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

Executive Order 12898

The role of the U.S. Environmental Protection Agency (EPA) in environmental justice is rooted in Executive Order (E.O.) 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, signed by President Bill Clinton on February 11, 1994. E.O. 12898 directs each executive department and agency, including EPA, to “make achieving environmental justice part of its mission.”

The consideration of environmental justice across federal programs and activities is not mandated in statute. 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 the E.O.

E.O. 12898 itself does not establish federal law but is a presidential directive for the management of executive departments and agencies that instructs the implementation of existing law. (See CRS Report RS20846, *Executive Orders: Issuance, Modification, and Revocation*, by Todd Garvey.) The E.O. is not judicially enforceable and explicitly precludes “any right of judicial review involving the compliance or noncompliance of the United States, its agencies, officers, or any other person with this order.” Although amended by E.O. 12948 in 1995, E.O. 12898 has not been revoked or further amended under the current or previous Administrations to date and continues to apply to executive departments and agencies. E.O. 12948 amended time frames for certain actions directed in E.O. 12898, but all other provisions have remained unchanged.

Under E.O. 12898, 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 implementation. Some agency programs or activities may not incorporate environmental justice or may incorporate it in a more limited capacity. Although the authorizing statutes do not explicitly preclude consideration of environmental justice, some implementation criteria may be inconsistent with such considerations. For example, federal environmental laws that authorize the permitting of industrial facilities do not allow the denial of a permit solely because of proximity to a particular community based on its demographics, although, during permitting actions, certain communities may cite proximity as an environmental justice concern. From a scientific standpoint, potential health risks in such situations would depend on exposure to pollutants, not proximity alone.

What Is Environmental Justice?

What constitutes environmental justice has been an ongoing issue for many years. There is no definition of environmental justice in federal law. Some have interpreted the terms “environmental justice (or injustice)” and “environmental equity (or inequity)” broadly to describe the perceived disproportionate impacts of pollution across populations that possess different demographic characteristics (e.g., age, gender, race, national origin, occupation, income, or language). Some have also raised concerns about environmental justice in terms of access to natural resources and recreational opportunities as part of a broader focus on the environment than just pollution from anthropogenic sources.

Stakeholder concerns about the consideration of environmental justice in the implementation of EPA programs and activities have generally focused on the protection of certain populations that may be disproportionately exposed to potentially hazardous or toxic substances. Economic impacts may also be cited as an environmental justice concern, such as perceived effects of the presence of pollution sources on property values.

E.O. 12898 refers to environmental justice in terms of disproportionately high and adverse human health or environmental impacts specifically on minority and low-income populations. In its role under E.O. 12898, EPA has generally 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 definition of environmental justice to their respective missions.

EPA Implementation

EPA’s Office of Environmental Justice (OEJ), administered within the Office of the Administrator, coordinates the implementation of E.O. 12898 within the agency to integrate environmental justice into policies and programs across the agency’s headquarters and regional offices. OEJ also administers EPA environmental justice grants and may provide information and technical assistance to other federal departments and agencies in their implementation of E.O. 12898. Prior to early 2018, OEJ was managed within EPA’s Office of Enforcement and Compliance Assurance.

Established just prior to the E.O. on September 30, 1993, the National Environmental Justice Advisory Council (NEJAC) has also served as a federal independent advisory

committee to EPA and has continued to consult with the agency in its implementation of the E.O.

EPA Environmental Justice Progress Reports

EPA issues annual progress reports summarizing how the agency seeks to incorporate the principles of environmental justice into its programs, pursuant to the E.O. Most recently, the Trump Administration issued the *EPA Annual Environmental Justice Progress Report FY2018* (August 2019). The report provides an overview of EPA's activities during FY2018, including in its regional offices, as well as efforts through partnerships with federal, state and local governments, tribes, and communities. The report also highlights the activities of the Office of Community Revitalization (formerly the Office of Sustainability) and the NEJAC. EPA is operating under its multi-year *EJ 2020 Action Agenda* that outlines the agency's plans to incorporate environmental justice into its mission from 2016 to 2020, issued during the Obama Administration.

