

Guidance on Considering Environmental Justice During the Development of Regulatory Actions



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Message from the Administrator

Guidance on Considering Environmental Justice During the Development of Regulatory Actions



Making a visible difference in communities across America means that we should consider the impacts of our decisions on all populations. In particular, the U.S. Environmental Protection Agency has a responsibility under Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* to consider the impacts of our regulatory actions on populations documented as frequently bearing the greatest burdens imposed by environmental pollution. Recently, the EPA celebrated the 20th anniversary of the groundbreaking executive order, and we are privileged to continue working to advance environmental justice in every corner of our great nation.

The EPA's *Guidance on Considering Environmental Justice During the Development of Regulatory Actions* is the Agency's guide for determining when environmental justice should be considered during the Action Development Process when developing regulations. This guide outlines critical steps that rule-writers can take to consider the needs of minority populations, low-income populations and indigenous peoples—those most impacted by environmental and public-health concerns—and provide specific strategies for giving those populations a voice in shaping the EPA's rules and regulations. The companion *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) provides information on how to analytically consider environmental justice in rules. Together, these documents provide consistency and rigor in how the Agency considers environmental justice in regulatory actions.

Our work under *Plan EJ 2014* has paved the way to understanding and integrating environmental justice into the EPA's policies and programs. Through increased analysis, informed decision making and expanded community engagement, we can secure the EPA's place at the forefront in addressing the environmental justice issues that challenge the health and vitality of our most vulnerable citizens and their communities.

The EPA strives to set the standard for addressing the environmental challenges that burden so many of our communities. In doing so, we realize that the future of our efforts will be built on our federal and state agencies working together with academia and our community partners to foster communication, support innovation and promote tremendous growth and understanding of environmental justice issues. I call upon you, the EPA family, to reaffirm the spirit of Executive Order 12898 and to commit to strengthening our mission to protect our environment and every American's fundamental right to breathe clean air, drink clean water and live on clean land.

A handwritten signature in black ink, appearing to read "Gina McCarthy". The signature is fluid and cursive, written on a light-colored background.

Gina McCarthy, Administrator

EPA's Action Development Process:

Guidance on Considering Environmental Justice During the Development of Regulatory Actions

Foreword

The Environmental Protection Agency (EPA) is authorized by Congress to create and enforce regulations that put our nation's environmental laws into effect. Exercising this authority is one of the EPA's most important and powerful tools for protecting our environment and the health of our people. The EPA's regulations cover a range of environmental and public health issues, from setting standards for clean water to controlling air pollution from industry and other sources. When the EPA identifies the need to develop or revise a regulation, it forms a workgroup that is led by the EPA office that will be writing the regulation. The workgroup may work for months, even years, employing EPA expert scientists, economists, and other analysts, before an appropriate course of action is decided upon and a regulation is promulgated and implemented.

A number of laws, executive orders and policies direct the EPA to consider issues of concern to the President, Congress and the American public when developing regulations. To achieve the goals of Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, it is critical that EPA rule-writers consider environmental justice (EJ) when developing a regulation. EO 12898 and EPA policy identify population groups of concern, specifically minority populations, low-income populations and indigenous peoples. This Guide is designed to help EPA staff incorporate EJ into the process followed at the EPA for developing regulations, also known as the Action Development Process (ADP), by:

- Describing the legal and policy frameworks at the EPA for rule-writers to consider EJ;
- Identifying the information rule-writers should consider to determine whether there are EJ concerns involved in the regulation being developed;
- Highlighting the kinds of questions about EJ that rule-writers should ask and address in each step of developing a regulation; and
- Providing strategies and techniques for achieving meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples at key stages in the rule development process.

This Guide explicitly integrates EJ considerations into the fabric of the ADP—from the point when the Agency first starts considering a rule, then through its promulgation and implementation. The analyses needed to implement this Guide may include quantitative and/or qualitative elements. See a companion document, Draft Technical Guidance for Assessing Environmental Justice in Regulatory

Analysis (U.S. EPA 2013),¹ for recommendations on how to evaluate potential EJ concerns using quantitative and qualitative methods for regulatory actions.

This Guide empowers decision-makers responsible for developing rules to determine early in the process the level of focus and effort that is necessary and appropriate to achieve the EO 12898 goals. This approach can and should balance the need to make sure that strong, environmentally-protective rules are promulgated in a timely way while ensuring EJ is considered to the maximum extent practicable where it has potential to impact regulatory decisions. To achieve these goals, the Guide directs rule-writers and decision-makers to respond to three core EJ questions throughout the ADP:

1. How did the public participation process provide transparency and meaningful participation for minority populations, low-income populations, tribes, and indigenous peoples?²
2. How did the rule-writers identify and address existing and/or new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples?
3. How did actions taken under #1 and #2 impact the outcome or final decision?

Questions 1 and 2 use slightly different wording in referencing the subject entities (populations, peoples, tribes). Throughout this Guide, statements associated with engagement activities use the wording “minority populations, low-income populations, tribes, and indigenous peoples,” whereas statements associated with analysis, assessment and/or consideration of environmental and human health impacts use the wording “minority populations, low-income populations, and/or indigenous peoples.” When discussing public participation and meaningful involvement, Agency protocols specify inclusion of tribal organizations as well as indigenous peoples, and specifically define those terms. However, when discussing analysis, assessment and/or consideration of impacts, attention in the Guide is focused on impacts on populations rather than on governmental or other types of organizations.

This Guide helps rule-writers and decision-makers understand and identify potential EJ concerns, and advises on how to integrate the consideration of EJ into the rule development process and to meaningfully engage minority populations, low-income populations, tribes, and indigenous peoples during the rule development process. Further assistance is provided in references throughout the Guide linking rule-writers and decision-makers to the wealth of other information resources that they can turn to in seeking to consider EJ throughout all stages of the EPA’s ADP.

Disclaimer: This document identifies internal Agency policies and recommended procedures for EPA employees or decision-makers developing or reviewing regulatory actions in the ADP. This document is not a rule or regulation and it may not apply to a particular situation based upon the circumstances. This Guide does not change or substitute for any law, regulation, or any other legally binding requirement and is not legally enforceable. As indicated by the use of non-mandatory language such as “guidance,” “recommend,” “may,” “should,” and “can,” it identifies policies and provides recommendations and does not impose any legally-binding requirements.

¹ <http://yosemite.epa.gov/ee/epa/eed.nsf/webpages/ejtg.html>

² It is important to solicit input from indigenous people and tribal governments that may be impacted by an action. Consultation with tribal governments should be offered as appropriate and in accordance with the Agency’s Tribal Consultation Policy.

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Acronyms and Abbreviations

ABP	Analytic Blueprint
ADP	Action Development Process
CEQ	Council on Environmental Quality
DABP	Detailed Analytic Blueprint
EA	Economic Analysis
EIS	Environmental Impact Statement
EJ	Environmental Justice
EO	Executive Order
EPA	Environmental Protection Agency
FAR	Final Agency Review
FR	Federal Register
IT	Information Technology
MATS	Mercury Air Toxics Standards
NAAQS	National Ambient Air Quality Standards
NEJAC	National Environmental Justice Advisory Council
NEPA	National Environmental Policy Act
OAR	Office of Air and Radiation
OECA	Office of Enforcement and Compliance Assistance
OEJ	Office of Environmental Justice
OGC	Office of General Counsel
OMB	Office of Management and Budget
OP	Office of Policy
PABP	Preliminary Analytic Blueprint
PM	Particulate Matter
RegDaRRT	Regulatory Development and Retrospective Review Tracker
RRP	Renovation, Repair and Painting
RTR	Risk and Technology Review
UMCR	Unregulated Contaminant Monitoring Regulation
WPS	Worker Protection Standards

Overview and Background

A. What Is the Purpose of This Guide?

Achieving environmental justice is an EPA priority and should be factored into Agency regulatory decisions to ensure that all Americans, regardless of race, economic status or ethnicity, have access to clean water, clean air, and healthy communities.³ The EPA is committed to using existing environmental statutes and regulations to consider and address potential environmental justice (EJ) concerns when possible. To aid in achieving this goal, it is vital that Agency rule-writers identify and address potentially disproportionate environmental and public health impacts experienced by minority populations, low-income populations, and/or indigenous peoples. This Guide will help Agency rule-writers consider EJ during the development of regulatory actions under the Agency's Action Development Process (ADP),⁴ consistent with existing environmental and civil rights laws and their implementing regulations, as well as Executive Order (EO) 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, Feb. 16, 1994), the EPA's EJ policies, Plan EJ 2014, and EJ strategies in the EPA's strategic plans.⁵

In addition to providing guidance on the importance of identifying potential EJ concerns during the development of regulatory actions (Part 1), this Guide identifies key steps throughout the ADP where EJ should be considered (Part 2). While this Guide applies specifically to the rule-making stages in the development of regulatory actions, rule-writers consider EJ in the development of risk assessments, analytical tools, guidance documents and other actions that support development of regulatory actions. Rule-making efforts are likely to be more effective and timely if EJ is considered in such "up-front" activities. For example, the development of some EPA regulations is prompted by the findings of risk assessments. If EJ was not considered in the development of those assessments, the rule-writers will not have the benefit of the information that might have been provided and may need to examine options for developing such information during specific stages of the ADP, as specified

³ See EPA Strategic Plan Cross Cutting Strategies (<http://www2.epa.gov/planandbudget/fy-2014-2018-strategic-plan>), Plan EJ 2014 (<http://www.epa.gov/environmentaljustice/plan-ej/index.html>) and EPA's Themes – Meeting the Challenge Ahead (<http://www.epa.gov/environmentaljustice/plan-ej/index.html>).

⁴ EPA's Action Development Process: Guidance for EPA Staff on Developing Quality Actions Process ([http://yosemite.epa.gov/sab/5CSABPRODUCT.NSF/5088B3878A90053E8525788E005EC8D8/\\$File/adp03-00-11.pdf](http://yosemite.epa.gov/sab/5CSABPRODUCT.NSF/5088B3878A90053E8525788E005EC8D8/$File/adp03-00-11.pdf)).

⁵ Under Plan EJ 2014, EPA developed a set of basic guidances, policies and tools for integrating environmental justice into EPA programs and policies, available at <http://www.epa.gov/environmentaljustice/plan-ej/index.html>. EPA's historical EJ policies include: EPA's Environmental Justice Strategy (1995), Environmental Justice Implementation Plan (1996), Environmental Justice: Guidance Under the National Environmental Policy Act (1997), Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses (1998), Toolkit for Assessing Potential Allegations of Environmental Justice (2004), and Memo from Lisa P. Jackson: Next Steps: Environmental Justice and Civil Rights (2009).

in this Guide. As a supplement to this Guide, Agency staff may find it useful to refer to other EPA guidance documents related to risk assessment, public involvement and economic analysis, as referenced throughout this Guide and in Appendix E.

This Guide complements existing EPA requirements or recommendations for integrating children's health considerations into the ADP (see Text Box 1) and for consulting with federally-recognized tribes when Agency actions may impact their citizens or resources (see Text Box 2).⁶ These issues are addressed in other Agency guides, which are available online at <http://intranet.epa.gov/adplibrary>.

Text Box 1: Children's Health

Refer to Executive Order 13045, *Protection of Children from Environmental Health Risks and Safety Risks and EPA's Guide to Considering Children's Health When Developing EPA Actions*. Note the important intersection between EJ concerns and children's health issues, since children in minority, low-income and indigenous population groups are more likely to be exposed to, and have increased health risks from, environmental pollution than the general population.

Text Box 2: Indigenous Peoples and Tribes

Refer to Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments and the Agency's Policy on Consultation and Coordination with Indian Tribes*. The Agency's responsibilities under EO 13175 and its own Consultation Policy are separate from the responsibilities under EO 12898 and stem from federally-recognized tribes' unique status as sovereign governments. To better understand how to integrate EJ principles in a consistent manner in the Agency's work with federally recognized tribes and indigenous peoples, refer to EPA's Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples.

B. Who Is the Audience for This Guide?

This Guide is for EPA rule-writers and decision-makers:

- Rule-writers include: lead-program staff and managers charged with leading development of regulatory actions (who often also serve as leaders [chairs] of regulatory action development workgroups); members of regulatory action development workgroups; Agency staff and managers that perform the analyses that may be used to support Agency decision-making; and any other Agency staff and managers who assist in developing regulatory actions. Workgroup chairs have particular responsibilities under the ADP, including the responsibilities outlined in this Guide with respect to identifying and addressing potential EJ concerns. However, each regulatory action development workgroup member has the responsibility for being familiar with, and understanding, the various statutes and executive orders that impact the regulatory action they are developing. Other staff responsible for the development of regulatory actions, who may not be workgroup members, are also responsible for being familiar with these requirements.
- Decision-makers include: program managers, Office Directors, Assistant Administrators/National Program Managers, the Administrator, and other members of the Agency's decision-making team with respect to Agency regulatory actions. Decision-makers are responsible for helping to ensure that potential EJ concerns are appropriately identified and addressed in the development of regulatory actions under the ADP.

⁶ See EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples. (2014), <http://www.epa.gov/environmentaljustice/resources/policy/indigenous/ej-indigenous-policy.pdf>. For purposes of this cited policy, EPA defines the terms "federally recognized tribes" and "indigenous peoples." A "federally recognized tribe" is defined as an "Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1944, 25 U.S.C.479a. The elected officials for the federally recognized tribe and the government structure they administer are referred to as the federally recognized tribal government." The term "indigenous peoples" includes "state-recognized tribes; indigenous and tribal community-based organizations; individual members of federally recognized tribes, including those living on a different reservation or living outside Indian country; individual members of state-recognized tribes; Native Hawaiians; Native Pacific Islanders; and individual Native Americans." When used in this document, the term "tribes" refers to federally recognized tribes unless otherwise specified.

C. How Is This Guide Organized?

This guidance document is organized into four parts:

- Part 1 presents the key concepts and policies that are critical for understanding EJ and determining whether regulatory actions involve potential EJ concerns.
- Part 2 provides a step-by-step walk-through of what rule-writers and decision-makers should do to consider EJ in each stage of the EPA's ADP.
- Part 3 provides strategies and techniques for achieving meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples at key stages in the rule development process.
- Appendices A through E provide more detailed information and guidance elaborating on information presented in the main body of this Guide.

In addition, a separate document, *Templates for Regulatory Preambles to Address EO 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, explains how to address EO 12898 in rule preambles covering various situations. It is available in the Office of Policy's (OP's) ADP library at <http://intranet.epa.gov/adplibrary>. It is important to note that the preamble discussion should also focus on how the EPA identified and addressed potential EJ concerns as well as how the regulatory action complies with EO 12898 and the Agency's EJ policies.

Part I: Key Concepts for Understanding Whether Regulatory Actions Involve an Environmental Justice Concern

A. What Is Environmental Justice?

Environmental justice is central to the Agency’s mission and is the responsibility of everyone at the EPA. In particular, those who are involved in the development of regulatory actions need to understand the principles of EJ and how they relate to the development of an Agency regulatory action.

The EPA defines “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.⁷

- *Fair Treatment* means that no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental and commercial operations or programs and policies.
- *Meaningful Involvement* means that: (1) potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public’s contribution can influence the regulatory Agency’s decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the rule-writers and decision-makers seek out and facilitate the involvement of those potentially affected.

