



EPA Legal Tools to Advance Environmental Justice: Executive Order 14096 Addendum

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Introduction

On April 21, 2023, President Biden signed Executive Order (EO) 14096, “Revitalizing Our Nation's Commitment to Environmental Justice for All” (88 FR 25251). EO 14096 directs agencies to “identify, analyze and address” the disproportionate and adverse human health and environmental effects of federal activities. This Addendum examines new elements of EO 14096 that are relevant to environmental justice analysis and action, and considers the extent to which EO 14096 may affect the analysis and conclusions drawn in EPA Legal Tools to Advance Environmental Justice (EJ Legal Tools) and the associated Cumulative Impacts Addendum (CIA). In short, EJ Legal Tools and the CIA remain valid resources for identifying the Agency’s legal authorities to advance environmental justice. Where EPA has authority to advance environmental justice under the statutes and regulations analyzed in EJ Legal Tools and the CIA, EPA likely has authority to carry out the charges in EO 14096.¹

As discussed in EJ Legal Tools and the CIA, EPA’s authority to consider disproportionate impacts on communities with environmental justice concerns rests squarely within EPA’s organic authorities to protect human health and the environment. EO 14096 reaffirms this health and environmental focus in its definition of environmental justice, which includes that “all people . . . are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers . . .” In addition, as discussed in detail below, EO 14096 establishes a number of specific directives to ensure agencies promote environmental justice and sharpen their environmental justice analyses and related decision-making. These charges, too, focus almost exclusively on human health and the environment, and remain consistent with the Nation’s promise of justice, liberty, and equality that the federal government must uphold on behalf of all people.²

I. Background

EO 14096 builds upon the Biden Administration’s prior EOs aimed at advancing environmental justice and equity, and supplements the foundational elements of EO 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income

¹ The 16 directives in Section 3 of EO 14096 apply “as appropriate and consistent with applicable law.” Accordingly, it is important to routinely involve Office of General Counsel (OGC) or Office of Regional Counsel (ORC) staff early when considering the scope of the Agency’s applicable legal authority to advance environmental justice. Note that pursuant to a preliminary injunction issued by the U.S. District Court for the Western District of Louisiana on January 23, 2024, EPA will not impose or enforce any disparate-impact or cumulative-impact-analysis requirements under Title VI against the State of Louisiana or its state agencies.

² See EO 14096 Section 1.

Populations” (59 FR 7629).³ Among other new elements, EO 14096 establishes an executive-wide definition of environmental justice:

“**Environmental justice**” means the just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people:

- (i) are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and
- (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.⁴

EO 14096 is more expansive than EO 12898 both in terms of the populations included and the goals articulated. For instance, EO 12898 does not specifically discuss the concept of equitable access to the environment. EO 12898 does not include a definition of environmental justice, but it directs agencies to identify and address disproportionately high and adverse effects “of its programs, policies, and activities on minority and low-income populations.”⁵ EO 14096 provides clearer direction as to the scope of activities covered, defining “Federal activity” broadly, as “any agency rulemaking, guidance, policy, program, practice, or action that affects or has the potential to affect human health and the environment, including an agency action related to climate change. Federal activities may include agency actions related to: assuring compliance with applicable laws; licensing, permitting,⁶ and the reissuance of licenses and permits; awarding, conditioning, or oversight of Federal funds; and managing Federal resources and facilities.”⁷

³ See EO 14096 Section 1; EO 12898 (59 FR 7629, February 16, 1994) Section 1-101.

⁴ In contrast, EPA has previously defined environmental justice as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” See *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, EPA (June 2016) https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf at 66. The definition in EO 14096 articulates additional concepts including “full protect[ion]” from adverse effects and hazards, and “equitable access” to a healthy environment.

⁵ EO 12898 Section 1-101.