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 emphasizes that EJSCREEN is not intended to identify environmental justice communities, quantify specific risk values for a selected area, measure cumulative impacts of multiple environmental factors, or form the basis of agency determinations of the existence or absence of environmental justice concerns.

EPA Guidance for Regulatory Analysis

Issued in June 2016, the *EPA Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (EJTG) establishes procedures for evaluating environmental justice concerns potentially associated with agency regulatory actions. The EJTG 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.

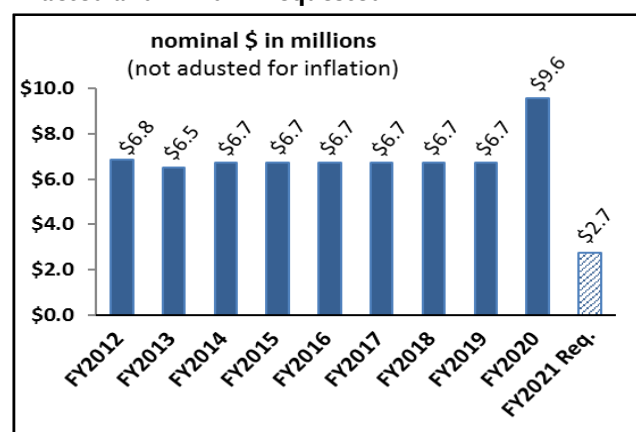
The EJTG supplements EPA's final *Guidance on Considering Environmental Justice During the Development of a Regulatory Action*, issued in May 2015. However, the federal environmental statutes that authorize EPA regulations do not specify environmental justice as a criterion for agency decisions. These statutes address the protection of human health and the environment among the general public regardless of population demographics.

EPA Appropriations

There is no consolidated line item of funding for EPA's implementation of E.O. 12898 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 environmental justice grants to assist potentially disproportionately affected communities. Other EPA funding to implement the E.O. is generally integrated across the agency's appropriations accounts that fund its

programs to the extent allowed under the statutes that authorize them. **Figure 1** presents enacted appropriations from FY2012 to FY2020 and the President's FY2021 request for the Environmental Justice program area within the EPA Environmental Programs and Management account (not adjusting for inflation). OEJ uses these funds for grants, technical assistance, and coordination described above. For this program area for FY2020, Title II of Division D in the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), appropriated \$9.6 million, an increase above the \$6.7 million FY2019 enacted level, and the President's FY2021 request of \$2.7 million. The Explanatory Statement accompanying P.L. 116-94 directed EPA to follow the guidance cited in the House Report (H.Rept. 116-100).

Figure 1. Appropriations for EPA Environmental Justice Grants and Coordination: FY2012-FY2020 Enacted and FY2021 Requested



Source: Prepared by CRS using information from the *Congressional Record* (explanatory statements); and House, Senate, and conference committee reports. Enacted amounts appropriated within EPA's Environmental Programs and Management account reflect rescissions and supplemental appropriations.

Federal Interagency Working Group on Environmental Justice

E.O. 12898 directed the establishment of the Federal Interagency Working Group on Environmental Justice (EJ IWG) to facilitate collaboration among federal departments and agencies. Chaired by EPA, the EJ IWG has established several standing committees and may create others as needed to carry out various aspects of the E.O. The heads of the 17 federal departments and agencies that comprise the EJ IWG adopted a charter in a 2011 "Memorandum of Understanding." As revised in 2014, the charter provides a framework and guidance to address coordination among individual departments and agencies in implementing E.O. 12898. In March 2016, the working group released its *EJ IWG Framework for Collaboration: Fiscal Years 2016-2018*. To carry out E.O. 12898, EPA and other departments and agencies have also developed various strategies, policies, and guidelines over time to incorporate environmental justice into their programs and activities within the confines of existing law.

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