Throughout this Guide, as noted in the Foreword, statements associated with engagement activities use the wording “minority populations, low-income populations, tribes, and indigenous peoples,” whereas statements associated with analysis, assessment and/or consideration of environmental and human health impacts use the wording “minority populations, low-income populations, and/or indigenous peoples.” When discussing public participation and meaningful involvement, Agency protocols specify inclusion of tribal organizations as well as indigenous peoples, and specifically define those terms. However, when discussing analysis, assessment and/or consideration of impacts, attention in the Guide is focused on impacts on populations rather than on governmental or other types of organizations.

⁷ EPA’s definition of EJ can be found at <http://www.epa.gov/compliance/environmentaljustice/basics/index.html>. EPA’s definition of EJ was informed by Executive Order 12898, which is discussed in full detail in Part I, Section D of this Guide. Background information on EPA’s EJ program can also be found on this website.

In implementing its EJ program, the EPA has expanded the concept of fair treatment to include not only consideration of how burdens are distributed across all populations, but the distribution of benefits as well. Thus, to the extent data are initially available or can be developed through timely data needs assessment and planning, rule-writers should not only evaluate the distribution of burdens by paying special attention to populations that have historically borne a disproportionate share of environmental harms and risks, but should also evaluate the distribution of the positive environmental and health consequences resulting from their regulatory actions.

B. Which Populations Groups Are the Focus of EO 12898 and the Agency's EJ Policies?

Executive Order 12898 and EPA policy identify the populations of concern for the EO and for the Agency; specifically: minority populations, low-income populations and indigenous peoples.^{8,9} To help achieve the EPA's goals for EJ (i.e., the fair treatment and meaningful involvement of all people), the EPA places particular emphasis on the public health and environmental conditions affecting minority populations, low-income populations, and/or indigenous peoples. In recognizing that these populations frequently bear a disproportionate burden of environmental harms and risks (see Text Box 3 for an example), the EPA works to protect them from adverse public health and environmental effects of its programs. Thus, the focus in this Guide is on minority populations, low-income populations and indigenous peoples, who may be disproportionately impacted by environmental pollution.

Text Box 3: I-710 Freeway Los Angeles

The densely populated communities closest to the I-710 freeway in Los Angeles County are severely impacted by pollution from goods movement and industrial activity. The Ports of Long Beach and Los Angeles are the entry point of 40% of all imports to the U.S. and account for 20% of diesel particulate emissions in Southern California. Approximately 2,000 premature deaths annually are associated with diesel emissions from goods movement in the South Coast Air Basin. The I-710 freeway passes through 15 cities and unincorporated areas with a population of over 1 million residents—about 70% of which are minority and disproportionately low-income populations. The area is dense with truck traffic, industrial facilities, residences, schools, daycares and senior centers. The region exceeds national ambient air quality standards for particulate matter and has some of the worst ozone air pollution in the country. The South Coast Air Quality Management District, California Air Resources Board, and EPA are working vigorously to address the air quality issues in the region.

Source: <http://www.epa.gov/region9/tri/report/09/TRI-2009-I710Corridor.pdf>



⁸ Executive Order 12898 also mentions “populations with differential patterns of subsistence consumption of fish and wildlife” as populations of concern. This population category largely overlaps with those defined on the basis of income and race/ethnicity, as it identifies particular pathways of exposure. Accordingly, it is not separately identified as a population of concern in this Guide.

⁹ See *EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*. (2014), <http://www.epa.gov/environmentaljustice/resources/policy/indigenous/ej-indigenous-policy.pdf>.

These population groups are briefly described below. See the *Guidelines for Preparing Economic Analyses* (U.S. EPA 2010) and *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) for detailed discussions of how these populations may be defined for analytic purposes.

Minority and Indigenous Peoples

The White House Office of Management and Budget (OMB) defines six distinct race and ethnic categories:

- American Indian or Alaska Native;
- Asian;
- Black or African American;
- Native Hawaiian or Other Pacific Islander;
- White; and
- Hispanic or Latino.

Statistical data collected by the federal government, such as the U.S. Census, use this classification system.¹⁰

Low-Income Populations

OMB has designated the Census Bureau's annual poverty measure as the official metric for program planning and analysis by all Executive branch federal agencies, though it does not preclude the use of other measures (OMB 1978).

However, unlike its treatment of poverty, the Census Bureau does not have an official or standard definition of what constitutes "low income." It is therefore appropriate to characterize low-income in a variety of ways. Rule-writers may examine several different low-income categories, such as families whose income falls above the poverty threshold but below the average household income for the United States, or below two times the poverty threshold. Additional socioeconomic characteristics such as educational attainment, baseline health status and health insurance coverage may also be useful for identifying, characterizing and developing strategies for assessing and engaging low-income populations in the context of specific regulatory actions.

C. What Are Disproportionate Impacts?

In accordance with EO 12898, each covered federal agency "shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects..." of its policies. See the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) under development for a detailed discussion of the concept of disproportionate impacts.

It is important to note that the role of the analyst is to assess and present differences in anticipated impacts across population groups of concern to the decision-maker and the public. The determination of whether there is a potential disproportionate impact that may merit Agency action is ultimately a policy judgment informed by analysis, and is the responsibility of the decision-maker. These analyses will depend on the availability of the scientific and technical data. As noted in the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013), examples of the

¹⁰ See http://www.whitehouse.gov/omb/fedreg_1997standards/ for the specific OMB definitions.

type of information that may be useful to provide to decision-makers for considering whether or not effects are disproportionate include: the severity and nature of health consequences; the magnitude of the estimated differences in impacts between population groups; mean or median exposures or risks to relevant population groups; distributions of exposures or risk to relevant population groups; characterization of the uncertainty; and a discussion of factors that may make population groups more vulnerable.

Also note that the Agency's statutory and regulatory authorities provide a broader basis for protecting human health and the environment than EO 12898 and do not require a demonstration of disproportionate impacts in order to protect the health or environment of any population, including minority populations, low-income populations, and/or indigenous peoples. Consistent with its mission, the Agency may address adverse impacts in the context of developing an action without the need for showing that the impacts are disproportionate. Evidence of potential adverse impacts on populations of concern may be more likely to be addressed, however, if there is also evidence that the adverse impacts may fall disproportionately on populations of concern. Thus, this Guide recommends that analysts evaluate the potential for disproportionate impacts and present the relevant data to decision-makers, who will determine what actions to take.

D. What Is the Agency's Statutory and Policy Framework for Considering Environmental Justice?

For over a decade, the EPA has developed strategies, guidance documents and implementation plans to move the Agency closer to its goal of achieving environmental justice. These documents, along with Executive Order 12898 and existing environmental statutes and regulations, provide the framework for the rule-writers to consider EJ during the development of the regulatory action.

EO 12898 applies to agency "programs, policies and activities" and in general calls on each covered federal agency to make achieving EJ part of its mission. It directs agencies such as the EPA, "[t]o the greatest extent practicable and permitted by law" to "identify [...] and address [...], as appropriate, disproportionately high and adverse human health or environmental effects" of agency programs, policies and actions on minority populations and low-income populations.¹¹ Because minority populations, low-income populations, tribes, and indigenous peoples have historically been under-represented in federal agency decision making, EO 12898 also aims to improve public participation of these populations in the decision-making process.

EO 12898 has informed the development and implementation of the EPA's EJ program and EJ policies. Consistent with the EO and the Presidential Memorandum accompanying it, the Agency's EJ policies promote human health and environmental protection by focusing attention and Agency efforts on addressing the types of environmental harms and risks that are prevalent among minority populations, low-income populations, and/or indigenous peoples. EO 12898 and the Agency's EJ policies do not mandate particular outcomes for regulatory actions, but they demand that decisions

¹¹ In addition, the Presidential Memorandum accompanying EO 12898 directs federal agencies to analyze environmental effects, including human health, economic and social effects, of federal actions when such analysis is required under the National Environmental Policy Act. See *Memorandum for the Heads of All Departments and Agencies: Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (1994). Similarly, the EPA promotes the consideration of economic or social effects in developing its actions to better inform and manage the process of implementing Agency actions and policies, where allowed by underlying statutory authority.

involving the action be informed by a consideration of EJ issues. Where feasible, regulatory actions should prevent or address and mitigate potential EJ concerns.

Consistent with the emphasis in the Presidential Memorandum accompanying EO 12898 on using existing environmental laws to help achieve the goal of EJ, the EPA uses existing environmental statutes and regulations to consider and address potential EJ concerns.¹² See Text Box 4 for some examples of statutory authorities used to help achieve EJ goals. These authorities encompass the breadth of the Agency's activities, including setting standards. Early in the rule writing process, rule-writers should become familiar with the specific authorities governing their rule's development and the opportunities they provide to address EJ concerns. Some of the EPA's legal authorities direct the Agency to consider specific populations when setting standards, whereas other authorities provide discretionary opportunities. Where discretionary authority exists, the decision to take a particular regulatory action to address potential EJ concerns is a policy call that may involve consideration of questions beyond the action's legal basis, such as data availability, time and resource constraints or the associated human health or environmental benefits.

As a starting point, rule-writers should consult the Agency's *EJ Legal Tools* document, which identifies discretionary legal authorities that are or may be available to the EPA to incorporate EJ into rules.¹³ *EJ Legal Tools* notes that some authorities to promote EJ are clear, where others may involve interpretive issues that call for further analysis. Rule-writers may need to work closely with OGC and/or the appropriate regional or program office staff to understand how to use a specific authority to address potential EJ concerns in a particular set of circumstances. These conversations may influence the types of data collected and methods used to evaluate potential EJ concerns in a rule.

Existing statutory and regulatory authorities can be applied to prevent and mitigate adverse or disproportionate health and environmental impacts on all populations, including minority populations, low-income populations, and/or indigenous peoples. In applying these authorities to address potential EJ concerns, it is important to understand the appropriate role of demographic information when evaluating EJ. Demographic information can be used to identify existing or potential impacts on minority populations, low-income populations, and/or indigenous peoples and may be a factor in the design and implementation of regulatory actions. However, a decision to act (such as developing a more protective rule or standard) would be based on a human health or environmental factor, and not the racial composition or economic status of the impacted populations. Following this approach, demographic data will be used in conjunction with health or environmental information to identify

Text Box 4: Examples of Statutory Authority

Under the Resource Conservation and Recovery Act sections 3002 through 3004, EPA is directed to establish requirements applicable to generation, transport, treatment, storage and disposal of hazardous waste "as may be necessary to protect human health and the environment." This provides EPA with broad discretion to consider impacts on minority populations, low-income populations, and/or indigenous populations when developing RCRA regulations.

¹² The Presidential Memorandum also states that existing civil rights statutes provide opportunities to address environmental hazards in minority and low-income communities. It directs agencies as follows: "In accordance with Title VI of the Civil Rights Act of 1964, each Federal agency shall ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of race, color, or national origin."

¹³ The *EJ Legal Tools* document was developed under EPA's Plan EJ 2014 and can be accessed at <http://www.epa.gov/environmentaljustice/plan-ej/law.html>.

differences, and those health or environmental impacts (not demographics) are the rationale for the Agency's decision.

It is important, however, to recognize that the Agency's statutory and regulatory authorities provide a broad basis for protecting human health and the environment and do not require a demonstration of disproportionate impacts in order to protect the health or environment of any population, including minority populations, low-income populations, and/or indigenous peoples. Thus, consistent with its mission, the Agency may address adverse impacts in the context of developing regulatory actions without the need to show that the impacts are disproportionate. Unless prohibited by statutory or regulatory authority, the EPA can and should consider action to address adverse health and environmental impacts on populations of concern, consistent with this guidance. Rule-writers should focus attention on the health of and environmental conditions affecting minority populations, low-income populations, and/or indigenous peoples, both before and after implementation of a rule and/or for the regulatory options under consideration. This will allow decision-makers to make more informed choices between different regulatory options. An important consideration for regulatory options is the extent to which they improve the adverse health and environmental impacts in minority populations, low-income populations, and/or indigenous peoples.

E. What Is an “Environmental Justice Concern”?

Throughout this Guide, the phrase “potential environmental justice (EJ) concern” is used to indicate the actual or potential lack of fair treatment or meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples in the development, implementation and enforcement of environmental laws, regulations and policies. This section will provide general guidelines on how to identify regulatory actions that may involve potential EJ concerns. See the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) how to evaluate potential EJ concerns.

Decision-makers determine early in the rule-making process the appropriate level of analysis and engagement with stakeholders, including minority populations, low-income populations, tribes, and indigenous peoples, considering factors such as the legal framework governing the action, the availability of relevant data and analytical methodologies, stakeholder interest, and the impacts that potential EJ concerns are likely to have on the actual decisions involving the action (see Section G below). Based on the application of these criteria, some regulatory actions will be identified for enhanced efforts that may require the development of new data, application of more advanced analytical methodologies and more extensive and targeted engagement of stakeholders, including minority populations, low-income populations, tribes, and indigenous peoples. As detailed more thoroughly in Part 2, decision-makers should convey their determinations on the appropriate level of analysis and stakeholder engagement to the rule-writers. It is important to document decisions regarding the screening-level analysis described in Section G and any further analyses, including the information upon which these decisions are based.

1. A potential EJ concern refers to disproportionate and adverse impacts on minority populations, low-income populations, and/or indigenous peoples that may exist prior to or that may be created by the proposed regulatory action.

The regulatory action may involve a potential EJ concern if it could:

- Create new disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples;
- Exacerbate existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples; or
- Present opportunities to address existing disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples through the action under development.

For some Agency regulatory actions, it may also be useful and appropriate to assess the distribution of the benefits of the rulemaking action under consideration. Data limitations may, however, constrain rule-writers' ability to gauge how the distribution of existing pollution control program benefits may be changed by the new regulatory action. Rule-writers are encouraged to consult the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) for information on potential considerations and methodologies and conduct timely assessment and planning for data needs during the rule-making process.

The assessment of whether the regulatory action involves potential disproportionate impacts may include qualitative and/or quantitative elements. To begin this assessment, rule-writers should first understand what an action is accomplishing and why it is necessary. As rule-writers gather this preliminary information and set the context for the action, they can begin to articulate the framework for analyzing whether there are potentially disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples. The level of analysis appropriate for the regulatory action will depend on a variety of factors, including preliminary evidence of public health or environmental impacts on minority populations, low-income populations, and/or indigenous peoples, the legal framework governing the action, the availability of relevant data and analytical methodologies, a history of EJ issues in communities likely to be affected by the rule (e.g., history of significant non-compliance or recognized health effects due to polluting sources) or stakeholder interest, and the impacts that potential EJ concerns are likely to have on the actual decisions involving the action.

2. A potential EJ concern refers to lack of opportunities for minority populations, low-income populations, tribes, and indigenous peoples to meaningfully participate in the development of the regulatory action.

Regulatory actions may create a potential EJ concern if the Agency does not provide meaningful involvement opportunities to minority populations, low-income populations, tribes, and indigenous peoples during the development of the action. To provide meaningful involvement opportunities that are consistent with the Agency's definition of EJ, the rule-writers will likely need to go beyond the minimum requirements of standard notice and comment procedures and engage minority populations, low-income populations, tribes, and indigenous peoples early in the process. It is often unrealistic to expect meaningful involvement if the rule-writers have not targeted outreach efforts to these populations or tribes prior to proposing the action. Part 3 of this Guide describes the Agency's policies and resources related to meaningful involvement, and notes the difference between meaningful

involvement of tribes and indigenous peoples as it is used in the EJ context versus formal consultation with tribes.

