

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

Washington, D.C. 20250

July 15, 2011

DEPARTMENTAL REGULATION 1071-001

**MEMORANDUM OF UNDERSTANDING ON
ENVIRONMENTAL JUSTICE AND EXECUTIVE ORDER 12898**

WHEREAS, on February 11, 1994, the President signed Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (“Executive Order 12898” or “Order”), and issued an accompanying Presidential Memorandum (references to this Order herein also generally include this Memorandum), and

WHEREAS, Executive Order 12898 applies to the following agencies: the Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of Transportation, and the Environmental Protection Agency. The Order applies to the following offices in the Executive Office of the President: Office of Management and Budget, Office of Science and Technology Policy, Office of the Deputy Assistant to the President for Environmental Policy, Office of the Assistant to the President for Domestic Policy, National Economic Council, and Council of Economic Advisers. The Order also applies to other agencies and offices as the President may designate, Executive Order 12898, sec. 1-102, 6-604 (Feb. 11, 1994). The agencies and offices that are listed in section 1-102 or designated by the President under section 6-604 of the Order are referred to herein as “covered agencies” and “covered offices,” respectively, and

WHEREAS, Executive Order 12898 requires each covered 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,” *id.*, sec. 1-101, and

WHEREAS, each responsibility of a covered agency under Executive Order 12898 “shall apply equally to Native American programs,” *id.*, sec. 6-606, and

WHEREAS, Executive Order 12898 establishes an Interagency Working Group on Environmental Justice (“Interagency Working Group”) consisting of the heads of the agencies

and offices listed above and any other officials designated by the President, or their designees, *id.*, sec. 1-102(a), and

WHEREAS, Executive Order 12898 directs the Interagency Working Group to assist the covered agencies by providing guidance and serving as a clearinghouse, *id.*, sec. 1-102(b), and

WHEREAS, Executive Order 12898, as amended, required that the then-covered agencies submit to the Interagency Working Group by March 24, 1995 an agencywide environmental justice strategy to carry out the Order, *id.*, sec. 1-103(e), as amended by Executive Order 12948 (Jan. 30, 1995), and

WHEREAS, Executive Order 12898 further required, within two years of issuance, that the then-covered agencies provide to the Interagency Working Group a progress report on implementation of the agency's environmental justice strategy, Executive Order 12898, sec. 1-103(f), and

WHEREAS, Executive Order 12898 requires that covered agencies conduct internal reviews and take such other steps as may be necessary to monitor compliance with the Executive Order, *id.*, sec. 6-601, and provide additional periodic reports to the Interagency Working Group as requested by the Group, *id.*, sec. 1-103(g), and

WHEREAS, Executive Order 12898 provides that a member of the public may submit comments and recommendations to a covered agency relating to the incorporation of environmental justice principles into the agency's programs or policies and provides that the agency must convey such recommendations to the Interagency Working Group, *id.*, sec. 5-5(a), and

WHEREAS, the covered agencies and the Interagency Working Group remain committed to full ongoing compliance with Executive Order 12898, and

WHEREAS, Executive Order 12898 does not preclude other agencies from agreeing to carry out the Order and to participate in the activities of the Interagency Working Group as appropriate, and as consistent with their respective statutory authorities and the Order;

NOW THEREFORE, the undersigned agencies (referred to herein as "Federal agencies") hereby agree:

I. Purposes

- A. To declare the continued importance of identifying and addressing environmental justice considerations in agency programs, policies, and activities as provided in Executive Order 12898, including as to agencies not already covered by the Order.

- B. To renew the process under Executive Order 12898 for agencies to provide environmental justice strategies and implementation progress reports.
- C. To establish structures and procedures to ensure that the Interagency Working Group operates effectively and efficiently.
- D. To identify particular areas of focus to be included in agency environmental justice efforts.

II. Authorities

This Memorandum of Understanding on Environmental Justice and Executive Order 12898 (“Memorandum of Understanding” or “MOU”) is in furtherance of the Order including the authorities cited therein. Federal agencies shall implement this Memorandum of Understanding in compliance with, and to the extent permitted by, applicable law.

III. Actions and Responsibilities

- A. Adoption of Charter.** This Memorandum of Understanding adopts the Charter for Interagency Working Group on Environmental Justice (“Charter”) set forth in Attachment A. Each Federal agency agrees to the framework, procedures, and responsibilities identified in the Charter and agrees to provide the Interagency Working Group with the agency’s designated Senior Leadership Representative and Senior Staff Representative by September 30, 2011.
- B. Participation of Other Federal Agencies.** While Executive Order 12898 applies to covered agencies, the Order does not preclude other agencies from agreeing to undertake the commitments in the Order. Likewise, while the Executive Order identifies the composition of the Interagency Working Group, other agencies may, to the extent consistent with the Order, participate in activities of the Interagency Working Group as appropriate. An agency that is either not a covered agency or not represented on the Interagency Working Group, or both, may become a “Participating Agency” by signing this Memorandum of Understanding. To the extent it is not already a covered agency, a Participating Agency agrees to carry out this Memorandum of Understanding as well as Executive Order 12898, and to the extent it is not already represented on the Interagency Working Group, a Participating Agency agrees to participate in activities of the Interagency Working Group as appropriate. The term “Federal agency” herein refers to covered agencies that sign this MOU and to Participating Agencies that sign this MOU.
- C. Federal Agency Environmental Justice Strategies; Public Input; Annual Reporting.**

