

## Environmental Justice

### Contact

Lisa Elliott  
Office of Environmental Stewardship (OES)  
Minnesota Department of Transportation  
395 John Ireland Boulevard, MS 620  
St. Paul, Minnesota 55155  
[lisa.elliott@state.mn.us](mailto:lisa.elliott@state.mn.us)  
Phone: 651-366-3618

### Purpose

To ensure that NEPA review for MnDOT projects complies with Executive Order 12898 and relevant lead federal agency orders and guidance. Executive Order 12898 directs the Federal departments and agencies take the appropriate steps to identify and address any “disproportionately high and adverse” human health or environmental effects of Federal programs, policies, and activities on minority and low-income populations.

Note that the guidance contained in this section of the HPDP relates to the preparation of federal environmental documents. See MnDOT Environmental Justice homepage for more information on [MnDOT’s other activities related to EJ](#).

### Threshold Criteria

Any program, policy, activity, or project funded or approved by the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), or other U.S. DOT component,

Specifically, if a MnDOT action requires preparation of an Environmental Assessment (EA), or an Environment

Impact Statement (EIS) under NEPA, where an agency of the US DOT is the lead federal agency, an analysis must be conducted in accordance with the lead federal agency guidance and reported in the NEPA document. Additionally, an environmental justice analysis must be completed if a MnDOT action requires the preparation of a Categorical Exclusion when there are residential or business relocations.

## Relationship to the HPDP

### Steps in Environmental Justice Investigation and Documentation

The steps for preparing an Environmental Justice (EJ) finding are listed shown in the flowchart on the following page and detailed in the text below. The description is specific to projects where FHWA is the lead federal agency. If FTA, FRA, FAA or other U.S. DOT agency is the lead federal agency, other agency-specific guidance may apply.

*Note that "Public Involvement" is not presented as a distinct or separate step, but occurs throughout the EJ assessment process. The Executive Order and its implementing DOT Order place great stress on the involvement of minority populations and/or low-income populations in this process.*

Project proposers who are not familiar with the EJ process requirements should work with the Contact listed at the top of this page to discuss the process requirements and strategies in more detail.

Links to U.S. DOT agency guidance current as of April 2015 are provided toward the end of this HPDP chapter; **however, the project proposer should confirm the latest relevant guidance for the appropriate lead federal agency.**

Project proposers are encouraged to use the [Standard Attachment for Environmental Justice Analysis](#). The Metro District should continue to use their methodology for completing an environmental justice analysis. While the scale will differ, the steps in the assessment/determination process are the same for all three classes of environmental documentation (Non- programmatic CEs; EAs; and EISs) and are as follows:

#### **Step 1. Identify Environmental Justice (EJ) Study Area.**

The EJ Study Area is the geographic area where the proposed project has potential for human health or environmental effects. Like many of SEE impacts, EJ includes both direct and indirect impacts. The boundaries will depend upon

the project type, but would typically be ¼ mile from project limits (including each of the project alternatives under consideration). If project involves road or ped/bike/transit facility closure or the removal of a grade separation or interchange, the EJ study area would include the broader area that could be affected by a resulting negative change to community connections, e.g. creating a longer, less convenient route between neighborhoods and services. If the project has a detour route, especially that negatively impacts non-motorized or transit operations along the detour, the EJ analysis would include the detour route as well.

After identifying the EJ Study area, **go to Step 2.**

## **Step 2: Determine if there are readily-identifiable minority and/or low-income (EJ) populations in the EJ Study Area.**

