

TO: Rural Development State Directors

ATTN: Rural Development Managers
Community Development Managers
Program Directors
State Environmental Coordinators
State Civil Rights Managers/Coordinators

FROM: Russell T. Davis (*Signed by Russell T. Davis*)
Administrator
Housing and Community Facilities Programs

Ben Anderson (*Signed by Ben Anderson*)
Administrator
Business and Cooperative Programs

James M. Andrew (*Signed by James M. Andrew*)
Administrator
Utilities Programs

SUBJECT: Environmental Justice and Civil Rights Impact Analysis

PURPOSE/INTENDED OUTCOME:

The purpose of this Administrative Notice (AN) is to clarify the procedures used in complying with Executive Order (EO) 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, issued February 11, 1994, RD Instruction 7 CFR Part 1940-G and RUS 7 CFR Part 1794. For further information on environmental justice refer to Departmental Regulation 5600-2, *Environmental Justice*, dated December 15, 1997, which this AN supplements.

This guidance is not intended to change the requirements concerning civil rights impact analyses for any Agency administrative actions. For guidance concerning those actions refer to Departmental Regulation 4300-4, *Civil Rights Impact Analysis*, dated May 30, 2003, and RD Instruction 2006-P.

EXPIRATION DATE:
October 31, 2009

FILING INSTRUCTIONS:
RD Instructions 1940-G and 2006-P

COMPARISON WITH PREVIOUS AN:

This is a reissuance of RD AN 4297 (2006-P), which expired June 30, 2008. This AN also clarifies the relationship and use of the National Environmental Policy Act (NEPA) of 1969 and Title VI of the Civil Rights Act of 1964 in implementing EO 12898.

Environmental Justice (EJ) principles will be incorporated into Rural Development programs, activities, and services through existing requirements, primarily NEPA and Title VI of the Civil Rights Act of 1964. Rural Development, to the greatest extent practicable, will consider environmental justice principles in its decision-making using its existing NEPA environmental review and Civil Rights Impact Analysis processes.

IMPLEMENTATION RESPONSIBILITIES:

Executive Order 12898, *Environmental Justice*, requires each Federal agency to identify and address disproportionately high and adverse human health or environmental effects including social and economic effects of its programs, policies, and activities on minority and low-income populations. In his Memorandum for the Heads of All Departments and Agencies signed on February 11, 1994, Former President Clinton indicated that the purpose of this separate memorandum was to underscore certain provisions of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment. It was therefore directed that all Department and Agency heads take the necessary steps to ensure that each Federal agency analyze the environmental effects of Federal actions including effects on minority communities and low-income communities when such analysis is required by NEPA, 42 U.S.C. section 4321 et seq. In addition, each Federal agency is to provide opportunities for community input in the NEPA process, including identification of potential effects and mitigation measures in consultation with affected communities and improvement in accessing meetings, crucial documents, and notices. Compliance with both the EO and the President's directive is an ongoing responsibility and Rural Development will monitor its programs, activities, and services to ensure that disproportionately high and adverse effects on minority and low income populations are avoided, minimized, or mitigated consistent with its existing environmental regulations, EO 12898, and this AN.

Title VI of the Civil Rights Act of 1964 requires each Federal agency to ensure that no person, on the basis 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. Proposed actions, as defined by Departmental Regulation 4300-4 and RD Instruction 2006-P, include a wide range of agency programs, activities, and services, including, but not limited to, grants, contracts, loans, prepayments, distributions of allocations, or project approvals or disapprovals. Rural Development Instruction 2006-P requires the completions of Form RD 2006-38, Rural Development Environmental Justice /Civil Rights Impact Analysis (CRIA) and Certification, to assure that the major civil rights impacts of proposed actions are

identified and the potential for negative effects are addressed before approval and implementation.

Completion and certification of Form RD 2006-38 will fulfill Rural Development compliance with EO 12898, RD Instruction 2006-P, and Departmental Regulation 5600-2.

ADDITIONAL INFORMATION:

It is Rural Development policy to actively administer and monitor its decision-making process to ensure that nondiscrimination is an integral part of its programs, activities, and services. Rural Development programs, activities, and services that have the potential for a disproportionately high and adverse effect on human health or the environment should include explicit consideration of their effects on minority and low-income populations. Procedures are necessary to provide meaningful opportunities for public involvement by members of minority and low-income populations during the development of environmental review documents that include identification of potential effects, alternatives (if necessary), and mitigation measures to reduce any disproportionate effect on minority and low-income populations. Attachment 1 provides a simplified look at those procedures necessary to complete a successful Environmental Justice analysis and provide meaningful public involvement.

