



**Environmental Justice**

**Annual Implementation Progress Report**

**FY 2017**

## Table of Contents

I.	Introduction .....	1
II.	Implementing Commitments of the EJ MOU.....	2
	Focus Area 1: Implementation of the National Environmental Policy Act (NEPA) .....	3
	Focus Area 2: Implementation of Title VI of the Civil Rights Act of 1964, as amended .....	3
	Focus Area 3: Impacts from Climate Change.....	5
	Focus Area 4: Impacts from Commercial Transportation and Supporting Infrastructure.....	6
III.	Implementation of the DHS Environmental Justice Strategy.....	6
VI.	Public Comments.....	9
VII.	Updates and Revisions to the DHS EJ Strategy .....	10
VIII.	Conclusion.....	10

## I. Introduction

Executive Order (EO) 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 11, 1994), 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.” Although the U.S. Department of Homeland Security (DHS) did not exist in 1994, and is thus not an agency expressly included in the EO, in August 2011, DHS joined 16 other federal agencies and signed a *Memorandum of Understanding on Environmental Justice and EO 12898* (EJ MOU).<sup>1</sup> By signing, DHS made achieving environmental justice a part of its mission. In accordance with EO 12898 and the EJ MOU, DHS has undertaken a number of commitments to further the aims of environmental justice, including publication of an agency-wide Environmental Justice Strategy (DHS EJ Strategy)<sup>2</sup> and annual progress reports on its implementation.<sup>3</sup>

DHS is a member of the U.S. Environmental Protection Agency (EPA)-sponsored Federal Environmental Justice Interagency Working Group (EJIWG), and facilitates an internal DHS Environmental Justice Working Group (EJWG). The DHS EJWG is co-chaired by the DHS Sustainability and Environmental Programs office (SEP) within the Office of the Chief Readiness Support Officer (OCRSO), and the DHS Office for Civil Rights and Civil Liberties (CRCL). To ensure nondiscrimination, the Secretary designated the environmental oversight of DHS federally conducted activities to SEP, and the lead for civil rights compliance and enforcement in federally assisted programs to CRCL.

As explained more fully in the DHS EJ Strategy, the Department approaches environmental justice through the missions and general strategic framework set forth in the 2014 Quadrennial Homeland Security Review (QHSR). The QHSR guides the activities of the Department.<sup>4</sup> Environmental justice considerations can arise within four of the QHSR’s five homeland security missions: prevent terrorism and enhance security; enforce and administer our immigration laws; secure and manage our borders; and strengthen national preparedness and resilience; as well as in all of the strategic priorities. This report summarizes the Department’s progress toward achieving the goals of EO 12898 during fiscal year (FY) 2017.

---

<sup>1</sup> The EJ MOU is available at <http://www.epa.gov/environmentaljustice/resources/publications/interagency/ej-mou-2011-08.pdf>. Concurrently with the MOU, the participating agencies issued a *Charter for the Interagency Working Group on Environmental Justice*, available at <http://www.epa.gov/environmentaljustice/resources/publications/interagency/iwg-charter-2011.pdf>.

<sup>2</sup> Department of Homeland Security, *Environmental Justice Strategy* (February 2012), available at <http://www.dhs.gov/xlibrary/assets/mgmt/dhs-environmental-justice-strategy.pdf>.

<sup>3</sup> Department of Homeland Security, *Environmental Justice Annual Implementation Progress Report* for the periods FY 2011, FY 2012, FY 2013, FY 2014, and FY 2015 available at <https://www.dhs.gov/dhs-environmental-justice-strategy>.

<sup>4</sup> Department of Homeland Security, *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland* (June 2014), available at <http://www.dhs.gov/publication/2014-quadrennial-homeland-security-review-qhsr>.

