

**Nondiscrimination Compliance Plan
for the
[CITY/COUNTY NAME]**

[CITY/COUNTY NAME]
[DIVISION/DEPARTMENT]
[MONTH DATE]

Mission Statement:

It is the intent of the [DIVISION/DEPARTMENT] of the [CITY/COUNTY NAME], throughout its daily operations, to ensure that no person shall on the grounds of race, color, national origin, sex, age or disability be excluded from participation in, or be denied the benefits of, or be subjected to discrimination under any program or activity conducted by the [CITY/COUNTY NAME], its recipients, subrecipients, and contractors.

“The effort to prevent discrimination must address, but not be limited to a program’s impacts, access, benefits, participation, treatment, services, contract opportunities, training opportunities, investigations of complaints, allocations of funds, right-of-way, research, planning and design.”

- Title VI of the Civil Rights Act of 1964 and Civil Rights Restoration Act of 1984

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SECTION 1 – INTRODUCTION

1.1 About [CITY/COUNTY NAME]

The [CITY/COUNTY NAME] is a member of the Indian Nations Council of Government (INCOG). INCOG is a voluntary association of northeast Oklahoma governments in Creek, Osage, Rogers, Tulsa, and Wagoner counties. INCOG's purpose is to promote economy and efficiency in government by providing a forum for regional cooperation and by supporting members with planning, development, management, research, and coordination services.

INCOG was designated by the Governor of Oklahoma as the Metropolitan Planning Organization (MPO) for the Tulsa metropolitan area, in accordance with federal law. As the MPO, INCOG, in cooperation with the Oklahoma Department of Transportation (ODOT) and Metropolitan Tulsa Transit Authority (MTTA), is responsible for the development of regional transportation plans and programs for the Tulsa Transportation Management Area (TMA), as shown on page 4.

The 1,200 square-mile TMA is comprised of Tulsa County and portions of Creek, Osage, Rogers, and Wagoner counties. The area includes the cities of Bixby, Broken Arrow, Catoosa, Claremore, Collinsville, Coweta, Fair Oaks, Glenpool, Jenks, Kiefer, Owasso, Sand Springs, Sapulpa, Skiatook, Sperry, Verdigris, and Tulsa. According to 2000 Census data, the Tulsa metropolitan area has 701,580 residents, all needing reliable, convenient, and safe transportation opportunities.

1.2 Document Purpose

The purpose of this document is to ensure that the [CITY/COUNTY NAME] [DIVISION/DEPARTMENT NAME] complies with Title VI of the Civil Rights Act of 1964 and similar provisions in federal grant statutes. Enforcement of the latter statutes is covered by this document to the extent that they relate to prohibiting discrimination on the grounds of race, color, national origin, sex, age, or disability in programs receiving federal financial assistance. Responsibility for enforcing Title VI and nondiscrimination rests with the federal agencies that extend financial assistance. The [CITY/COUNTY NAME] [DIVISION/DEPARTMENT NAME] actions in enforcing nondiscrimination will include:

- Access to information for all residents and other interested parties
- Consideration of all citizen input
- Recognition of specific and prominent community issues and circumstances
- Equitable provision of facilities, services and benefits

- Ensuring compliance with Title VI and nondiscrimination regulations in all project development, right-of-way, construction, public involvement, and compliance activities
- Documenting all project development, right-of-way, construction, public involvement, and compliance activities related to Title VI and nondiscrimination

1.3 Definitions

The following terms are defined for the purpose of this document.

General Terms:

Title VI - refers to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-4. Where appropriate, this term also refers to the civil rights provisions of other federal statutes to the extent that they prohibit discrimination on the grounds of race, color, national origin, sex, age, and disability in programs receiving federal financial assistance of the type subject to Title VI itself

INCOG - refers to the Indian Nations Council of Governments in its capacity as the Metropolitan Planning Organization for transportation planning for the Tulsa Transportation Management Area

Tulsa TMA - refers to the Tulsa Transportation Management Area, a 1,200 square-mile area comprised of Tulsa County and portions of Creek, Osage, Rogers, and Wagoner counties.

DOJ - refers to the United States Department of Justice

DOT - refers to the United States Department of Transportation

FHWA - refers to the Federal Highway Administration

NHTSA - refers to the National Highway Traffic Safety Administration

Project - refers to transportation projects and activities receiving federal financial assistance subject to Title VI

Race, Color, and National Origin Classifications (where designation of persons by race, color or national origin is required, the following groups, based on US Census definitions, shall be used):

American Indian or Alaskan Native - refers to person(s) having origins in any of the original peoples of North and South America (including Central America), and who maintain tribal affiliation or community attachment and includes people who indicated their race or races by marking this category or writing in their principal or enrolled tribe, such as Rosebud Sioux, Chippewa, or Navajo

Asian or Pacific Islander - refers to person(s) having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands and includes people who

indicated their race or races as “Asian Indian,” “Chinese,” “Filipino,” “Korean,” “Japanese,” “Vietnamese,” or “Other Asian,” or wrote in entries such as Burmese, Hmong, Pakistani, or Thai

Black (not of Hispanic Origin) - refers to person(s) having origins in any of the Black racial groups of Africa and includes people who indicated their race or races as “Black, African Am., or Negro,” or wrote in entries such as African American, Afro American, Nigerian, or Haitian

Hispanic – refers to person(s) of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race

White (not of Hispanic Origin) - refers to person(s) having origins in any of the original peoples of Europe, the Middle East, or North Africa and includes people who indicated their race or races as “White” or wrote in entries such as Irish, German, Italian, Lebanese, Near Easterner, Arab, or Polish.

Other Classifications:

LEP - person(s) with Limited English Proficiency

Low Income - person(s) who live in areas with 51% or more of households below 80% of the median household income for an area

Sex - discrimination based on person’s gender

Elderly – person(s) age 65 and older

Youth – person(s) younger than 18

Single Parent Female-Headed Household – household including children younger than 18 headed by an unmarried female parent/guardian

Individual with a disability – person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment

1.4 Groups Evaluated

The Federal Highway Administration (FHWA) 2000 publication *An Overview of Transportation and Environmental Justice* presented three fundamental environmental justice principles:

- To avoid, minimize, or mitigate disproportionately high and adverse human health and environmental effects, including social and economic effects, on minority populations and low-income populations
- To ensure the full and fair participation by all potentially affected communities in the transportation decision-making process

- To prevent the denial of, reduction in, or significant delay in the receipt of benefits by minority and low-income populations

The Office of Management and Budget (OMB) issued *Policy Directive 15, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, in 1997, establishing five minimum categories for data on race. Executive Order 12898 and the DOT and FHWA Orders on Environmental Justice address persons belonging to any of the following groups (as defined in “An Overview of Transportation and Environmental Justice”): American Indian and Alaskan Native, Asian, Black, Hispanic, or Low Income. Native Hawaiian or Other Pacific Islander was added in 2000.

In addition to these federally recognized groups, Title VI also requires special considerations based on national origin. To be sure additional underserved groups are not disproportionately affected by [CITY/COUNTY NAME] projects, the [DIVISION/DEPARTMENT NAME] has focused on additional sub-groups. These additional groups are: youth, elderly, female single-parent heads of household, and individuals with disabilities.

1.5 Authorities and Guidelines

[CITY/COUNTY NAME] is subject to the following federal acts, authorities, guidelines, regulations, and executive orders in regards to equal treatment and discrimination.

Nondiscrimination Statutes

Title VI of the Civil Rights Act of 1964, 42 USC 2000, provides in Section 601 that: “No person in the United States shall, on the ground of race, color, or national origin, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Section 504 of the Rehabilitation Act of 1973, 29 USC 790, provides: “No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.”

Age Discrimination Act of 1975, USC 6101, provides: “No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

23 USC 324 provides: “No person shall on the ground of sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal assistance under this Title or carried on under this title.”

The Civil Rights Restoration Act of 1987, P.L. 100-209, provides: Clarification of the original intent of Congress in Title VI of the Civil Rights Act of 1964, Title IX of the Educations Amendments of 1972,

the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. It also restores the broad, institution-wide scope and coverage of the nondiscrimination statutes to include all programs and activities of Federal-aid recipients, sub-recipients, and contractors, whether such programs and activities are Federally assisted or not.

Title II of the Americans with Disabilities Act of 1990, P.L. 101-336, provides: “No qualified individual with a disability shall, by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination by a department, agency, special purpose district, or other instrumentality of a State or local government.”

Nondiscrimination Executive Orders

E.O. 12250: DOJ Leadership and Coordination of Nondiscrimination Laws

E.O. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Nondiscrimination Regulations

28 CFR 35: DOJ regulations governing Nondiscrimination on the basis of disability in State and Local Government Services

28 CFR 36: DOJ regulations governing nondiscrimination on the basis of disability in public accommodations and commercial facilities

28 CFR 41: Implementation of Executive Order 12250, Nondiscrimination on the basis of handicap in federally assisted programs

28 CFR 42, Subpart C: DOJ’s regulation implementing Title VI of the Civil Rights Act of 1964

28 CFR 50.3: DOJ’s Guidelines for enforcement of Title VI of the Civil Rights Act of 1964

49 CFR 21: DOT’s Title VI regulation

49 CFR 27: DOT’s regulation implementing Section 504 of the Rehabilitation Act of 1973

23 CFR 200: FHWA’s Title VI regulation

23 CFR 1235: FHWA and NHTSA joint regulation governing Uniform System for Parking for People with Disabilities

Nondiscrimination Directives

DOT ORDER 1000.12: Implementation of the DOT Title VI Program

DOT ORDER 1050.2: Standard Title VI Assurances

1.6 Non-discrimination Policy Statement

[CITY/COUNTY NAME] Affirms:

1. Title VI of the Civil Rights Act of 1964 prohibits discrimination in federally assisted programs. Title VI was amended by the Civil Rights Restoration Act of 1987 (P.L. 100-259), effective March 22, 1988. This Act expanded the definition of the terms “programs or activities” to include all of the operations of an education institution, governmental entity, or private employer that receives federal funds if any part of that entity receives federal funds.
2. **[DIVISION/DEPARTMENT NAME]** has been designated the Title VI Compliance Coordinator for the **[CITY/COUNTY NAME]**. It is the policy of the **[CITY/COUNTY NAME]** **[DIVISION/DEPARTMENT NAME]** to ensure compliance with the Title VI of the Civil Rights Act of 1964 and all related statutes or regulations in all projects and activities it administers.
3. The **[CITY/COUNTY NAME]** **[DIVISION/DEPARTMENT NAME]** will ensure that no person shall on the grounds of race, color, national origin, sex, age or disability be excluded from participation in, or be denied the benefits of, or be subjected to discrimination during any transportation projects or activity, its recipients, sub-recipients, and contractors.
4. **[CITY/COUNTY NAME]** delegates nondiscrimination responsibilities to the **[TITLE OF NONDISCRIMINATION COMPLIANCE DESIGNEE]** and charges them with the responsibility to develop and implement procedures and guidelines to adequately monitor their programs.
5. The **[TITLE OF NONDISCRIMINATION COMPLIANCE DESIGNEE]** is granted the authority for **[CITY/COUNTY NAME]**'s **[DIVISION/DEPARTMENT NAME]** to administer and monitor nondiscrimination as promulgated under Title VI of the Civil Rights Act of 1964 and any subsequent legislation. **[TITLE OF NONDISCRIMINATION COMPLIANCE DESIGNEE]** will provide assistance to recipients, sub-recipients, and any person(s).
6. **[CITY/COUNTY NAME]** recognizes the need for continuous Title VI training for personnel and will facilitate that training on a regular basis.