- a. **Environmental Justice Strategy.** By September 30, 2011, after reviewing and updating an existing environmental justice strategy where applicable and as the agency deems appropriate, each Federal agency will post its current “Environmental Justice Strategy” on its public webpage and provide the Interagency Working Group with a link to the webpage. If the agency posts and provides a draft Environmental Justice Strategy, then it will post and provide its final Environmental Justice Strategy by February 11, 2012. Thereafter, each Federal agency will periodically review and update its Environmental Justice Strategy as it deems appropriate and will keep its current Environmental Justice Strategy posted with a link provided to the Interagency Working Group.
 - b. **Public Input.** Consistent with Executive Order 12898, section 5-5, each Federal agency will ensure that meaningful opportunities exist for the public to submit comments and recommendations relating to the agency’s Environmental Justice Strategy, Annual Implementation Progress Reports, and ongoing efforts to incorporate environmental justice principles into its programs, policies and activities.
 - c. **Annual Implementation Progress Report.** By the February 11 anniversary of Executive Order 12898 each year, beginning in 2012, each Federal agency will provide a concise report on progress during the previous fiscal year in carrying out the agency’s Environmental Justice Strategy and Executive Order 12898. This “Annual Implementation Progress Report” will include performance measures as deemed appropriate by the agency. The report will describe participation in interagency collaboration. It will include responses to recommendations submitted by members of the public to the agency concerning the agency’s Environmental Justice Strategy and its implementation of the Executive Order. It will include any updates or revisions to the agency’s Environmental Justice Strategy, including those resulting from public comment. The agency will post its Annual Implementation Progress Report on its public webpage and provide the Interagency Working Group with a link to the webpage.
- D. Areas of Focus.** In its Environmental Justice Strategy, Annual Implementation Progress Reports and other efforts, each Federal agency will identify and address, as appropriate, any disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations, including but not limited to, as appropriate for its mission, in the following areas: (1) implementation of the National Environmental Policy Act; (2) implementation of Title VI of the Civil Rights Act of 1964, as amended; (3) impacts from climate change; and (4) impacts from commercial transportation and supporting infrastructure (“goods

movement”). These efforts will include interagency collaboration. At least every three (3) years, the Interagency Working Group will, based in part on public recommendations identified in Annual Implementation Progress Reports, identify important areas for Federal agencies to consider and address, as appropriate, in environmental justice strategies, annual implementation progress reports and other efforts.

IV. Miscellaneous

- A. Parties, Effective Date, Amendment.** This MOU becomes effective for a Federal agency when it signs the MOU. An agency may sign the MOU at any time. The MOU may be amended by written agreement of the then-current signatory Federal agencies.
- B. Applicable Law.** Nothing in this MOU shall be construed to impair or otherwise affect authority granted by law to, or responsibility imposed by law upon, an agency, or the head thereof, or the status of that agency within the Federal Government. This MOU shall be implemented consistent with applicable law and subject to the availability of appropriations.
- C. Fiscal.** This MOU is not a fiscal or financial obligation. It does not obligate a Federal agency to expend, exchange or reimburse funds, services or supplies, or to transfer or receive anything of financial or other value.
- D. Internal Management.** This MOU and activities under it relate only to internal procedures and management of the Federal agencies and the Interagency Working Group. They do not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its agencies or other entities, its officers, employees or agents, or any other person.

V. Signatures

- A. Covered Agencies.**

- B. Participating Agencies and Offices.**

ATTACHMENT A

CHARTER FOR INTERAGENCY WORKING GROUP ON ENVIRONMENTAL JUSTICE

On February 11, 1994, the President signed Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (“Executive Order 12898” or “Order”), and issued an accompanying Presidential Memorandum. The Order requires each agency that is covered by the Order 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.” Executive Order 12898, sec. 1-101 (Feb. 11, 1994); *see also id.*, sec. 1-102 and 6-604. The Order establishes an Interagency Working Group on Environmental Justice (“Interagency Working Group”) comprised of the heads of the agencies and offices that are listed in section 1-102 of the Order, and any other government officials designated by the President, or their designees. *Id.*, sec. 1-102. References to the Order herein also generally include the accompanying Presidential Memorandum.

The Memorandum of Understanding on Environmental Justice and Executive Order 12898 issued in 2011 (“MOU”) adopted this Charter for Interagency Working Group on Environmental Justice (“Charter”).

1. Covered Agencies and Covered Offices in Executive Order 12898

Executive Order 12898 provides that the Interagency Working Group includes the heads of the following agencies or their designees: the Department of Agriculture, Department of Commerce, Department of Defense, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of Transportation, and the Environmental Protection Agency. The Interagency Working Group includes the heads of the following offices in the Executive Office of the President or their designees: Office of Management and Budget, Office of Science and Technology Policy; Office of the Deputy Assistant to the President for Environmental Policy, Office of the Assistant to the President for Domestic Policy, National Economic Council, and Council of Economic Advisers. The Interagency Working Group also includes such other Government officials as the President may designate or their designees. *Id.*, sec. 1-102 (Feb. 11, 1994).