Rule-writers should think broadly about how regulatory actions may impact minority populations, low-income populations, and/or indigenous peoples. For regulatory actions that may impact these populations, the rule-writers should assess what steps will be taken to ensure there are sufficient opportunities for meaningful involvement during the development of the action. This includes regulatory actions that directly impact the health or environmental conditions of these populations as well as regulatory actions that involve the collection of information or data (information or data collection actions may impact these populations or tribes if the information or data are later used for inspection and enforcement or to assess potential health or environmental impacts).¹⁴ Meaningful involvement is discussed in more detail in Part 3 of this document.

3. A potential EJ concern may arise when there is an actual or potential lack of fair treatment or meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples when implementing an agency regulatory action.

Rule-writers should assess how to consider EJ not only in the *development* of the action, but in the *implementation* of the action as well. The rule-writers should consider whether and how they can craft the action to influence its implementation in a manner that considers EJ. For example, listed below are common implementation issues that may be of particular concern to minority populations, low-income populations, tribes, and indigenous peoples.

What approaches should be included in the regulatory action to make sure it is effective with high compliance by the regulated community? Consider whether the regulatory action, when implemented, will itself promote compliance, to ensure that regulated facilities are complying. Rule-writers should try to make the rule self-implementing to drive compliance, using approaches such as enhanced monitoring, reporting and record-keeping requirements. These tools can help ensure compliance where needed to protect adversely affected populations, including minority populations, low-income populations, and/or indigenous peoples. Rule-writers should also draw on the expertise of the workgroup members, including representatives from OECA, in considering ways of ensuring effective program implementation and pursuing innovative ideas on how to achieve greater compliance and effectiveness of the action in reducing pollution and human and environmental risks. Information technologies in conjunction with public disclosure and accountability and other Next Generation Compliance concepts can be used to make rules more effective and enforceable.¹⁵

Does the regulatory action support compliance and enforcement? Non-compliance issues may impact the public health and environmental conditions affecting minority populations, low-income populations, and/or indigenous peoples, particularly when violations are occurring in areas already disproportionately impacted by environmental hazards. Structuring the action with compliance

¹⁴ Agency actions involving monitoring requirements are often viewed as important data gathering opportunities that inform the development of future actions. Also, a test rule that requires the submission of certain data that may subsequently be used in an analysis about impacts presents an important opportunity. Rule-writers should offer affected minority populations, low-income populations, tribes, and indigenous peoples meaningful opportunities to influence the type of data and information collected through such actions, how the data or information may be made available to the public, and how the Agency plans to use that data or information in future actions. For example, while the Agency often makes data available for the public to consider by issuing a Notice of Data Availability or as part of an Advanced Notice of Proposed Rulemaking, Rule-writers may consider and solicit feedback on other mechanisms for making the data or information available to these populations.

¹⁵ For further information on such concepts, rule-writers are encouraged to consult the Rule Implementation, Compliance and Effectiveness Screening Tool, available at <http://intranet.epa.gov/gis/ejscreen/>.

considerations built in will improve the Agency's ability to detect and respond to non-compliance and will help improve the action's effectiveness and efficiency in achieving its intended results. Ensuring that the action is written to be enforceable is critically important to address EJ concerns that may arise as a result of program implementation issues and non-compliance. For example, regulatory actions should define what constitutes a violation, clearly outline what industry should do to comply with the action and identify how compliance will be measured and by whom. The rule-writers should also consider available information regarding industry-specific non-compliance histories (and underlying causal factors) to determine whether the rule could be designed—or coordinated with other efforts—in ways that improve compliance rates and overall rule effectiveness. See Text Box 5.

Does the regulatory action promote transparency and meaningful involvement?

Regulatory actions that promote transparency and meaningful involvement during implementation can make it easier to engage and inform minority populations, low-income populations, tribes, and indigenous peoples throughout the action lifecycle, including after regulations are promulgated and being implemented. These actions may in turn improve their ability to spot non-compliance issues or identify ways in which implementation may be improved. For example, rule-writers should seek to design actions to maximize appropriate public availability of post-promulgation compliance information readily available and accessible to the affected public. The rule-writers should also assess how the action impacts the ability of minority populations, low-income populations, tribes, and indigenous peoples to meaningfully participate in subsequent environmental decision-making processes, e.g., permits, NEPA assessments, State Implementation Plans and reassessments of Agency regulatory actions.

Text Box 5: Nitrogen Dioxide (NO₂) Ambient Air Quality Monitoring

In 2010, EPA strengthened the health-based NAAQS established new ambient air monitoring and reporting requirements for NO₂. To determine attainment of the new standard, EPA established new ambient air monitoring and reporting requirements for NO₂. Ambient NO₂ monitoring data are collected by state, local and tribal monitoring agencies in accordance with monitoring requirements contained in 40 CFR parts 50, 53 and 58. Under these monitoring requirements, EPA required Regional Administrators to work with states to site a minimum of 40 NO₂ monitors, above the minimum number required in the area-wide and near-road network design, focused primarily on collecting NO₂ air quality data in areas where susceptible or vulnerable populations may be exposed to ambient NO₂ concentrations that have the potential to approach or exceed the NAAQS. Additional information is available at <http://www.epa.gov/ttn/amtic/svpop.html>.

Does the regulatory action encourage or require state, local and tribal governments to consider EJ as they implement federal programs?

State, local and tribal governments are the primary implementers of many programs that the Agency administers.¹⁶ If rule-writers have identified potential EJ concerns that may arise during state, local or tribal implementation, they should then consider how the action should address those issues. See Text Box 5 for an example of how this has been done successfully in a prior EPA rulemaking.

Does the regulatory action provide sufficient background information for drafting subsequent individual permits? Permits are an important vehicle through which Agency regulatory actions are implemented within a specific location.¹⁷ Permits implement generally applicable regulatory standards

¹⁶ EPA reviews state, local, and tribal programs to determine if they meet applicable requirements for federal approval. If EPA finds that the program meets those requirements, it approves the state, local, or tribal government to implement the federal program. State and local governments which receive grants to implement federal programs are also subject to Title VI of the Civil Rights Act of 1964, as amended. Title VI prohibits recipients from discriminating on the basis of race, color, or national origin. A recipient's obligation under Title VI of the Civil Rights Act of 1964, is layered upon separate, but related, obligations under the federal or state environmental laws.

¹⁷ For more information on considering EJ in permitting, see <http://www.epa.gov/environmentaljustice/plan-ej/permitting.html>.

by applying those standards to specific discharges and emissions of pollutants, which in some cases may take into account estimates of exposure experienced by minority populations, low-income populations, and/or indigenous peoples in that location. To facilitate the drafting of subsequent permits, it is important to consider, where feasible and appropriate, whether the data and assumptions that form the basis of the regulatory standard being developed account for exposure to multiple stressors,¹⁸ impacts on vulnerable or susceptible populations, or other issues related to potential EJ concerns (see next section for discussion of factors that contribute to potential EJ concerns).^{19,20}

F. What Are the Factors That Contribute to Potential Environmental Justice Concerns?

Identifying the presence of potential EJ concerns goes beyond simply characterizing potentially impacted populations. Several factors, summarized below, will help in assessing whether potential EJ concerns may be associated with regulatory actions (i.e., whether disproportionate impacts on, or distribution of benefits to, minority populations, low-income populations, and/or indigenous peoples exist prior to or are created by the proposed action). These factors may contribute to the higher health and environmental risks or lower environmental benefits in these populations. EJ concerns may result from a combination of several, if not all, of the subsequently listed factors. However, in some circumstances, the presence of one or two of these factors alone could be sufficient to result in a potential EJ concern (i.e., potentially disproportionate impact on minority populations, low-income populations, and/or indigenous peoples). The rule-writers should note that disproportionate impacts may also arise from factors not included here. See the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) for a more detailed discussion.

Proximity and Exposure to Emission Sources. Proximity to emission sources is the most studied indicator of high exposure in environmental justice literature. Disproportionate public health and environmental effects may be related to a population's differential proximity and associated exposure to environmental stressors, often stemming from evolving mixed land use patterns (i.e., encroachment of industrial/commercial facilities/infrastructure on residential communities or recreation areas, or expansion of residential areas into current or former industrial/commercial sites).

Unique Exposure Pathways. Unique exposure pathways are non-traditional pathways through which exposure to a given stressor occurs. Some populations sustain unique environmental exposures because of practices linked to their cultural background or socioeconomic status. For example, subsistence diets may expose these populations to toxic chemicals, such as exposures to mercury from a fish diet or exposures to other chemicals from a diet high in contaminated vegetation.²¹ There are also non-dietary exposure pathways that may be unique to some indigenous peoples, such as the practice of basket weaving, where exposures to toxic chemicals may occur when contaminated materials are

¹⁸ This Guide uses the term “environmental stressor” or “stressor” to encompass the range of chemical, physical or biological agents, contaminants, or pollutants that may be subject to a rulemaking.

¹⁹ In some situations, it may be appropriate for EPA to seek information about specific exposure pathways associated with cultural or traditional practices before formulating assumptions or making a determination of whether the assumptions account for a population's vulnerability. See the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*.

²⁰ For a more detailed discussion of EJ and permitting, see EPA's Plan EJ 2014 webpage at <http://www.epa.gov/environmentaljustice/plan-ej/permitting.html>. The resources developed under the EJ in Permitting Initiative are housed on this website. The purpose of the EJ in Permitting Initiative is to enable overburdened communities to have full and meaningful access to the permitting process and to develop permits that address environmental justice issues to the greatest extent practicable under existing environmental laws.

²¹ In the case of subsistence fishing, these populations may be exercising legal rights, based on treaties, to do so.

placed in the mouth during the weaving process. Unique exposure pathways can also be identified based on other factors, such as behavioral and physiological stages of growth and development which may occur during a particular life stage.²²

Physical Infrastructure. Physical infrastructure is a very important source of environmental stressors. The physical infrastructure, such as poor housing, poorly maintained public buildings (e.g., schools) or presence of legacy pollutants such as lead in paint and PCBs in building materials, may contribute to making certain populations more vulnerable to environmental hazards.

Multiple Stressors and Cumulative Impacts. Exposures to, and risks from, multiple stressors from one or more sources or pathways can be accumulated over time and result in one or multiple effects. In addition, such risks may be modified by other stressors affecting the exposed population, such as nutritional or health status, smoking, or other factors. However, the science supporting assessments of such cumulative impacts is evolving and the data and analytical tools needed to develop informative, scientifically sound analyses of these effects may not be available. Under these circumstances, estimated exposures or risks associated with environmental pollutants from a given source may not reflect the potential health risks to populations exposed to multiple environmental stressors, particularly if the emissions, exposures or risks being targeted by the action under consideration have significant interaction effects with these other stressors. Minority populations, low-income populations, and/or indigenous peoples are likely to suffer a wide range of environmental stressors, ranging from poor air quality to poor housing. Numerous empirical studies and anecdotal accounts describe minority populations, low-income populations, and/or indigenous peoples that are impacted by multiple environmental hazards, such as industrial facilities, landfills, transportation-related air pollution, poor housing, leaking underground tanks, pesticides and incompatible land uses. Analyzing cumulative impacts from multiple stressors allows a more complete evaluation of a population's risk from pollutants targeted by the action under consideration, particularly when there may be important interaction effects among these multiple stressors and adequate data and methods are available. The EPA's *Framework for Cumulative Risk Assessment*²³ can enhance an evaluation of the various aspects of cumulative risk experienced by these populations. See also the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) for a more detailed discussion.

Capacity to Participate in Decision Making. The ability, or inability, to participate in the environmental decision-making process may contribute to disproportionate impacts. Factors which contribute to the inability of minority populations, low-income populations, tribes, and indigenous peoples in particular to participate fully in the decision-making process include:

- Lack of trust;
- Availability or lack of information;
- Language barriers;
- Socio-cultural issues;
- Inability to access traditional communication channels; and
- Limited capacity to access technical and legal resources.

²² EPA defines lifestages as the "time frame in an individual's life characterized by unique and relatively stable behavioral and/or physiological characteristics that are associated with development and growth." For more information on lifestages, please visit <http://yosemite.epa.gov/ochp/ochpweb.nslf/content/lifestage.htm>.

²³ See <http://www.epa.gov/raf/publications/framework-cra.htm>.

Higher Risk in Response to Exposure Among Minority Populations, Low-Income Populations, and/or Indigenous Peoples. At-risk populations are groups who have a greater likelihood of experiencing effects related to environmental exposures.²⁴ Certain factors may render different groups less able to resist or tolerate an environmental stressor. These risk factors may be intrinsic in nature, based on age, sex, genetics, race or ethnicity, or acquired (such as chronic medical conditions, or smoking status); as well as extrinsic, non-biological factors such as those related to socioeconomic status, reduced access to health-care, health-care, nutrition, fitness and/or exposures related factors.²⁵

If the rule-writers conclude that one or more of the previously listed factors is relevant to the action, they should then consider whether the action involves potentially disproportionate impacts on minority populations, low-income populations, and/or indigenous peoples and thus raises a potential EJ concern. To characterize and better understand the populations affected by the proposed action, the rule-writers may want to look at demographic data and consult with program and/or regional office EJ coordinators.²⁶ The rule-writers should also consider reaching out to these populations and tribes directly to assess potential concerns and issues associated with the proposed action (see Part 3 below for guidance on meaningfully engaging minority populations, low-income populations, tribes, and indigenous peoples). Where a screening analysis indicates the need for further analysis and engagement, the previously listed factors can be considered to determine the extent to which adverse health or environmental risks may be higher or concentrated within minority populations, low-income populations, and/or indigenous peoples. See the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) for how to evaluate potential EJ concerns. Rule-writers may also want to draw on the expertise of representatives in their workgroup from the Office of Research and Development.²⁷

G. How Do the Decision-Makers Determine What Degree of Assessment of Potential EJ Concerns Is Feasible and Appropriate?

In determining whether potential EJ concerns may be at issue in regulatory actions, some level of analysis is needed, be it qualitative, quantitative, or some combination of both. For many regulatory actions, including actions that strengthen environmental protection, it is not possible to rule out potential EJ concerns without some level of assessment. The extent to which an analysis of potential EJ concerns is feasible and appropriate also will be affected by data, budget and analytical constraints specific to the action and circumstance. See the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) for more information.

This Guide encourages offices to utilize a “screening-level” analysis when feasible and appropriate to help determine the extent to which regulatory actions may raise potential EJ concerns that need

²⁴ This Guide uses the term “environmental stressor” or “stressor” to encompass the range of chemical, physical or biological agents, contaminants, or pollutants that may be subject to a rulemaking.

²⁵ For example, in the final PM_{2.5} National Ambient Air Quality Standards rule, based on information presented in the *Integrated Science Assessment for Particulate Matter* (U.S. EPA, 2009, sections 2.2.1 and 8.1.7), the EPA made a finding that persons with lower socioeconomic status are at increased risk for experiencing adverse health effects related to PM exposures (78 FR 3104). Persons with lower socioeconomic status (SES) have been generally found to have a higher prevalence of pre-existing diseases, limited access to medical treatment, and increased nutritional deficiencies, which can increase this population’s risk of PM-related effects (77 FR 38911, June 29, 2012).

