

South Central Pennsylvania
Unified Environmental Justice Process and Methodology

TECHNICAL DOCUMENT

Volume II

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Introduction

The main document of the *South Central Pennsylvania Unified Environmental Justice (EJ) Process and Methodology Guide* (Volume I) provides brief overviews of each recommended approach. This Technical Document (Volume II) introduces users to the concept of environmental justice and the *Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* that was issued, tracing its foundations in nondiscrimination laws, agency orders and guidance. The guiding principles and key definitions for identifying and addressing environmental justice are given.

The Technical Document includes six appendices containing detailed information on analytical approaches, data sources, and public engagement techniques. Volume II first provides background on Environmental Justice requirements and objectives and concludes with an explanation on how *Guide* users can make use of Volume II appendices.

What is Environmental Justice?

Legal Background

The concept of environmental justice emerged in the early 1980s in response to concerns that minority and low-income populations were experiencing greater negative environmental effects than other populations. In 1994, Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* was issued. EO 12898 stipulates that:

“Each Federal agency shall make achieving EJ 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.”

Although EO 12898 is a fundamental basis for US Department of Transportation’s Environmental Justice strategy, the concept of EJ has its roots in the 14th Amendment of the US Constitution and its Equal Protection Clause, which states:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

EJ Orders and Guidance

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- USDOT Environmental Justice Order 5610.2(a), Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- FHWA Order 6640.23A FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- Federal Transit Administration Circular 4703.1, Environmental Justice Policy Guidance for Federal Transit Administration Recipients
- Federal Highway Administration Environmental Justice Reference Guide

Environmental Justice, as defined by E.O. 12898, is also rooted in Title VI of the 1964 Civil Rights Act, which prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, and national origin.

“No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

Following the issuance of E.O. 12898, the US Department of Transportation (USDOT) issued orders establishing policies and procedures for identifying and addressing EJ in USDOT programs, policies, and activities. In 2012, USDOT issued an update to its internal DOT Order 5610.2(a), *Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. The updated Order reaffirms USDOT’s commitment to EJ and clarifies certain aspects of the original Order, including the definitions of “minority” populations. The revisions clarify the distinction between a Title VI analysis and an EJ analysis conducted as part of a NEPA review, and affirm the importance of considering EJ principles as part of early planning activities in order to avoid disproportionately high and adverse impacts. In addition, the Federal Highway Administration (FHWA) reissued its FHWA Order 6640.23a and the Federal Transit Administration (FTA) issued its Circular 4703.1 in 2012 to provide guidance on meaningfully implementing EJ at the planning and project development level.

Who are protected populations under EJ?

Minority and low-income populations are protected under EJ. Minority persons are defined as:

- Black - a person having origins in any of the black racial groups of Africa
- Hispanic or Latino - a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race
- American Indian and Alaskan Native - a person having origins in any of the original people of North America or South America (including Central America) who maintains cultural identification through tribal affiliation or community recognition
- Native Hawaiian and Other Pacific Islander - people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific islands
- Asian American - a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent

Low-income means a person whose household income is at or below the Department of Health and Human Services (HHS) poverty guidelines (shown in **Table 1**). MPOs may also employ a locally developed threshold that reflects local cost of living or otherwise is more appropriate for achieving its regional equity goals. The local threshold must be at least as inclusive as the HHS poverty guidelines.

Persons in Family/ Household	Poverty Guideline (2018)
1	\$12,140
2	\$16,460
3	\$20,780
4	\$25,100
5	\$29,420
6	\$33,740
7	\$38,060
8	\$42,380

Table 1 U.S. Department of Health and Human Services (HHS) poverty guidelines

The definition of minority and low-income populations should not be combined in the identification of environmental justice populations. Minority populations exist at all income levels; and low-income populations may be minority, non-minority, or a mix in a given area.

A minority population is any readily identifiable group of minority persons who live in geographic proximity. Low-income populations are any readily identifiable group of low-income persons who live in geographic proximity. If circumstances warrant, both minority and low-income populations may also include geographically dispersed or transient persons (such as migrant workers or Native Americans) who would be affected by a proposed DOT program, policy, or activity.

Persons do not have to reside within an area to be affected by a change resulting from a particular transportation program, policy, or activity. For example, non-resident travelers visiting a predominantly minority-serving church, commuting to a workplace, or shopping at a specialty store catering to specific minority populations—such as the foreign born—are examples of circumstances where disruption in access or displacement of facilities could result in an adverse effect borne by a minority or low-income group even if the area is not identified as a place with a high concentration of low-income or minority populations.

What are the guiding principles of EJ?