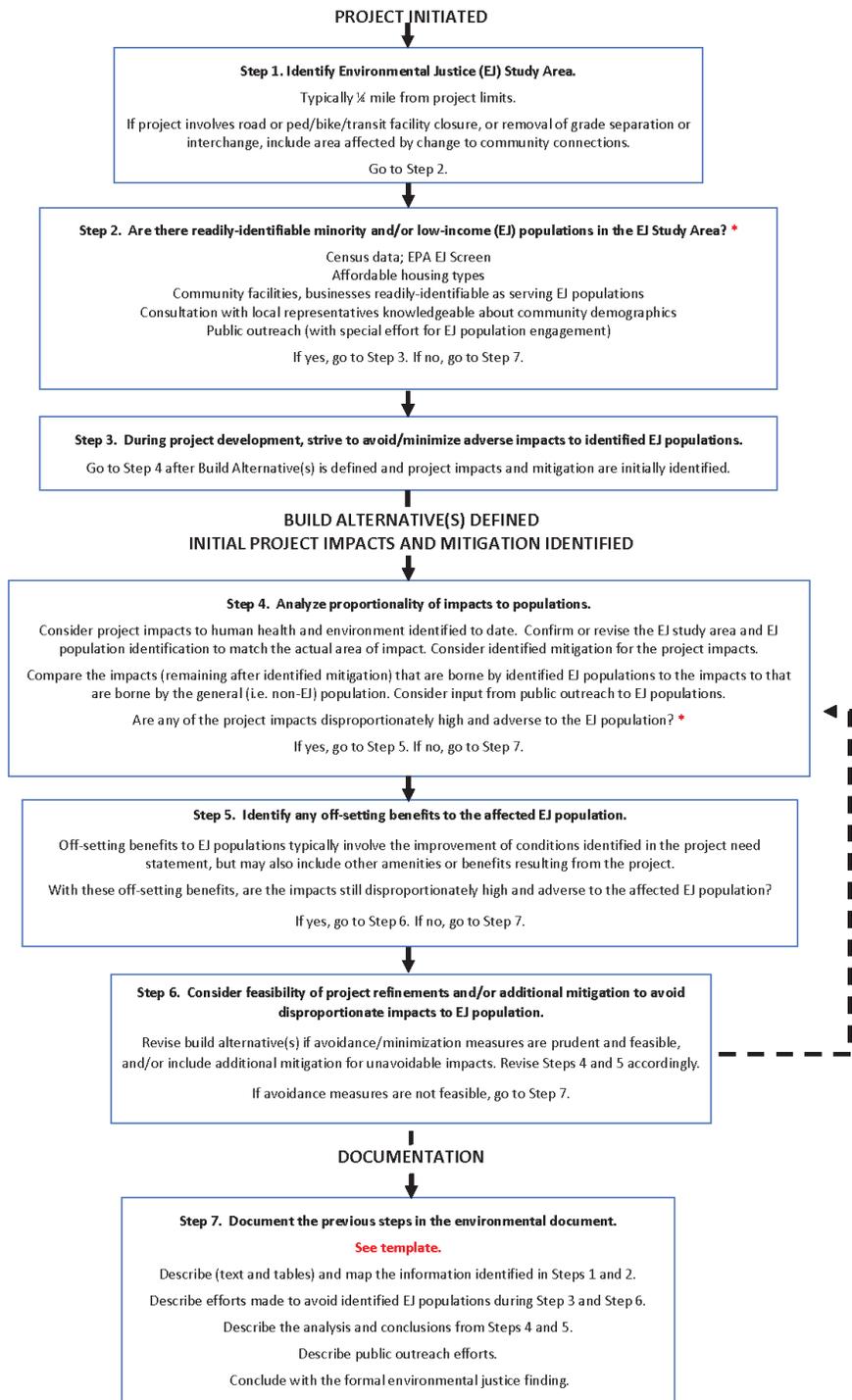
### **Definitions:**

- **Minority** is defined in the DOT Order as including “Black or African American, Hispanic, Asian American, American Indian/Alaskan Native and Native Hawaiian or Pacific Islander.” **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.
- **Low income population** is defined in the DOT Order on Environmental Justice (Order 5610.2(a)) as meaning “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.

U.S.DOT and FHWA define a low-income individual as a person whose median household income is at or below the Department of HHS poverty guidelines. The guidelines are updated annually and available [online.](#)

These data are not readily available from census data because the HHS poverty guidelines vary by household size and the census does not report income by household size. However, because the HHS guidelines are based on poverty level, the census reporting of persons with incomes below the poverty level is the best data available as a proxy for the FHWA definition.

### Environmental Justice Determination Process



\*See guidance.

April 1, 2015 FHWA Environmental Justice Reference Guide states that, “a State or locality may adopt a more inclusive threshold for low-income than that specified by HHS as long as it is inclusive of all persons at or below the HHS poverty guidelines. It is permissible to use industry-recognized tools such as the Environmental Protection Agency’s (EPA) “EJ Screen” to assist identification of low-income populations as long as the documentation explains what is being used and why and makes clear that the data is inclusive of low-income households as defined by the HHS. (The threshold should not exceed 200% of poverty level.)