²⁶ For a listing of media EJ Coordinators, please visit <http://epa.gov/environmentaljustice/contact/ej-contacts-media.html>. For a listing of Regional EJ Coordinators, please visit <http://epa.gov/environmentaljustice/contact/ej-contacts-regional.html>.

²⁷ The recently-released *American Journal of Public Health* Supplement “Environmental Justice and Disparities in Health” may be useful in gaining a more complete understanding of how these factors influence health outcomes. See <http://ajph.aphapublications.org/toc/ajph/101/S1>.

to be evaluated further as rule-writers advance through the ADP.²⁸ Rule-writers are encouraged to check with the lead office's EJ Coordinator, Agency memoranda relating to prioritization of rules for EJ consideration/analysis and updates to the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) to assess whether specific guidance or screening tools are available to support decision-makers as they determine the appropriate methods and approaches for assessing potential EJ concerns in the context of the rule-making action.

Screening-level analyses can help offices focus their resources and efforts on regulatory actions where there are opportunities to identify and address potential EJ concerns. As is often the case in the development of many of EPA's regulations, screening-level analyses may need to be updated or reconsidered in the beginning stages of the ADP as more information becomes available. Rule-writers should also consult with OGC if there are questions about the opportunities for addressing potential EJ concerns that are provided by the statutes that govern the action.

Current EPA guidance does not prescribe or recommend a specific approach or methodology for conducting screening-level analysis. A screening-level analysis should provide information related to whether there may be potential EJ concerns associated with regulatory actions, and may include elements such as the following:

1. A description of the potential impacts on, and existing risks to, minority populations, low-income populations, and/or indigenous peoples. This may involve a description of:
 - The proximity of sources being regulated to these populations
 - The number of sources that may be impacting these populations
 - The nature and amount of pollutants that may be impacting these populations
 - Whether there are any unique exposure pathways involved
 - Combinations of the various EJ factors occurring in conjunction with one another
 - Expressed stakeholder concerns about the action, if any.
2. A description of potential impediments to meaningful involvement. This may involve understanding whether the action presents opportunities to improve public involvement requirements or limits opportunities in some way.

To assist decision-makers in their efforts to determine what degree of assessment of potential EJ concerns is feasible and appropriate, rule-writers should consider the data that would be needed to support a quantitative analysis and estimate the resources that would be needed to develop the data and carry out a quantitative analysis. Rule-writers should then provide this information to decision-makers to support their determinations regarding the analysis of EJ issues in the rulemaking effort. In some circumstances, decision-makers might determine that there are insufficient data available to do a quantitative evaluation or such analysis is otherwise infeasible or unnecessary. In such cases, it may nonetheless be possible to develop a meaningful qualitative analysis (see example in Text Box 6).

There may also be circumstances where decision-makers elect not to go beyond a screening level analysis to evaluate potential EJ concerns because it is impracticable to do so or initial screening or other information indicates that EJ concerns are unlikely to be manifest.

²⁸ In October 2012, the Deputy Administrator announced that EJSscreen is EPA's official environmental justice screening tool for Agency work. EJSscreen is available within EPA at <http://ejscreen.epa.gov/mapper/>.

Text Box 6: DSW Analysis

Although EPA's *Analysis for the Definition of Solid Waste* (DSW) relies on both quantitative and qualitative analyses, it demonstrates how a qualitative approach can be used. The DSW analysis showcases how EPA used data on vulnerabilities and impacts to support a proposed rule revision that would prevent and mitigate adverse impacts that disproportionately affect minority populations, low-income populations, and/or indigenous populations. This analysis made qualitative connections between the increased incidence of vulnerability factors (relating to increased proximity and increased susceptibility) and the likelihood that populations impacted by the rule, which included minority populations, low-income populations, and/or indigenous populations, would potentially face increased risk of negative health and environmental outcomes. The vulnerability factors considered in the DSW analysis are multiple and cumulative impacts; ability to participate in the decision-making process; physical infrastructure; susceptible populations; and unique exposure pathways. The analysis concluded that the underlying vulnerabilities traditionally associated with minority and low-income communities may exacerbate potential adverse impacts of the DSW rule (see <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-RCRA-2010-0742-0004>).

It is important to document the decision-makers' determinations regarding the screening-level analysis and any further analyses, including the information upon which these decisions are based. This documentation should become part of the record for the action and will help the rule-writers and associated programs establish compliance with the directives of EO 12898 and EJ policies. Decision-makers may want to review this documentation and discuss whether further consideration of potential EJ concerns is appropriate.

H. Exploring Regulatory Responses to Potential EJ Concerns

A regulatory response to an identified potential EJ concern may require rule-writers to consider whether the regulatory action can and should set a stricter standard or go beyond the basic and ordinarily protective norms to require additional measures in a rule. The Agency's ability to do this, and the appropriateness of doing so, will depend on the Agency's legal authority and whether sufficient evidence of a potential EJ concern has been established, and whether circumstances or factors exist with respect to the particular emissions, exposures or risks addressed by the action that justify setting a stricter standard. An example of the latter might be the need to set a lower threshold of concern for exposure to a pollutant because the exposure-response for that pollutant is altered by disproportionately high exposure to other environmental stressors. These opportunities will become clearer as the Agency gains more experience in this area and as the data, tools and methods to evaluate potential EJ concerns evolve.

Examples of regulatory responses that could serve as starting points for rule-writer's consideration are discussed in Appendix E. The appendix includes examples in which responses to potential EJ concerns strengthened the defensibility of the rule, generated better data on differential exposure levels, increased benefits for all population groups, reduced disparities in risk, improved oversight of facilities, and improved compliance.

In some cases, rule-writers may identify a potential EJ concern for which the Agency's ability to explore a regulatory response is limited. It is important for rule-writers to alert their decision-makers to potential EJ concerns that cannot be addressed through the rule under development. This information allows decision-makers to look for other resources and tools to address potential EJ concerns as appropriate and as time, resources and data allow. In addition, rule-writers should pass along the information they have gathered about potential EJ concerns to other EPA offices as they consider EJ as they implement their own programs. See example in Text Box 7.

Text Box 7: National Emissions Standards for Hazardous Air Pollutants: Mineral Wool Production and Wool Fiberglass Manufacturing

Proposed Rule Development Example

As part of OAR's development of the Wool Fiberglass Manufacturing rulemaking proposal, EPA sent requests to 29 fiberglass manufacturing plants across the nation, asking them to provide emissions data. From this information, EPA learned that the CertainTeed plant in the Fairfax Industrial District of Kansas City, Kansas, was emitting chromium VI emissions that were higher than any other facility in the industry.

Region 7 proactively engaged the local community and identified the potential environmental concerns, opening lines of communication and launching several opportunities for the community to voice concerns, ask questions and receive additional information. At least ten face-to-face sessions were held, including stakeholders meetings, technical discussions, as well as a round table discussion with the Region 7 Regional Administrator.

Concurrently, Region 7 conducted air monitoring at John Garland Park, located between the facilities and nearby residential areas. The results of the air monitoring did not indicate that the plant emissions were a health concern for the community. The monitoring was conducted for approximately five months, however the furnace associated with the high chromium VI emissions was idled shortly after the monitoring began, and remains idled to this day.

Due to the high level of local interest regarding this rulemaking, a public hearing was also held in the Kansas City area giving the community an opportunity to submit verbal and written comments on the pending rulemaking. Much like the air monitoring events, holding a public hearing in the vicinity of an active community is not typically a direct result of the rulemaking process.

Rule-writers should also assess whether additional compliance drivers and tools for ensuring transparency (such as those discussed in section E.3) should be included in the regulations they are developing to ensure that the rules are as effective as possible in addressing the EJ Factors identified in Section F above. These tools can complement enforcement programs and enhance public involvement in rule implementation.

Part 2: Considering Environmental Justice During the Development of Regulatory Actions Under the Action Development Process

This section of the Guide describes the key issues related to considering EJ during the development of regulatory actions under the ADP (see Text Box 8). It is designed to help the rule-writers identify opportunities in the ADP where they can:

1. Identify potential EJ concerns;
2. Plan to achieve meaningful involvement;
3. Plan to evaluate and address potential EJ concerns;
4. Discuss potential EJ concerns with decision-makers;
5. Compare how options under consideration would change the environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples; and
6. Document the rule-writers' efforts to achieve meaningful involvement and address potential EJ concerns.

Text Box 8: What Is the Action Development Process?

The ADP is a method for producing quality actions, such as regulations, policies, guidance, strategies and reports. It ensures that EPA uses the best available information to support its actions and that scientific, economic and policy issues are adequately coordinated across the Agency during the various stages of action development. Activities that implement EO 12898 should be undertaken within the framework of this process. For more information, see EPA's *Action Development Process: Guidance for EPA Staff on Developing Quality Actions* available on OP's intranet site at <http://intranet.epa.gov/adplibrary>.

A. Who Is Responsible for Considering EJ During the Development of Regulatory Actions Under the ADP?

Rule-writers and decision-makers (see definitions provided in subsection B of the Overview and Background section) should use this Guide in the development of regulatory actions. In addition, rule-writers and decision-makers may seek assistance from other EPA resources, such as EJ Coordinators. Based on the level of participation in the development of regulatory actions, they may have additional specific responsibilities. See EPA's *Action Development Process: Guidance for EPA Staff on Developing Quality Actions* for general information about the roles and responsibilities of the different participants in the development of regulatory actions. Following is guidance for key actors in the ADP:

Text Box 9: Decision-Makers

Decision-makers establish policy priorities, communicate expectations to the workgroup and decide whether or not a potential EJ concern warrants further evaluation, the level of analysis and public involvement, and the resources available for those activities.

1. Decision-Makers. Relying on information provided by the rule-writers, EPA decision-makers determine what needs to be done to identify and address potential EJ concerns for Agency regulatory actions under development (see Text Box 9). They communicate expectations to the rule-writers, establish policy priorities, identify issues of significant concern and guide the process of developing the action. As a result, decision-makers play a key role in ensuring that the potential EJ implications

of regulatory actions are considered during the development of those actions, and that populations affected by those actions have an opportunity to participate.

In particular, decision-makers determine early in the process the appropriate level of analysis and engagement of stakeholders, including minority populations, low-income populations, tribes, and indigenous peoples, considering factors such as the legal framework governing the regulatory action, the availability of relevant data and feasibility of analytical methodologies, stakeholder interest and the impacts that EJ concerns are likely to have on the actual decisions involving the action. Based on the application of these criteria, some regulatory actions will be identified for enhanced efforts that may require the development of new data, application of more advanced analytical methodologies and more extensive and targeted engagement of minority populations, low-income populations, tribes, and indigenous peoples. Decision-makers convey determinations on the appropriate level of analysis and stakeholder engagement to the workgroup.

Decision-makers are responsible for ensuring rule-writers address the following three core EJ questions at the appropriate points during the development of the regulatory action under the ADP (as described below in this section):

1. How will (or did) the public participation process provide transparency and meaningful participation for minority populations, low-income population, tribes, and indigenous peoples?
2. How do the rule-writers plan to (or how did the rule-writers) identify and address existing and new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples during the rulemaking process?
3. How did the actions taken under #1 and #2 impact the outcome or final decision?

Appendix B provides a quick reference for EPA decision-makers on when and how they can participate in the action's development to ensure that the rule-writers identify and evaluate potential EJ concerns.

2. The Workgroup Chair. The role of the workgroup chair is to facilitate and oversee the efforts of the rule-writers to achieve meaningful involvement and to consider EJ concerns during the development of the action. Appendix C provides a checklist to identify what the chair may need to know and/or do in order to integrate EJ into the development of the action.

3. The Rule-Writing Workgroup. The rule-writing workgroup is responsible for assuring meaningful involvement and consideration of EJ concerns during the development of the regulatory action under the ADP (see Text Box 10). Workgroup members influence the scope and content of analyses of EJ concerns that support regulatory actions. Workgroup members, as representatives of their program offices or regional offices, should keep decision-makers in their organizations informed of EJ concerns

and workgroup actions in a timely manner so that they can formulate appropriate responses.

4. The Analysts. For the most part, the analysts—those doing the economic or scientific supporting analyses—are likely to be members of the workgroup. In some cases, however, the analysts may only be involved in the analytic work performed as part of the development of regulatory actions. In either case, the analyst plays a key role in identifying the analytical topics that will need to be addressed during the development of regulatory actions, as well as leading or actively participating in the analytical efforts, including considering whether one or more scientific or economic analyses are needed to support those actions.²⁹ It is also important to note that these analyses may be quantitative, qualitative, or both. See the *Guidelines for Preparing Economic Analyses* and the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) under development for more information on conducting an analysis of potential EJ concerns for regulatory actions.

Text Box 10: What Is the Workgroup?

The workgroup consists of representatives from interested program offices and Regions. The workgroup develops the draft regulation, involving its members throughout the ADP. Workgroup members represent the position of their program office or Region. Tier 1 and Tier 2 actions call for formation of action development workgroups. Even though Tier 3 actions do not normally call for teams/workgroups, the lead program should consider the level of assistance needed from Regions and other offices to produce a quality regulatory action.

B. When Should Potential EJ Concerns Be Considered During the Development of Regulatory Actions Under the ADP?

The following is a description of the opportunities for considering potential EJ concerns at the specific steps in developing regulatory actions under the ADP. If the workgroup is unable to follow the activities described below for a particular step of the ADP, those activities may be performed at later steps, as appropriate.

The procedural steps under the Agency's ADP may vary based on the specific tier designation. The procedural steps described in this Guide primarily apply to regulatory actions developed under Tier 1 and 2 of the ADP because Tier 3 regulatory actions, such as regional office regulatory actions, may not follow all the same procedural steps. For example, an Analytic Blueprint (preliminary or detailed) is optional for Tier 3 actions. Even though a particular ADP step may not apply to the action, rule-writers should consider potential EJ concerns regardless of the tier level assigned to the regulatory action. Note that some regional offices regulatory actions are developed under the ADP as Tier 3 actions while some are developed under a separate process from the ADP. This Guide can also help workgroups consider EJ concerns for those regional offices regulatory actions that are developed under a separate process from the ADP.

Appendix A includes a flowchart, entitled “Incorporating Environmental Justice into Tier 1 and Tier 2 Actions Under the ADP,” which outlines the ADP procedural steps for Tier 1 and 2 actions to illustrate when EJ concerns might be integrated at various steps throughout the ADP (see blue text boxes). The discussion that follows in this Guide is linked to the numbered steps used in the Tier 1 and 2 process

²⁹ See EPA's *Action Development Process Guidelines for Preparing Analytic Blueprints*, p. 14, available electronically at <http://intranet.epa.gov/adplibrary/documents/abp09-30-04.pdf>.

flowchart. This information is also provided on the EPA intranet in the form of tool at <http://intranet.epa.gov/oswer/policy/ejr/index.html>.

ADP Steps 1 and 2 – Action Initiation and Tiering

Once the Agency decides to initiate a regulatory action (Step 1), the next step of the ADP is tiering (Step 2). At this point, the lead EPA Program Office must fill out a tiering form in the ADP TRACKER that provides basic information about the action being initiated. Table 1 displays the EJ question currently in the ADP TRACKER. These questions can be used to help determine whether regulatory actions may involve a subject that is of particular interest to or may have particular impacts on these populations.

