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Role of the U.S. Environmental Protection Agency in Environmental Justice

The role of the U.S. Environmental Protection Agency (EPA) in environmental justice is rooted in multiple executive orders (E.O.s) and implemented through a wide range of agency programs and activities. Legislation has been introduced in multiple Congresses to require the consideration of environmental justice in federal agency decisions; this legislation has not been enacted to date. Environmental-justice-related E.O.s and examples of EPA's implementation of selected directives are discussed below.

Environmental Justice Executive Orders

Three E.O.s, one issued by President Clinton and two by President Biden, direct EPA and other agencies to consider environmental justice when carrying out agency programs and activities, subject to existing law. E.O.s in themselves generally do not establish federal law; they are presidential directives for the management of executive departments and agencies that instruct the implementation of existing law. Under the E.O.s, executive departments and agencies are responsible for interpreting the statutes that authorize their respective programs and activities to determine the extent to which environmental justice may be incorporated as a facet of their mission. Although the authorizing statutes do not explicitly preclude consideration of environmental justice, other implementation criteria established in law could be inconsistent with such considerations.

On February 11, 1994, President Clinton signed the first E.O. focused on environmental justice, E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, which directs each executive department, EPA, and certain other agencies to “make achieving environmental justice part of its mission.” E.O. 12898 more generally directs executive departments and agencies to integrate environmental justice into their respective missions to “the greatest extent practicable and permitted by law.” Some departments and agencies have incorporated the consideration of environmental justice into their respective regulations to carry out E.O. 12898. E.O. 12898 also established the Interagency Working Group on Environmental Justice (IWGEJ), comprising the heads of certain executive agencies and departments, including EPA. E.O. 12898 states that it is intended to supplement E.O. 12250 for implementing Title VI of the Civil Rights Act of 1964, which generally prohibits discrimination based on race, color, or national origin in federally funded programs or activities.

E.O. 14008, *Tackling the Climate Crisis at Home and Abroad*, signed by President Biden on January 27, 2021, amends E.O. 12898. Sections of E.O. 14008 expand the environmental justice directives to EPA and other federal

agencies and executive departments, restructure the IWGEJ into the White House Environmental Justice Interagency Council (Interagency Council), and establish the Justice40 initiative (discussed below), among other provisions. For EPA specifically, E.O. 14008 directs the agency to administer the new White House Environmental Justice Advisory Council. E.O. 14008 also directs the agency to focus its enforcement efforts on violations that may have a “disproportionate impact on underserved communities” and to build upon existing pollution monitoring and notification programs for the public. E.O. 14008 further directs the Council on Environmental Quality (CEQ) to develop the Climate and Economic Justice Screening Tool (CEJST), a government-wide online mapping tool designed to assist federal agencies in identifying disadvantaged communities for the purposes of the Justice40 initiative. CEQ released the first version of CEJST in November 2022.

E.O. 14096, *Revitalizing Our Nation's Commitment to Environmental Justice for All*, signed by President Biden on April 21, 2023, builds upon these two previous E.O.s and amends certain provisions in them. E.O. 14096 sets out a “whole-of-government” approach to environmental justice and applies to a broader scope of federal agencies than E.O. 12898, which generally limited its directives to IWGEJ member agencies. E.O. 14096 establishes new directives and expands other directives for federal agencies to make achieving environmental justice part of their missions, consistent with E.O. 12898 and subject to each agency's statutory authority. For example, E.O. 14096 directs each federal agency to submit an Environmental Justice Strategic Plan to CEQ. E.O. 14096 also modifies the membership of the Interagency Council and establishes a new White House Office of Environmental Justice within CEQ.

E.O. 14096 also directs federal agencies to consider environmental justice in the National Environmental Policy Act (NEPA) federal environmental review process. (See CRS Legal Sidebar LSB10590, *Addressing Environmental Justice Through NEPA*, for more information.) In addition, E.O. 14096 directs EPA to establish an online environmental justice information clearinghouse, among other responsibilities.

What Is Environmental Justice?

What constitutes environmental justice has been an ongoing question for many years. There is no definition of *environmental justice* in federal law. EPA generally has defined *environmental justice* as the “fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” Other

federal departments and agencies may tailor their definitions of *environmental justice* to their respective missions.