⁶ EPA-issued permits may be subject to review by the EPA Environmental Appeals Board (EAB). See generally, 40 C.F.R. §124.19. The Guide to the EAB recognizes that “the EAB has played an important role in the context of reviewing permitting decisions to resolve allegations that the permit issuer did not meet its obligations with respect to environmental justice in its permitting decision.” See *Guide to the U.S. Environmental Protection Agency’s Environmental Appeals Board*, EPA (Mar. 2023), [https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/8f612ee7fc725edd852570760071cb8e/26e637699cb1cc1685257b50004044f6/\\$FILE/Guide%20to%20the%20EAB%20March%202023.pdf](https://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/8f612ee7fc725edd852570760071cb8e/26e637699cb1cc1685257b50004044f6/$FILE/Guide%20to%20the%20EAB%20March%202023.pdf) at 35-36. The EAB can also hear challenges to permitting decisions made by a state, local, or Tribal authority where that authority is acting on EPA’s behalf as its delegate under federal law to issue federal environmental permits.

⁷ EO 14096 Section 2(c).

EO 14096 also directs agencies to identify, analyze, and address “disproportionate and adverse”⁸ effects, including those related to climate change,⁹ the cumulative impacts of environmental and other burdens, and historical inequities or systemic barriers. It sets forth enhanced direction on providing meaningful involvement of persons and communities with environmental justice concerns, and includes 16 directives to federal agencies to deepen their efforts at advancing environmental justice. Among those directives to agencies, discussed in more detail below, is direction to evaluate relevant legal authorities to (i) address disproportionate and adverse effects *unrelated* to federal activities,¹⁰ (ii) provide workforce training and support the creation of jobs for people within communities with environmental justice concerns,¹¹ and (iii) mitigate disproportionate effects of federal activities, and address any contribution of such federal activities to existing adverse effects.¹²

EJ Legal Tools and the CIA are intended to help identify specific authorities available to EPA to consider and address environmental justice in decision-making, and to promote meaningful engagement with potentially impacted communities. Neither this document nor the preexisting EJ Legal Tools and CIA provide guidance on how best to conduct an environmental justice analysis. This document does, however, note certain elements that should be added to environmental justice analyses going forward pursuant to EO 14096 (e.g., consideration of the just treatment and meaningful involvement of individuals with disabilities).

EO 14096, like all EOs, is not an independent source of legal authority, and therefore does not expand the scope of EPA’s existing legal authority, including the authorities identified in EJ Legal Tools or the CIA. As with EJ Legal Tools and the CIA, this Addendum does not speak to when or how the Agency should act to address any disproportionate and adverse effects that its environmental justice analyses may have identified. The most basic advice provided in EJ Legal Tools and the CIA remains the same: that program and regional offices should consult

⁸ EO 14096 uses the phrase “disproportionate and adverse” instead of “disproportionately high and adverse,” as used in EO 12898. According to the White House Fact Sheet on EO 14096, these phrases have the same meaning. Removing the word “high” is intended in to eliminate potential misunderstanding that agencies should only be considering large disproportionate effects. See *FACT SHEET: President Biden Signs Executive Order to Revitalize Our Nation’s Commitment to Environmental Justice for All*, THE WHITE HOUSE (Apr. 21, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/04/21/fact-sheet-president-biden-signs-executive-order-to-revitalize-our-nations-commitment-to-environmental-justice-for-all/>. The 2016 Technical Guidance for Assessing Environmental Justice in Regulatory Analysis defines “disproportionate” to mean “differences in impacts or risks that are extensive enough that they may merit Agency action and should include cumulative impacts where appropriate.” While informed by analysis, this determination is ultimately a policy judgment in some contexts. See *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, EPA (June 2016) https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf at 4. This Guidance is currently being updated, and thus the definition is subject to change.

⁹ For additional information on climate change, see the [Fifth National Climate Assessment \(NCA5\)](#), the U.S. Government’s preeminent report on climate change impacts, risks, and responses. Chapters 16 (on Indigenous Peoples) and 20 (on Social Systems and Justice) are particularly relevant to the intersection of climate change and environmental justice. [EJScreen](#) also includes useful data on climate change, including flood risk, wildfire risk, 100 year floodplains, and sea level rise. See also, *Climate Change and Social Vulnerability in the United States: A Focus on Six Impacts*, EPA (Sept. 2021), https://www.epa.gov/system/files/documents/2021-09/climate-vulnerability_september-2021_508.pdf.

¹⁰ See EO 14096 Section 3(a)(ii).

¹¹ See *id.* at Section 3(a)(v).