Table 1: EJ Question in ADP TRACKER

Environmental Justice		
<i>Does this action involve a topic that is likely to be of particular interest to or have particular impact upon minority populations, low-income populations, or indigenous populations, or tribes?</i>		
<input type="checkbox"/> Yes	If the answer is Yes, please check a minimum of one of the following options: <input type="checkbox"/> The action is likely to impact the health of these populations. <input type="checkbox"/> The action is likely to impact the environmental conditions of these populations. <input type="checkbox"/> The action is likely to present an opportunity to address an existing disproportionate impact on these populations. <input type="checkbox"/> The action is likely to result in the collection of information or data that could be used to assess potential impacts on the health or environmental conditions of these populations or tribes. <input type="checkbox"/> The action is likely to affect the availability of information to these populations or tribes. <input type="checkbox"/> Other reasons. <i>Explain:</i>	Comments:
<input type="checkbox"/> No	Selecting No means that this action is not likely to be of any particular interest to these populations or tribes. <i>Explain:</i>	Comments:
<input type="checkbox"/> TBD	Selecting TBD means that, given the information available at this time, the Agency does not know if these populations or tribes will be particularly interested in this action.	Comments:

For some offices, the EJ question asked at tiering might also be the impetus for an initial screening analysis, as discussed in Part 1 of this document. For other offices, there may already be a screening process in place that can inform how rule-writers answer this question at tiering.

As the lead program office prepares to answer the EJ question displayed in Table 1, there are some important points to keep in mind.

- Rule-writers are expected to make an informed assessment about whether regulatory actions will have potential impacts on minority populations, low-income populations, and/or indigenous peoples based on readily accessible information and what the rule-writers already know about a regulatory action and its potential EJ implications, recognizing that at this early step in the ADP they may not have sufficient information to determine whether a potential EJ concern is associated with the action.
- The question also asks about actions that may be of *particular interest* to minority populations, low-income populations, tribes, and indigenous peoples. A regulatory action may be of particular interest if it concerns a topic that these populations or tribes have identified as important. For example, a rule that affects the availability of information may be of interest even though it

may not have particular impacts on these populations or tribes. If a regulatory action may be of particular interest to these populations or tribes, rule-writers may need to provide opportunities for meaningful involvement in the development of those actions.

- Answering yes to this question signals that potential EJ concerns are likely to be involved in the regulatory action. See the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) for guidance on analytic expectations. If rule-writers believe that the action may involve a potential EJ concern, they may request that an EJ coordinator be assigned to join the workgroup or otherwise support the action. This can be done by requesting OEJ assistance in assigning an EJ coordinator in the “Workgroup” section of the tiering form or by describing the potential concerns in the section labeled “Additional information or assistance needed.”
- Answering TBD to this question signals that the rule-writers should consider whether there are potential EJ concerns associated with the regulatory action as they go through the ADP. Rule-writers are expected to conduct proper outreach and evaluation activities to make a determination of whether potential EJ concerns are involved and how those concerns can be addressed before they develop the final action. See the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) for guidance on analytic expectations.
- The lead program office’s answer to this question (along with other information on the tiering form) will be part of the Agency’s Regulatory Development and Retrospective Review Tracker (Reg DaRRT) Reg DaRRT offers the public a means of learning about and tracking rulemakings (see Text Box 11). One of the features allows rule-writers and the public to sort actions based on the responses to the EJ question displayed in Table 1. Reg DaRRT is updated regularly, so any updates rule-writers make to the action in the ADP TRACKER is reflected on Reg DaRRT throughout the life of the action. Rule-writers can access the Reg DaRRT website at <http://yosemite.epa.gov/opei/RuleGate.nsf/>.
- Program Offices will be asked to reconsider their answer for this question during the semi-annual update of the Agency’s Regulatory Agenda. This provides rule-writers with an opportunity discuss whether the answer should be changed based on new information or the results of the evaluation.

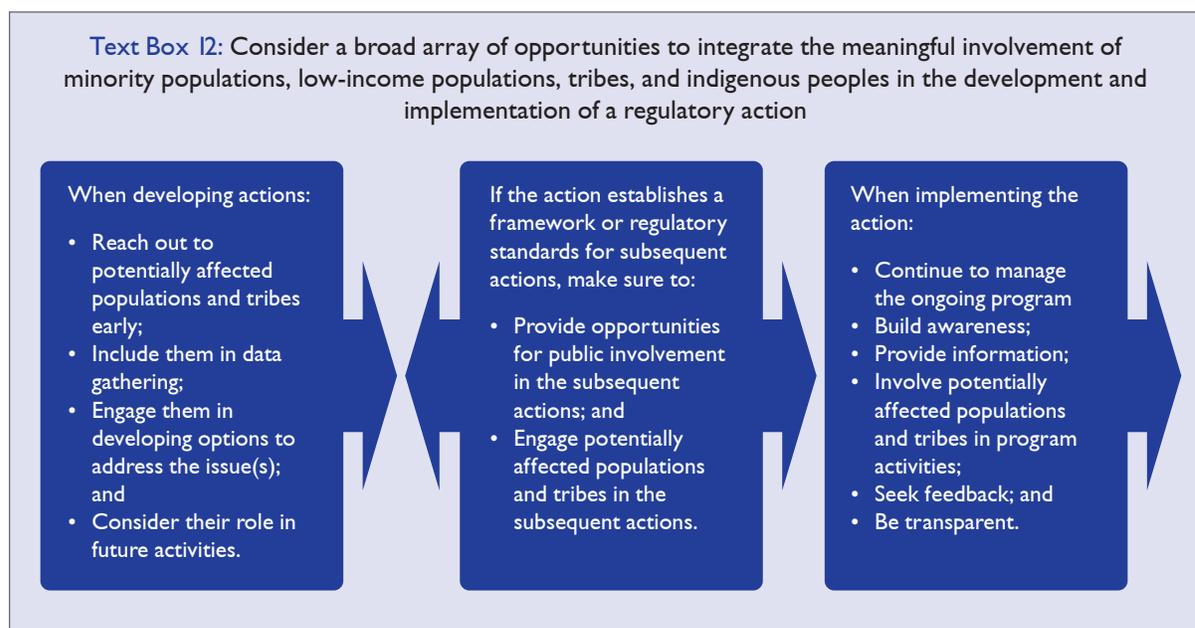
Text Box II: What Is Reg DaRRT?

The Regulatory Development and Retrospective Review Tracker (Reg DaRRT) provides information to the public on the status of EPA’s priority rulemakings and retrospective reviews of existing regulations. Reg DaRRT includes rulemakings that have not yet been proposed, those that are open for public comment, those for which EPA is working on a final rule, and those that have been recently finalized.

ADP Step 3 – Preliminary Analytic Blueprint (PABP)

The PABP, which is required for all Tier 1 and 2 actions, provides an opportunity to review the rule-writers’ screening decision and to identify what steps they will take to ensure that EJ concerns are considered in the development of regulatory actions. This opportunity to revisit EJ considerations is similar to the opportunity the PABP provides to revisit other assumptions or decisions made regarding other aspects of the regulation development effort. It is important to document the potential EJ concerns and how rule-writers will develop needed information and how they will use that existing and new information to explore and address them in the action.

Careful consideration of EJ concerns in the PABP can improve regulatory actions by ensuring appropriate consideration in planning rule-writers' activities, including early attention to data gathering, facilitating cross-agency sharing of valuable information, expertise and perspectives and by fostering early agreement on the three core EJ questions through a structured, documented process. It is likely that information to describe baseline conditions for minority populations, low-income populations and indigenous peoples may be lacking, potentially limiting the ability to assess the impacts of the regulation on those populations. However, timely assessment and planning for these information needs will help rule-writers develop a well-supported and documented regulatory action and avoid last minute concerns over the type of information or analyses that should be available or might need to be developed (see Text Box 12). The rule-writers should also be aware of opportunities to coordinate data collection and analytical efforts with children's and other health impacts analyses conducted in developing the rule.³⁰



To determine whether the regulatory action may have potential EJ concerns, and to ensure appropriate and timely information is provided to decision-makers, the PABP should (to the extent relevant and appropriate):

- Identify potentially affected populations and tribes, as well as others who might be interested in the action;
- Outline plans and resource needs for achieving meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples;
- Describe the plans and resource needs for evaluating impacts on of minority populations, low-income populations and indigenous peoples;

³⁰ See EO 13045 Protection of Children from Environmental Health Risks and Safety Risks. Rule-makers should also be aware of the requirements in EPA's Guide to Considering Children's Health When Developing EPA Actions: Implementing Executive Order 13045 and EPA's Policy on Evaluating Health Risks to Children.

- Identify available EJ assessment tools, as well as related needs for data collection, expertise and resources; and
- Identify potential analytical issues that will need to be raised to decision-makers or addressed.

Please note that the PABP does not have to describe the details of the analyses that might be needed to evaluate EJ concerns.

It may be beneficial to develop a separate scoping document that becomes part of the PABP for purposes of increasing accountability and visibility of evaluating EJ concerns. For example, a scoping document may be a useful vehicle to provide an opportunity for meaningful involvement early in the regulatory action's development.

The framework for identifying and addressing EJ concerns is part of an iterative process. It is therefore important to revisit in later stages of the ADP as information and ideas continue to develop, similarly to revisiting assumptions or decisions made regarding other aspects of the regulation development effort, the scope of inquiry relating to evaluation of EJ concerns.

The PABP is an important vehicle for raising EJ concerns to decision-makers. Once developed, rule-writers should submit the PABP to senior management decision-makers as part of the request for Early Guidance.

ADP Step 4 – Early Guidance

At this step, decision-makers convey their expectation that rule-writers consider potential EJ concerns during regulatory action development. Early Guidance always comes from senior management decision-makers, although the level of management giving guidance differs for Tier 1 and Tier 2 actions. See Text Box 13 and EPA's *Action Development Process: Guidance for EPA Staff on Developing Quality Actions*, available on OP's intranet site <http://intranet.epa.gov/adplibrary>, for more information on Early Guidance.

In addition, at Early Guidance rule-writers should obtain input from decision-makers on the proposed approaches for considering potential EJ concerns and any potential complications or issues in doing so. Rule-writers should be prepared to respond to decision-makers' questions about whether the regulatory action may involve a potential EJ concern, and how this was or will be ascertained. This will ensure that decision-makers provide the direction that rule-writers need to respond to the three core EJ questions outlined in Part 2, Section A (and repeated in the guidance for Step 5). Rule-writers also should be prepared to explain what resources are required to identify and evaluate potential EJ concerns, including data needs.

Text Box 13: Early Guidance from Decision-Makers

Early guidance from decision-makers determines the appropriate level of analysis and engagement of stakeholders, based on:

- Stakeholder interest;
- The legal framework governing the action;
- The availability of data;
- The availability of resources and the timeline for developing the action; and
- The impacts that EJ concerns are likely to have on the actual decisions involving the action.

ADP Step 5 – Detailed Analytic Blueprint (DABP)

The DABP should incorporate the directions received through Early Guidance from senior management decision-makers. The preparation of the DABP provides rule-writers with another opportunity to plan key activities for determining whether and how potential EJ concerns will be identified and considered during the development of the regulatory action, including scientific and economic analysis, information gathering and defining alternative approaches to be considered. If there are potential EJ concerns, the rule-writers should also develop a detailed public involvement plan that provides transparency and meaningful participation for minority populations, low-income populations, tribes, and indigenous peoples (e.g., by considering their needs, capacities, cultural practices and languages).

The DABP may identify a preliminary plan to determine to what extent the regulatory action involves EJ concerns, estimate the magnitude of such concerns and guide the initial development of any options regarding those concerns. When preparing a quantitative or qualitative evaluation of potential EJ concerns, the DABP should describe the:

- Rule-writers with lead responsibility for the preliminary and detailed assessments of EJ concerns;
- Data needs and data sources for the EJ assessment;
- Scope and basic methodology of the EJ assessment;
- Outputs of the EJ assessment; and
- Schedule and resources required to prepare the EJ assessment.

In addition, the DABP should describe the rule-writers' planned activities to ensure that they can answer the first two of the three core EJ questions at key stages in the ADP:

1. How did/will the public participation process provide transparency and meaningful participation for minority populations, low-income populations, tribes, and indigenous peoples?

This question asks rule-writers to document the proactive steps taken, beyond minimum notice and comment opportunities, to meaningfully engage these populations, tribes and peoples in the development of the regulatory action. This would include any outreach to state, tribal, and local governments and to national- and community-level non-governmental organizations, among others. Rule-writers should document planned public meetings, information sessions, workshops or other activities designed to identify and encourage the participation of these populations, tribes and peoples.

2. How did the rule-writers identify and address existing and/or new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples?

This question asks rule-writers to document the proactive steps taken to identify and address potentially disproportionate impacts on the public health and environment of these populations. This could include any investigation and characterization the rule-writers performed of

geographic areas or populations that are likely to be most affected by the action. As part of this evaluation, rule-writers are encouraged to look at the distribution of the positive environmental and health consequences from the EPA's activities. Rule-writers should ensure that they have identified and addressed issues that are of concern to minority populations, low-income populations, tribes and indigenous peoples.

Rule-writers should note that not all regulatory actions will raise potential EJ concerns. For regulatory actions that do not raise EJ concerns, rule-writers can answer the three core EJ questions by showing that the action either:

- Underwent a screening-level analysis designed to identify those regulatory actions that may raise potential EJ concerns and those that do not; or
- Has been shown—through thorough research and analysis—to support a determination that the action does not involve any potential EJ concerns.

ADP Step 6 – Management Approval of the DABP

The review and approval of the DABP provides another important opportunity for the rule-writers to check in with decision-makers to determine whether and how potential EJ concerns will be identified and considered during the development of the regulatory action. For example, during the formal cross-agency review of the draft DABP, the rule-writers and other reviewers of the draft DABP (e.g., OEJ or the lead office's EJ Coordinator) can assess whether the DABP outlines activities for identifying or considering potential EJ concerns. The decision-makers can also use this as an opportunity to consider how well the DABP addresses potential EJ concerns before approving the DABP (see Text Box 14).

Once the DABP is approved, decision-makers have determined the appropriate level of analysis and engagement for the regulatory action. In the absence of any compelling circumstances that would cause decision-makers to revisit this or other non-EJ determinations, rule-writers should follow the direction provided by decision-makers in the DABP for the remaining steps of the ADP.

ADP Step 7 – Data Collection, Analysis and Consultation, and Development of Regulatory Options

In this step, rule-writers should implement the DABP and investigate the regulatory problem that the action is intended to address, gather relevant information, consult with stakeholders, including minority populations, low-income populations, tribes, and indigenous peoples, and develop options

Text Box 14: Management Approval of DABP

During the course of developing the PABP and DABP, an office may alter its determination that an action might be of particular interest to or have particular impacts upon minority populations, low-income populations, and/ or indigenous peoples. Should such a change occur, alter the answer provided to the EJ Question in the ADP TRACKER (illustrated in the section titled "ADP Steps 1 and 2"). The EJ Question in the TRACKER can be altered at any time. Changes to Tier 1 and Tier 2 actions are updated regularly so the public can access EPA's latest thinking about an action.

for resolving the problem.³¹ Integrated into all of these activities should be the consideration of the extent to which there are potential EJ concerns, and how those concerns may be addressed. Rule-writers should use the Agency's available EJ assessment tools to determine the extent to which the action has potential EJ concerns, complete EJ-related consultation or public participation, as appropriate, and analyze any potential EJ concerns.