## II. Implementing Commitments of the EJ MOU

### Introduction

In FY 2017, DHS, as an active member of the EJIWG, worked to advance the integration of environmental justice principles throughout all levels of government. The EJIWG, chaired by the EPA, with representatives from 17 federal agencies and the White House, strived to engage and support local communities in addressing environmental and human health impacts of federal programs, policies, and activities by promoting comprehensive solutions for addressing environmental justice. The EJIWG provides federal leadership, guidance, and support in the following areas:

- Coordinating a focused and collaborative effort across the Federal Government to address the environmental, social, economic, and public health burdens in minority, low-income, indigenous and tribal communities;
- Identifying and supporting policies that have measurable impacts on environmental justice;
- Focusing federal agency resources and technical assistance to address disproportionately high and adverse human health or environmental impacts in minority, low-income, indigenous and tribal communities; and
- Developing partnerships with colleges, universities, and other organizations outside of the Federal Government to facilitate support for, and improvement in, overburdened communities.

Additionally, the Department was a key contributor in achieving the following EJIWG accomplishments:

- The development of the *EJ IWG Goods Movement Federal Resource Compendium*<sup>5</sup>. The *EJ IWG Goods Movement Federal Resource Compendium*, created by the EJ IWG's Impacts from Commercial Transportation Committee, contains federal memorandums, policies, executive orders, guidance, and statues on goods movement-related programs and resources.

---

<sup>5</sup> US Environmental Protection Agency, *EJ IWG Goods Movement Federal Resource Compendium*  
<https://www.epa.gov/environmentaljustice/ej-iwg-goods-movement-federal-resource-compedium>

## **Focus Area 1: Implementation of the National Environmental Policy Act (NEPA)**

The DHS NEPA implementing procedures in DHS Directive 023-01, *Implementation of the National Environmental Policy Act*,<sup>6</sup> require the Department to follow the Council on Environmental Quality (CEQ) guidance for identifying potential environmental justice issues when conducting the review of proposed actions. Governance and oversight of the program is managed by the OCRSO under delegated authority. In addition to implementing the Department's NEPA process, OCRSO actively participates in the NEPA Committee of the EJIWG. The NEPA Committee seeks to improve the effective, efficient, and consistent consideration of environmental justice issues in the NEPA process through the sharing of best practices, lessons learned, research, analysis, training, consultation, and other experiences of federal NEPA practitioners.

On January 25, 2017, the President issued EO 13767, *Border Security and Immigration Enforcement Improvements*, in furtherance of securing our Nation's borders and fully enforcing our immigration laws. In many ways, the tasks therein fall to DHS for execution. On February 20, 2017, then DHS Secretary John Kelly issued a memorandum directing the actions needed to assure compliance with EO 13767 and all applicable laws. The memorandum specifically addressed NEPA compliance due to the complications created by waivers and activities conducted under the waivers. The memorandum made clear all actions not covered by waivers remain subject to the compliance requirements of all applicable laws, regulations, EOs, and other requirements established for the protection and stewardship of the environment.<sup>7</sup>

During FY 2017, DHS Office of the Chief Financial Officer issued the updated FY 2017 DHS Standard Terms and Conditions,<sup>8</sup> which, as in previous years, requires all recipients to comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA.

## **Focus Area 2: Implementation of Title VI of the Civil Rights Act of 1964, as amended**

Title VI of the Civil Rights Act of 1964 ("Title VI") prohibits race, color, or national origin discrimination by recipients of financial assistance from DHS. Environmental justice issues may arise in programs and activities supported through federal financial assistance. In this context, Title VI is an important tool for addressing those concerns. By delegation from the Secretary and through regulations at 6 C.F.R Part 21, CRCL leads the Department's compliance efforts to assure that its federally assisted programs, including those that affect human health or the environment, do not discriminate on the basis of race, color, and national origin, and comply with the affirmative requirements of Title VI and the Department's implementing regulations.

---

<sup>6</sup> Department of Homeland Security "*Directive and Instruction 023-01, Environmental Planning Program*" <http://www.dhs.gov/national-environmental-policy-act> .