¹² See *id.* at Section 3(a)(vi).

with the relevant ORC and OGC attorneys regarding potential legal issues associated with considering environmental justice in their work, including the applicability of any court orders. Whether and how EPA utilizes its legal authorities to address environmental justice will depend on the statutory, regulatory, policy, scientific, and factual contexts at issue, as well as the resources available to the Agency.

EJ Legal Tools Applied– Phase II Freedom of Information Act (FOIA) Rule

EO 14096 calls on agencies to advance environmental justice in our federal activities. One example of EPA’s efforts to advance environmental justice is the Phase II FOIA rule. In September 2023, EPA issued its final Phase II FOIA rule to promote transparency and accountability, make FOIA more affordable, and under certain conditions expedite access to information related to communities with environmental justice concerns (88 FR 63020). The environmental justice-related update was recommended in EJ Legal Tools as a way to make FOIA more effective for communities with environmental justice concerns.¹³ The Phase II FOIA rule established a new standard for requesters to seek expedited processing of their FOIA request if they identify a pressing need to inform a community with environmental justice concerns. Additionally, if EPA grants a request for environmental justice-related expedited processing, EPA will also waive applicable fees.

The Phase II FOIA rule defines an environmental justice related need as “a pressing need to inform a community that is potentially experiencing disproportionate and adverse human health or environmental effects.”¹⁴ In making this determination, the Agency will consider: (A) whether the requested records relate to actual or alleged federal government activity, (B) the extent to which there is a pressing need to inform the community about the federal government activity, (C) the extent to which the community is potentially experiencing disproportionate and adverse human health or environmental effects, and (D) the requester’s ability and intention to effectively convey the information to members of the community.¹⁵

Discussion of Select EO 14096 Elements

I. Inclusion of Disability

EO 14096 expanded upon EO 12898 by explicitly including disability within the concept of environmental justice. While EO 14096 does not define “disability”, the term “disability” commonly covers a wide range of conditions that limit a person’s ability to do certain activities. The Americans with Disabilities Act (ADA), for example, defines disability as “a physical or mental impairment that substantially limits one or more major life activities, a record of such

¹³ See *EPA Legal Tools to Advance Environmental Justice*, EPA (May 2022), <https://www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf> at 186.

¹⁴ 40 C.F.R. § 2.104(g)(1)(ii).

¹⁵ See *id.*

an impairment, or being regarded as having such an impairment.”¹⁶ Census data from the American Community Survey (ACS)¹⁷ considers six disability types: hearing difficulty, vision difficulty, cognitive difficulty, ambulatory difficulty, self-care difficulty, and independent living difficulty. Respondents who report any one of the six disability types are considered to have a disability. EPA’s June 2023 update of EJScreen included the addition of a new map layer for individuals with disabilities using data derived from the ACS.

Populations of people with disabilities may be disproportionately and adversely affected by environmental and health effects, including hazards and risks related to pollution, climate change, and the cumulative impacts of chemical and nonchemical stressors. These impacts may be tied to geographic areas — such as geographic locations with high asthma rates or that are in proximity to schools and programs for individuals with disabilities — or may relate to particular susceptibilities experienced by individuals with disabilities, such as mobility or hearing impairments that may make certain individuals particularly vulnerable in environmental or human health emergencies. Examples of the potential health impacts of these hazards include heat illnesses, water-related illnesses, mental health effects, and injuries and death.¹⁸ Further, some people with disabilities may be part of other groups vulnerable to climate change or other human health or environmental impacts. For example, individuals with disabilities are more likely to be unemployed and/or age 65 or older, which places them at greater risk than people who do not have disabilities.¹⁹ In addition, childhood disability has been rising in recent years, with disability rates highest among American Indian and Alaska Native children and those living in poverty.²⁰ Thus, consistent with the definition of environmental justice in EO 14096 and the EO’s direction on just treatment and meaningful involvement, individuals with disabilities are to be considered when evaluating impacts to communities with environmental justice concerns.

II. Directives to Advance Environmental Justice

In addition to acknowledging critical foundational elements of an environmental justice analysis, such as consideration of climate change and cumulative impacts, EO 14096 lays out 16 charges for agencies to further advance environmental justice, including, but not limited to:

¹⁶ 42 U.S.C. Sec. 12102(1). Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working; or the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *Id.* at Sec. 12102(2). *See also* the definitions provided in Section 504 of the Rehabilitation Act, 45 C.F.R. § 84.3(j).