Although analyses to evaluate potential EJ concerns will vary across regulatory actions, they typically have the same starting point. Rule-writers should attempt to describe the regulatory baseline and the anticipated changes in emissions, exposures, and/or risks to be achieved by an action. It is important, where appropriate and when data permit, to characterize the potential changes in emissions, exposures and/or risks on minority populations, low-income populations, and/or indigenous peoples. The analysis should cover the appropriate range of options considered to address those impacts and should provide a sufficient level of detail to distinguish major environmental or public health impacts across the options for these population groups. Rule-writers should consider the data needed to support such analyses when developing their Preliminary and Detailed Analytical Blue Prints in order to maximize their opportunities to describe these baselines and the projected impacts of their regulatory actions. See the *Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (U.S. EPA 2013) for guidance on analytic expectations.

ADP Step 8 – Options Selection

Options selection is the last step in the ADP before rule-writers finish drafting the regulatory action. In this step, the rule-writers can identify the significant issues and several options to resolve each issue. Senior management decision-makers then selects those options that would best achieve the goals of the action. Selecting a regulatory action from among many options is a complex process. The extent to which potential EJ concerns factor into the process will vary considerably across regulatory actions, and will depend in large part on the operative requirements of the statute under which the action is being taken.

In presenting the options to senior management decision-makers for final decision-making, rule-writers have another opportunity to consider whether potential EJ concerns have been addressed. Decision-makers will also have an opportunity to confirm that the rule-writers have considered and addressed potential EJ concerns, including any necessary consultations to achieve meaningful involvement. The options selection presentation should describe the rule-writers' activities and efforts to assess potential EJ concerns and to involve affected populations, including minority populations, low-income populations, tribes, and indigenous peoples. The presentation should also describe what actions are recommended to ensure that potential EJ concerns are addressed by each of the options being presented (see Text Box 15). Rule-writers should be prepared to discuss the options under consideration in the regulatory action (such as pollution control options) in

Text Box 15: Does the DABP Address EJ?

The DABP presents the plan that implements the management decision regarding the level of analysis and engagement of stakeholders.

³¹ See previous discussion about preparing the DABP, which should include a consultation plan that describes how the workgroup will achieve meaningful involvement, particularly for those stakeholders that may have historically not been able to participate. In addition, the workgroup should consult the Agency's Risk Characterization Handbook, which provides a single, centralized body of risk characterization implementation guidance for Agency risk assessors and risk managers to help make the risk characterization process transparent and the risk characterization products clear, consistent and reasonable, at <http://www.epa.gov/osa/spc/pdfs/rchandbk.pdf>.

light of their impacts on minority populations, low-income populations, and/or indigenous peoples, including reductions in exposure or risk.

In presenting the results of the analysis evaluating potential EJ concerns to decision-makers, rule-writers should be aware of the specific statutory and other important criteria they will use to select an option. Where EJ concerns represent the major consideration for selecting an option, it is vital that the nature and magnitude of impacts be clearly presented in some detail. For example, the following questions might be answered:

- Are there studies documenting impacts? How complete are the studies?
- Is there indication that certain populations are particularly sensitive?
- What are the qualitative and quantitative differences?

In addition, rule-writers should be prepared to discuss the first two of the three core EJ questions outlined above in Part 2, Section A. The rule-writers should also note that regulatory actions that impact the availability of information or the ability to participate meaningfully in the implementation of a program might have indirect impacts on these populations that should be considered. For example, a rule that modifies reporting requirements for regulated industries may make it easier or harder to effectively monitor facilities that are of concern to these populations and understand whether the rule is achieving the intended results. This type of impact should be considered.

ADP Step 9 – Preparation of the Action and Supporting Documents

In this step, rule-writers prepare the regulatory action, consistent with decision-maker direction. This step includes preparing the rule and preamble and the supporting documents. The evaluation of potential EJ concerns is part of this step.

At this stage, the rule-writers may document how they identified, assessed and addressed potential EJ concerns and how they achieved the meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples. Even if the rule-writers concluded there were no EJ concerns, the activities that led to that conclusion should be documented. It is important that pertinent documents relating to potential EJ concerns are understandable and readily accessible to the public in the docket for the regulatory action.

In general, the preamble for the regulatory action should clearly state how the action is supported by the results of the analyses to evaluate potential EJ concerns. If the data to characterize potential EJ concerns was insufficient or inadequate, the preamble should describe clearly the Agency's efforts to search for data to characterize risks and how the regulatory decision addressed the data gaps and any qualitative information available on potential EJ concerns. Suggested template language for addressing EO 12898 in preambles is available in the ADP library (<http://intranet.epa.gov/adplibrary>) and covers both proposed and final rules. However, the rule-writers' documentation is not limited to the inclusion of appropriate language in the preamble to address compliance with EO 12898.

ADP Step 10 – Final Agency Review (FAR)

Once the regulatory action has been developed, a package is presented to the decision-makers for Final Agency Review (FAR). The FAR package consists of the final drafts of the action itself (e.g., the Federal Register [FR] document that represents the proposed rule), the supporting documents (e.g., the economic analysis and, if prepared separately, any assessment of potential EJ concerns), the Action Memorandum and any other relevant documents (e.g., the Information Collection Request, Communications Plan, etc.).

As part of the draft Action Memorandum, rule-writers should specifically address the three core EJ questions identified in Part 2, Section A (and repeated in ADP Step 5 above). These answers will accompany the action when it is presented to the Administrator or other Agency decision-maker for signature.

This is the final opportunity for rule-writers and decision-makers to consider whether potential EJ concerns have been considered and addressed, and to ensure that the rule-writers have properly documented those efforts.

ADP Steps 11 & 12 – Office of Management and Budget (OMB) Review (if “significant” under EO 12866)

If the regulatory action requires OMB review, rule-writers will have to prepare a package for submission to OMB. For more details, see the EPA’s *Action Development Process: Guidance for EPA Staff on Developing Quality Actions* (<http://intranet.epa.gov/adplibrary>).

ADP Steps 13 & 14 – Signature and Publication

The lead program prepares the action for signature by the designated Agency official and subsequent publication in the Federal Register. For more details, see Text Box 16 and the EPA’s *Action Development Process: Guidance for EPA Staff on Developing Quality Actions* (<http://intranet.epa.gov/adplibrary>).

Once signed by the appropriate official, the FR document is transmitted to the Office of the Federal Register for final publication. Rule-writers should ensure that all relevant documentation regarding the consideration of potential EJ concerns during the development of the action is included in the docket for the action.

Text Box 16: OMB Review

During OMB review, an office may alter its conclusion that an action might be of particular interest to or have particular impacts upon minority populations, low-income populations, and/or indigenous populations. Should such a change occur, alter the answer provided to the EJ Question in the ADP TRACKER (illustrated in the section titled “ADP Steps 1 and 2”). The EJ Question in the TRACKER can be altered at any time. Changes to Tier 1 and Tier 2 actions are regularly updated so the public can access EPA’s latest thinking about an action.

ADP Step 15 – Soliciting and Accepting Public Comment

This step in the process provides another opportunity for the rule-writers to consider ways to ensure that the public comment process allows for meaningful involvement of minority populations,

low-income population, tribes, and indigenous peoples, both in terms of providing a sufficient comment period and in terms of notification, communication or outreach to actively engage affected populations or tribes. This may include holding one or more public meetings or hearings in or near affected populations and tribes. If a public meeting and/or hearing is held, the rule-writers and lead program office should ensure there is sufficient notice about the meeting and/or hearing, and the meeting and/or hearing is scheduled at a time and place convenient to affected populations and tribes, with appropriate translation services, as appropriate. These activities may also be scheduled prior to the public comment period. See Part 3 of this Guide for ideas on how rule-writers can achieve meaningful involvement.

ADP Step 16 – Developing the Final Regulatory action

When preparing for the final stage of the regulatory action, the first step is to evaluate the public comments, which provides another opportunity for rule-writers to consider potential EJ concerns that were identified and discussed in the preamble, as well as an opportunity to consider potential EJ concerns raised in public comments.

In considering comments, rule-writers should evaluate whether the consideration of potential EJ concerns in the analyses performed for the proposed action needs to be refined or revised, and if so, how. If the EPA did not consider potential EJ concerns in their analyses, rule-writers should consider whether the public comments raise issues that may warrant reconsideration.

Rule-writers should then brief decision-makers on the scope of the EJ-related comments received and recommend how to respond to them. Decision-makers will consider the recommendations and will then provide guidance on how to proceed in developing the final action (e.g., this is equivalent to Early Guidance as discussed previously). Decision-maker guidance will also identify which process steps the rule-writers should follow in preparing the final action, which may vary based on the nature and extent of comments or other factors.

As with all significant public comments, rule-writers are expected to consider and respond to all significant public comments on EJ-related topics that are relevant to the proposal and submitted during the applicable comment period. For more details on responding to public comments, see the EPA's *Action Development Process: Guidance for EPA Staff on Developing Quality Actions* (<http://intranet.epa.gov/adplibrary>). It is also important to update responses to the EJ Question in the ADP TRACKER as needed and appropriate.

In general, rule-writers will be expected to follow the same basic process steps to finalize the action, thereby having additional opportunities to ensure that they satisfy the Agency's commitments to both identify and address potential EJ concerns, and to provide meaningful involvement in the ADP.

Part 3: Achieving Meaningful Involvement

A. What Is Meaningful Involvement?

The EPA defines EJ 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. Meaningful involvement means that: (1) potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity (i.e., rulemaking) that may affect their environment and/or health; (2) the populations' contributions can influence the EPA's rulemaking decisions; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the EPA will seek out and facilitate the involvement of populations potentially affected by the EPA's rulemaking process.

Executive Order 12898 *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* and other policies³² direct federal agencies to improve public participation among minority populations, low-income populations, tribes, and indigenous peoples. Consistent with the Agency's definition of EJ and EO 12898, Agency policy directs staff to take proactive steps to provide opportunities for potentially affected populations to participate in decisions that may affect their environment or health.

As EPA rule-writers identify opportunities for public involvement, they should also consider EO 13166 *Improving Access to Services for Persons with Limited English Proficiency*, which addresses the need to give voice to populations who historically may have been excluded from consideration during the decision-making process.

Public involvement works best when rule-writers consult with stakeholders, including minority populations, low-income populations, tribes, and indigenous peoples early and often and when their efforts follow a decision-making process that the potentially impacted populations understand and, to the extent feasible, have had a role in designing. Minority populations, low-income populations, tribes, and indigenous peoples have unique knowledge of their goals, needs and vulnerabilities. Through early public involvement, rule-writers can obtain information on issues affecting these populations and other entities and increase the understanding of such issues in the context of developing the action.

³² For example, see *EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples*. (2014), <http://www.epa.gov/environmentaljustice/resources/policy/indigenous/ej-indigenous-policy.pdf>.

Rule-writers should develop a public involvement plan early in the rulemaking process, optimally as a part of the analytic blueprint stage so that the plan ensures that (1) opportunities for meaningful involvement have been appropriately addressed without delaying the rulemaking process, (2) input is considered early in the process so impacted populations may influence the Agency’s decision-making process, where appropriate, and (3) the rule-writers get direction on the appropriate level of outreach and other activities given the nature of the rule, its potential impacts, and available resources.

B. Existing Guidance on Meaningful Public Involvement

The EPA is committed to engaging all stakeholders as it develops and implements Agency actions, but recognizes that special attention is often required in ensuring meaningful involvement of minority populations, low-income populations, tribes, and indigenous peoples. There are numerous resources that rule-writers can use to help determine what type and level of public involvement is appropriate for their regulatory actions.³³ See Text Box 17 for an overview of basic steps for effective public involvement. For some regulatory actions, it may be appropriate to reach out to affected populations, while for others it may be appropriate to go further and invite them to the table to develop alternatives for consideration.

Also, statutory and regulatory authorities set minimum standards for public involvement, so it is important to be familiar with the specific requirements for public notice and involvement that are associated with the development of the action. However, relying on the minimum notice and comment requirements is often not enough to achieve meaningful involvement for minority populations, low-income populations, tribes, and indigenous peoples.

Promoting meaningful involvement often requires special efforts to connect with populations that have been historically underrepresented in decision-making and that have a wide range of educational levels, literacy, or proficiency in English. It will likely be necessary to tailor outreach materials to be concise, understandable and readily accessible to the populations that rule-writers are trying to reach.³⁴

Involving these populations in a meaningful way presents challenges and opportunities that are different than those presented by a general public involvement effort, such as:

Text Box 17: 7 Basic Steps for Effective Public Involvement

1. Plan and budget for public involvement activities;
2. Identify the interested and affected public;
3. Consider providing technical or financial assistance to the public to facilitate involvement;
4. Provide information and outreach to the public;
5. Conduct public consultation and involvement activities;
6. Review and use input and provide feedback to the public; and
7. Evaluate public involvement activities.

³³ For example, the International Association for Public Participation has developed materials that discuss the spectrum of public involvement ranging from informing the public to empowering the public. Their publications and public involvement training opportunities can be found at www.IAP2.org.

³⁴ For more information, see the “*Model Plan for Public Participation*” developed by the National Environmental Justice Advisory Council (<http://www.epa.gov/environmentaljustice/resources/publications/nejac/model-public-part-plan.pdf>).

- Conveying issues in ways that are tailored (for example, translation, timing, location) to each population;
- Bridging cultural and economic differences that affect participation;
- Using communication techniques that enable more effective interaction with other participants;
- Developing partnerships on a one-to-one or small group basis to ensure representation;
- Developing trust between government and potentially affected populations; and
- Developing stakeholder capacity to effectively participate in future decision-making processes.

In planning public involvement, rule-writers should identify different ways to engage minority populations, low-income populations, tribes, and indigenous peoples meaningfully and effectively. Rule-writers should consider using Web-based information technology (IT) tools, particularly those that are more user-centered, collaborative or interactive (see Text Box 18). However, some populations have only rudimentary access to the most modern communications tools. Remote towns and villages disseminate information using local radio stations, CB radio, local newspapers, placing posters at grocery stores, trading posts, or at village/community center/chapter meetings (see Text Box 2). In many instances, reaching parents of school-age children may be facilitated through schools.

It is important to note the difference between the meaningful involvement of tribes and indigenous peoples as it is used in the EJ context versus formal consultation with tribes.³⁵ The federal government has a unique government-to-government relationship with federally-recognized tribes, which arises from Indian treaties, statutes, executive orders and the historical relations between the United States and Indian Nations. The federal government has a trust responsibility to federally-recognized tribes, and the EPA, like other federal agencies, must act consistently with the federal trust responsibility when taking actions that affect tribes. Part of this responsibility includes consulting with tribes and considering their interests when taking regulatory actions that may affect tribes or their resources. Tribal consultation is the subject of EO 13175 and the Agency's Tribal Consultation Policy (<http://www.epa.gov/tribal/consultation/consult-policy.htm>).

Two additional documents finalized in 2013 may be useful resources for rule-writers considering appropriate outreach techniques and approaches: the "Notice of Availability of Regional Actions to Promote Public Participation in the Permitting Process" and "Promising Practices for Permit

Text Box 18: Web-based IT Tools

Referred to as "web 2.0 tools," these tools generally include tools that:

- Emphasize participation;
- Harness collective intelligence;
- Reach a variety of audiences by facilitating customer self-service;
- Redesign information and services based on the features that customers are using most;
- Provide information that can be accessed by more devices that just a computer (e.g., mobile phone, MP3 player); and
- Develop and deploy applications that can scale quickly to meet the size of the task.