USDOT identifies three guiding EJ principles that MPOs should consider throughout the transportation planning process, including public outreach and participation efforts:

- 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.
- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations.

Analyzing adverse effects and benefits

Under the USDOT Order 5610.2(a), “adverse effects” refers to “the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects”. These effects 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 non-profit organizations;

- increased traffic congestion, isolation, exclusion or separation of 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.

Adverse effects are not limited to specific negative impacts, but can be any number or combination of negative impacts. Adverse effects can be for an individual or group of individuals who are minority, low-income, or both minority and low-income. Identifying adverse effects requires an analysis that assesses the extent of the effect.

Transportation decisions can also deliver benefits to individuals, groups and communities. Some examples of benefits from transportation that may accrue include:

- reduced travel times;
- reduced travel costs;
- improved reliability;
- improved safety;
- improved travel options; and
- economic development.

USDOT defines “disproportionately high and adverse effect on human health or the environment” as:

“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.”

In the transportation planning stage, the foundation for making an environmental justice determination involves the appropriate use of data, analytical methods and public engagement to enable a comparative consideration of the benefits and adverse effects borne or suffered by EJ populations against those experienced by non-EJ populations. Making a determination of whether there are disproportionately high and adverse effects requires consideration of the mitigating strategies that a transportation agency may implement to address unmet needs and offset imbalances in the distribution of benefits and burdens borne or suffered by EJ populations.

EJ and Title VI

EO 12898 reinforces and reaffirms the rights and legal requirements of Title VI of the Civil Rights Act. Title VI of the Civil Rights Act of 1964 prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, and national origin, including matters related to language access for limited English proficient (LEP) persons. Under DOT’s Title VI regulations, recipients of DOT financial assistance are prohibited from using “criteria or methods of administering your program which have the effect of subjecting individuals to discrimination based on their race color, or national origin.” The objective of EO 12898 is to ensure that Federal agencies promote and enforce nondiscrimination as one

way of achieving the overarching objective of EJ – a fair distribution of the benefits or burdens of Federal programs, policies, and activities.

In some respects, the statutory and regulatory requirements of Title VI are broader in scope than EO 12898, and in some respects are narrower. The diagram in **Figure 1** seeks to clarify the differences in protected populations represented under Title VI and EJ. The term “minority”, which is a protected class under EJ, overlaps with race, color, and national origin, which the Title VI statute protects. The coverage of national origin under Title VI also includes limited English proficiency, or LEP, populations. EJ, however, also applies to low-income populations, which are not covered under the Title VI statute.

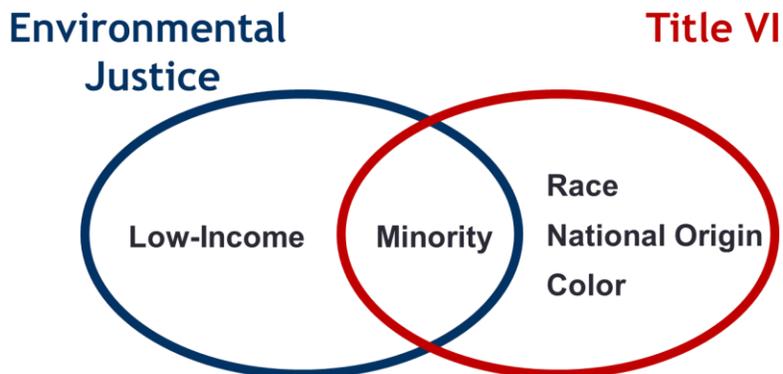


Figure 1 Overlaps in Populations Protected Under EJ and Title VI

Both EJ and Title VI create specific tools that USDOT uses to ensure that grantees’ planning, project development, and operational activities comply with statutes and regulations. EJ analysis does not satisfy specific Title VI program requirements. However, tools developed for Title VI – like a Title VI survey and other public involvement work with disadvantaged communities should be used to inform EJ work. Paying close attention to EJ in the planning stage may provide an opportunity to avoid and minimize adverse effects, or ensure the delivery of benefits to EJ populations, thereby lessening the potential for Title VI complaints when plans and programs are implemented. EJ however does not create any rights or legal remedies, whereas a Title VI complaint can be filed and projects can be litigated under Title VI. **Table 2** summarizes key similarities and differences between EJ and Title VI.

Table 2 Relationship between EO 12898 and Title VI

SIMILARITIES	DIFFERENCES
<ul style="list-style-type: none"> • Both address non-discrimination. • Both capture minority populations. • Both are rooted in the constitutional guarantee (14th Amendment) that all citizens are created equal and are entitled to equal protection. • Both address involvement of impacted citizens in the decision-making process through meaningful involvement and participation. 	<ul style="list-style-type: none"> • EO 12898 covers minority and low-income status, while Title VI and supplemental legislation cover race, color, national origin, sex, age, disability and religion. • EO 12898 is an executive order (an order of the President of the United States), while Title VI is a Federal statute (an act of Congress) • EO 12898 mandates a process, while Title VI prohibits discrimination.