¹⁷ Disability data from the ACS can be found here:

<https://data.census.gov/table/ACSST5Y2022.S1810?q=S1810>.

¹⁸ *See, e.g., Climate Change and the Health of People with Disabilities*, EPA,

<https://www.epa.gov/climateimpacts/climate-change-and-health-people-disabilities>.

¹⁹ *See, e.g., Persons with a Disability: Labor Force Characteristics Summary*, U.S. BUREAU OF LABOR STATISTICS (2023), <https://www.bls.gov/news.release/disabl.nr0.htm>, USDL-24-0349.

²⁰ *See* Natalie A. E. Young, *Childhood disability in the United States: 2019: American community survey briefs*. U.S. CENSUS BUREAU (2021), <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acsbr-006.pdf>, ACSBR-006, at 2-3.

- Identifying, analyzing, and addressing disproportionate and adverse human health and environmental effects of federal activities²¹ (see Section 3(a)(i));
- Evaluating relevant legal authorities,²² and, as appropriate, taking steps to address disproportionate and adverse human health and environmental effects *unrelated* to federal activities (see Section 3(a)(ii));
- Identifying, analyzing, and addressing historical inequities, systemic barriers, or actions related to any federal regulation, policy, or practice that inhibit access to a healthy and sustainable environment (see Section 3(a)(iii));
- Identifying, analyzing, and addressing barriers related to federal activities that impair equitable access to human health or environmental benefits, including benefits related to natural disaster recovery and climate mitigation and adaptation (see Section 3(a)(iv));
- Evaluating relevant legal authorities and, as appropriate, taking steps to provide opportunities for workforce training and to support the creation of high-quality and well-paying jobs for people who are part of communities with environmental justice concerns (see Section 3(a)(v));
- Evaluating relevant legal authorities and, where appropriate, considering adopting or requiring measures to avoid, minimize, or mitigate disproportionate and adverse effects of federal activities on communities with environmental justice concerns, and to address any contribution of such federal activities to adverse effects already being experienced (see Section 3(a)(vi));
- Providing opportunities for the meaningful engagement of persons and communities with environmental justice concerns who are potentially affected by federal activities (see Section 3(a)(vii));
- Carrying out the National Environmental Policy Act (NEPA) in a manner that considers best available science on disparate health effects from exposure to pollution and other environmental hazards and provides opportunities for early and meaningful involvement in the environmental review process (see Section 3(a)(ix));
- In accordance with Title VI of the Civil Rights Act of 1964 and agency regulations, ensuring that all programs or activities receiving federal financial assistance do not discriminate on the basis of race, color, or national origin (see Section 3(a)(x));²³
- Encouraging and ensuring that Government-owned, contractor-operated facilities take appropriate steps to implement the directives of the EO (see Section 3(a)(xiii)); and
- Considering ways to encourage and ensure that recipients of federal funds and entities subject to contractual, licensing, or other arrangements with federal agencies advance environmental justice (see Section 3(a)(xiv)).²⁴

²¹ “Federal activities” is defined broadly in EO 14096. See Section I above for further discussion of this term.

²² This includes the applicability of any court orders.

²³ See the Office of External Civil Rights Compliance’s webpage for information about special circumstances regarding Title VI applying to the State of Louisiana and its agencies.

²⁴ In addition to the charges enumerated above, certain of the EO’s directives reemphasize requirements articulated in pre-existing statutes or EOs. These include Section 3(a)(viii) (directing agencies to continue consulting on federal activities that have Tribal implications pursuant to prior EOs and Presidential Memoranda, including related to Indian Sacred Sites), 3(a)(xi) (directing agencies to ensure that the public has adequate access to information on federal activities as required under federal statute), 3(a)(xii) (directing agencies to

Several important concepts are interwoven throughout the EO and the 16 directives. For example, the EO’s definition of “environmental justice” explicitly encompasses human health and environmental effects, risks, and hazards. EPA’s *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* defines risk as the probability of an adverse effect in an organism, system, or population, caused under specified circumstances by exposure to a contaminant or stressor.²⁵ A hazard is defined as an inherent property of an agent, contaminant, or situation having the potential to cause adverse effects when an organism, system, or population is exposed to that stressor.²⁶ In contrast, EO 12898 speaks only to identifying and addressing “effects.”²⁷ EO 14096 also makes it clear that human health impacts, including both those that are environmental in origin and those that are not, should be considered and addressed.²⁸

The ultimate focus of the directives in EO 14096 is on human health and the environment, remaining consistent with the priorities of EO 12898 and the analysis and reasoning in EJ Legal Tools and the CIA.