³⁵ For information on the development of EPA's Tribal Consultation Policy, please contact the office's tribal coordinator or the American Indian Environmental Office. Also see EPA Policy on Environmental Justice for Working with Federally Recognized Tribes and Indigenous Peoples (2014). This policy establishes principles and affirms EPA's commitment to provide to federally recognized tribes and indigenous peoples in all areas of the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands, and others living in Indian country, fair treatment and meaningful involvement in EPA decisions that may affect their health or environment.

Applicants Seeking EPA-Issued Permits,” 78 FR 27,220 (May 9, 2013).³⁶ While intended for use in permitting actions, these documents identify useful strategies for promoting greater public involvement and improving communication and understanding between facility operators and potentially-affected populations.

C. Assessment of Best Practices and Recommendations

The EPA identified examples of best practices on how to promote meaningful involvement in a September 2012 report entitled *Recommendations for Opportunities for Including Meaningful Environmental Justice Public Involvement in Agency Rulemaking Activities: Achieving Environmental Justice Results in Rules and Rule Implementation*.³⁷ The document provides recommendations regarding several important factors that rule-writers should consider when developing opportunities for meaningful involvement in the rulemaking process. For example, some of the factors include: careful consideration of cultural implications, linguistics, effective stakeholder outreach techniques, pre-meeting stakeholder capacity building efforts and carefully planned logistical strategies which promote successful meeting participation by minority populations, low-income populations, tribes, and indigenous peoples with the EPA.

Recommendations for rule-writers include:

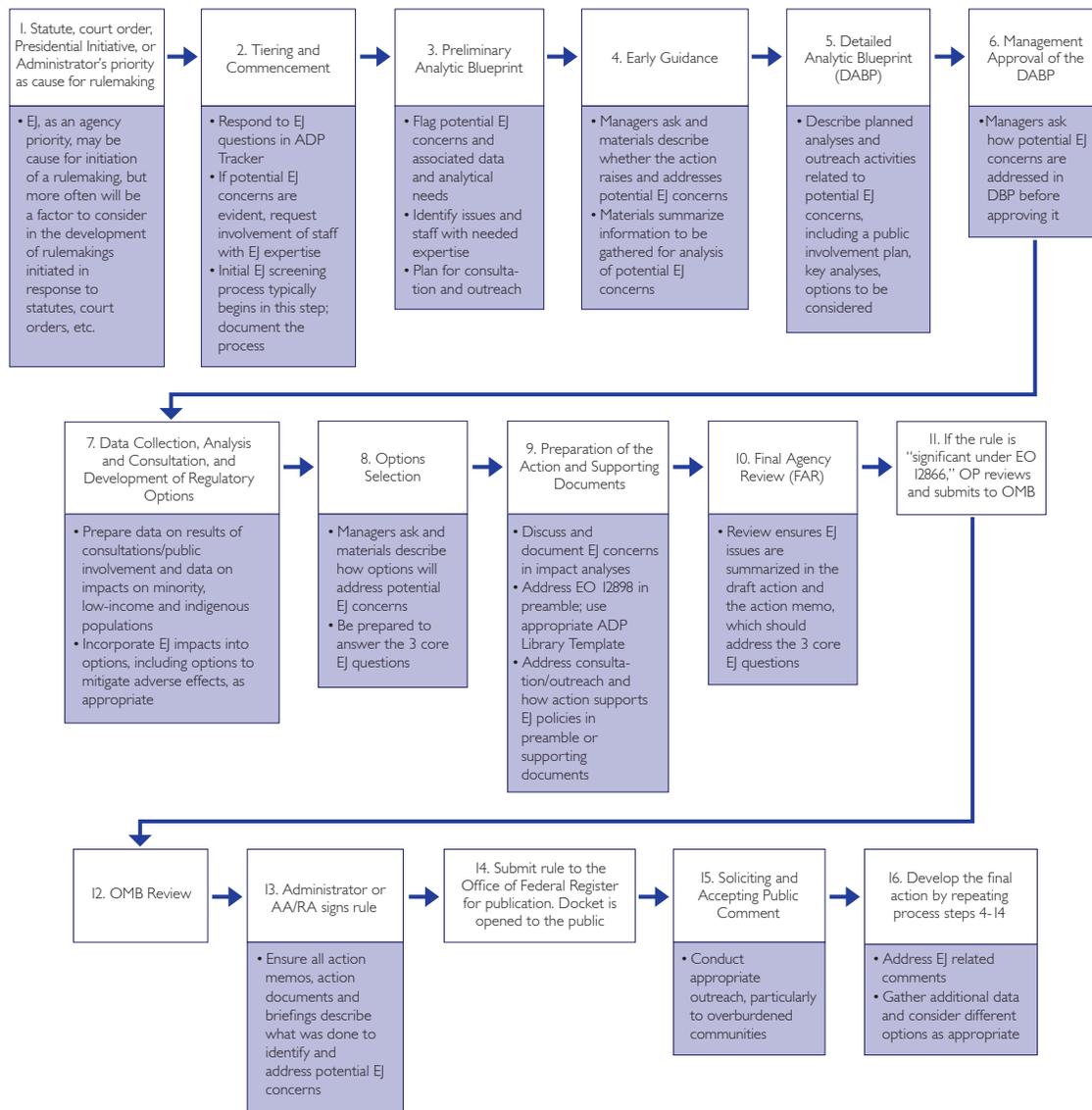
- Identify and utilize Agency EJ staff and others who are trained in cultural, linguistic and stakeholder outreach techniques.
- Draw on available tools, expertise and resources. For example, investigate whether other EPA offices have developed training modules rule-writers may need or whether they have experts who can provide some of the increased support needed through interoffice technology transfer.
- Provide capacity building for minority populations, low-income populations, tribes, and indigenous peoples to help them participate more effectively in the rulemaking process.
- Work closely with EPA headquarters program and regional office EJ Coordinators and consider contacting the National Environmental Justice Advisory Council (NEJAC) and/or other federal/state agencies that may have relevant and useful lessons learned, best practices or approaches to providing opportunities for meaningful involvement for overburdened populations.

More information is available in the report, which can be accessed at <http://intranet.epa.gov/oeca/oej/rulemaking.html#involvement>. In addition, the Agency developed 11 case studies of EPA rules that appropriately reflect a range of meaningful involvement opportunities provided to minority populations, low-income populations, tribes, and indigenous peoples and may be instructional for rule-writers that are looking for assistance or ideas on how to meaningfully engage these and other stakeholders in the development of their rule.

³⁶ Available at <https://www.federalregister.gov/articles/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process>.

³⁷ This report was produced by the Public Involvement (PI) Sub-Team of EPA's Cross Agency Environmental Justice in Rulemaking (EJR) Team. This team was made up of rulemaking experts from each NPM.

Appendix A: Incorporating Environmental Justice into Tier 1 and 2 Actions Under the ADP³⁸



Note: While some of the ADP steps described above may be relevant only to Tier 1 and 2 actions, tiering level does not preclude the applicability of either EO 13045 or the Children's Health Policy. See *Guide to Considering Children's Health When Developing EPA Actions* (<http://www2.epa.gov/children/guide-considering-childrens-health-when-developing-epa-actions-implementing-executive-order>) for more information. Additional information may also be obtained from consultation with the Office of Children's Health and Protection (OCHP).

³⁸ See <http://intranet.epa.gov/adplibrary>.

Appendix B: A Quick Reference Guide for EPA Decision-Makers: Integrating EJ into the Development of Regulatory Actions Under the ADP

This document is intended to serve as a quick reference for EPA decision-makers by providing a *brief overview* of the guidance provided in this Guide. It is not intended to replace the information provided in main body of the Guide and does not, therefore, repeat the details provided there or elsewhere.³⁹

What is meant by “environmental justice”?

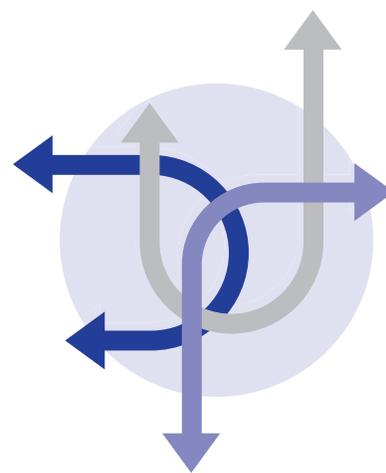
The EPA defines “environmental justice” as the *fair treatment* and *meaningful involvement* of all people, particularly minority populations, low-income populations, tribes, and indigenous peoples in the development, implementation and enforcement of environmental laws, regulations and policies.⁴⁰

What is the decision-maker’s overall role?

The EPA decision-makers direct workgroup activities related to identifying potential EJ concerns for Agency regulatory actions under development. This direction may be made in the context of a particular action, or can also be made for a category of actions that are similar and have the same general impacts. Decisions-makers communicate expectations to the rule-writers, establish policy priorities, identify issues of significant concern and guide the process of developing the action. As a result, decision-makers play a key role in ensuring that the potential EJ implications of a regulatory action are considered during the development of that action, and that populations affected by the action have an opportunity to participate.

When and how can decision-makers participate?

- **Consider EJ when decisions are made regarding which regulatory actions to pursue.** The decision to initiate regulatory actions is an opportunity to consider whether the actions under consideration involve—or have the potential to involve—potential EJ concerns.



³⁹ A refresher on the process steps involved in the ADP is provided in the chart in Appendix A of the Guide.

⁴⁰ See Part 1, Section A.

- **Identify the potential for EJ concerns at the beginning.** Potential EJ concerns may arise when a proposed regulatory action would: a) create new, exacerbate existing, or present an opportunity to address existing disproportionate impacts; b) not create sufficient opportunities for meaningful participation in the development of the action; or c) involve an actual or potential lack of fair treatment or meaningful involvement in the implementation or enforcement of the action.
- **Set clear expectations about potential EJ concerns in the Early Guidance provided to the rule-writers.** To start, provide the “three core EJ questions,” which the rule-writers will be expected to answer at the end of their effort. Consider also providing guidance on the level of analysis needed to make decisions later, as well as the level of outreach to and involvement of populations affected by the regulatory action. Consider asking for an assessment of resource needs to perform different levels of analyses and/or outreach.
- **Review the analytic blueprint (ABP) to ensure the rule-writers address potential EJ concerns.** The review and approval of the ABP may be the final opportunity to provide direction before resources are committed. In this review, consider whether the ABP includes the following information:
 - The identification of potentially affected populations and related stakeholders, along with a plan for how the rule-writers will ensure outreach and meaningful involvement of these populations, including minority populations, low-income populations, tribes, and indigenous peoples.
 - The identification of analytical needs (scientific and economic), and a plan for ensuring the consideration of EJ in those analyses.
 - An identification of related resources needed to address both the outreach activities and analytical needs, along with whether additional resources are needed to meet expectations.
- **Consider potential EJ concerns related to the options presented.** Different options may involve different potential EJ concerns, or provide different opportunities to address existing disproportionate impacts. The rule-writers should highlight this information for consideration in decisions-making about the options.

What are the “three core EJ questions”?

The Guide suggests that decision-makers ask rule-writers about their efforts to address the following three core EJ questions at key points during the development of regulatory actions under the ADP (such as at Early Guidance, options selection or Final Agency Review):

1. How will (or did) the public participation process provide transparency and meaningful participation for minority populations, low-income populations, tribes, and indigenous peoples?
2. How do the rule-writers plan to (or how did the rule-writers) identify and address existing and new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples during the rulemaking process?
3. How did the actions taken under #1 and #2 impact the outcome or final decision?

Appendix C: A Checklist for EPA Rule-Writers: Integrating EJ into the Development of Regulations Under the ADP

EPA rule-writers can use this checklist to identify what they may need to know and/or do in order to integrate EJ into the development of their regulatory action. The checklist is based on available guidance, including that provided in this Guide. This checklist is not intended to replace the information provided in main body of the Guide and does not, therefore, repeat the details provided there or elsewhere.



Activity
I. BEFORE THE ADP PROCESS STARTS – Learn the basics about the ADP and EJ.
<input type="checkbox"/> Are rule-writers familiar with the process steps under the ADP? ⁴¹ <i>If a refresher on the process steps involved in the ADP is needed, please see the charts provided in Appendix A of the Guide.</i>
<input type="checkbox"/> Have the rule-writers read the Guide?
<input type="checkbox"/> Do the rule-writers know what the Executive Order on EJ requires?
<input type="checkbox"/> What is meant by "environmental justice"?
<input type="checkbox"/> What is meant by an "EJ concern"?
<input type="checkbox"/> Do the rule-writers know how it can identify, assess and address potential EJ concerns during the development of the action?
<input type="checkbox"/> Do the rule-writers know their different roles?
<input type="checkbox"/> Do the rule-writers know the "three core EJ questions"? (See item #5 on this checklist)
<input type="checkbox"/> Does the office have any applicable program specific requirements or guidance on EJ?
<input type="checkbox"/> Are the rule-writers familiar with the <i>Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis</i> (U.S. EPA 2013)?
2. GETTING STARTED – Screen the action.
<input type="checkbox"/> Have the rule-writers responded to the EJ question in ADP TRACKER?
<input type="checkbox"/> Have the rule-writers completed an initial screening process to evaluate whether the action has the potential to raise or address potential EJ concerns and documented the analytic basis for the conclusions?

⁴¹ Agency Guidance on the ADP is available at <http://intranet.epa.gov/adplibrary/>.

Activity
3. PLANNING – Complete an Analytic Blueprint (ABP) for the action.
<input type="checkbox"/> Have the rule-writers identified the potentially impacted minority populations, low-income populations, tribes, and/or indigenous peoples and their concerns? ⁴²
<input type="checkbox"/> Does the ABP address its plans for achieving meaningful involvement and contain plans for effectively engaging the minority populations, low-income populations, tribes, and indigenous peoples affected by the action?
<input type="checkbox"/> Have the rule-writers identified the factors that contribute to potential EJ concerns?
<input type="checkbox"/> Have the rule-writers identified the data needs and data sources for an appropriate EJ assessment, the scope and basic methodology of the EJ assessment and the outputs of the EJ assessment?
<input type="checkbox"/> Have the rule-writers explored alternative approaches for addressing potential EJ concerns (regulatory, voluntary and/or innovative approaches)?
<input type="checkbox"/> Have the rule-writers identified the resources needed to achieve meaningful involvement, gather needed data and conduct identified analyses?
<input type="checkbox"/> Have the rule-writers identified the key activities, analyses, consultation activities (including those called for by relevant statutes and EOs), contributors and timeline?
4. OPTIONS SELECTION – Identify and prepare options for decision-makers.
<input type="checkbox"/> Is input from affected minority populations, low-income populations and/or indigenous peoples reflected in the analysis of options, both in terms of potential impacts and options to consider?
<input type="checkbox"/> Have the rule-writers incorporated potential impacts on minority populations, low-income populations, and/or indigenous peoples into the analysis of options? <ul style="list-style-type: none"> <input type="checkbox"/> Have the rule-writers described the ways in which the action can address any existing potentially disproportionate impacts? <input type="checkbox"/> If the action has the potential to create new disproportionate impacts, has the rule-writers identified options that will avoid or mitigate those impacts?
<input type="checkbox"/> Are the rule-writers prepared to address how to answer the three core EJ questions?
5. DOCUMENTATION – Prepare the action and final documents.
<input type="checkbox"/> Have the rule-writers documented their outreach and consultation efforts, as well as the results of those efforts?
<input type="checkbox"/> Have the rule-writers used the appropriate ADP Library Template for the preamble discussion of EO 12898?
<input type="checkbox"/> Do the final economic and scientific analyses clearly present the potential EJ concerns?
<input type="checkbox"/> Have the rule-writers described in the preamble or supporting documents any identified potential disproportionate impacts and potential EJ concerns and how they are addressed by the action?
<input type="checkbox"/> Have the rule-writers addressed the “Three Core EJ Questions” in the Action Memo: <ol style="list-style-type: none"> 1. How did the public participation process provide transparency and meaningful participation for minority populations, low-income populations, tribes, and indigenous peoples? 2. How did the rule-writers identify and address existing and/or new disproportionate environmental and public health impacts on minority populations, low-income populations, and/or indigenous peoples? 3. How did the actions taken under #1 and #2 impact the outcome or final decision?