<sup>7</sup> Department of Homeland Security "*Policy Directive Memorandum 023-05, Compliance with the National Environmental Policy Act in the Implementation of EO 13767*"

<sup>8</sup> DHS Standard Terms and Conditions: <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>

Title VI, through its prohibition against national origin discrimination, also requires recipients of DHS financial assistance to take reasonable steps to provide meaningful access to its programs and activities for limited English proficient (LEP) persons.<sup>9</sup> LEP persons (i.e., those who have a limited ability to speak, read, write, or understand English) may also be a part of low-income or minority communities that are subject to disproportionately high and adverse environmental effects. In carrying out enforcement of Title VI, it is critical for DHS to identify the intersection with environmental justice as well as to educate recipients on fulfilling their language access obligations. To that end, integrating LEP persons into environmental justice efforts, such as through multilingual outreach and the regular use of competent interpreters at meetings and in other interactions, supports environmental justice goals and Title VI compliance.

In FY 2017, CRCL continued to implement the DHS-wide Title VI compliance program. Major accomplishments include:

**DHS Civil Rights Evaluation Tool.** CRCL, in coordination with the Federal Emergency Management Agency (FEMA) and other DHS Components, finalized the DHS Civil Rights Evaluation Tool. The tool will assist recipients in understanding and meeting their civil rights requirements and streamline data collection. Once implemented, all primary recipients of DHS financial assistance will be required to provide DHS with standard data, complaint information (including those in which environmental justice concerns are raised), and policies and procedures required to fulfill various civil rights obligations. Finalization and implementation of the Evaluation Tool is planned for FY 2018.

**Technical Assistance to Recipients.** CRCL published a new webpage targeted at recipients of DHS financial assistance.<sup>10</sup> The page provides an overview of the civil rights requirements applicable to recipients of federal financial assistance and links to resources to assist those recipients. Additionally, CRCL published a sample notice of nondiscrimination in multiple languages for recipients to modify and use to advise program beneficiaries of their civil rights protections, including how and where to file a complaint of discrimination.

#### **United States Coast Guard (USCG)**

In FY 2017, the USCG provided approximately \$105 million in grants to U.S. States and territories. An additional \$5 million in grants went to 15 non-profit organizations. As part of efforts to ensure compliance with Title VI of the Civil Rights Act of 1964, the USCG Civil Rights Directorate reviewed civil rights assurances from all recipients.

---

<sup>9</sup> “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.” 76 Fed. Reg. 21755 (April 18, 2011).

<sup>10</sup> Resources for Recipients of DHS Financial Assistance: <https://www.dhs.gov/resources-recipients-dhs-financial-assistance>

### **Focus Area 3: Impacts from Climate Change**

DHS identified climate change as a strategic priority in its mission to prevent, protect against, mitigate, respond to, and recover from threats and hazards, as well as to build in security, ensure resilience, and facilitate customs and exchange. The QHSR states, “Natural hazards are becoming more costly to address, with increasingly variable consequences due in part to drivers such as climate change and interdependent and aging infrastructure.” The Department is strategically positioned to demonstrate the inseparability of security and resilience. The 2017 hurricane season was one of the most active on record. With Hurricanes Harvey, Irma, and Maria making landfall in FY 2017, the Department shifted its focus to mission resilience. In the aftermath of the recent disasters, the need for resilient, reliable, and secure resource alternatives are critical. In response, DHS established a DHS Resilience Tiger Team. The team consisted of DHS Component and Program Office operations and management personnel. The Tiger Team is led by the DHS EJ Representative, with the DHS EJ Senior Staff Representative serving as a standing team member and climate resilience advisor.

