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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, EPA, and certain other agencies 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 E.O. 12898.

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.) E.O. 12898 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.” E.O. 12898 also states that it is intended to supplement E.O. 12250 for implementing Title VI of the Civil Rights Act of 1964 that generally prohibits discrimination based on race, color, or national origin in federally funded programs or activities. Although amended by E.O. 12948 in 1995 to alter time frames for certain actions, E.O. 12898 has not been revoked and has continued to apply to executive departments and agencies.

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 their mission. 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 prior to E.O. 12898 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 E.O. 12898.

EPA Environmental Justice Progress Reports

EPA issues annual progress reports summarizing how the agency seeks to incorporate the principles of environmental justice into its mission, pursuant to E.O. 12898. The *EPA Annual Environmental Justice Progress Report FY2020* provides an overview of EPA's activities and partnerships with other federal agencies, states, local governments, tribes, communities, and the NEJAC. The multiyear *EPA EJ 2020 Action Agenda* established the agency's strategic plan for incorporating environmental justice into the agency's mission from 2016 to 2020.

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 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* 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.

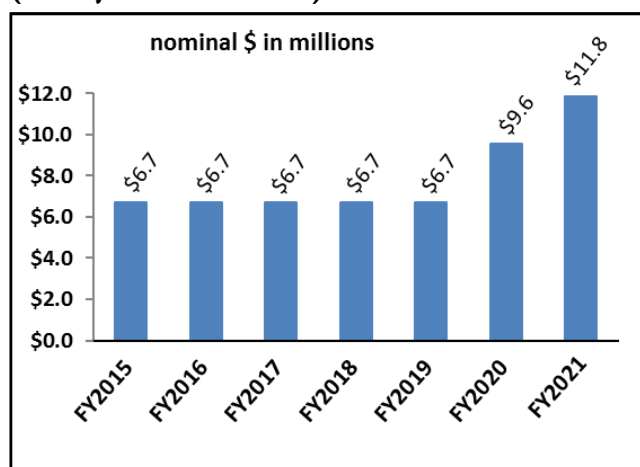
This June 2016 guidance supplements EPA's *Guidance on Considering Environmental Justice During the Development of a Regulatory Action*, finalized in May 2015. However, the federal environmental statutes that authorize EPA regulations do not specify environmental justice as a criterion for agency decisions. These statutes address the protection of human health and the environment 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, technical assistance, and interagency coordination. Other EPA funding to implement the E.O. is generally integrated across the agency's appropriations accounts that fund its programs within the scope of the authorizing statutes.

Figure 1 presents enacted appropriations from FY2015 to FY2021 for the Environmental Justice program area within the EPA Environmental Programs and Management account (not adjusted for inflation). These funds support grants, technical assistance, and interagency coordination administered by the OEJ. Division G, Title II, of the Consolidated Appropriations Act, 2021 (P.L. 116-260, H.R. 133) appropriated \$11.8 million for this program area, an increase of \$2.2 million above the \$9.6 million FY2020 enacted level, and \$9.1 million above the President's FY2021 request of \$2.7 million. The Explanatory Statement accompanying H.R. 133 indicated that the House directives in H.Rept. 116-448 related to EPA's environmental justice activities were not adopted under the final bill, and more generally directed EPA to support environmental justice efforts to "protect public health."

Figure 1. EPA Environmental Justice Grants, Technical Assistance, and Interagency Coordination: FY2015-FY2021 Enacted Appropriations (not adjusted for inflation)



Source: Prepared by CRS using information from Explanatory Statements presented in the *Congressional Record*; and House, Senate, and conference committee reports.

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 E.O. 12898. 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 2020, the EJ IWG released its *Fiscal Year 2019 Progress Report*. 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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