EJ Legal Tools Applied—The Toxic Substances Control Act (TSCA)

The 2016 amendments to TSCA included the term “potentially exposed or susceptible subpopulations” (PESS), which the Agency must consider in implementing multiple sections of the statute. PESS is defined as “a group of individuals within the general population identified by the Administrator who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture, such as infants, children, pregnant women, workers, or the elderly.”²⁹ EJ Legal Tools analysis noted that the Agency had the legal authority to consider adopting a broad interpretation of the term PESS.³⁰

In April 2024, EPA issued a final rule to amend the procedural framework rule for conducting risk evaluations under TSCA.³¹ The rule adds “overburdened communities” to

improve collaboration with State, Tribal, territorial, and local governments on programs and activities to advance environmental justice) and 3(a)(xvi) (directing agencies to ensure that, in accordance with EO 12898, federal activities do not exclude persons from participation in federal activities, deny persons the benefits of federal activities, or subject persons to discrimination, in each case on the basis of their race, color, or national origin).

²⁵ See *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, EPA (June 2016), https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf at 68. This Guidance is currently being updated, and thus the definition is subject to change.

²⁶ See *id.* at 67.

²⁷ See EO 12898, Section 1-101.

²⁸ See, e.g., EO 14096 Section 3(a)(i) (including consideration of “environmental and other burdens”). EJSscreen and other tools can be used to identify potential health burdens as well as environmental burdens. For example, EJSscreen includes data on low life expectancy, heart disease, asthma, cancer, and persons with disabilities.

²⁹ 15 U.S.C. § 2602(12).

³⁰ See *EPA Legal Tools to Advance Environmental Justice*, EPA (May 2022), <https://www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf> at 124-25.

³¹ 89 FR 37028.

the definition of PESS to reflect the Agency’s intent to advance environmental justice in TSCA risk evaluations. In identifying “overburdened communities” when conducting TSCA risk evaluations, EPA intends to engage the public early on in the process, work with EPA offices such as the Office of Environmental Justice and External Civil Rights and the Office of Research and Development, and may use available screening tools such as EJScreen.³² These and other tools may allow EPA to capture communities with greater susceptibility or greater exposure to environmental or human health impacts based on socioeconomic factors (e.g., income/poverty, education), location (e.g., housing, employment, geography), or environmental indicators (e.g., air toxics cancer risk, respiratory hazard index, particulate matter levels, ozone, Superfund site proximity, hazardous waste proximity, proximity to multiple chemical manufacturing or processing facilities).

a. Evaluating Legal Authorities

Three of the EO’s charges specifically direct agencies, as an initial step, to conduct a review of relevant legal authorities.³³ Specifically, the EO directs agencies to evaluate relevant legal authorities and, as available and appropriate:

- Take steps to address disproportionate and adverse effects *unrelated* to federal activities (Section 3(a)(ii));³⁴
- Take steps to provide opportunities for *workforce training and to support the creation of high-quality and well-paying jobs* for people within communities with environmental justice concerns (Section 3(a)(v)); and
- To consider adopting or requiring measures to avoid, minimize, or mitigate disproportionate and adverse effects of federal activities, and *address any contribution of such federal activities to adverse effects already experienced by such communities* (Section 3(a)(vi))(emphasis added).

EPA’s legal authority to carry out each of these charges is addressed in part by EJ Legal Tools and the CIA, and is discussed further below.

i. *Effects unrelated to federal activities (Section 3(a)(ii))*

Federal activities under EO 14096 are defined broadly as “any agency rulemaking, guidance, policy, program, practice, or action that affects or has the potential to affect human health and the environment, including an agency action related to climate change. Federal activities may include agency actions related to: assuring compliance with applicable laws; licensing, permitting, and the reissuance of licenses and permits; awarding, conditioning, or oversight of Federal funds; and managing Federal resources and facilities.”³⁵

³² *Id.* at 37040.