## **Complete Step 2 as follows:**

### 2-a. Compile demographic data.

- Examine census information, at the lowest level of aggregation available for the EJ study area. The decennial US Census includes race/ethnicity data at the Census block group level. The most recent American Community Survey (ACS) provides the best available income data at the block group level.

*The Environmental Protection Agency (EPA) has a useful environmental justice mapping and screening tool called [EJSCREEN](#) that allows users to choose a geographic area for which the tool will provide demographic (and environmental) information.*

Compare the percentages of minority and low-income persons in the EJ study area to the percentages of minority and low-income persons at the city, county and/or state level depending upon the context of the project. Comparisons at the city and county level are the most likely geographic units to be used. If the percentages of either of these are meaningfully greater than those of the city, county and/or state, it is a strong indicator of the presence of an EJ population and therefore a closer look at the community context is warranted. A study area where the percentage of minority persons is 10 percentage points higher than the county average; or represents greater than 50 percent of the total geographic unit would be a strong indicator of a minority population for purposes of the EJ analysis.

See [EJ Tools](#) for information on using the Census Bureau’s American Factfinder and the EPA’s EJScreen to compile demographic data for the EJ analysis. See example data tables in the [Standard Attachment for Environmental Justice Analysis](#).

2-b. Conduct field review of the EJ study area.

This can be via on-line maps/photography (Google maps) and/or on-the-ground (walk or drive the area). Identify locations of potential indicators of EJ populations in the EJ study area, including:

- affordable housing types such as manufactured home communities and public housing
- community facilities (e.g. governmental agencies, places of worship, service organizations) providing services to ethnic groups or low-income households)
- businesses readily-identifiable as serving EJ populations (e.g. stores specializing in ethnic goods/services, signs in non-English languages, etc.)

2-c. Consult local representatives who are knowledgeable about community demographics

- Contact relevant city or county officials who would be familiar with EJ study area demographic makeup. This may include a city administrator, city or county planner, community action council staff, county human services staff, school administrators, or personnel from other agencies that serve low-income and or minority persons.
- Identify organized groups that represent, provide services to, or are cultural/social centers for minority and/or low-income persons who may reside in the EJ study area. This may involve contacting places of worship, or initiating contact with various state councils.
- Contact Tribal Governments in the EJ study area.

2-d. Conduct public outreach with special effort for EJ population engagement.

Talk directly to people who live, work or own businesses in and near the EJ study area. Include specific efforts in the project's public engagement process to reach EJ populations, e.g. announcements and meeting materials translated into languages known to be common in the study area, project staff presence at local events, advertising/project information at community gathering places, interpreters at public meetings, working with local agencies on outreach, etc.

2-e. Summary. Based on the data collection above, determine whether there is or is not an identifiable EJ population in the EJ study area.

- If there is an identifiable EJ population in the EJ study area, depict the boundaries of the EJ population(s) on a map relative to project construction limits. Go to **Step 3**.
- If there is not an identifiable EJ population in the EJ study area, then no further study is needed regarding EJ impacts; go to **Step 7**.

**Step 3. During project development, strive to avoid/minimize adverse impacts to identified EJ populations.**

Keep track of these avoidance/minimization efforts during project development so that it is easy to report them in the environmental document.

*Define Build alternative(s) and conduct the typical required environmental assessment of impacts and proposed mitigation. Go to Step 4 of the EJ analysis **after the Build Alternative(s) is defined and the initial project impacts, including all impacts (direct and indirect) on human health and environmental regardless of income or minority status, and mitigation for these impacts have been identified.***

**Step 4. Analyze proportionality of impacts to populations.**

**Definition:**

- **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.

*Complete Step 4 as follows:*

4a. Review the project impacts to human health and environment (to all persons, not just EJ populations) that have been identified to date.

