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# Brandywine/TB, Southern Region Neighborhood Coalition

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## TITLE VI REQUIREMENTS AND GUIDELINES: State and Local Agencies responsibilities

- Brandywine EPA Title VI Active Complaint

### ENVIRONMENTAL JUSTICE OVERVIEW

#### Community of Color 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.

Because the nondiscrimination requirements of Title VI extend to all programs and activities of State and Local governments and their respective sub-recipients and contractors, the concepts of environmental justice apply to all projects, including those that do not involve Federal-aid funds.

**A. PURPOSE.** The purpose of this Memorandum is to provide information to recipients of Federal Transit Administration (FTA) financial assistance with guidance and instructions necessary to carry out U.S. Department of Transportation ("DOT" or "the Department") Title VI regulations (49 CFR part 21) and to integrate into their programs and activities considerations expressed in the Department's Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient ("LEP") Persons (70 FR 74087, December 14, 2005).

#### B. ENVIRONMENTAL JUSTICE.

- Executive Order 12898, "Federal Actions to Address" "Environmental Justice in Minority Populations and Low-Income Populations," was signed by President Clinton on February 11, 1994. Subsequent to issuance of the Executive Order, the U.S. Department of Transportation (DOT) issued a DOT Order for implementing the Executive Order on environmental justice (EJ). The DOT Order (Order 5610.2(a), "Action to Address Environmental Justice in Minority Populations and Low-Income Populations," 77 "FR 27534, May 10, 2012) describes the process the Department and its modal administrations (including FTA) will use to incorporate EJ principles into programs, policies, and activities.
- "The Presidential memorandum accompanying EO 12898 identified Title VI of the Civil Rights Act of 1964 as one of several Federal laws that should be applied "to prevent minority communities and low-income communities from being subject to disproportionately high and adverse environmental effects." According to the U.S. Department of Justice, "... the core tenet of environmental justice—that development and urban renewal benefitting a community as a whole not be unjustifiably purchased through the disproportionate allocation of its adverse environmental and health burdens on the community's minority—flows directly from the underlying principle of Title VI itself.
- "Title VI prohibits discrimination by recipients of Federal financial assistance on the basis of race, color, and national origin, including the denial of meaningful access for limited English proficient (LEP) persons. Under DOT's Title VI regulations, recipients of Federal financial assistance are prohibited from, among other things, using "criteria or methods of administering its program which have the effect of subjecting individuals to discrimination based on their race, color, or national origin." For example, facially neutral policies or practices that result in discriminatory effects or disparate impacts violate DOT's Title VI regulations, unless the recipient can show the policies or practices are substantially justified and there is no less discriminatory alternative. In addition, Title VI and DOT regulations prohibit recipients from intentionally discriminating against people on the basis of race, color, and national origin.

- d. The overlap between the statutory obligation placed on Federal agencies under Title VI to ensure nondiscrimination in federally assisted programs administered by State and local entities, and the administrative directive to Federal agencies under the Executive Order to address disproportionate adverse impacts of Federal activities on minority and low-income populations explain why Title VI and environmental justice are often paired. The clear objective of the Executive Order and Presidential memorandum is to ensure that Federal agencies promote and enforce nondiscrimination as one way of achieving the overarching objective of environmental justice—fair distribution of the adverse impacts of, or burdens associated with, Federal programs, policies, and activities.
- e. It is encouraged a proactive approach to the implementation of environmental justice principles in its programs, policies, and activities. This is reflected in the DOT Order on Environmental Justice (DOT Order 5610.2(a)) which, consistent with E.O. 12898, sets forth a process by which DOT and its Operating Administrations, including FTA, will integrate the goals of environmental justice into their existing operations to ensure that consideration of EJ principles is an integral part of all programs, policies, and activities, from the inception of the planning process through to project completion, operations, and evaluation.
- f. “Environmental Justice Policy Guidance for Federal Transit Administration Recipients,” in order to provide recipients with a distinct framework to assist them as they integrate principles of environmental justice into their public decision-making processes. As recipientants of Federal Funds expects need to properly incorporate both Title VI and environmental justice into their public decision-making.
- g. Because of the connection between EJ and Title VI, the consideration of EJ principles has sometimes been confused with the requirements of Title VI. Here is a summary of the key differences between the two:

**WE NEED TO TAKE ACTION ...**

*to protect a community that you live, in having a quality of life. Over...*

Key Aspects of the Authorities	Title VI	Environmental Justice
<b>What is the basis for the authority?</b>	Title VI is a Federal statute and provides that no person shall, on the grounds 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.	The basis for addressing environmental justice is an Executive Order: EO 12898 directs each Federal agency to “make achieving environmental justice part of its mission.” The EO is intended to improve the internal management of the executive branch and not to create legal rights enforceable by a party against the U.S.
<b>What is the purpose of the authority?</b>	Title VI prohibits recipients of Federal financial assistance (e.g., states, local governments, transit providers) from discriminating on the basis of race, color, or national origin in their programs or activities, and it obligates Federal-funding agencies to enforce compliance.	EO 12898 calls on each Federal agency to achieve "environmental justice...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...."

Key Aspects of the Authorities	Title VI	Environmental Justice
<b>To whom does the authority apply?</b>	Title VI is a Federal law that applies to recipients and subrecipients of Federal financial assistance (e.g., States, local governments, transit providers), and not to DOT itself.	EO 12898 applies to Federal agency actions, including DOT's and FTA's actions. Title VI is one of the tools used by Federal agencies to implement this directive.
<b>What does the authority require, and of whom?</b>	Under Title VI, DOT has the responsibility to provide oversight of recipients and to enforce their compliance with Title VI, to ensure that recipients do not use DOT funds to subsidize discrimination based on race, color, or national origin.	EO 12898 is a directive from the President of the United States to Federal agencies intended to improve the internal management of the Federal government. DOT issued its own Order implementing EO 12898, and updated the Order in May 2012 (Order 5610.2(a)).
<b>What does the authority say with regard to negative effects or impacts?</b>	In accordance with 49 CFR part 21 and Title VI case law, if an otherwise facially neutral program, policy, or activity will have a discriminatory impact on minority populations, that program, policy, or activity may only be carried out if (1) the recipient can demonstrate a substantial legitimate justification for the program, policy, or activity; (2) there are no comparably effective alternative practices that would result in less-disparate impacts; and (3) the justification for the program, policy or activity is not a pretext for discrimination.	In accordance with EO 12898 and the DOT Order on EJ, if a DOT program, policy, or activity will have a disproportionately high and adverse effect on minority or low-income populations, that program, policy, or activity may only be carried out if further mitigation measures or alternatives that would 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.
<b>Does the authority create any rights or remedies?</b>	Title VI allows persons alleging discrimination based on race, color, or national origin by recipients of Federal funds to file administrative complaints with the Federal departments and agencies that provide financial assistance. Persons alleging intentional discrimination (i.e., disparate treatment) may bring a court action seeking to enforce Title VI but cannot do so with regard to allegations of discrimination based on agency disparate impact regulations. Disparate impact claims may be filed with the Federal agency.	EO 12898 establishes the Executive Branch policy on environmental justice; it is not enforceable in court and does not create any rights or remedies

- 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.
9. 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

## WHAT YOU NEED TO KNOW ABOUT...

### Title VI of the Civil Rights Act of 1964

Thus, while Title VI is one tool for agencies to use to achieve the principles of environmental justice, it is important to recognize that Title VI imposes statutory and regulatory requirements that are broader in scope than environmental justice. Recipients are cautioned that while there may be overlap, engaging in an EJ analysis under Federal provisions will not satisfy all of the Title VI requirements. Similarly, a Title VI analysis will be necessarily satisfy environmental justice, given that Title VI does not include low-income populations. Moreover, Title VI applies to all activities of Federal recipients, not solely those which have disproportionately high and adverse human health or environmental effects on EJ populations.

For example, while a bus rehabilitation project may not impose disproportionately high or adverse health or environmental effects on minority or low-income populations, the use of those buses subsequent to the rehabilitation may be subject to a Title VI analysis to ensure that vehicles assigned to a particular area do not result in a disparate impact on the basis of race, color, or national origin (for which truck diesel traffic will). In addition, if there are substantive changes to the service levels for which the rehabilitated or other buses will be used, i.e., the vehicles are deployed in such a way that the nature and quantity and effect on the environment and quality of life in a particular area is changed, then an equity analysis must be conducted to determine whether this change results in a disparate impact on the basis of race, color, or national origin. The requirements for that particular analysis are part of the compliance determinations made for Federal funds recipients whether state or local for which this does apply.