Component-specific efforts related to climate change include:

#### **FEMA**

- On August 15, 2017, the Administration issued EO 13807, “*Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*,” which revoked EO 13690, *Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input (January 2015)*<sup>11</sup>. Accordingly, in response to EO 13807, plans are underway for FEMA’s withdrawal of the 2016 Notice of Proposed Rulemaking which proposed changes to FEMA’s “*Floodplain Management and Protection of Wetlands*” regulations to implement EO 13690, and proposed supplementary policy (FEMA Policy: 078-3), which clarified how FEMA would apply the FFRMS.
- FEMA continues to conduct NEPA reviews of mitigation grant projects which support relocation of climate change impacted coastal native Alaskan villages in Region X. This work is done in collaboration with other federal funding agencies and the Alaska Department of Military and Veteran Affairs - Division of Homeland Security and Emergency Management.

---

<sup>11</sup> Executive Order 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input*: <https://www.gpo.gov/fdsys/pkg/DCPD-201500068/pdf/DCPD-201500068.pdf>

## **Focus Area 4: Impacts from Commercial Transportation and Supporting Infrastructure**

In its role as protector of the nation's borders and the grantor of bridge permits, DHS is instrumental in the movement of goods. "Goods movement" refers to the distribution of freight, including raw materials, parts, and finished consumer products, by all modes of transportation, including marine, air, rail, and truck. Goods movement facilities, also called freight facilities, include seaports; airports; land ports of entry; rail yards and rail lines; highways and high truck traffic roads; and warehouse and distribution centers.<sup>12</sup> In FY 2017, OCRSO and the DHS Office of General Counsel actively participated in the EJIWG Goods Movement Committee.

Component-specific efforts related to goods movement include:

### **U.S. Customs and Border Protection (CBP)**

- In FY 2017, DHS furthered efforts to improve the Centralized Examination Station (CES) program. In response to concerns raised by the West Oakland Environmental Indicators Project, regarding the selection of a private vendor to operate a CES for the Port of Oakland, CBP initiated actions to review programs, policies, activities and legal obligations. Furthermore, in an effort to enhance opportunities for meaningful engagement, CBP took additional steps to notify the public regarding the Port of Oakland CES bid solicitation. In addition to the standard trade journal, CBP posted solicitation information at the current CES site and local post office, and sent the information to members of community organizations and stakeholder groups by email and USPS.
- CBP operates traffic checkpoints in support of its mission. Environmental stewardship is not lost at these facilities. For example, CBP includes as a design requirement that each checkpoint include the mitigation of environmental impacts to road shoulders and surrounding areas, each location is furnished with spill containment and fire suppression equipment, and trash and sanitary waste are managed via contract. This is done to assure compliance and minimal impact to human health and the environment.

### **III. Implementation of the DHS Environmental Justice Strategy**

The DHS EJ strategy integrated environmental justice principles into our everyday operations through a variety of methods. This section describes examples of DHS efforts.

**Creating a directive and instruction on environmental justice.** In FY 2017, DHS created *Directive 023-04: Environmental Justice* and initiated an expanded technical assistance and awareness program. In the first phase, DHS conducted education sessions with select Program Offices that interface with the public and provided tools and information to representatives from the DHS Center for Faith Based and Neighborhood Partnerships (CFBNP), FEMA National Preparedness Directorate (NPD) and the NPPD Office of Infrastructure Protection to assist these offices in better serving the public.

---

<sup>12</sup> Environmental Protection Agency, *EPA's Response to the National Environmental Justice Advisory Council Report: Reducing Air Emissions Associated with Goods Movement: Working Toward Environmental Justice* (June 28, 2010).



Component efforts related to creating a directive and instruction on environmental justice include FEMA's drafting of the National Historic Preservation Act Section 106 Tribal Consultation Guide, under the leadership of the FEMA Federal Preservation Office. In addition to providing guidance on conducting Section 106 consultations, the Guide outlines how to build, maintain, and enhance tribal relations and maintain respect for Tribal sovereignty. A 2018 completion date is planned.