⁴² In addition to providing meaningful involvement opportunities for indigenous communities and tribes, rule-writers should consider whether it is appropriate to offer tribes the opportunity for government-to-government consultation on the action. For additional information, see EPA’s Tribal Consultation Policy.

Appendix D: References/ Resources

Please note that this document is written for EPA employees and contains links to resources on the EPA's intranet website. Those resources are inaccessible from non-EPA computers.

Policy and Guidance Documents

Title and URL	Description
Executive Order 12898: Environmental Justice http://www.epa.gov/environmentaljustice/resources/policy/exec_order_12898.pdf	Text of EO directing agencies to address Environmental Justice in minority populations and low-income populations.
EPA's Definition of Environmental Justice http://www.epa.gov/environmentaljustice/basics/index.html	Environmental Justice and related terms defined for use at EPA.
Memorandum for the Heads of All Departments and Agencies: Executive Order on Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994) http://www.epa.gov/environmentaljustice/resources/policy/clinton_memo_12898.pdf	President's cover memorandum for Executive Order 12898.
EPA's Environmental Justice Strategy (1995) http://www.epa.gov/environmentaljustice/resources/policy/ej_strategy_1995.pdf	Strategy developed in response to EO 12898.
Environmental Justice Implementation Plan http://www.epa.gov/environmentaljustice/resources/policy/implementation_plan_ej_1996.pdf	Plan to integrate environmental justice into the Agency's work under Carol Browner (1996).
Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analysis (1998) http://www.epa.gov/environmentaljustice/resources/policy/ej_guidance_nepa_epa0498.pdf	Guidance for incorporating environmental justice goals into the EPA's preparation of environmental impact statements (EISs) and environmental assessments (EAs) under NEPA.
Environmental Justice: Guidance under the National Environmental Policy Act (1997) http://www.epa.gov/environmentaljustice/resources/policy/ej_guidance_nepa_ceq1297.pdf	Original guidance provided by CEQ.
Toolkit for Assessing Potential Allegations of Environmental Justice (2004) http://www.epa.gov/environmentaljustice/resources/policy/ej-toolkit.pdf	Reference guide to assist Agency personnel in assessing potential allegations of environmental injustice and to provide a framework for understanding national policy on environmental justice.
Strengthening EPA's Environmental Justice Program (June 9, 2008) http://www.epa.gov/environmentaljustice/resources/policy/admin-ej-strength-memo-060908.pdf	Administrator Johnson directs the EPA to conduct EJ reviews of its program, policies and activities.

Title and URL	Description
Reaffirming the U.S. EPA's Commitment to Environmental Justice – Memo from Stephen L. Johnson (November 4, 2005) http://www.epa.gov/environmentaljustice/resources/policy/admin-ej-commit-letter-110305.pdf	Administrator Johnson outlines the Agency's commitment to Environmental Justice and its integration into all programs, policies, and activities.
Plan EJ 2014 http://www.epa.gov/environmentaljustice/plan-ej/index.html	Roadmap for how EPA will integrate EJ into the Agency's programs, policies, and activities.
EJ Legal Tools http://www.epa.gov/environmentaljustice/plan-ej/law.html	Identifies existing legal tools to help EPA advance the goal of EJ and provides an overview of a number of discretionary legal authorities that are or may be available to EPA under federal statutes and programs.
Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (U.S. EPA 2013) http://www.epa.gov/environmentaljustice/plan-ej/rulemaking.html	Helps analysts assess potential EJ concerns associated with EPA rules.
Plan EJ 2014: EJ in Permitting http://www.epa.gov/environmentaljustice/plan-ej/permitting.html	The EJ in Permitting Initiative seeks to enable overburdened communities to have full and meaningful access to the permitting process and to develop permits that address environmental justice issues to the greatest extent practicable under existing environmental laws.
EPA Policy on Environmental Justice for Tribes and Indigenous Peoples http://www.epa.gov/environmentaljustice/resources/policy/indigenous/ej-indigenous-policy.pdf	Clarifies and integrates environmental justice principles in a consistent manner in the Agency's work with federally recognized tribes and indigenous peoples throughout the United States, and with others living in Indian country to protect their environment and public health.
American Journal of Public Health Supplement "Environmental Justice and Disparities in Health" http://ajph.aphapublications.org/toc/ajph/101/S1	Useful resource for gaining a more complete understanding of how disproportionate impact factors can influence health outcomes.
EPA's Policy of Evaluating Health Risks to Children http://yosemite.epa.gov/ochp/ochpweb.nsf/content/riskpolicy.htm?File/riskpolicy.pdf	Policy applied to assessments started or revised on or after November 1, 1995.
Executive Order 13175: Consultation and Coordination with Indian Tribal Governments http://www.epa.gov/tp/pdf/eo-13175.pdf	EO directing Federal agencies to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications.
EPA's Public Involvement Policy http://www.epa.gov/publicinvolvement/pdf/policy2003.pdf	Complete Agency policy with four appendices and two addenda.
Public Involvement http://www.epa.gov/publicinvolvement	Information on the full range of activities that EPA uses to engage the American people in the Agency's decision-making.
International Association for Public Participation www.IAP2.org	Provides discussion on the spectrum of public involvement; identifies useful publications and training opportunities.
Web 2.0 http://www2.epa.gov/webguide/epa-and-web-20-technologies-2007-memo	Provides information about the EPA's social media use and necessary steps for setting up Web 2.0 applications such as wikis and blogs.

Other Useful Resources

Title and URL	Description
Environmental Justice Coordinators – Media Offices http://epa.gov/environmentaljustice/contact/ej-contacts-media.html	List of contacts with name, phone, location, and areas of expertise identified.
Environmental Justice Coordinators – Regional Offices http://epa.gov/environmentaljustice/contact/ej-contacts-regional.html	List of contacts with name, phone, and address identified.
Action Development Process http://intranet.epa.gov/adplibrary/adp/index.htm	Information about each particular aspect of EPA's ADP.
Action Development Process: Guidance for EPA Staff on Developing Quality Actions http://intranet.epa.gov/adplibrary/documents/adp03-00-11.pdf	Lays out the ADP and where to get additional information and guidance as Agency actions are developed.
Action Development Checklist See Appendix C of this Guidance on Considering Environmental Justice During the Development of an Action	Illustrative list to help rule-writers determine whether the action being developed may involve a subject of particular interest to—or may have particular impacts on—vulnerable populations.
Environmental Justice Regulatory Preamble Templates http://intranet.epa.gov/adplibrary/adp-templates/index.htm#stat	Suggested language for addressing EO 12898 in preambles for proposed and final rules.
Action Development Guidelines for Preparing Analytic Blueprints http://intranet.epa.gov/adplibrary/documents/abp09-30-04.pdf	Discusses the timing and steps for the drafting and approval of Analytic Blueprints (applicable to all Tiers 1 and 2 actions); directs reader to resources for more information and guidance.
RegDaRRT http://yosemite.epa.gov/opei/RuleGate.nsf/	Offers the public a means of learning about and tracking EPA actions.
Cross-Agency EJ in Rulemaking Team's Resources for Incorporating EJ in Agency Rules http://intranet.epa.gov/oeca/oej/rulemaking.html	Resources identify opportunities for the Agency to advance the integration of EJ in rules.

Appendix E: Examples of Regulatory Responses That Directly or Indirectly Address Potential EJ Concerns

Significant progress in making EJ a part of the Agency's rulemaking process has already been made, as evidenced by the following examples:

- **Definition of Solid Waste 2015 (DSW):** On January 13, 2015, EPA published the final revisions to the Definition of Solid Waste Rule, also known as the DSW rule. It represents a major environmental justice milestone by directly addressing impacts to communities, disproportionately borne by minority and low-income populations from the mismanagement of hazardous materials sent to recycling. EPA conducted a rigorous environmental justice analysis that examined the location of recycling facilities and their proximity and potential impact to adjacent residents. The methodology and scope was developed through a broad public engagement and expert peer review process. The analysis identified significant regulatory gaps in the previous DSW rule which could negatively impact communities adjacent to third party recyclers, including minority and low-income populations.

EPA identified mismanagement that could pose a risk of fires, explosions, accidents and releases of hazardous constituents to the environment. The economics of commercial recycling contain market disincentives that encourage over-accumulation and mismanagement of hazardous secondary material. The 2008 DSW rule lacked the tools needed for proper oversight of these facilities by EPA, states and the communities affected by them. The final rule addresses the market disincentives in a way that helps encourage safe and legitimate recycling while addressing the need to protect communities. The final rule also includes a public participation component so that communities are notified prior to recycling operations beginning and have a chance to weigh in on the environmental decisions that affect them, which was a major issue identified in the environmental justice analysis.

- **Mercury and Air Toxics Standard (MATS):** In December 2011, EPA finalized the first federal standards that require power plants to limit their emissions of toxic air pollutants like mercury, arsenic and metals. The Mercury and Air Toxics Standard (MATS) was supported by EPA's study of the public health hazards from power plant emissions as required by the Clean Air Act. EPA used data on subsistence fishing and potential health impacts of mercury deposition on the minority, low-income and indigenous populations engaged in subsistence fishing to arrive at an "appropriate and necessary" finding that moved the rulemaking forward. In addition, EPA held a series of webinars, community calls, and consultations with tribal leadership on this rule. Most plants

will come into compliance in April 2015, with full implementation by April 2016. EPA projects that mercury emissions from sources covered by MATS are expected to be reduced from 27 tons without MATS in 2016 to 7 tons in 2016 with MATS, approximately a 74 percent reduction. Overall, the MATS rule will improve public health by lowering mercury exposure, especially for children and the elderly and for low-income, minority and indigenous populations that rely on subsistence fishing.

- **National Ambient Air Quality Standards for Particulate Matter:** In December 2012, EPA strengthened the annual health National Ambient Air Quality Standard (NAAQS) for fine particulate matter (PM). Under Section 109 of the Clean Air Act, EPA set the primary standard to protect public health with an adequate margin of safety, considering “sensitive or susceptible individuals or groups.” People most at risk from PM exposure include people with heart or lung disease (including asthma), older adults, children and people of lower socioeconomic status. In writing the PM NAAQS Implementation Rule, EPA engaged with communities to help identify areas to provide guidance to states on targeting activities that address the impact on low-income communities. EPA met with the National Environmental Justice Advisory Committee (NEJAC) and had a training in North Carolina on this issue. The proposal for the Implementation Rule was put forth in March 2015 and will provide suggestions to the states on targeting emissions reductions in environmental justice communities as well as suggestions on how to engage communities in the development of the PM State Implementation Plans.
- **Petroleum Refinery Residual Risk and Technology Review:** In June 2014, EPA proposed the Petroleum Refinery Residual Risk and Technology Review (RTR) rule to achieve further controls on toxic air emissions from petroleum refineries. Early engagement with communities indicated a particular interest in fence-line monitoring, which was supported by EPA’s emissions inventory data indicating a significant portion of emissions from refineries come from fugitive sources. Based on this community input and the risk and technology review analyses, EPA proposed requirements for:
 - Additional emission control requirements for storage tanks, flares and coking units;
 - Higher combustion efficiency for flaring operations; and
 - Monitoring of air concentrations at the fence-line of refinery facilities.

After the proposal was released, EPA held community calls and webinars and conducted trainings in New Orleans, Louisiana, and in Oakland, California. As a result, a significant number of communities provided more substantive comments for consideration during the development of the final rule. Additionally, in the summer of 2014 the Agency held two public hearings on this rulemaking (one in Wilmington, California and one in Houston, Texas). The comment period for this rulemaking closed on October 28, 2014 and EPA is under a consent decree with environmental litigants to finalize this rule by June 16, 2015. EPA received 100,000 comments on this rulemaking. EPA is currently reviewing the comments received and will be considering all comments as we move forward with the final rulemaking.

- **Revisions to Agricultural Worker Protection Standards:** On March 19, 2014, EPA published a proposed rule to revise the current Worker Protection Standard (WPS), designed to protect workers on agricultural establishments from occupational exposure to pesticides. EPA recognizes

that individuals working with pesticides, or contacting crop products on which pesticides have been used, are at greater risk of exposure. The estimated two million farmworkers are potentially exposed to pesticide residues, both during applications as well as when they re-enter treated areas for hand labor activities. The core concepts of EJ have been part the fundamental basis of the rule since its inception. EPA sought and received extensive input from the farmworker community over many years to help the Agency formulate the best set of improved protections in the proposed rule. Improvements where EJ consideration made a difference include training and notifications to workers, requirements to support the enforcement of required protections, and enhancements to decontamination supplies and emergency assistance requirements.

- **Implementation of Lead Renovation Repair and Painting Program:** In April 2008, EPA issued its final Lead Renovation, Repair, and Painting Program (RRP) rule that addressed lead-based paint hazards created by renovation, repair, and painting activities in target housing and child-occupied facilities. Recognizing that children in minority populations and children whose families are poor have an increased risk of exposure to harmful lead levels, EPA determined that effective implementation was one of the best ways to ensure that these populations are not exposed to additional leaded dust resulting from common, but improperly-performed, home renovation, repair, and painting work. EPA's Dust Study supported this approach because it demonstrated that renovation activities result in dust lead levels that can be orders of magnitude above the hazard standard and higher than the levels achievable if the RRP requirements were followed. EPA concluded that fully implementing the regulations can be a successful tool in addressing elevated blood lead levels in children. Implementation of the RRP rule is expected to minimize exposure to lead-based paint hazards and protect children and others. Because minority and low-income children are already at higher risk of lead poisoning, we expect that this activity will have specific benefits to populations with EJ concerns.
- **Unregulated Contaminant Monitoring Regulation (UCMR 3) for Public Water Systems Final Rule:** EPA uses the Unregulated Contaminant Monitoring program to collect data for contaminants suspected to be present in drinking water, but that do not have health-based standards or treatment technique regulations established under the Safe Drinking Water Act. After conducting an EJ analysis of the rule, EPA updated it to require that all public water systems report U.S. Postal Service zip codes in their service area. This additional data will enable EPA to identify areas that may have disproportionately high and adverse human health or environmental impacts on minority or low-income population water supplies.

Notes

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Notes

Guidance on Considering Environmental Justice During the
Development of Regulatory Actions