Source: PennDOT, Project Level Environmental Justice Guide

Why implement EJ?

State DOTs and MPOs must certify to FHWA and FTA that their planning process is addressing major issues facing the area and is being conducted in accordance with applicable laws and requirements. The planning regulations at 23 CFR 450.316(a)(1)(vii), require that the needs of “traditionally underserved” by existing transportation systems, such as low-income and/or minority populations that may face challenges accessing employment and other services, be sought out and considered. The self-certification process addresses several requirements including adherence to Title VI of the Civil Rights Act of 1964 and Title VI assurances executed by each state. Additionally, the metropolitan planning process should be consistent with the principles set forth in EO 12898.

Formal certification reviews of the metropolitan planning process in transportation management areas (urbanized populations over 200,000) are conducted by FTA and FHWA at least every four years. At least once every four years, FHWA Divisions and FTA Regions must jointly develop a report of findings and submit a transmittal letter documenting the final certification decision (i.e., if the TMA is fully meeting the requirements). This certification determination is the basis for providing ongoing allocations of Federal funds.

While FHWA and FTA review and approve planning products, provide technical assistance, and promote good practice on a routine basis, the formal assessment during a certification review also provides a valuable opportunity for FHWA and FTA to comprehensively assess compliance and provide advice and technical assistance to the MPO and its planning partners for enhancing the multimodal planning process and improving the quality of transportation investment decisions. During certification review, several types of questions are raised to substantiate the basis upon which self-certification of Title VI compliance is made. These extend to three broad capability review topics; Overall Strategies and Goals; Service Equity, and Public Involvement. Reviewers ascertain the effectiveness of MPOs’ efforts to identify and address disproportionately high and adverse impacts and include EJ populations in public outreach.

However, MPOs should avoid viewing EJ as a “box to check” to meet a federal mandate. Effective transportation decision-making depends upon understanding and properly addressing the unique needs of different socioeconomic groups. EJ processes and analyses, when properly designed and implemented, allow MPOs to deliver plans and projects that more effectively serve the MPO region. In the past, FHWA has sought to make clear that there are benefits to the proper integration of EJ into decision-making processes, including:

- Make better transportation decisions that meet the needs of all people
- Design transportation facilities that fit more harmoniously into communities
- Enhance the public-involvement process, strengthen community-based partnerships, and provide minority and low-income populations with opportunities to learn about and improve the quality and usefulness of transportation in their lives
- Improve data collection, monitoring, and analysis tools that assess the needs of, and analyze the potential impacts on minority and low-income populations
- Partner with other public and private programs to leverage transportation-agency resources to achieve a common vision for communities
- Avoid disproportionately high and adverse impacts on minority and low-income populations

- Minimize and/ or mitigate unavoidable impacts by identifying concerns early in the planning phase and providing offsetting initiatives and enhancement measures to benefit affected communities and neighborhoods

How to Use the Technical Document

The Volume II, Technical Document identifies several recommended analyses and details required steps and provides examples of resulting products, including tables, charts and maps. These analyses have been compiled into several appendices as a resource for MPOs in carrying out EJ analyses, particularly those that make use of emerging tools and datasets such as General Transit Feed Specification (GTFS), CNT's AllTransit, and Open Trip Planner.

The specifications presented in this Technical Document (Volume II) may differ from those presented in the main body of the EJ Guide (Volume I). MPOs should adhere to the specifications identified in Volume I, which were refined during the course of finalizing the *Guide*. In addition, MPOs should make sure they are using the most recent versions of datasets identified in this *Guide*.

The technical documentation is presented in four appendices organized by the “EJ Analysis Process Framework in Transportation Planning”. These appendices also include examples of analysis outputs using data from PennDOT District 8 MPO planning regions, examples of recommended tool outputs, and case examples of the analyses as implemented by MPOs around the U.S. For several recommended practices, background information and case examples are described, rather than specific instructions for implementing the practice. Two additional appendices contain information on datasets used in the recommended analyses and guidance on inclusive public outreach.

The appendices associated with Volume II of the *Guide* are outlined below:

- Appendix A: Identifying EJ Populations
- Appendix B: Assessing Conditions and Identifying Needs
- Appendix C: Evaluating Benefits and Burdens of Plan or Program
- Appendix D: Identifying and Addressing Disproportionately High and Adverse Effects
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