**Developing compliance and review capacity.** In FY 2017, DHS continued to expand the Department's compliance and review capacity. As established by *Directive 023-01, Rev 01*, the Decision Support System (DSS) is the Department's system for NEPA compliance. Moreover, use of the DSS system assures that the consideration of EJ is a part of the project review process. In FY 2017, DHS conducted a total of 94 DSS reviews. As an effort to increase understanding and application of the DSS system, DHS SEP experts conducted hands-on "Train the Trainer" classes for the FEMA Environmental Management and Environmental Planning programs.

Component efforts related to developing compliance and review capacity in FY 2017 include:

- CBP finalized its NEPA Supplemental procedures. The procedures institutionalize the Component's environmental justice NEPA practices and strengthen the quality assessment efforts of the program. All Environmental Assessments (EAs) now follow standard notification and engagement practices including, but not limited to, distribution to interested parties, agencies, public libraries, and publication through the CBP.gov public website.
- FEMA offered an online and classroom "Introduction to Environmental and Historic Preservation Compliance" course. Environmental justice compliance requirements and tools are a component of the training. A total of 1307 students completed the training.
- USCG completed and implemented a NEPA warrant program. The NEPA Warrant Program requires that all USCG employees signing official NEPA documents as environmental professionals are trained on the requirement of EO 12898. To date, 105 USCG personnel from 17 different offices have NEPA warrants.

**Identifying and addressing environmental justice considerations in programs, policies, and activities.** In FY 2017, the DHS EJWG, comprising representatives from DHS Components and Headquarter offices, met monthly to review DHS programs, activities, and share best practices.

Component efforts related to identifying and addressing environmental justice considerations in programs, policies, and activities include:

- In FY 2017, CBP provided all new Border Patrol Agents with Environmental and Cultural Stewardship training. CBP is divided into 20 geographic operational sectors each with designated personnel specializing in the mitigation of environmental impacts and addressing associated public concerns. The training is designed to equip agents with the tools needed to conduct environmental impact assessments.
- CBP conducted environmental justice reviews and analyses on a number of projects in FY 2017. Listed below is a project sampling. Additional project information is available at <https://www.cbp.gov/about/environmental-cultural-stewardship/nepa>.

- Proposed Tijuana River Vegetation Control Draft EA and Finding of No Significant Impact (FONSI);
  - Proposed Relocation of the North Dakota Air Branch to Grand Forks Air Force Base. Draft Supplemental Environmental Assessment (SEA) and FONSI;
  - Mechanical Control of Carrizo Cane in the Rio Grande Basin of Texas; and
  - Remote Video Surveillance System Tower Upgrades in western and eastern portions of the Border Patrol's Rio Grande Valley Sector.
- FEMA OEHP and Regional Environmental Officers (REOs) continue to utilize and leverage the NEPA compliance process outlined in the FEMA Directive 108-1 and Instruction 108-1-1. In FY 2017, FEMA prepared 28 EAs and associated FONSI and posted to FEMA.gov. Additionally, in FY 2017 FEMA continued work on the “*National Flood Insurance Program Nationwide Programmatic Environmental Impact Statement*” (NPEIS). The NPEIS examines the impacts of proposed improvements and modifications to the National Flood Insurance Program (NFIP). The NFIP proposed modifications are for the implementation of legislative requirements of the Biggert-Waters Flood Insurance Reform Act of 2012, the Homeowner Flood Insurance Affordability Act of 2014, and to demonstrate compliance with the Endangered Species Act. FEMA published the final NPEIS in the Federal Register on November 3, 2017. Issuance of the Record of Decision is pending.
  - FEMA continued the NEPA review of mitigation grant projects in Region VI. The grants are focused on assisting the residents of Princeville, North Carolina recover from the 2016 Hurricane Matthew. Princeville is a 96.3% African American community with a median income of \$21,066.
  - In FY 2017, FEMA Region VIII established a Collaborative Planning Team (CPT) to support the development of the Tribal Response and Coordination Annex (TRCA) of the All Hazards Plan. The Tribal Annex will assure the regional workforce has the guidance and support needed to strategically and effectively support Tribal Nations. Furthermore, it will serve as a resource for use in defining a baseline for response, recovery, and mitigation operations, and identifying options for delivering programs following a direct Tribal declaration. Stakeholder outreach is underway.