³³ Note that EO 14096 Section 3(a) directs agencies to effectuate the 16 charges “as appropriate and consistent with law,” which implicitly requires evaluation of relevant legal authorities.

³⁴ Consistent with applicable law or court orders.

³⁵ *See* EO 14096 Section 2(c).

An analysis of effects *unrelated* to federal activities is inherent in any assessment of cumulative impacts. Sources of pollution or other burdens that are unrelated to federal activities may be identified in such an assessment. As discussed in the CIA, EPA has a range of authorities to address cumulative impacts under various statutory authorities. In situations where EPA does not have authority to address these factors, the Agency can look for opportunities to work with states, Tribes, local governments, and other stakeholders that may be able to use their authorities and resources to address such impacts.³⁶

Given that cumulative impacts refers to the total burden of both chemical and nonchemical stressors and their effects on health, well-being, and quality of life outcomes,³⁷ it is important to address potential nonchemical stressors found in the built, natural, and social environment such as access to health care, education, transportation, and healthy food.³⁸ Through outreach or formal partnerships, EPA can also look for ways to promote intergovernmental and non-governmental cooperation to reduce nonchemical stressors, such as critical service gaps or disproportionate exposures to climate change risks, and provide equitable access to environmental and human health benefits. EJScreen can be a useful tool for conducting an initial screening for potential cumulative chemical and nonchemical burdens. In addition to data on multiple distinct environmental burdens, EJScreen includes socioeconomic data, data on health disparities, climate change, and critical service gaps (e.g., broadband gaps, lack of health insurance, housing burden, transportation access, and food deserts).

ii. Workforce training and job creation (Section 3(a)(v))

EPA has several statutory authorities available to implement the workforce training and job creation charge in EO 14096 Section 3(a)(v). Certain authorities explicitly allow or direct EPA to consider workforce training and job creation. For example, Section 1442(c) of the Safe Drinking Water Act authorizes EPA to develop, expand, or carry out a program (which may combine training education and employment) for training people for occupations involving the public health aspects of providing safe drinking water.³⁹ Section 104(k)(7) of the Comprehensive Environmental Response, Compensation and Liability Act authorizes EPA to provide training and technical assistance to facilitate the inventory, assessment, preparation,

³⁶ In some circumstances, state governments may have authority to consider and address environmental justice where EPA's authority is limited. For example, New Jersey law requires the state to deny or impose conditions on a permit for a new facility upon a finding that the permit would "cause or contribute to adverse cumulative environmental or public health stressors in [an] overburdened community." See N.J. Stat. § 13:1D-160c. New York recently adopted a similar law, which will take effect on December 30, 2024, which states that New York's Department of Environmental Conservation "shall not issue an applicable permit for a new project if it determines that the project will cause or contribute more than a de minimis amount of pollution to a disproportionate pollution burden on [a] disadvantaged community." N.Y. Env't Conserv. Law § 70-0118.3.(b).

³⁷ See *Cumulative Impacts: Recommendations for ORD Research*, EPA (Oct. 13, 2022) EPA/600/R-22/014F, https://cfpub.epa.gov/si/si_public_record_report.cfm?dirEntryId=357832&Lab=ORD&simplesearch=0&showcriteria=2&sortby=pubDate&searchall=357832&timstype=&datebeginpublishedpresented=05/17/2021 at 5.

³⁸ See *EPA Legal Tools to Advance Environmental Justice: Cumulative Impacts Addendum*, EPA (Jan. 2023), <https://www.epa.gov/system/files/documents/2022-12/bh508-Cumulative%20Impacts%20Addendum%20Final%202022-11-28.pdf>, at 2. See the Office of External Civil Rights Compliance's webpage for information about special circumstances applying to the State of Louisiana and its agencies.