[CITY/COUNTY OFFICIAL NAME AND TITLE]

Date

SECTION 2 – AFFECTED ACTIVITIES

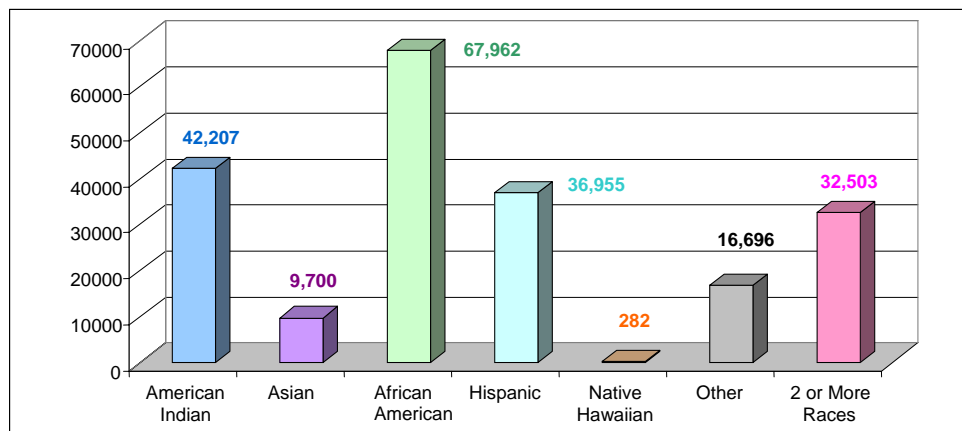
2.1 Data Collection

Minority, low-income, and other resident concentrations were identified using 2000 Census data and Geographic Information System (GIS) analysis by the Indian Nations Council of Governments (INCOG). The subsequent pages include Tulsa TMA maps of the following:

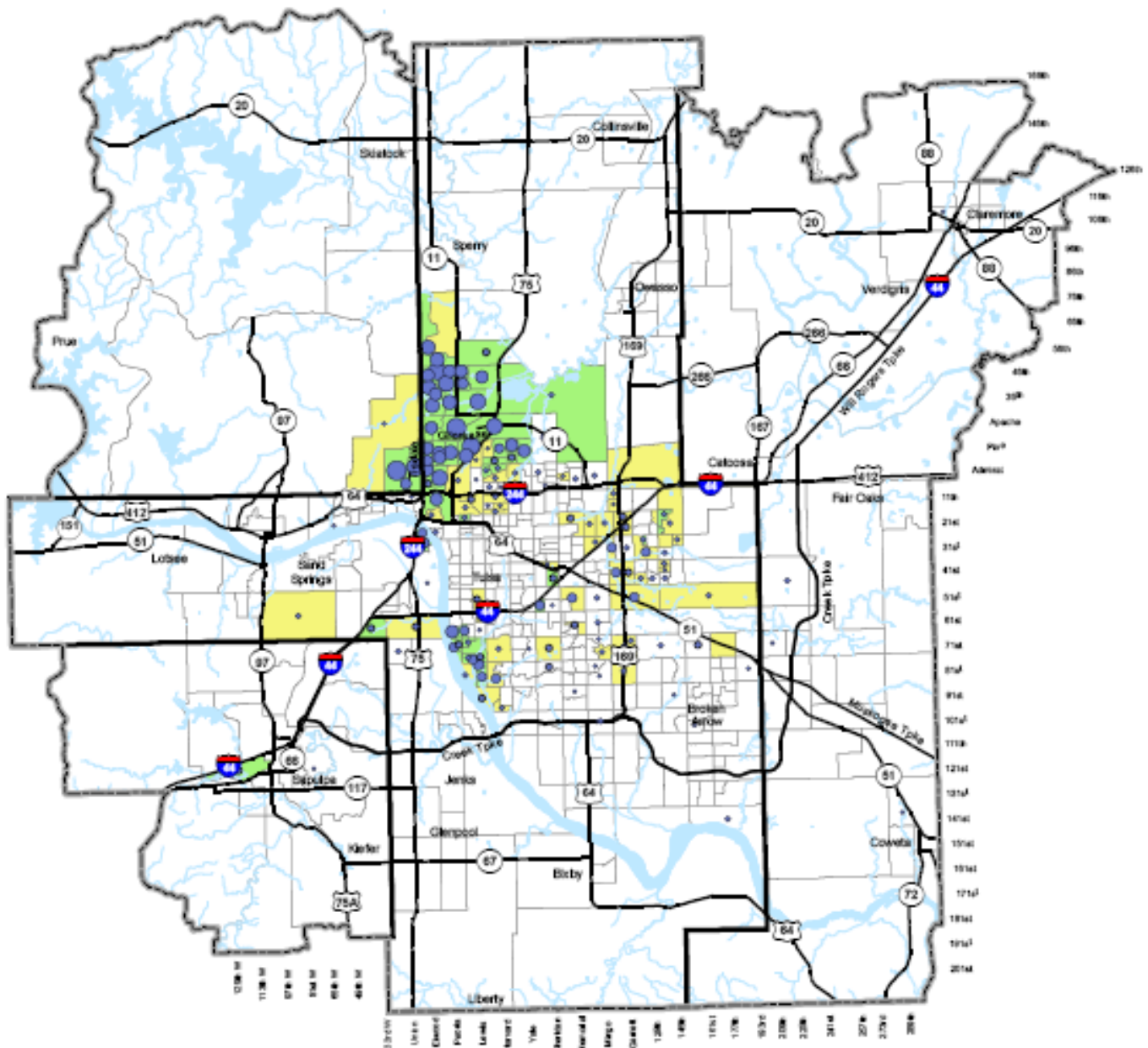
- African American Concentrations
- American Indian Concentrations
- Asian Concentrations
- Native Hawaiian Concentrations
- Other Race Concentrations
- Two or More Race Concentrations
- Hispanic Concentrations
- Civilian Noninstitutionalized Population 5 Years & Older with a Disability
- Concentrations of Single Female-Headed Households with Children Less than 18
- Population Less than 18 Years Old Concentrations
- Population 65 and Older Concentrations
- Low to Moderate Income Areas and Median Household Income Below HHS Poverty Guidelines by Block Group
- Minority Concentrations

US Census data for 2000 were used to obtain minority population information. In 2000, the TMA minority population was approximately 19.5% of the general population. The chart below presents the number of TMA residents who belong to each race/ethnicity classification.

Minority Race/Ethnicity Residents in the Tulsa TMA
2000 Census



African American Concentrations Within the Transportation Management Area



Legend

- | | | | |
|--|--|--|--------------------------------------|
| | TMA Boundary | | # African Americans in block groups* |
| | Tulsa County Boundary | | Total Number |
| | TMA African American Population Standard Deviation | | 100 |
| | Less than 1.00 | | 500 |
| | From 1.00 to 1.99 | | 1,000 |
| | Greater than 2.00 | | Highways |
| | | | Water Bodies |
| | | | Streams |

Total TMA Population = 701,545
 TMA African American Population = 67,962
 Percent African American within TMA = 9.7%

*Block groups of 100 or more African Americans are represented on the map

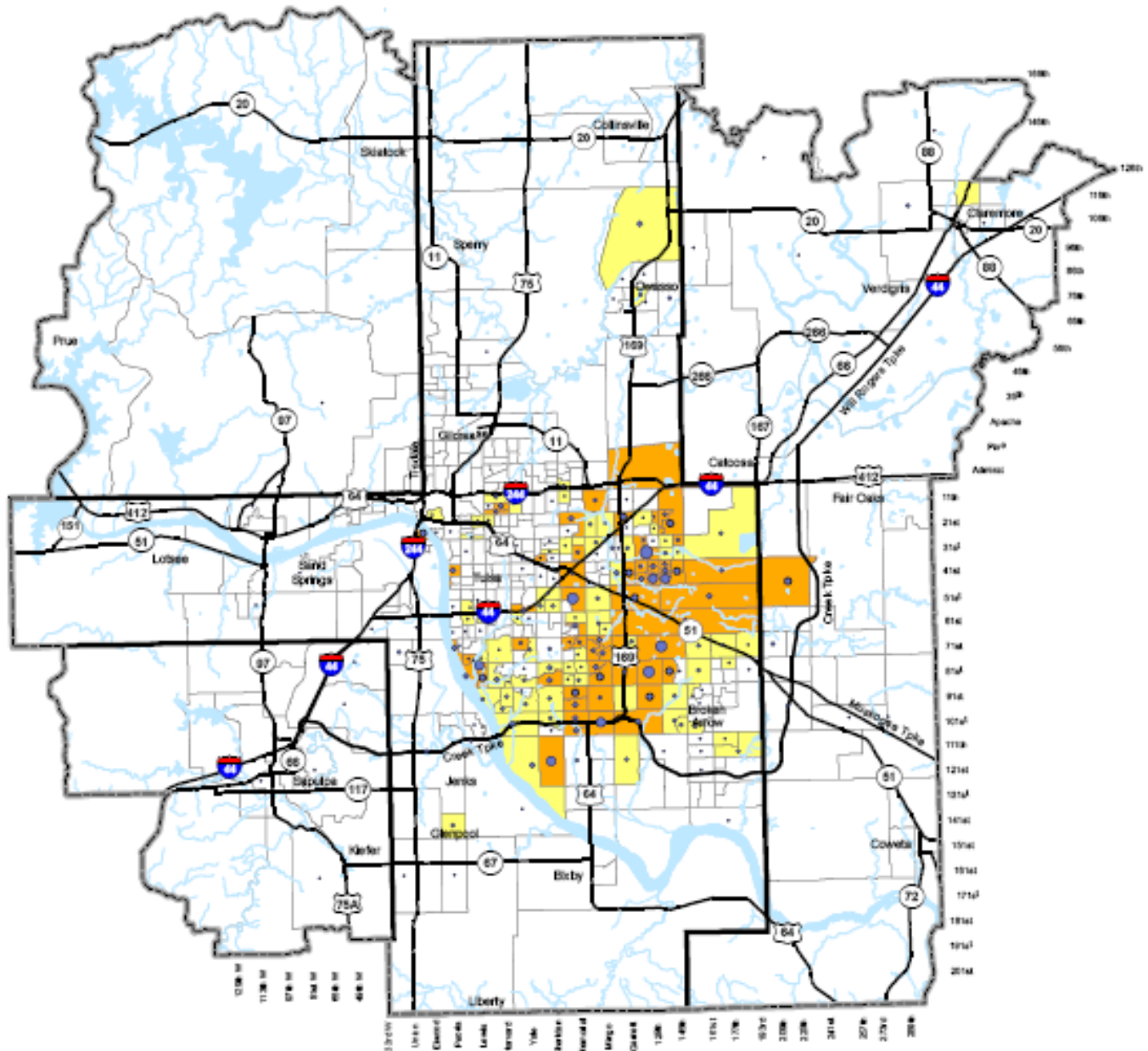
Standard Deviation is a comparison of the percent of African American population for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of the African American population.

Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-1 by block group



0 2 4 8 Miles

Asian Concentrations Within the Transportation Management Area

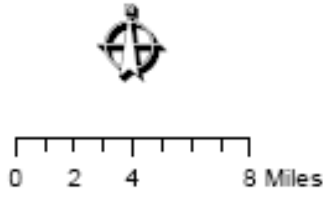


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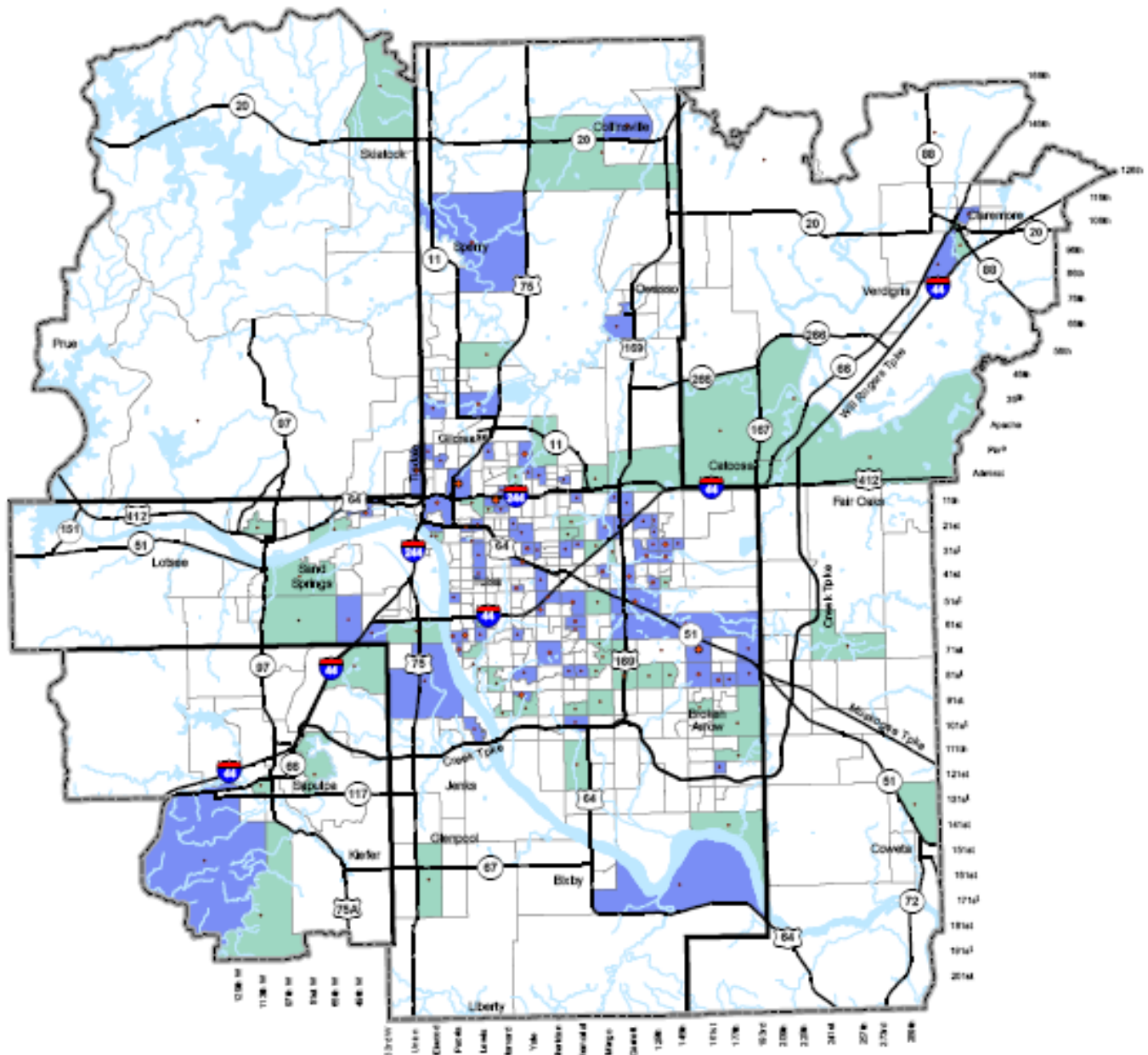
	TMA Boundary		# Asians in block groups*
	Tulsa County Boundary		Total Number
TMA Asian Population			Standard Deviation
	Less than 1.00		10
	From 1.00 to 1.99		50
	Greater than 2.00		100
	Highways		Water Bodies
	Streams		

Total TMA Population = 701,545
 TMA Asian Population = 9,700
 Percent Asian within TMA = 1.4%

*Block groups of 10 or more Asians are represented on the map
 Standard Deviation is a comparison of the percent of Asian population for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of the Asian population.



Native Hawaiian Concentrations Within the Transportation Management Area



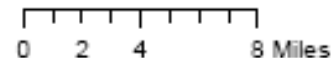
Legend

	TMA Boundary	# Native Hawaiians In block groups
	Tulsa County Boundary	Total Number
TMA Native Hawaiian Population Standard Deviation		1
	Less than 1.00	5
	From 1.00 to 1.99	10
	Greater than 2.00	

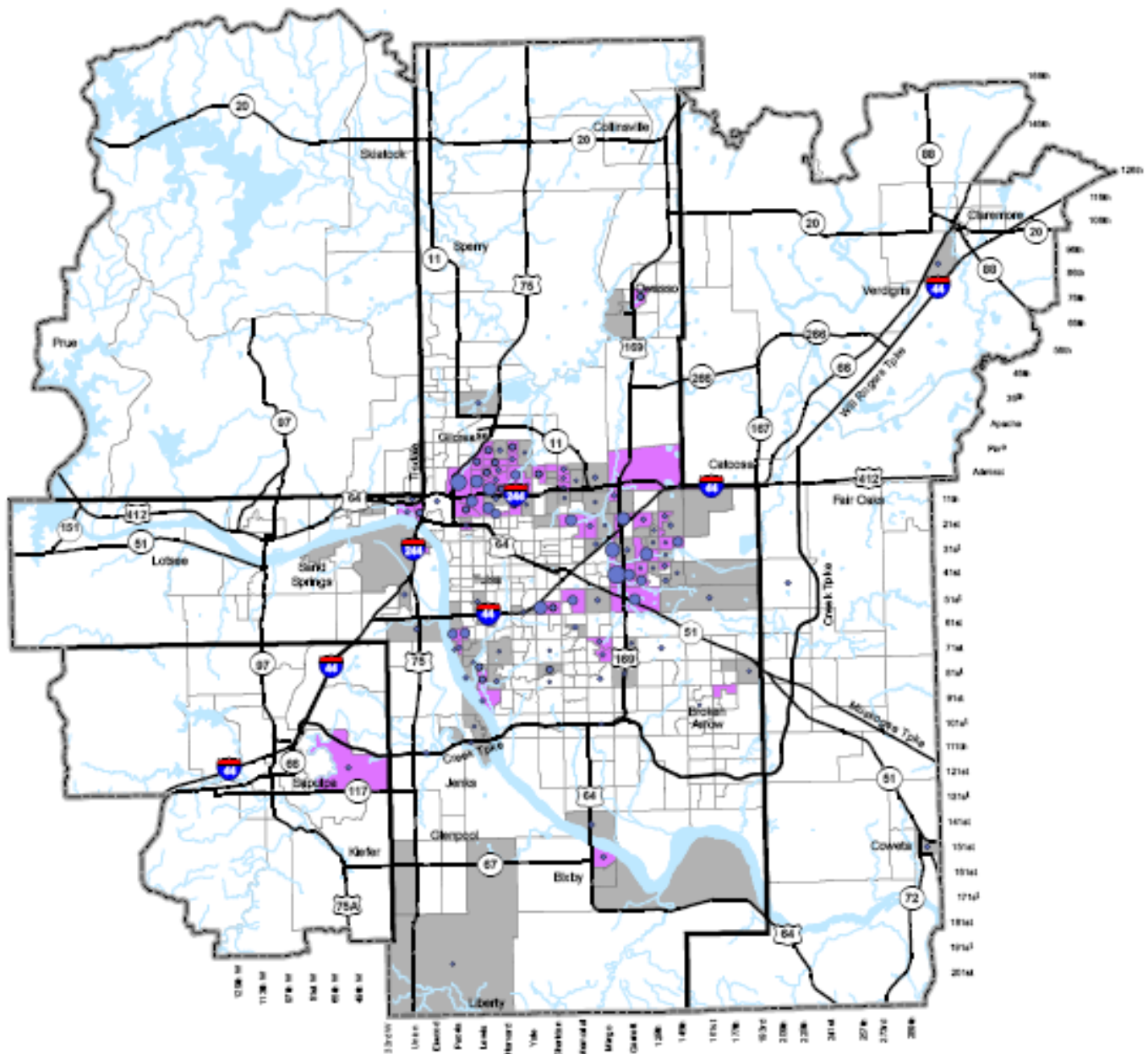
Total TMA Population = 701,545
 TMA Native Hawaiian Population = 282
 Percent Native Hawaiian within TMA = 0.04%

Standard Deviation is a comparison of the percent of Native Hawaiian population for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of the Native Hawaiian population.

Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-1 by block group



Other Race Concentrations Within the Transportation Management Area



Legend

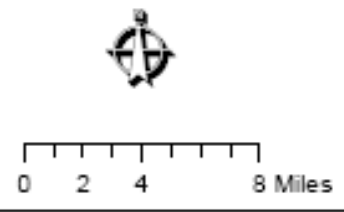
	TMA Boundary	# Other race in block groups*
	Tulsa County Boundary	Total Number
TMA Other Race Population Standard Deviation		• 10
	Less than 1.00	• 100
	From 1.00 to 1.00	• 1,000
	Greater than 2.00	

Total TMA Population = 701,545
 TMA Other Race Population = 16,696
 Percent Other Race within TMA = 2.4%

