environmental Policy Act (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. 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. 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.
- c. FHWA will implement the principles of the DOT Order 5610.2 and EO 12898 by incorporating Environmental Justice principles in all FHWA programs, policies, and activities within the framework of existing laws, regulations, and guidance.
- d. In complying with this Order, FHWA will rely upon existing authorities to collect necessary data and conduct research associated with environmental justice concerns, including 49 CFR 21.9(b) and 23 CFR 200.9 (b)(4).

4. **INTEGRATING ENVIRONMENTAL JUSTICE PRINCIPLES WITH EXISTING OPERATIONS**

- a. The principles outlined in this Order are required to be integrated in 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 compliance with EO 12898 and this Order.
- 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 Order.

5. **PREVENTING DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS**

- 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. 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.

- b. FHWA currently administers policies, programs, and activities that are subject to the requirements of NEPA, Title VI, the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (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, or national origin, and income level;
 - (2) proposed steps to guard against disproportionately high and adverse effects on persons on the basis of race, or national origin; and,
 - (3) present and proposed membership by race, or national origin, in any planning or advisory body that is part of the program.

- c. 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; and
 - (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 FHWA programs, policies, and activities, where permitted by law and consistent with EO 12898; and
 - (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 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 and low-income populations in considering alternatives during the planning and development of alternatives and decisions.

6. **ACTIONS TO ADDRESS DISPROPORTIONATELY HIGH AND ADVERSE EFFECTS**

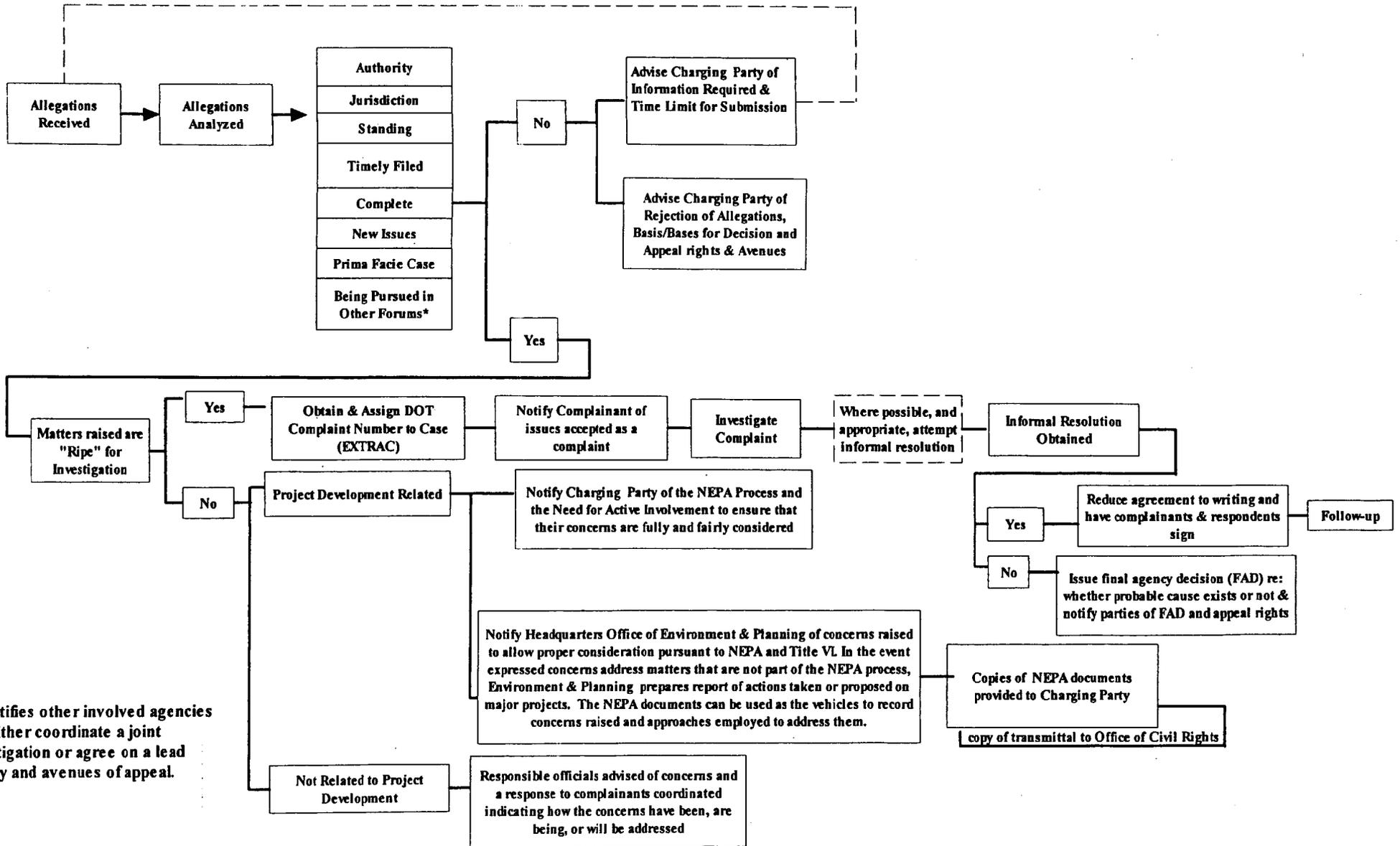
- a. Following the guidance set forth in this Order, FHWA managers and staff shall ensure that FHWA programs, policies, and activities for which they are responsible do not have a disproportionately high and adverse effect on minority or low-income populations.
- b. When determining whether a particular 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 enhancements 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 nonminority and nonlow-income areas.
- c. FHWA managers and staff will ensure that the programs, policies, and activities that will have disproportionately high and adverse effects 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 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.
- d. 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 more severe; or
 - (b) would involve increased costs of an extraordinary magnitude.

- e. Any relevant finding identified during the implementation of this Order must be included in the planning or NEPA documentation that is prepared for the appropriate program, policy, or activity.
- f. Environmental and civil rights statutes provide opportunities to address the environmental effects on minority populations and low-income populations. 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, Attention HCR-20, alleging that he or she was subjected to disproportionately high and adverse health or environmental effects. FHWA will then process the allegation in a manner consistent with the attached operations flowchart.


Kenneth R. Wykle
Federal Highway Administrator

Attachment

PROCESSING ALLEGATIONS OF DISPROPORTIONATE EFFECTS AND DISCRIMINATION INVOLVING ENVIRONMENTAL JUSTICE CLAIMS



*Identifies other involved agencies and either coordinate a joint investigation or agree on a lead agency and avenues of appeal.