The environmental justice and Civil Rights Impact findings must be certified on RD 2006-38 and attached to all NEPA environmental review documents, prepared pursuant to 7 CFR Part 1940-G and 7 CFR Part 1794. The only exceptions are for individual Single Family Housing grants and/or loans (direct or guaranteed) and servicing actions (transfer, assumption, subordination, etc.) unless concerns of environmental justice have been identified or an environmental justice complaint has been made.

When conducting Environmental Justice Reviews, Pre-Compliance Reviews, and Civil Rights Impact Analyses, the following information should be considered where relevant, appropriate, or practical:

- (1) Population affected by race, color, or national origin and income level;
- (2) Proposed steps to guard against disproportionately high and adverse effects on persons based on race, color, or national origin.

Attachment 2 provides other helpful information to consider when conducting reviews and analyses. Upon completion of Environmental Justice Reviews and Civil Rights Impact Analyses, the properly authorized and delegated preparer will submit to the Certifying Official supporting documentation on Form RD 2006-38, such as a map of the project area showing the location of minority and low-income populations/communities, delineation of the Applicant's proposed project site, and the footprint area of where adverse impacts will occur. A copy of the Environmental Protection Agency's (EPA)

EnviroMapper EJ analysis with the above areas superimposed on it is one form of acceptable documentation.

In addition to identifying and addressing disproportionately high and adverse human health effects on minority and low-income populations, Rural Development must ensure that minority and low-income communities have adequate access to public information. This may require special outreach efforts be used prior to approving.

Whenever environmental justice or civil rights impact concerns are raised by the public, the concerns must be included in, and addressed by, the environmental analysis. As needed, consultation must occur with other agencies or experts in a particular field to address those concerns. Any consultation and mitigating measures that are recommended or taken must be made a part of the documentation.

For loan and grant approvals, the loan processing or servicing official is the Certifying Official for Environmental Justice and Civil Rights Impact Analyses. The State Civil Rights Manager/Coordinator will assist the loan official on an as-needed basis and will provide advice and guidance to the State Director and field staff. For Rural Development Electric and Telecommunications Programs, the Assistant Administrator, or official designated to certify on his or her behalf, is the Certifying Official.

Employees who will be conducting Environmental Justice or Civil Rights Impact Analyses and completing the certification form must be familiar with RD Instruction 2006-P and this AN. Any questions should be directed to the State Civil Rights Manager/Coordinator or State Environmental Coordinator (SEC).

Further technical advice and assistance is available from the National Office. Civil Rights questions should be referred to Carlton L. Lewis of the Civil Rights Staff at (202) 692-0097 (Voice), or 692-0107 (TDD). Environmental justice questions should be referred to Donna M. Meyer for Housing and Community Facilities and Business and Cooperative programs at (202) 720-1827 or Richard Fristik for Utilities Programs at (202) 720-5093, as appropriate.

Attachments

Environmental Justice Analysis – Step-by-Step Flowchart

STEP 1:

Determine potential for Environmental Justice issues
If no adverse environmental or human health effects proceed with proposal

STEP 2:

If adverse environmental or human health effects
define project area;
Conduct demographic analysis including EJ populations

STEP 3:

Identify interested and potentially affected parties
If required, develop public outreach that identifies interaction with specific EJ
communities

STEP 4:

Identify potential impacts
Map impact footprint
Refine demographic/EJ analysis to focus on the project impact area using census
data/other data sources
If impact is not disproportionately high and adverse, then declare no disproportionate
effect
If impact is disproportionately high and adverse, then conduct public interaction to
confirm and involve the public
Identify alternatives or determine mitigation

STEP 5:

Document methodology and finding(s)
Determine/describe if EJ populations are disproportionately impacted
Describe impacts and mitigation in NEPA environmental review document

Commonly asked questions about Environmental Justice and Civil Rights Impact Analyses

1. What is environmental justice?

Environmental justice is the fair treatment and meaningful involvement of people of all races, cultures, and incomes, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The goal of environmental justice is for Federal agency decision-makers to identify impacts that are disproportionately high and adverse with respect to minority and low-income populations and identify alternatives that will avoid or mitigate those impacts.