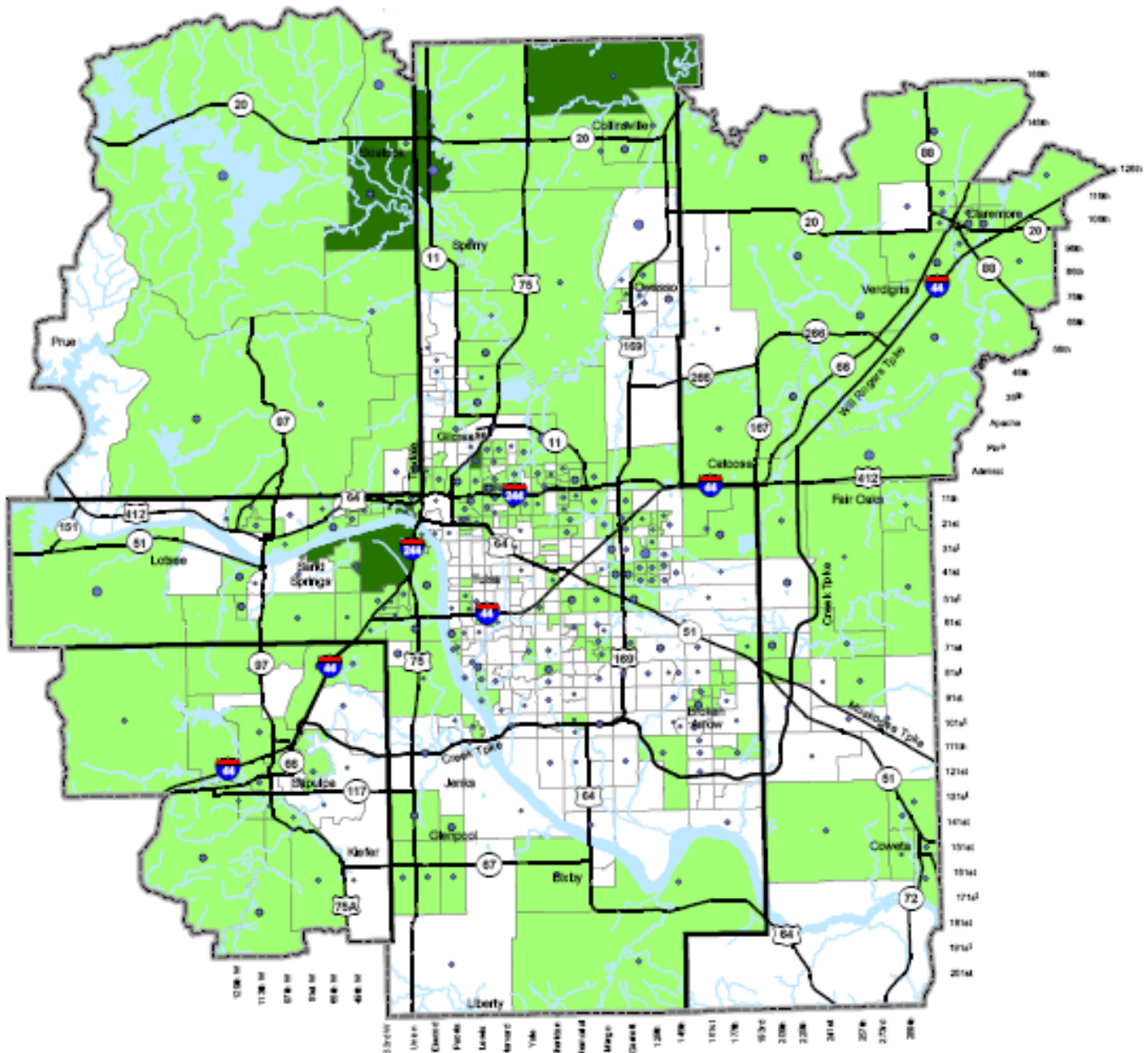
*Block groups of 40 or more Other race are represented on the map

Standard Deviation is a comparison of the percent of Other race population for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of the Other race population.

Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-1 by block group



Two or More Race Concentrations Within the Transportation Management Area

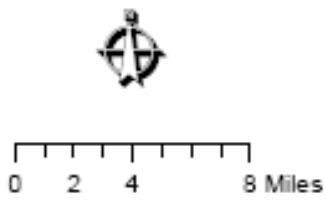


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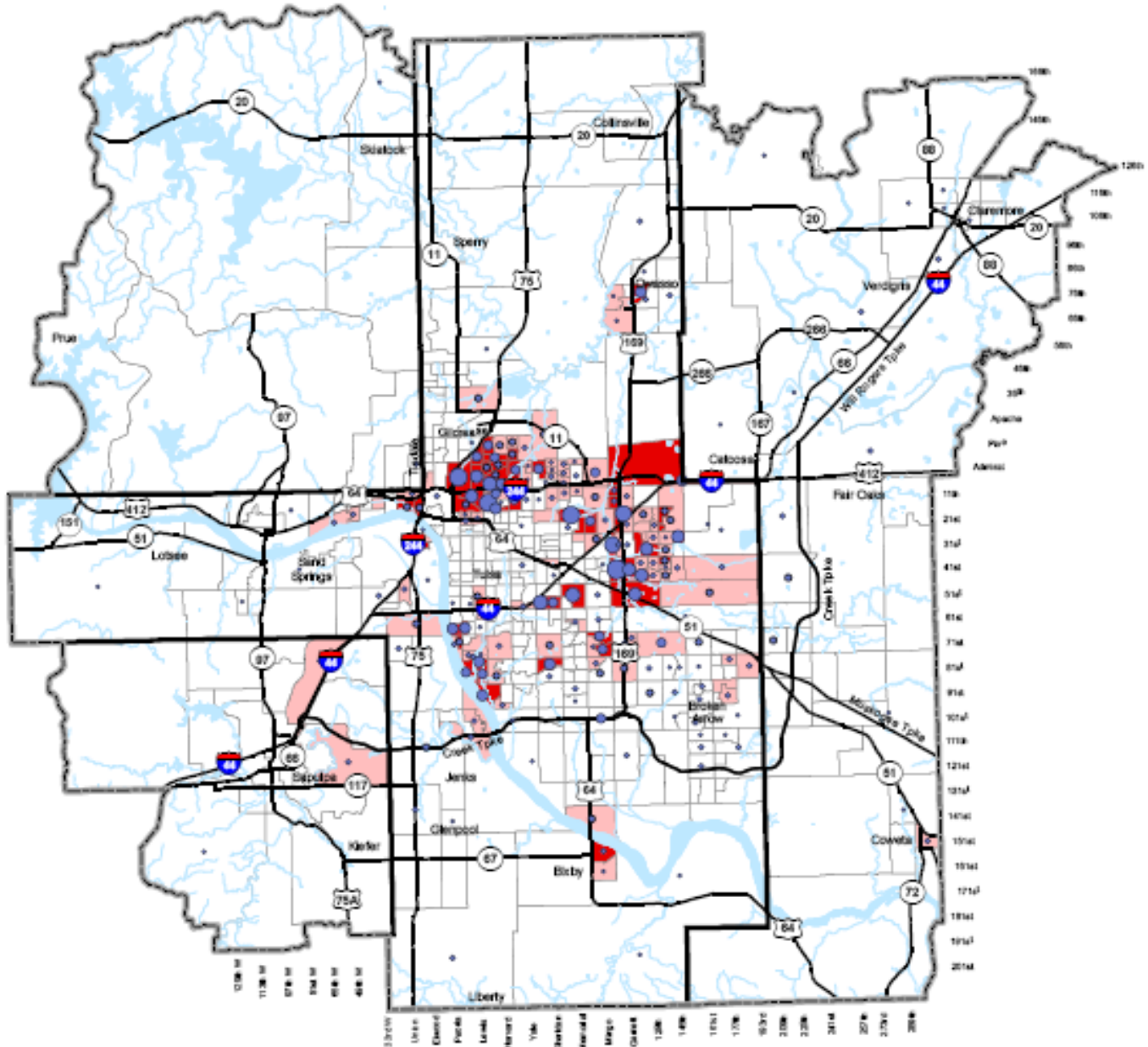
	TMA Boundary		# Two or More races in block groups*
	Tulsa County Boundary		Total Number
TMA Two or More Races Population Standard Deviation			10
	Less than 1.00		50
	From 1.00 to 1.99		100
	Greater than 2.00		Highways
			Water Bodies
			Streams

Total TMA Population = 701,545
 TMA 2 or More Races Population = 32,503
 Percent 2 or More Races within TMA = 4.6%

*Block groups of 50 or more Two or More races are represented on the map
 Standard Deviation is a comparison of the percent of Two or More Races population for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of the Two or More Races population.
 Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-1 by block group



Hispanic Concentrations Within the Transportation Management Area



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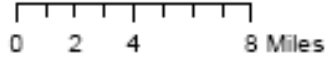
	TMA Boundary	# Hispanics in block groups*
	Tulsa County Boundary	Total Number
	TMA Hispanic Population Standard Deviation	10
	Less than 1.00	100
	From 1.00 to 1.99	1,000
	Greater than 2.00	

Total TMA Population = 701,545
 TMA Hispanic Population = 36,955
 Percent Hispanic within TMA = 5.3%

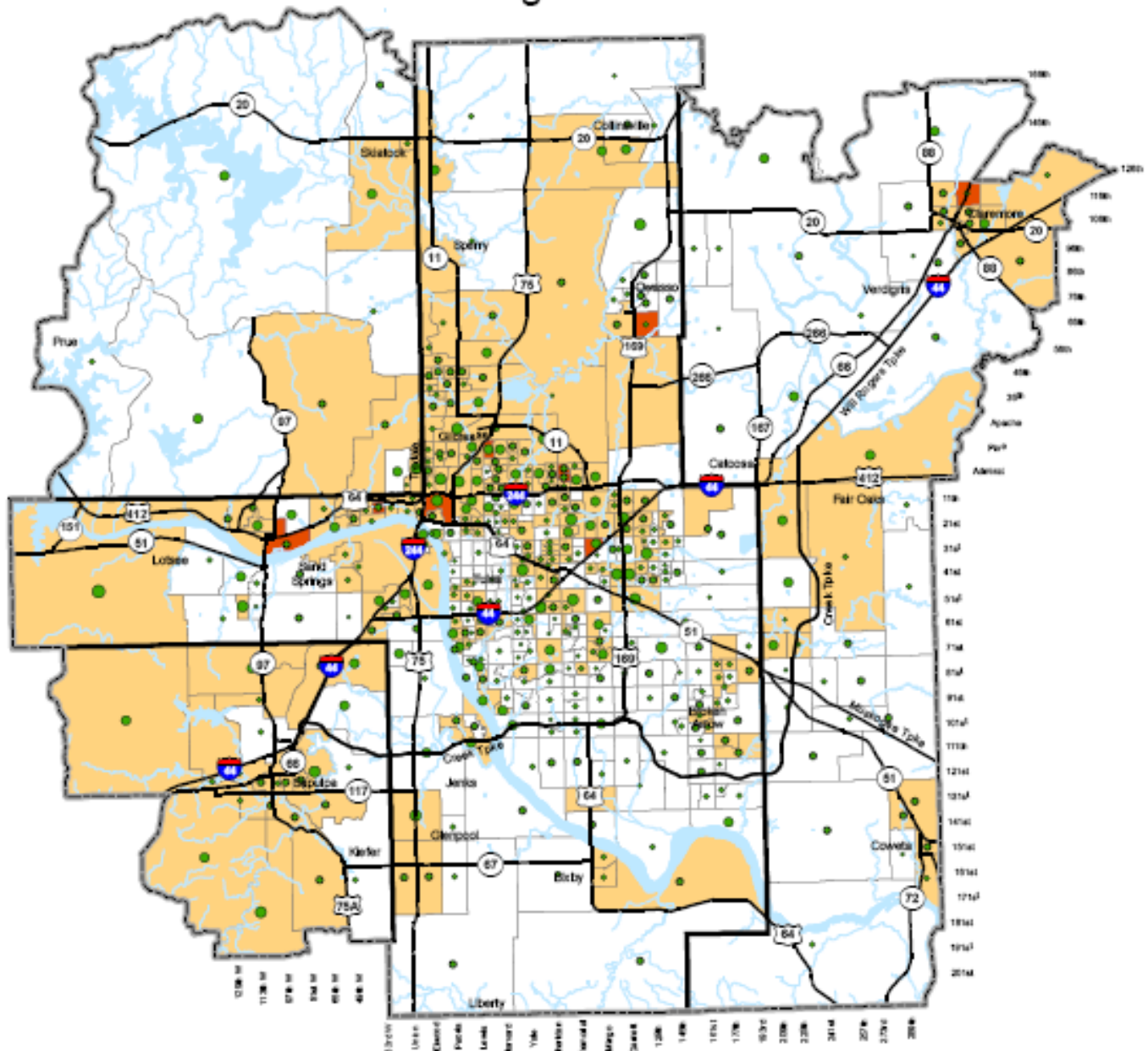
*Block groups of 50 or more Hispanic are represented on the map

Standard Deviation is a comparison of the percent of Hispanic population for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of the Hispanic population.