**Collaborating with other agencies on environmental justice related matters.** As outlined in the QHSR, “Homeland security spans the authorities and responsibilities of federal departments and agencies; state, local, tribal, and territorial governments; the private sector; and private citizens and communities. For this reason, coordination and cooperation are essential to successfully carrying out and accomplishing the homeland security missions.”

Component efforts related to collaborating with other agencies include:

- FEMA's Louisiana Recovery Office (LRO) collaborated with EPA on the Desire Area Road Network project (DARN). The DARN area overlies the footprint of the Agriculture Street Landfill, an EPA Superfund site currently on the National Priorities List, due to hazardous materials contamination in the soil and groundwater underlying the landfill. FEMA provided grant assistance funds to aid the sub-grantee with recovery efforts and mitigation planning. As a part of the project review, FEMA in concert with the grantee

and sub-grantee, modified the Scope of Work to assure compliance with the requirements of EO 12898.

- CBP Office of Acquisition, in partnership with the Department of Interior (DOI), Bureau of Indian Affairs (BIA) and U.S. Fish and Wildlife Service (USFWS) met regularly to confer on the Integrated Fixed Tower (IFT) EA located on the Tohono O’odham Nation. The aim of the interagency collaboration is to ensure CBP efforts result in beneficial or the least adverse environmental impacts on the Tohono O’odham Nation.

**Communicating through active outreach efforts.** In addition to the outreach activities described in the interagency focus areas in Part II, in FY 2017 DHS Components and Program Offices made additional efforts to engage potentially affected communities.

At the 2017 National Environmental Justice Conference and Training Program, members of the FEMA National Preparedness Directorate presented information on “Addressing Barriers to Disaster Recovery for Populations that may be Disproportionately Impacted.” Approximately 60 stakeholders from the public, private, and non-governmental organizations participated in the conference. Additionally, in FY 2017, representatives from the DHS Center for Faith Based and Neighborhood Partnerships participated as panelists in the 2017 U.S. Conference of Catholic Bishops meeting with the EJIWG. The meeting focused on reviewing opportunities for enhanced collaboration, with a focus on the environment and support for vulnerable communities. The DHS Center for Faith Based and Neighborhood Partnerships was created in 2006 by an executive order to help emergency managers effectively engage with faith and community-based groups.

Components efforts related to active outreach include:

- In the planning stages of the Coronado National Forest Road Construction project, CBP consulted with several Native American tribes to determine if the proposed action could impact areas of cultural/medicinal or religious importance. Through this process, CBP determined that portions of the Nogales Ranger District were used for collection of traditional or medicinal plants.
- CBP worked in close collaboration with the Tohono O’odham Nation on the IFT project aimed at stemming illegal cross-border incursions and includes proposed construction of 15 Integrated Fixed Towers, at locations which the Tohono O’odham Nation found to be best situated to protect vegetation, wildlife, and culturally significant sites. The Tohono O’odham Nation recognized the value and benefits of these projects in protecting their lands. CBP’s Office of Acquisition held public outreach meetings with the tribal government and individual Nation members during all phases of the Draft EA development. CBP completed the final EA and FONSI in March 2017.

## **VI. Public Comments**

There were no public comments received on the FY 2016 Environmental Justice Annual Implementation Progress Report. DHS remains open to public comment on the DHS EJ Strategy and Annual Reports.

## **VII. Updates and Revisions to the DHS EJ Strategy**

The DHS EJ Strategy was approved in February 2012. There are no updates or revisions to the DHS EJ Strategy for this reporting period.

## **VIII. Conclusion**

This FY 2017 Annual Progress Report serves as the official update of Department activities relative to the 2012 DHS EJ Strategy. The Department remains committed to the vision of avoiding burdening minority and low-income populations with a disproportionate share of any adverse human health or environmental risks associated with its efforts to secure the nation.