The requirements of Executive Order 12898 apply to the above-listed agencies as well as to any other agency designated by the President. *Id.*, sec. 6-604. All such agencies are referred to herein as “covered agencies.” The above-listed offices are referred to herein as “covered offices.”

2. Chair

The Administrator of the U.S. Environmental Protection Agency or designee will serve as convener of the Interagency Working Group (“IWG Chair”) pursuant to section 1-102(a) of the Executive Order.

3. Participating Agencies and Participating Offices

An agency that is not a covered agency can become a “Participating Agency” by signing the MOU and notifying the IWG Chair. The term “Federal agencies” herein refers to covered agencies that sign the MOU and to Participating Agencies that sign the MOU. An office in the Executive Office of the President that is not a covered office can become a “Participating Office” by notifying the IWG Chair. To the extent they are not otherwise represented on the Interagency Working Group, Participating Agencies and Participating Offices participate in the activities of the Interagency Working Group as appropriate and as consistent with Executive Order 12898. To the extent they were not already covered agencies before signing the MOU, Participating Agencies agreed in the MOU to carry out the requirements of Executive Order 12898, to the extent consistent with their statutory authorities, as if they were covered agencies.

4. Council on Environmental Quality

The Council on Environmental Quality is an office in the Executive Office of the President that has notified the IWG Chair of its role as a Participating Office.

5. Agency Representatives

Each Federal agency whose head is listed in section 1-102 as on the Interagency Working Group and each agency represented on the Interagency Working Group by an official designated by the President under section 1-102 will designate a Senior Leadership Representative and Senior Staff Representative to serve as its representatives to the Interagency Working Group in the absence of the agency head or official or other designee of the agency head or official. Each Participating Agency that is not already represented on the Interagency Working Group will also designate a Senior Leadership Representative and Senior Staff Representative to participate in activities of the Interagency Working Group as appropriate and consistent with Executive Order 12898. The Senior Leadership Representative will be a senior level management official at the Deputy Assistant Secretary level or higher, or equivalent. Each Federal agency will provide the names of

these designated Representatives to the IWG Chair and subsequently notify the IWG Chair as changes occur. The role of the Senior Leadership Representative will include conveying input from the agency's head leadership to the Interagency Working Group.

6. Meeting

The Interagency Working Group will meet monthly or as otherwise convened by the IWG Chair. The meetings will generally be held at the offices of the Federal agencies.

7. Public Meetings

The Interagency Working Group will hold a public meeting at least once a year consistent with section 5-5(d) of the Executive Order.

8. Environmental Justice Strategies, Annual Implementation Progress Reports, and Other Material

The IWG Chair will receive Environmental Justice Strategies and Annual Implementation Progress Reports from Federal agencies, and provide public access to them through a public webpage and other means. The IWG Chair will similarly provide public access to the current list of Federal agencies, covered offices, and Participating Offices under the MOU, as well as to other information relevant to the Interagency Working Group.

9. Interagency Collaboration

The Interagency Working Group will serve as a clearinghouse to help identify opportunities for targeted interagency collaboration on environmental justice, and will help facilitate interagency coordination including for research, data collection, and analysis consistent with sections 3-3 and 4-4 of the Executive Order, and for access to information consistent with section 5-5 of the Order. The interagency coordination should include regional and branch offices of Federal agencies. The Interagency Working Group will facilitate development of interagency model projects consistent with section 1-1 of the Order.

10. Committees

The Interagency Working Group will create standing and select committees to help carry out its responsibilities under the Executive Order. The members of the committees will consist of Senior Leadership Representatives, Senior Staff Representatives, and other persons put forth by an agency. The Interagency Working Group will create, revise, or terminate Select Committees as appropriate. The Interagency Working Group will maintain permanent Standing Committees including:

a. Public Participation Committee

This committee will develop listening sessions and other similar opportunities for the Interagency Working Group, federally-recognized tribes, and other members of the public. It will propose venues and agendas, and facilitate participation by Federal agencies and members of the public. The committee will also help coordinate responses to public input.

b. Strategy and Implementation Progress Report Committee

This committee will be available as a resource for a Federal agency as it reviews, updates, or develops its environmental justice strategy, and as it develops its annual implementation progress reports. It will work with agencies to help coordinate programs, policies, and activities.

c. Title VI Committee

Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d - 2000d-4a, prohibits recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin in programs or activities that receive federal assistance. This committee will be a resource available to help agencies connect their civil rights enforcement responsibilities with their other efforts to achieve environmental justice.

11. Areas of Focus

Consistent with the MOU, at least every three (3) years, the Interagency Working Group will, based in part on public recommendations identified in annual implementation progress reports, identify important areas for Federal agencies to consider and address, as appropriate, in environmental justice strategies, annual implementation progress reports, and other efforts.

12. Amendment

The Interagency Working Group may amend this Charter in a manner not inconsistent with Executive Order 12898 and the MOU.