2. Does an Environmental Justice and Civil Rights Impact Analysis have to be conducted for each and every grant or loan under all Rural Development programs?

All Rural Development programs that involve grants, contracts, loans (direct or guaranteed), prepayments, distributions of allocations, or project approvals or disapprovals proposed will require an Environmental Justice and Civil Rights Impact Analysis, and the analysis must be documented utilizing Form RD 2006-38, Rural Development Environmental Justice (EJ)/Civil Rights Impact Analysis (CRIA) and Certification. The only exceptions are Single Family Housing loans (direct or guaranteed). In addition, an analysis is not required for a servicing action (transfer, assumption, subordination, etc.) unless a civil rights concern with respect to environmental justice has been identified or unless an environmental justice complaint has been made.

3. How can minority and low-income populations be identified and defined?

Identifying and defining minority and low-income populations for an Environmental Justice and Civil Rights Impact Analysis can be achieved in the following ways:

(a) Define the affected area. Delineate the area affected by the Applicant's proposal. The affected area is defined as the area that the proposal will or may have an affect on. Care should be taken that the geographic area of analysis is chosen so as not to artificially dilute or inflate the affected minority populations. An area analyzed for environmental justice may extend beyond the typical area of potential effect of an environmental review in certain instances where the area may be used for spiritual or subsistence purposes by Native American communities.

(b) Obtain U.S. Bureau of Census demographic data to determine the minority composition of the affected area. A minority population may be defined as any readily identifiable group of minority persons who live in geographic proximity to the affected area. This definition includes, if circumstances warrant, geographically dispersed or

transient persons who will be affected by the Applicant's proposal. Minority populations often occur in small pockets within a larger community. Ensure that minority populations are not missed because they live within geographic areas that do not align with census data. Some minority populations are transient and may not be accounted for in census data. These communities include seasonal and/or migrant farm workers.

Sources that can provide information regarding small pockets of minorities and transient minority populations can be obtained through local churches, state and local colleges, community centers, and expanded public outreach efforts.

(c) Obtain U.S. Bureau of Census demographic data to determine the number of individuals within the affected area whose median household income is at or below the U.S. Department of Health and Human Service's (HHS) poverty guidelines. Low-income populations in an affected area can be identified by using the annual statistical poverty thresholds from the U.S. Census Bureau on Income and Poverty (<http://www.census.gov>). These income data are available in several formats. Local sources of information such as local colleges and local or State departments of economic development can also be used to augment census data.

(d) Use of the EPA's on-line EnviroMapper can provide access to a wealth of environmental information. It is a powerful tool used to map various types of environmental information, including air emissions, surface water features, toxic releases, hazardous wastes, Superfund Sites, and Environmental Justice Geographic Assessment Information. Selected demographic features that can be accessed within the Environmental Justice Geographic Assessment Tool include, but are not limited to, persons per square mile; per capita income; percent minority; percent below poverty; percent education < 12th grade; percent that speak English well; and percentage of renters. Information can be viewed by adding several features to the map that include major roads, railroads, churches, hospitals, and schools, etc. A geographic area of interest is selected by inserting a zip code to start the map construction. Maps can be generated at the national, state, and county levels and then printed. Visit <http://www.epa.gov/enviro/html/em/> for further information.

Typically, census data alone will not be sufficient to identify pockets of minority or low-income populations. A combination of methods should be utilized.

4. In light of environmental justice, what is an adverse effect or impact?

An adverse effect is used to describe the entire compendium of significant individual or cumulative human health or environmental effects that may result from a Rural Development action. Examples of adverse effects for environmental justice concerns include, but are not limited to:

- (a) air, noise, soil, and water pollution or contamination;
- (b) destruction or disruption of man-made or natural resources;
- (c) destruction or diminution of aesthetic values;
- (d) impacts to religious or cultural sites;
- (e) destruction or disruption of community cohesion or a community's economic vitality (change in land use);

- (f) displacement of persons, businesses, farms, or nonprofit organizations;
- (g) increased traffic congestion, isolation, exclusion, or separation of minority or low-income individuals within a community or from the broader community; and
- (h) denial of, reduction in, or significant delay in the receipt of benefits of RD programs, activities, or services.