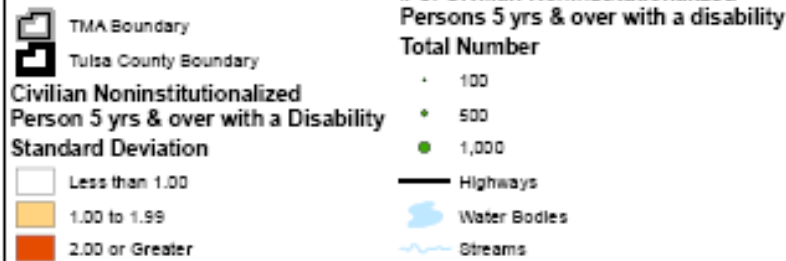
Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-1 by block group



Civilian Noninstitutionalized Population 5 years & Older With a Disability Within the Tulsa Transportation Management Area



Legend



Total Civilian Noninstitutionalized Population 5 years & older = 643,406

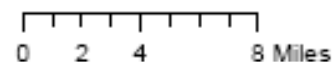
Total Civilian Noninstitutionalized Population 5 years & older with a disability = 124,410

Percent of total civilian noninstitutionalized population 5 years & older with a disability = 19.34%

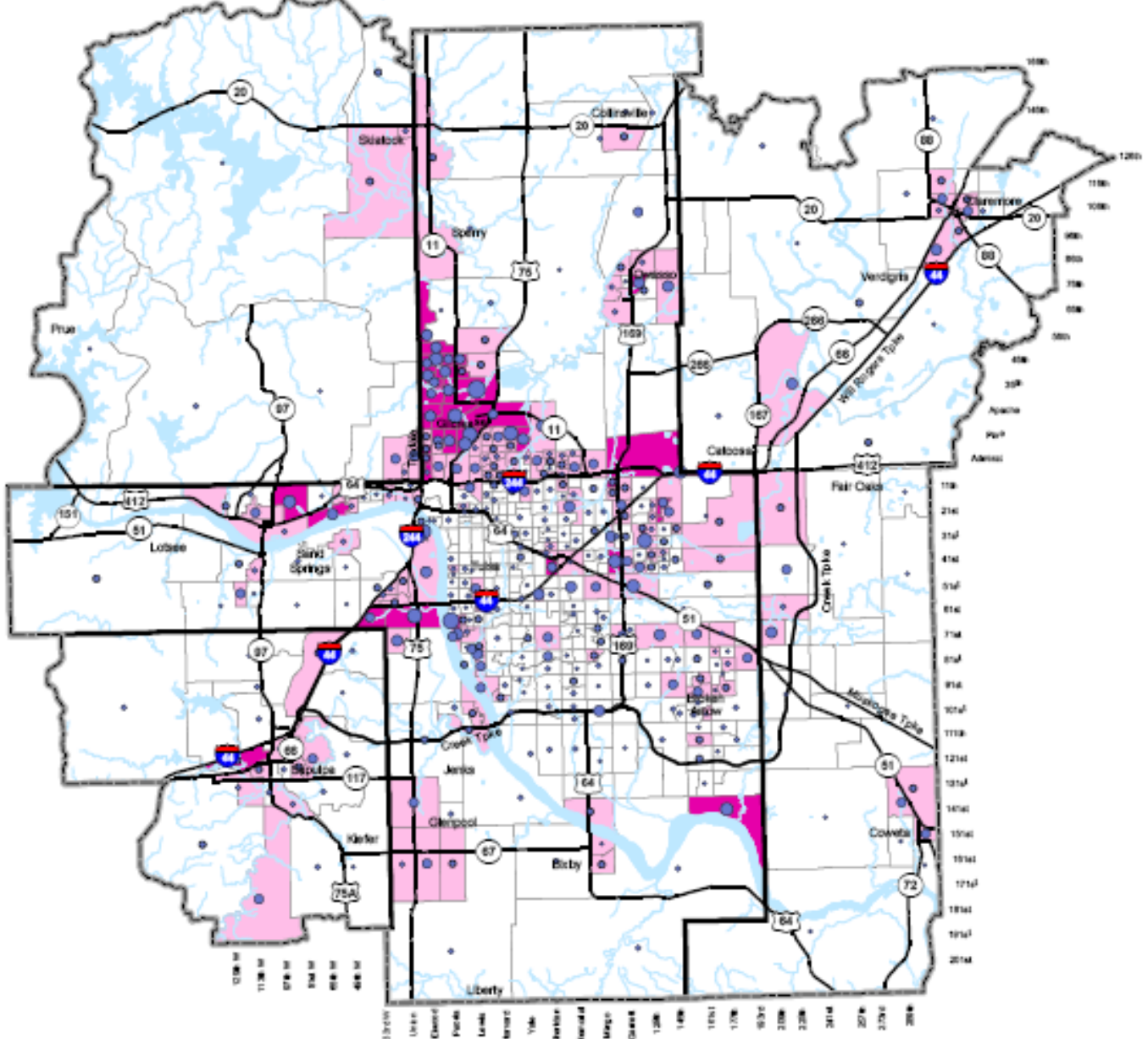
*Block groups of 100 or more are represented on the map

Standard Deviation is a comparison of the percent of civilian noninstitutionalized persons 5 years and older with a disability for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of civilian noninstitutionalized persons 5 years and older with a disability.

Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-3 by block group



Concentrations of Female - Single Headed Households with Children Less than 18 Years Old Within the Transportation Management Area



Legend

- TMA Boundary
- Tulsa County Boundary
- TMA Female-Single Headed Households with Children <18 Population**
- Standard Deviation**
- Less than 1.00
- From 1.00 to 1.99
- Greater than 2.00
- # Female-Single Headed Households with Children <18 by block group*
- Total Number**
- 10
- 50
- 100
- Highways
- Water Bodies
- Streams

*Block groups of 20 or more Female-Single Headed Households with Children <18 are represented on the map

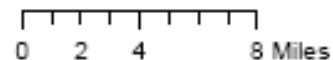
Standard Deviation is a comparison of the percent of Female-Single Headed Households with Children <18 population for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of the Female-Single Headed Households with Children <18 population.

Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-1 by block group

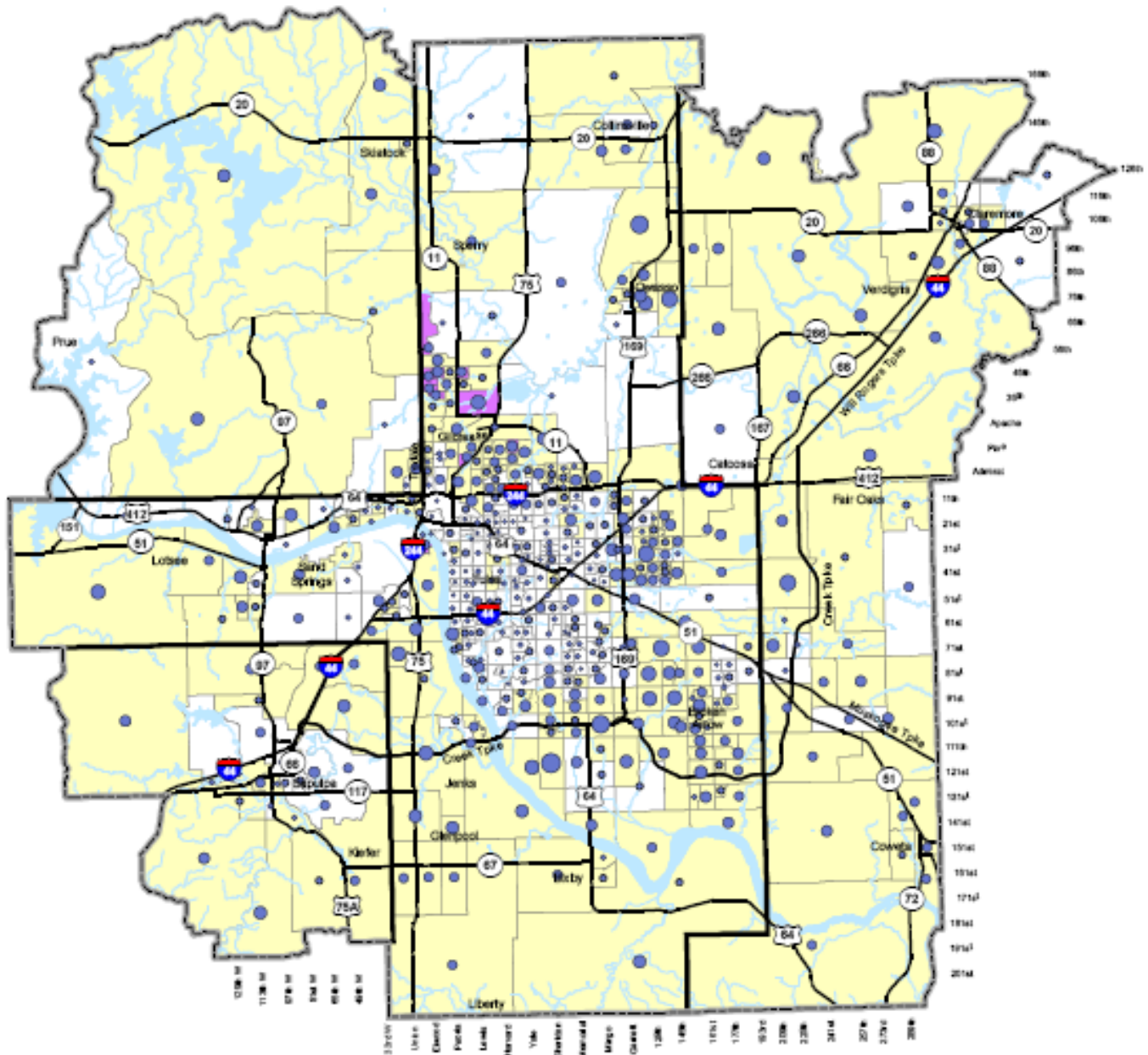
Total TMA Households = 277,192

TMA Female-Single Headed Households with Children <18 = 23,413

Percent Female-Single Headed Households with Children <18 within TMA = 8.4%



Population Less than 18 Years Old Concentrations Within the Transportation Management Area



Legend

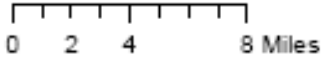
TMA Boundary	# Population <18 by block group*
Tulsa County Boundary	Total Number
TMA Population <18 years old	• 100
Standard Deviation	• 500
Less than 1.00	• 1,000
From 1.00 to 1.40	— Highways
Greater than 1.50	Water Bodies
	Streams

Total TMA Population = 701,545
 TMA Population < 18 years old = 186,995
 Percent Population <18 years old
 within TMA = 26.7%