E.O. 14096 specifies a new uniform definition of *environmental justice* for consideration by EPA and all other federal departments and agencies when implementing E.O. directives, within the scope of existing laws. The E.O. defines *environmental justice* as “the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability in agency decision making and other Federal activities that affect human health and the environment.”

EPA Implementation

In 2022, EPA created a new Office of Environmental Justice and External Civil Rights, which consolidated the functions of existing agency offices, including the Office of Environmental Justice previously organized within the Office of the Administrator. The new office is responsible for coordinating the implementation of the three E.O.s (discussed above) throughout the agency, administering environmental justice grants, providing training and technical assistance, developing and managing screening and mapping tools, and coordinating with other agencies in their consideration of environmental justice.

The National Environmental Justice Advisory Council (NEJAC), established prior to E.O. 12898, serves as a federal independent advisory committee to EPA. Since its creation on September 30, 1993, the NEJAC has consulted with the agency on environmental justice matters and implementation of related E.O.s.

EPA Guidance for Regulatory Analysis

The federal environmental statutes that authorize EPA to issue regulations do not specify environmental justice as a criterion for agency decisions. These statutes address the protection of human health and the environment regardless of population demographics.

Issued in June 2016, the EPA *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* establishes procedures for evaluating environmental justice concerns potentially associated with agency regulatory actions. This guidance is intended to provide consistency across EPA’s programs and offices in integrating environmental justice into the implementation and enforcement of the federal statutes that the agency administers in coordination with delegated states. This June 2016 guidance supplements EPA’s *Guidance on Considering Environmental Justice During the Development of a Regulatory Action*, finalized in May 2015.

EPA Strategic Plan

EPA’s FY2022-FY2026 strategic plan outlines the agency’s most recent approach to implementing E.O. 12898, E.O. 14008, and E.O. 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. In this strategic plan, the agency sets a goal to “take decisive action to advance environmental justice and civil rights” and outlines three related objectives: (1) promoting environmental justice at the federal, tribal, state,

and local levels; (2) embedding environmental justice into EPA’s programs, policies, and activities; and (3) strengthening civil rights enforcement in communities with environmental justice concerns.

EJSCREEN

Launched in 2015, EPA’s EJSCREEN is a screening and mapping tool intended to provide environmental and demographic data for specific locations. EPA categorizes EJSCREEN as a resource for stakeholders and communities to evaluate the overlap between environmental conditions and demographic characteristics to inform public comments on proposed rulemaking, permitting, and other regulatory actions. EPA last updated the tool in 2023 to include additional environmental and health data, new indexes, and additional map layers. EPA emphasizes that EJSCREEN is not intended to identify environmental justice communities or form the basis of agency determinations of the existence or absence of environmental justice concerns. EJSCREEN has a different purpose and uses a different methodology than the CEJST government-wide screening tool discussed above.

Justice40

E.O. 14008 directs CEQ and the Office of Management and Budget (OMB), in consultation with federal departments and agencies, to publish recommendations on “how certain Federal investments might be made toward a goal that 40 percent of the overall benefits flow to disadvantaged communities” in seven environmental, energy, and infrastructure areas. In 2021, OMB released the *Interim Implementation Guidance for the Justice40 Initiative* for federal agencies, providing additional direction on Justice40 for EPA and other agencies. In April 2023, as directed under E.O. 14008, EPA released its first Environmental Scorecard on Justice40 implementation covering FY2022, which identified 74 EPA Justice40 covered programs, 40 related EPA funding announcements, and \$14 million in available funding opportunities for Justice40 covered programs.

EPA Appropriations

There is no consolidated line-item of funding for EPA’s implementation of environmental-justice-related E.O.s within the annual appropriations acts that fund the agency. Although there is no separately explicit program authority, Congress has provided specific funding in annual appropriations acts primarily for interagency coordination and environmental justice grant programs. These grant programs provide technical assistance and funding for state, tribal, and community-based environmental justice activities. Other EPA funding to implement the E.O.s is generally integrated across the agency’s appropriations accounts that fund its programs within the scope of the authorizing statutes. Title II, Division G of the Consolidated Appropriations Act, 2023 (P.L. 117-328) appropriated \$108.04 million to EPA for environmental justice. The President’s FY2024 budget request includes \$375.00 million for environmental justice at EPA.

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