Some examples of an adverse effect include: (1) placing a multi-family housing project adjacent to railroad tracks, next to a farm that routinely crop dusts, or within a 100- or 500-year floodplain; (2) placing a community center or health care facility across town away from a minority or low-income population with no accessibility to public transportation; (3) locating a waste water treatment facility or landfill in or near a minority or low-income area; (4) not extending water or sewer lines to a minority or low-income area; and (5) placing a wind turbine, telecommunications tower, or anaerobic digester in a minority or low-income neighborhood.

5. What is a disproportionately high and adverse effect on minority or low-income populations?

A disproportionately high and adverse effect is defined as an impact predominately borne by a minority or low-income population, is suffered by the minority and/or low-income population, and is appreciably more severe or greater in magnitude than the adverse effect that would be experienced by the non-minority or non low-income population.

6. How can disproportionately high and/or adverse environmental effects be determined for environmental justice concerns?

This is usually answered by asking and answering the following questions:

- (a) Is there or will there be a specific or general impact to the natural or physical environment that significantly and adversely impacts an environmental justice population or Native American Tribe?
- (b) Will the environmental effects occur or could they occur within an affected area or a Native American tribal community and result in cumulative or multiple adverse exposures from environmental hazards?

7. How can environmental justice requirements be integrated into the Rural Development NEPA environmental review process?

Identifying and defining environmental justice populations in the community of an Applicant's proposal are the first step to integrating environmental justice requirements into the Rural Development environmental review process. The environmental review preparer should ask themselves two questions in making a determination on environmental justice:

(a) Does the potentially affected area include minority and/or low-income populations?

(b) Are the environmental impacts likely to fall disproportionately on minority or low-income members of the affected area or Native American tribal resources?

If the answer is "no" to both of these questions, then this is documented on Form RD 2006-38, which will be attached to the environmental review forms. However, if the answer is yes to either, then environmental justice requirements need to be incorporated into the Housing and Community Facilities and Business Programs environmental review analyses (CATEX, Class I and Class II EAs) and documented in the project files. For Utilities Program proposals environmental justice issues are discussed in Section 3.15 of the ER. To ensure environmental justice is fully integrated into the Rural Development environmental review analysis, it is important to identify resources within the affected area that may be impacted by the Applicant's proposal.

8. Who should actually be conducting the Environmental Justice and Civil Rights Impact Analysis and signing the Certification (Form RD 2006-38)?

In most cases, the person that is processing the grant or loan application is the person (1) most familiar with the community, (2) responsible for conducting an environmental review, and (3) already trained to conduct civil rights compliance reviews. Therefore, the loan processing or servicing official will conduct the analysis and sign the form.

The State Civil Rights Manager/Coordinator will monitor and evaluate a sufficient number of Civil Rights Impact Analyses to determine whether they are being properly completed.

9. What factors should be included and where and how should they be documented?

Factors that should be included in an environmental justice analysis include, but are not limited to, the following:

- (a) demographic factors;
- (b) socioeconomic factors;
- (c) human health risk and ecological risk assessments;
- (d) maps of the affected area showing the location of minority and low-income populations, any existing human health hazards (railroad tracks, waste dumps, treatment facilities, industrial areas, etc.), and location of the Applicant's proposal; and
- (e) site and/or design alternatives.

As indicated above, applicable documentation will be attached to Form RD 2006-38, which will then be included with the environmental review document.

10. What if potential adverse impacts are identified?

The State Civil Rights Manager/Coordinator and the State Environmental Coordinator must be consulted. Rural Development staff and the Applicant must be prepared to discuss alternative sites and any other measures that might be available to mitigate the potential impacts on minority or low-income populations. If no alternative sites are available or if there are no reasonable methods of mitigating the impact, the State Civil Rights Manager/Coordinator will consult with the National Office Civil Rights staff before the Applicant's proposal is approved and Rural Development's action implemented. (Note: Even though potential adverse impacts have been identified, it does not necessarily mean that the project cannot be approved and implemented.) Any mitigation measure should focus on true mitigation of the impact rather than merely shifting the impact from one population to another. 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 should be taken into account. If mitigation measures are required to reduce disproportionately high and adverse effects, a commitment to these measures must be documented in the Finding of No Significant Impact (FONSI), the Record of Decision (ROD) as well as the Letter of Conditions, or Conditional Commitment.