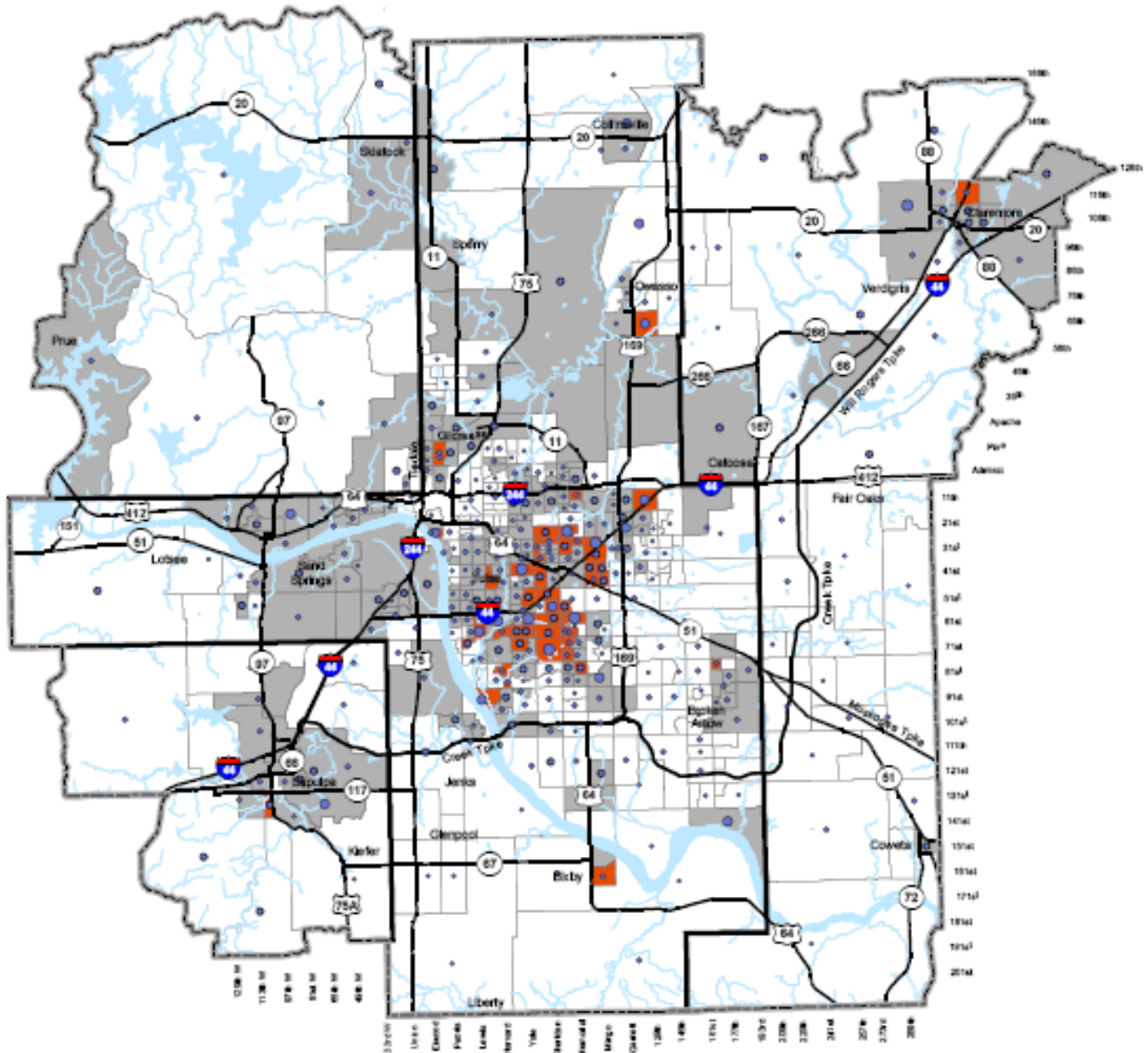
*Block groups of 100 or more population less than 18 years old are represented on the map

Standard Deviation is a comparison of the percent of population less than 18 years old for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of the population less than 18 years old.

Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-1 by block group



Population 65 Years and Older Concentrations Within the Transportation Management Area



Legend

	TMA Boundary	# Population 65 years & older by block group*
	Tulsa County Boundary	Total Number
TMA Population 65 years & older Standard Deviation		• 100
	Less than 1.00	• 500
	From 1.00 to 1.99	• 1,000
	Greater than 2.00	— Highways

Total TMA Population = 701,545

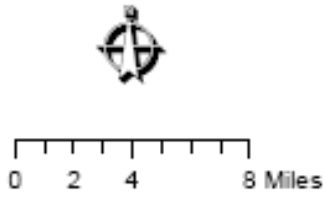
TMA Population 65 Years and older = 81,489

Percent Population 65 years and older within TMA = 11.6%

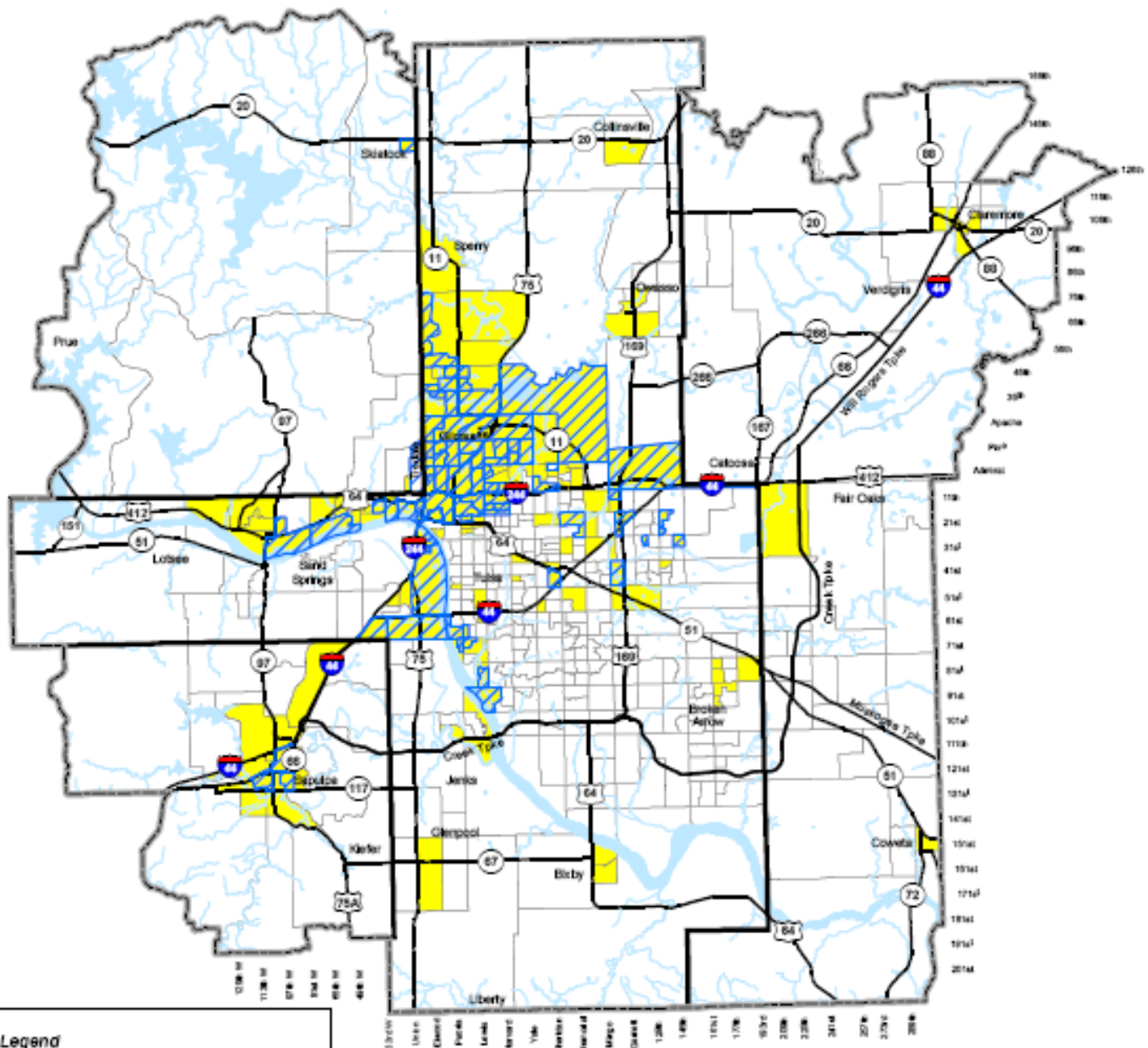
*Block groups of 100 or more population 65 years and older are represented on the map

Standard Deviation is a comparison of the percent of population 65 years and older for that block group to the same percentage for the entire TMA. The higher the number the greater the concentration of the population 65 years and older.

Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-1 by block group



Concentrations of Persons in Low to Moderate Income Households Within the Transportation Management Area



Legend

- TMA Boundary
- Tulsa County Boundary
- Concentrations of Persons Living Below Poverty*
- Low-Mod Block Groups**
- Percent Low-Mod****
- Less than 51.00% Low-Mod
- 51.00% or Greater Low-Mod
- Highways
- Water Bodies
- Streams

*Concentrations are a Standard Deviation greater than 2.00. Standard deviation is a comparison of the percent of persons living below poverty for that block group to the percent of persons living below poverty for the entire TMA. The higher the number, the greater the concentration of households below poverty. (Poverty is defined by the U.S. Bureau of the Census)

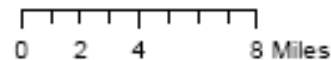
**Low-Mod refers to 51% or greater of households that are below 80% of the TMA median household income.

Map prepared by INCOG, 8/30/05, source - 2000 Census Data SF-3 by block group and www.tulsa.gov