The following are topics that typically have the potential to impact human health and environment:

- land use
- parks/recreational facilities
- surface or groundwater quality
- contamination
- historic/archaeological resources
- visual quality
- air quality
- noise
- vibration
- traffic
- parking
- transit
- bicycle/pedestrian facilities
- access
- right of way acquisition
- relocation
- economic conditions
- social conditions
- tribal lands

Only consider the topics for which the project has been found to have adverse impacts to human health and environment (affecting any population). If a topic has **no impact** or **only a beneficial impact** to human health or environment whatsoever (for either EJ populations or non-EJ populations), there is no need to analyze the topic in the EJ section of the document.

*Step 4-b – confirming or revising the study area after identifying the project’s actual adverse impacts to human health and environment – is an essential step in the EJ process.*

4-b. Confirm whether any of the adverse impacts to human health and environmental occur outside of the EJ study area identified in Step 1. If so, the EJ study area will need to be revised to match the actual area of impact and the information about EJ populations updated accordingly prior to completing the analysis for disproportionate impact.

4-c. Consider the effect of the mitigation that has already been identified for the identified impacts. (e.g. noise walls, measures to avoid drinking water contamination, relocation benefits, park restoration/improvements, aesthetic treatments, traffic control, historic property recordation) to the EJ population(s). If there are multiple EJ populations along a linear transportation project, impacts are in the context of each identified EJ population.

Identify the adverse impacts that remain to human health and environment for each of the topics that remain after this identified mitigation is considered.

If the identified mitigation measures sufficiently addressed the impact so that no substantial adverse impacts to any populations remain, then there is no need to further address the proportionality of impacts in the EJ analysis, however such a conclusion should be well supported and vetted through the public involvement process.

4-d. Determine if any of the identified adverse impacts to populations remaining after mitigation (a) are predominately borne by a minority population and/or a low-income population; or (b) will be suffered by the minority population and/or low-income population and are 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. Remember the concern is with impacts on “populations” not on specific individuals.

Does Step 4 identify any disproportionately high and adverse impacts on EJ population remaining after the initially identified mitigation has been considered?

- If yes, go to **Step 5**.
- If not, go to **Step 7**.

**Step 4 Examples:**

Below are some potential situations and the types of questions (not exhaustive) that would need to be considered in Step 4. The affected community's view of the project impacts are important in answering questions of the type provided in the examples below.

- *The Build alternative would have noise impacts, but all noise walls are cost effective and the noise wall voting process has "approved" the walls. The noise impact will be mitigated and therefore there is no need to address the proportionality of the noise impacts in the EJ analysis.*
- *The Build alternative would result in noise impacts that do not meet cost effective criteria and therefore walls are not proposed. Would these noise impacts be predominately born by an EJ population or greater in magnitude than the noise impacts borne by the non-EJ population?*
- *The Build alternative would result in noise impacts that do meet cost effective criteria, but through the noise voting system, the walls are "voted down" and therefore not proposed. Would these unmitigated noise impacts be predominately born by an EJ population or greater in magnitude than the noise impacts borne by the non-EJ population? If so, is it readily apparent from the voting responses whether or not the noise voting outcome reflects the expressed preferences of the disproportionately affected EJ population? When answering these questions, focus on the votes of the benefited receptor residents, not the owner.*
- *The Build alternative would require the relocation of a business; the*

*business will receive relocation benefits.* While relocation benefits would “make whole” the affected business, there may be broader impacts to consider. Is it likely that the business relocation would adversely affect its employees? Will they lose their jobs or have to travel substantially greater distances to a new business location? Is it likely that the business relocation would adversely affect people’s access to goods/services? Is it a business that uniquely serves EJ populations? If so, would any of these adverse impacts be predominately borne by an EJ population or greater in magnitude than the effect borne by non-EJ population?

- *The Build alternative would require relocation of homes; the residents will receive relocation benefits.* Again, while the relocation benefits will “make whole” the affected residents, there may be broader impacts to consider. Will the removal of several homes negatively affect the fabric (“community cohesiveness” or “community identity”) of the neighborhood or disturb established EJ social communities? If so, would the social impact be predominately borne by an EJ population or greater in magnitude than the effect borne by non-EJ population?
- *The Build alternative has been determined to have an adverse effect on a historic property and a mitigation plan has been developed in agreement between MnDOT and SHPO/THPO.* After considering the mitigation plan, does the community still view the effect as substantially negative and if so, is this negative effect predominately borne by an EJ population or greater in magnitude than the effect borne by the non-EJ population?

**Step 5. Identify any off-setting benefits to the affected EJ population.**

Off-setting benefits to the affected EJ population typically involve the improvement of conditions identified in the project need statement, but may also include other amenities or benefits to the EJ population that would result from the project, such as enhancements that go beyond basic mitigation of impacts. Project enhancements or other positive outcomes, such as improvement to express/regional transit services that do not directly serve the EJ population are not part of the equation when answering this question.

After factoring in these off-setting benefits, are the impacts still disproportionately high or adverse to the affected EJ population?

- If yes, go to **Step 6.**
- If no, go to **Step 7.**

**Step 6. Consider feasibility of project refinements and/or additional mitigation to avoid disproportionate impacts to EJ population.**

The consideration of project refinements and additional mitigation may involve a balancing of impacts to other social, economic (including cost) or environmental resources as well as public engagement with the affected population.

Is avoidance of disproportionate impacts to EJ population feasible?

- If yes, revise build alternative(s) and/or include additional mitigation. Revise **Step 4** and **Step 5** accordingly. Go to **Step 7**.
- If no, go to **Step 7**.

**Step 7. Document the previous steps in the environmental document.**

More information is provided by class of action/document type in the next section, but in general the documentation includes the following (see [Standard Attachment for Environmental Justice Analysis](#)).

- Describe (text, tables, and maps) the analysis and conclusions from **Step 1** and **Step 2**.
- Describe efforts made to avoid identified EJ populations during **Step 3** and **Step 6**.
- Describe the analysis, rationale, and conclusions from **Step 4** and **Step 5**.
- Include discussion of the public engagement efforts.
- Conclude with the formal environmental justice finding. See example text in the Prepared Statements section later in this guidance.

There are also additional considerations that apply if the disproportionate impact falls on a population protected by Title VI of the Civil Rights Act of 1964. If that is the case, the project proposer should discuss the impacts with the EJ Contact in OES listed at the top of this page.

## **Documentation for Class I Action (Environmental Impact Statements EIS)**

### **Scoping Documents**

Identify any minority populations and/or low-income populations that lie within the area where the project has potential for human health or environmental effects. Assess the potential for any significant impacts. Early coordination

with city, county, or other local governments to assist in identifying populations and potential for adverse impacts is advised. If potentially affected populations are identified, work with stakeholders to identify appropriate outreach efforts to connect with the affected populations. Consider the potential for impacts in the screening of alternatives during the scoping process. Report relevant information in the Draft and Final Scoping Decision documents.

### **Draft Environmental Impact Statement (DEIS)**

Discuss any possible adverse impacts to minority populations and/or low-income populations, and any potential measures that could be taken to alleviate or minimize these impacts for each alternative with impacts. Make of preliminary finding as to whether or not the alternatives under consideration would result in a disproportionate impact to EJ populations.

### **Final Environmental Impact Statement (FEIS)**

Summarize the EJ information of the DEIS (if applicable), limiting the discussion to those facts pertinent to the selected alternative, updated to reflect the impacts of design refinements. Include what measures will be taken to mitigate these impacts. Include the formal Environmental Justice finding.

### **Documentation for Class II Action (Categorical Exclusions CE)**

An environmental justice analysis is required anytime there is a residential or business relocation. Identify any minority populations and/or low-income populations that lie within the area where the project has potential for human health or environmental effects. Discuss any possible adverse impacts and any proposed measures to be taken to alleviate or minimize the impacts. Include the formal Environmental Justice finding.

Early coordination with city, county, or other local governments to assist in identifying populations and potential for adverse impacts is advised. If potentially affected populations are identified, work with stakeholders to identify appropriate outreach efforts to connect with the affected populations.

### **Documentation for Class III Action (Environmental Assessment EA)**

Identify any minority populations and/or low-income populations that lie within the area where the project has potential for human health or environmental

effects. Discuss any possible adverse impacts to minority populations and/or low-income populations, and any potential measures that may be taken to minimize these impacts. Include the formal Environmental Justice finding. (Also see the early coordination discussion for Class II Actions).

### **Finding Of No Significant Impact (FONSI)**

Include the formal Environmental Justice finding, updated to reflect the impacts of design refinements, and discussion of the measures to be taken that will avoid, minimize and/or mitigate for adverse impacts to the minority populations and/or low-income populations in the request for a FONSI package and the state Negative Declaration.