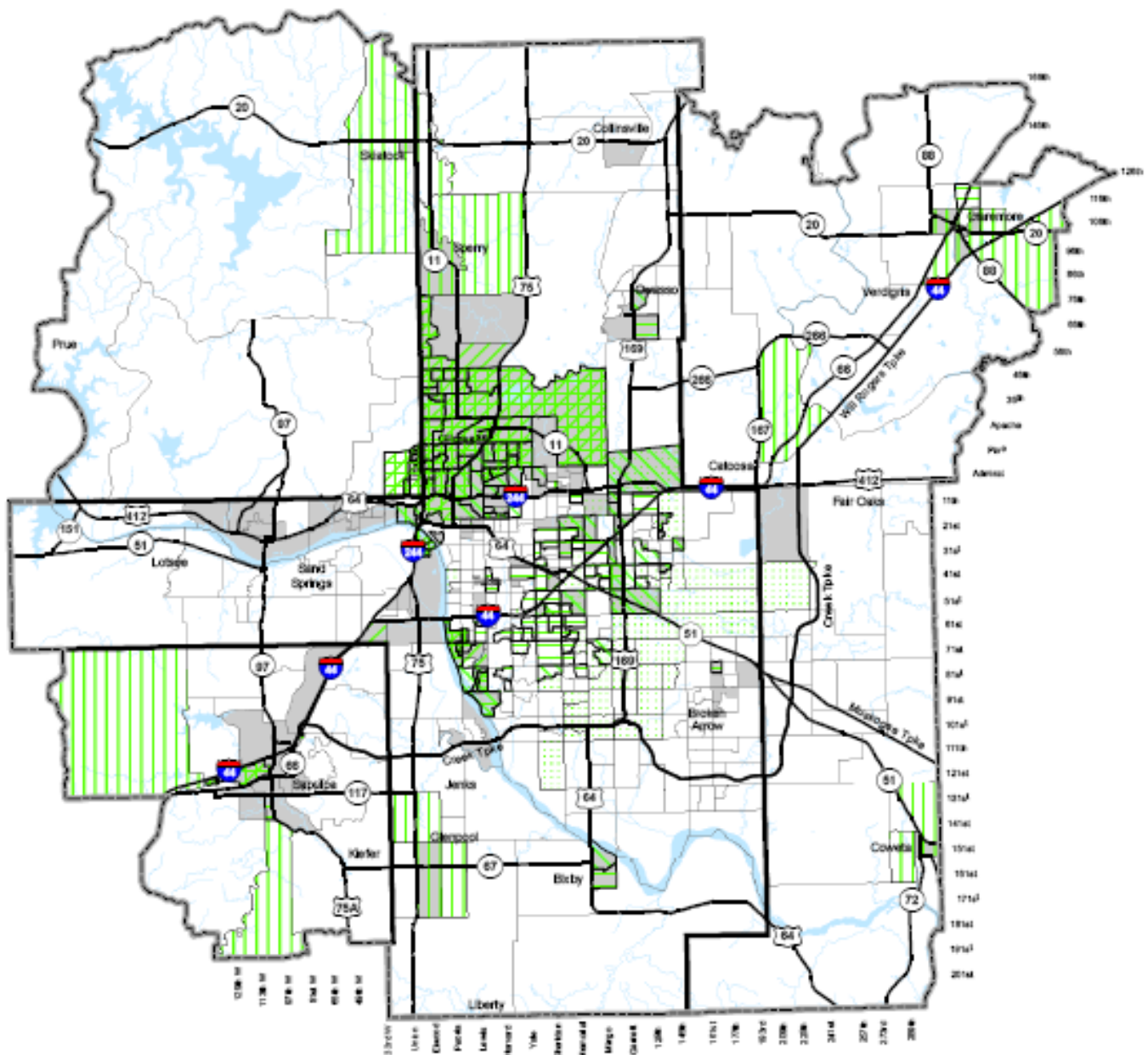
TMA Population for which poverty is determined = 688,187

TMA Population below poverty = 76,345

Percent living below poverty within the TMA = 11.1%



Elderly, Low Income & Minority Concentrations Within the Transportation Management Area



Legend

- TMA Boundary
- Tulsa County Boundary
- Highways
- Water Bodies
- Streams
- No Concentration

- African American Concentrations
- American Indian Concentrations
- Asian Concentrations
- Hispanic Concentrations
- Population 65 Years & Older Concentrations
- All Minorities Grouped Together Concentrations

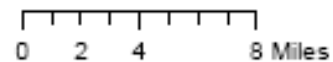
Low-Mod Block Groups

- Percent Low-Mod**
- Less than 51.00% Low-Mod
 - 51.00% or Greater Low-Mod

Concentrations are a Standard Deviation greater than 2.00. Standard deviation is a comparison of the percent of the minority for that block group to the percent of the minority for the entire TMA. The higher the number, the greater the concentration of the minority.

Low-Mod refers to 51% or greater of households that are below 80% of the TMA median household income.

Map prepared by INCOG, 8/20/05, source - 2000 Census Data SF-1 by block group and HUD - www.hud.gov



The Federal Highway Administration references Health and Human Services (HHS) Federal Poverty Guidelines in determination of poverty. These guidelines are based on the United States Census Bureau's poverty thresholds. Tulsa TMA households determined by the 2000 Census to be below the poverty threshold were mapped, as seen on the *Concentrations of Persons in Low to Moderate Income Households in the Transportation Management Area* map in this document.

However, INCOG used a broader definition of low income that includes more residents. Areas with 51% or more of households that make less than 80% of the median household income (the U.S. Department of Housing and Urban Development (HUD) definition of low/moderate income) were also mapped. Using these definitions of low-income allows the [CITY/COUNTY NAME] [DIVISION/DEPARTMENT] to extend its project considerations.

Areas having high concentrations of elderly and youth were also studied in order to identify possible needs for new or improved facilities and public involvement. Elderly is defined as TMA residents age 65 and older. According to the 2000 US Census, 81,489 persons (11.6% of the general population) in the TMA are age 65 and over. Most of this group is situated within the east and southeast sections of Tulsa's corporate limits. The youth demographic is often overlooked in transportation projects. Nearly 187,000 persons in the Tulsa TMA are younger than 18 (almost 27% of the population). A key indicator of youth possibly lacking adequate transportation is the number of single-parent female-headed households with children younger than 18. According to 2000 US Census counts, there are over 30,000 single-parent, female-headed households in the TMA, and this group represents nearly 11% of the total population. Many persons in this category, according to most statistics, live in low-income areas with little or no means of reliable transportation. Therefore, access to transportation facilities, such as transit routes and on-street bikeways, is vital and creates a dual benefit that serves not only the parent, who may need transportation to commute to work, but also the youth, who relies on safe transportation to school or community centers.

Residents with a disability also account for a significant portion of the TMA population. Just over 124,000 residents 5 years old or older have a reported disability, which accounts for over 19% of the population.

2.2 Project/Program Development

For projects and programs that are administered solely by [CITY/COUNTY NAME], the [DIVISION/DEPARTMENT NAME] will take steps, in addition to those mentioned throughout this plan, to ensure nondiscrimination and Title VI compliance. First, [CITY/COUNTY NAME] will make certain that all aspects of the location/project selection process comply with Title VI and nondiscrimination requirements. This goal will be achieved by using Census data and GIS technologies to identify affected populations. As outlined in the public involvement procedures, staff will also consult area residents and seek input from affected populations. If minority, low-income, youth, elderly, disabled, or LEP (Limited English

Proficiency) residents are identified, specific provisions will be made to overcome involvement barriers. As appropriate, residents and other interested parties will be asked to participate in the location/project selection process.

Advertisements and news releases concerning all aspects of the project/program will be sent to media outlets that specifically target these groups, and appropriate public outreach efforts will continue for the duration. Documentation and compliance reviews as outlined in this plan will also be conducted on a continuous basis.

To monitor compliance, [CITY/COUNTY NAME] will on a periodic basis review how the goals outlined in this section were met and what will be done in future project/development development efforts. This review will include ensuring any complaints were addressed.

2.3 Right-of-Way

The [DEPARTMENT/DIVISION NAME] is responsible for all right-of-way activities within [CITY/COUNTY NAME]. Subsequent right-of-way activities may include title clearance, procurement of professional services, appraisal and review of properties to be purchased, negotiation with property owners, acquisition of properties, relocation assistance to families and businesses, adjustment of utilities and project certification. All displaced families and businesses must be relocated to replacement sites before project certification and advertising for construction bids. The property management function may include remnant disposition, use and occupancy agreements, leases, granting of easements, revocable permits, access openings and/or exchanges and public complaints on land under the jurisdiction of [CITY/COUNTY NAME].

Compliance responsibilities:

1. Title VI and nondiscrimination provisions shall be included in documents outlining the right-of-way procedure.
2. Right-of-way agents shall ensure that equitable treatment shall be given to all businesses and persons displaced by transportation projects regardless of sex, age, disability, race, color, gender or national origin.
3. If affected property owners do not speak English, the [CITY/COUNTY NAME] or its agents shall provide information in the appropriate language and/or interpreters when required.
4. Disadvantaged Business Enterprise (DBE) appraisers will be provided maximum opportunity to be utilized.
5. Additional internal procedures shall be developed and updated as necessary to ensure nondiscrimination and Title VI compliance during all phases of the right-of-way process.

6. Monitor accomplishments and problem areas and summarize information for nondiscrimination and Title VI documentation.

2.4 Construction/Maintenance

[CITY/COUNTY NAME] [DEPARTMENT/DIVISION NAME] assures that construction/maintenance bidding and contracting procedures are followed with respect to Title VI and nondiscrimination issues. Steps are taken to ensure that DBE firms are provided maximum opportunity to participate in construction contracts.

Compliance responsibilities:

1. Ensure bidding notices are distributed to DBE firms and other interested parties
2. Document the number of contracts awarded to DBE firms
3. Monitor and take appropriate corrective action on any civil rights complaints involving competitive bidding procedures
4. Include Title VI and nondiscrimination contract language (as described in Section 2.7) in all contracts
5. Monitor contract provisions, sub-contract agreements, first and second tier, material supply and equipment lease agreements to ensure that they contain Title VI and nondiscrimination contract provisions for all federal-aid projects
6. Monitor accomplishments and problem areas and summarize information for documentation
7. Provide opportunities for public comment and interagency cooperation during environmental review and permitting periods

2.5 Contractors/ Subrecipients

All contractors and subrecipients are required to comply with Title VI and other related federal regulations. Contracts with the [CITY/COUNTY NAME] [DIVISION/DEPARTMENT NAME] include nondiscrimination and Title VI responsibilities, non-compliance sanctions, and related information. Contractors and subrecipients are required to comply with the regulations of the U.S. Department of Transportation relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation. The contractor or subrecipient agrees to not directly or indirectly discriminate on the grounds of race, color, national origin, sex, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractors are required to include this information in all subcontractor solicitations and contracts. Sample contract language is available in the document "Required Contract Provisions Federal-Aid Construction Contracts" (See Sample Forms).

2.6 Public Involvement

State and Federal policies and regulations, including Environmental Justice initiatives, reinforce the need of agencies to focus attention on reaching low-income and minority households. To include traditionally underserved communities in the decision-making process, it is necessary to identify key stakeholders that have low or no participation, what is preventing them from participating, and what can be done to overcome barriers and increase the levels of participation. Some explanations for the lack of participation include cultural and language barriers, disabilities, economic constraints, and lack of participation opportunities. To make certain that cultural and language barriers are overcome, LEP procedures are implemented, such as making information readily available and having documents translated and public notices broadcasted for Spanish-speaking populations. Meetings and/or public hearings shall be made accessible and user-friendly for all stakeholders, taking into consideration convenient locations and schedules. In addition, [CITY/COUNTY NAME] will provide appropriate accommodations for citizens with hearing and/or sight impairment.

In advertising these meetings, traditional methods (advertisements, news releases, direct mailings, etc.) are augmented with news releases and advertisements sent to minority- or LEP-focused publications. The [CITY/COUNTY NAME] staff will also continue correspondence with organizations that represent LEP, minority, disabled, youth, elderly, and low-income residents.

Interaction with the citizens of [CITY/COUNTY NAME] is vitally important to the decision-making process. Meetings of the governing body are open to the public and provide citizens with an opportunity for direct input. Information is also available at the [CITY/COUNTY OFFICE] during normal business hours. Citizens are encouraged to contact [CITY/COUNTY] officials if they have any questions or need assistance.

[ADDITIONAL OUTREACH ACTIVITIES, IF ANY – list any additional activities undertaken by the city/county to involve citizens, particularly those groups defined in Section 1.]

These activities promote compliance with Title VI of the Civil Rights Act of 1964 and subsequent federal legislation and therefore ensure that the needs of those traditionally underserved by existing projects are fully integrated in the process.

SECTION 3 - POLICIES AND ORGANIZATION STRUCTURE

3.1 Staffing and Additional Guidance

Members of the [CITY/COUNTY NAME] [DIVISION/DEPARTMENT NAME] will be trained to recognize Title VI and other nondiscrimination issues as defined by the authorities listed in Section 1. All staff members are aware of the [DIVISION/DEPARTMENT] responsibilities under Title VI and other nondiscrimination legislation, and if discrimination is discovered, know to refer to the complaint procedures. (The following staff listing is provided as a guide for individuals within the [CITY/COUNTY NAME] [DIVISION/DEPARTMENT NAME] with questions or complaints.) All aspects of the compliance and complaint process are coordinated by the [TITLE OF NONDISCRIMINATION COMPLIANCE DESIGNEE].

[CITY/COUNTY NAME] [DEPARTMENT/DIVISION] Staff

Name	Title	Phone	E-Mail
[CITY/COUNTY OFFICIAL]	[CITY/COUNTY OFFICIAL TITLE]	[PHONE]	[E-MAIL]
[ASSISTANT NAME]	[ASSISTANT TITLE]	[PHONE]	[E-MAIL]
[TITLE VI DESIGNEE]	[NONDISCRIMINATION COMPLIANCE DESIGNEE TITLE]	[PHONE]	[E-MAIL]

As appropriate, [CITY/COUNTY NAME] [DIVISION/DEPARTMENT NAME] staff will coordinate efforts with ODOT and the Federal Highway Administration, especially during nondiscrimination plan reviews and revisions. If appropriate, residents who need more information on Title VI and nondiscrimination regulations and responsibilities will be referred to:

Jesse Orange

State Title VI Branch/Title VI Coordinator
 Office of Civil Rights
 Oklahoma Department of Transportation
 200 N. E. 21st Street, Suite 1-C1a
 Oklahoma City, OK 73105-3204
 Phone: 405.521.2072

3.2 Nondiscrimination Monitoring and Review

Nondiscrimination monitoring and review activities will be led by the [TITLE OF NONDISCRIMINATION COMPLIANCE DESIGNEE]. An analysis will be conducted periodically to ensure compliance with Title VI and nondiscrimination as defined in this plan. The specific project areas to be analyzed are: project development, right-of-way, construction, public involvement, and compliance. Activities in these areas related to Title VI and nondiscrimination will be documented and compiled with copies of all advertisements, contracts, and other documents. During the annual nondiscrimination review, [DEPARTMENT/DIVISION NAME] staff will review this documentation and discuss successes and challenges in the nondiscrimination plan's implementation. If changes to the process are deemed necessary, the nondiscrimination plan will be updated to reflect these changes.

3.3 Documentation Process

[CITY/COUNTY NAME] will document all aspects of the public involvement and Title VI compliance process. This information includes sign-in sheets, meeting minutes, outreach materials, and various other essential details and data.

SECTION 4 – COMPLAINT PROCESS

4.1 Discrimination Complaint Procedure

[DESCRIPTION OF COMPLAINT PROCEDURE – *If your Human Resources Department already has an adopted complaint procedure, please insert it here. Otherwise, you may use the procedure below and alter it accordingly.*

1. **Submission of Complaint:** Any person who feels that he or she, individually or as a member of any class of persons, on the basis of race, color, national origin, age, sex, disability, or low-income status has been excluded from or denied the benefits of, or subjected to discrimination by [CITY/COUNTY NAME] may file a written complaint with the [CITY/COUNTY OFFICIAL TITLE], the Oklahoma Department of Transportation, or the US Department of Justice. A sample complaint form is available in this document (see Sample Forms) and upon request. Such complaints must be filed within 180 days of the date the person believes the discrimination occurred. Note: Upon request, assistance, in preparation of any necessary written material, will be provided to a person(s) who is unable to read or write. Complaints should be mailed to:

[CITY/COUNTY OFFICIAL TITLE]

Nondiscrimination Administration

[CITY/COUNTY OFFICE ADDRESS]

[CITY], OK [ZIP CODE]

2. **Referral to Review Officer:** Upon receipt of the Complaint, the [CITY/COUNTY OFFICIAL TITLE] will give the Complaint to the affected Program Manager for review. The Program Manager will determine if a Title VI/discrimination issue is present and will discuss his/her findings with the Executive Director. If they determine there is no Title VI/discrimination issue present, a letter describing their review and the appeal procedures will be sent to the Complainant. If further review is needed to determine if a Title VI/discrimination issue is present, the Executive Director shall appoint one or more staff review officers, as appropriate, together with the affected Program Manager, to evaluate the Complaint, in consultation with the [CITY/COUNTY NAME] [SOLICITOR/LEGAL AFFAIRS COORDINATOR]. The review staff officers shall meet with the Complainant to allow further explanation of the Complaint and will complete their review no later than 45 calendar days after the date [CITY/COUNTY NAME] received the Complaint. If more time is required, the [CITY/COUNTY OFFICIAL] shall notify the Complainant of the estimated time-frame for completing the review. Upon completion of the review, the staff review officer(s) shall make a recommendation regarding the merit of the Complaint and whether remedial actions are available to provide redress. Additionally, the staff review officer(s) may recommend improvements to [CITY OR COUNTY NAME]'s processes relative to nondiscrimination, as appropriate, including any additional actions with regards to staff if they have been found to have discriminated against any resident(s) or group(s). The staff review officer(s) shall forward their recommendations to the [CITY/COUNTY

OFFICIAL], for concurrence. If the [CITY/COUNTY OFFICIAL] concurs, he shall issue [CITY/COUNTY NAME]'s written response to the Complainant.

3. **Request for Reconsideration:** If the Complainant disagrees with the response from the [CITY/COUNTY OFFICIAL], he or she may request reconsideration by submitting the request, in writing, to the [CITY/COUNTY OFFICIAL] within 10 calendar days after receipt of the [CITY/COUNTY OFFICIAL]'s response. The request for reconsideration shall be sufficiently detailed to contain any items the Complainant feels were not fully understood by the [CITY/COUNTY OFFICIAL]. The [CITY/COUNTY OFFICIAL] will notify the Complainant of his decision either to accept or reject the request for reconsideration within 10 calendar days. In cases where the [CITY/COUNTY OFFICIAL] agrees to reconsider, the matter shall be returned to the staff review officer(s) to re-evaluate in accordance with Paragraph 2, above.

4. **Submission of Complaint to the Oklahoma Department of Transportation or US Department of Justice:** If the Complainant is dissatisfied with [CITY/COUNTY NAME]'s resolution of the Complaint, he or she may submit a written Complaint to the State of Oklahoma Department of Transportation or the U.S. Department of Justice for investigation:

Jesse Orange

State Title VI Branch/Title VI Coordinator
Office of Civil Rights, Oklahoma Department of Transportation
200 N. E. 21st Street, Suite 1-C1a
Oklahoma City, OK 73105-3204
Phone: 405.521.2072

• • •

Federal Highway Administration

U.S. Department of Transportation, Office of Civil Rights
400 7th Street, S.W., Room 4132
Washington, DC 20590
Title VI Coordinator: 202-366-2024
Email: CivilRights.FHWA@fhwa.dot.gov

• • •

U.S. Department of Justice

Civil Rights Division
Coordination and Review Section or Disability Rights Section – NYA
950 Pennsylvania Avenue, N.W
Washington, DC 20530
Title VI Hotline: 1-888-TITLE-06 (1-888-848-5306) (Voice / TDD)
ADA Information Line: 1-800-514-0301 (Voice) or 1-800-514-0383 (TDD)

Sample Forms

Discrimination Complaint Form	33
Required Contract Provisions Federal-Aid Construction Contracts	34

Discrimination Complaint

YOUR CONTACT INFORMATION

Name

Address

City

State

Zip Code

Phone Number

Email

BASIS FOR ALLEGED DISCRIMINATION

Please check the reason(s) you believe reflect the basis for discrimination against you.

Race/Color

Disability

Sex

Age

National Origin

Retaliation

DETAILS

Please describe why or how you believe you were excluded from participation in, or denied the benefits of, or subjected to discrimination under any transportation program or activity by the CITY/COUNTY, its recipients, subrecipients, and contractors. (Attach additional sheets or related written material as necessary)

Requested Remedy

Your Signature

Date

Required Contract Provisions Federal-Aid Construction Contracts

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Payment of Predetermined Minimum Wage
- V. Statements and Payrolls
- VI. Record of Materials, Supplies, and Labor
- VII. Subletting or Assigning the Contract
- VIII. Safety: Accident Prevention
- IX. False Statements Concerning Highway Projects
- X. Implementation of Clean Air Act and Federal Water Pollution Control Act
- XI. Certification Regarding Debarment, Suspension Ineligibility, and Voluntary Exclusion
- XII. Certification Regarding Use of Contract Funds for Lobbying

Attachments

- A. Employment Preference for Appalachian Contracts (included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.
2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.
3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.
4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:
 - a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or
 - b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."
2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment.

To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
 - b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be

taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

- a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.
 - b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
 - c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
 - d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.
6. **Training and Promotion:**
- a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
 - b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
 - c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
 - d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.
7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:
- a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing

the skills of minority group employees and women so that they may qualify for higher paying employment.

- b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
 - c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.
 - d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
 - c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a. The records kept by the contractor shall document the following:

1. The number of minority and non-minority group members and women employed in each work classification on the project;
 2. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 3. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 4. The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.
- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.

III. **NONSEGREGATED FACILITIES**

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

- a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.
- b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).
- c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of \$10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

- a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.
- b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.
- c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. **Classification:**
- a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.
 - b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:
 1. the work to be performed by the additional classification requested is not performed by a classification in the wage determination;
 2. the additional classification is utilized in the area by the construction industry;
 3. the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 4. with respect to helpers, when such a classification prevails in the area in which the work is performed.
 - c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary
 - e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.
3. **Payment of Fringe Benefits:**
- a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either

pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

- b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

1. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.
2. The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.
3. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the

apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

4. In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.
- b. Trainees:
1. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.
 2. The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.
 3. Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

4. In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. **Helpers:**

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. **Apprentices and Trainees (Programs of the U.S. DOT):**

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. **Withholding:**

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. **Overtime Requirements:**

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. **Violation:**

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. **Withholding for Unpaid Wages and Liquidated Damages:**

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

II. **STATEMENTS AND PAYROLLS**

(Applicable to all Federal-aid construction contracts exceeding \$2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. **Compliance with Copeland Regulations (29 CFR 3):**

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. **Payrolls and Payroll Records:**

- a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.
- b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.
- c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

- d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - 1. that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;
 - 2. that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;
 - 3. that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.
- f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.
- g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

III. RECORD OF MATERIALS, SUPPLIES, AND LABOR

- 1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than \$1,000,000 (23 CFR 635) the contractor shall:
 - a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

- b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.
 - c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.
2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

IV. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).
 - a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.
4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in

writing and that it contains all pertinent provisions and requirements of the prime contract.

V. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.
2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

VI. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or

costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

VII. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.
4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

VIII. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**

1. **Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

- a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.
- c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.
- d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into

- this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
 - i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

- 4. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

- d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 5. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

1. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more - 49 CFR 29)

- . By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.
- a. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- b. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
- c. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
- d. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- e. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

- f. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
- g. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- h. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

- 9. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 10. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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V. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 - 49 CFR 20)

- 1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - . No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a

Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- a. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS
(Applicable to Appalachian contracts only.)

4. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:
 - a. To the extent that qualified persons regularly residing in the area are not available.
 - b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.
 - c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.
5. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees

required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

6. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.
7. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.
8. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.