### **Prepared Statements**

Following is a sample introduction for the Environmental Justice section of project documents.

"Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations, dated February 11, 1994, directed " each federal agency shall 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 in the United States.... The proposed project has federal funding and federal permit requirements and is considered a federal project for purposes of compliance with the Executive Order."

"FHWA Order 6640.23A FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations establishes policies and procedures for the Federal Highway Administration (FHWA) to use in complying with Executive Order 12898. FHWA issued Order 6640.23A on June 14, 2012.

The section should then report the information developed in the steps described above in this guidance. It should conclude with the EJ finding.

Following is a sample EJ Finding that can be used to conclude EJ sections for projects that do not have disproportionately high and adverse EJ impacts:

### **Environmental Justice Finding**

*The purpose of Executive Order 12898 is to identify, address, and avoid disproportionately high and adverse human health or environmental effects on minority and low-income populations.*

*There are no readily identifiable minority or low-income populations affected by the project. [BRIEFLY RECAP THE BASIS FOR THIS CONCLUSION, I.E. EITHER THERE ARE NO IDENTIFIED POPULATIONS AT ALL OR ANY IDENTIFIED POPULATIONS WILL NOT BE AFFECTED BY THE PROJECT.]*

-OR-

*Readily identifiable minority and/or low-income populations have been identified in the project area. However, after considering mitigation, off-setting benefit, and public engagement, the adverse effects of the project will not be predominately borne by a minority or low-income population, nor will they be appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority or non-low-income population. [BRIEFLY RECAP THE BASIS FOR THIS CONCLUSION.]*

*Therefore, the proposed action will not have disproportionately high or adverse human health or environmental effects on any minority population or low-income population.*

Following is a sample EJ Finding that can be used to conclude EJ sections for projects that do have disproportionately high and adverse EJ impacts:

### *Environmental Justice Finding*

*The purpose of Executive Order 12898 is to identify, address, and avoid disproportionately high and adverse human health or environmental effects on minority and low-income populations.*

*Readily identifiable minority or low-income populations are affected by the project. After considering mitigation, off-setting benefit, and public engagement, the adverse effects of the project will be predominately borne by a minority population and/or a low-income population, OR will they be 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. [TAILOR STATEMENT AS NEEDED; BRIEFLY RECAP THE BASIS FOR THIS CONCLUSION.] Additional project refinements and mitigation measures to avoid or reduce the effects were considered but were found to not be practicable because [DESCRIBE WHY.]*

*Therefore, the proposed action will have disproportionately high or adverse human health or environmental effects a minority population AND/OR low-income population.*

## Agencies Involved

Agency(s)	When they are involved and why
<b>MnDOT</b>	Assess the benefits and adverse effects of transportation activities among different population groups and use that capability to develop appropriate procedures, goals, and performance measures in all aspects of their mission.
<b>FHWA</b>	Involved with all projects that use federal transportation funding, require an Interstate Access Request (IAR) or tie to an FHWA undertaking, including approvals that MnDOT takes on FHWA's behalf. Work with MnDOT to ensure Title VI and environmental justice considerations are integral to all surface transportation activities.

## Legal Basis

Description	Code
Federal Actions To Address Environmental Justice In Minority and Low-Income Populations	<a href="#">Executive Order 12898</a>
FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations	<a href="#">DOT Order 5610.2(a)</a>

## Guidelines/Regulations

[FHWA Environmental Justice Web site](#) Also see "Legal Basis" above.

[FHWA Reference Guide - 2015](#)

## Glossary

These definitions are from DOT Order on Environmental Justice (Order 5610.2(a)).

**DOT** means the Office of the Secretary, DOT operating administrations, and all other DOT components.

**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. U.S.DOT and FHWA use the Department of Health and Human Services poverty guidelines. The guidelines are updated annually and available [online](#).

**Minority** includes Black or African American, Hispanic, Asian American, American Indian/Alaskan Native and Native Hawaiian or Pacific Islander.

**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.

**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 DOT programs, policies, or activities.

**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.

**Programs, policies, and/or activities** mean all projects, programs, policies, and activities that affect human 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 to be a single project, program, policy or activity for purposes of E.O. 12898.

**Regulations and guidance** means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.