³⁹ See 42 U.S.C. 300j-1(c).

and remediation of brownfields sites, as well as to provide grants for job training and technical assistance through an annual grant competition.⁴⁰ Section 128(a)(1)(B) further provides for State or Tribal brownfields response program grants to be used to assist small communities, Tribes, rural areas, and disadvantaged areas in providing such training and technical assistance.⁴¹

In addition, EPA's Brownfields Job Training Grants Program provides opportunities for full-time green jobs for unemployed and under-employed residents of areas affected by the presence of brownfield sites.⁴² EPA also has the authority to offer workforce training and career opportunities through the Superfund Job Training Initiative (SuperJTI). SuperJTI is a job readiness program that provides training and employment opportunities for people living in communities affected by Superfund sites, many of which are communities with environmental justice concerns.⁴³ Finally, the Innovative Water Infrastructure Workforce Development grant program provides grant funding to support training and career opportunities in the water sector, with a goal of providing infrastructure investments and technical assistance in communities with environmental justice concerns.^{44 45}

The Inflation Reduction Act (IRA)⁴⁶ and the Bipartisan Infrastructure Law (BIL)⁴⁷ both allocated funding that EPA is using to effectuate the job creation and workforce training directive of EO 14096. Grant programs created by the IRA and BIL that contain elements related to job creation and workforce training include:

- The Community Change Grants Program authorized by section 138 of the Clean Air Act (CAA), which funds community-driven projects that address climate challenges and reduce pollution, including by enabling individuals in disadvantaged

⁴⁰ See 42 U.S.C. 9604(k)(6)-(7).

⁴¹ See also *infra* note 58 discussing EPA's authorities to render technical services, including associated trainings.

⁴² See *Brownfields Job Training Grants*, EPA <https://www.epa.gov/brownfields/brownfields-job-training-grants>.

⁴³ See *Superfund Job Training Initiative*, EPA <https://www.epa.gov/superfund/superfund-job-training-initiative>.

⁴⁴ See *Innovative Water Infrastructure Workforce Development Program*, EPA <https://www.epa.gov/sustainable-water-infrastructure/innovative-water-infrastructure-workforce-development-program>.

⁴⁵ The FY 22 and FY 23 Consolidated Appropriations Acts authorized EPA to fund both training and implementation grants related to environmental justice. Implementation grant authority allows EPA to fund a wide range of program activities intended to solve an environmental justice concern as opposed to studying the issues and providing training or demonstrations of innovative technologies. However, this implementation grant authority was not in the FY 24 Consolidated Appropriations Act. Thus, the Agency cannot use this authority for implementation grants with FY 24 funds. The FY 24 funds continue to be available for training grants.

⁴⁶ Pub. L. 117-169, Aug. 16, 2022.

⁴⁷ Pub. L. 117-58, Nov. 15, 2021.

- communities⁴⁸ to pursue career pathways in fields related to the reduction of greenhouse gas (GHG) emissions and other air pollutants;⁴⁹
- The Solar for All initiative, authorized by section 134 of the CAA, which provides grants to states, territories, Tribal governments, and eligible nonprofits to expand the number of low-income and disadvantaged communities primed for distributed solar investment, including for workforce development, community outreach, and other project-deployment support;⁵⁰
 - The Clean School Bus Program, which is aimed at replacing existing school buses with zero-emission and low-emission models and authorizes EPA to facilitate education and outreach regarding workforce development and training;⁵¹ and
 - The Clean Heavy-Duty Vehicles Program, a grant and rebate program that, among other things, supports workforce development and training to support the maintenance, charging, fueling, and operation of zero-emission vehicles.⁵²

In partnership with the Department of Energy (DOE), EPA has also dedicated funding to ensure that communities with environmental justice concerns have the necessary resources and support to access grant opportunities. Through the Environmental Justice Thriving Communities Technical Assistance Centers (EJ TCTACs) program, EPA is directing funds to technical assistance centers to help communities with environmental justice concerns navigate federal grant application systems, write strong grant proposals, and effectively manage grant funding.⁵³ The centers also provide guidance on community engagement and translation and interpretation services. EPA will deliver these resources in collaboration with DOE, whose funding allows the EJ TCTACs to provide support for identifying community opportunities for clean energy transition and financing options, including public-private partnerships supporting workforce development and outreach opportunities that advance energy justice objectives.⁵⁴

⁴⁸ EPA has created the EPA IRA Disadvantaged Communities map layer to assist potential applicants seeking to identify whether a community is disadvantaged for the purposes of implementing programs under the IRA. See *Inflation Reduction Act Disadvantaged Communities Map*, EPA

<https://www.epa.gov/environmentaljustice/inflation-reduction-act-disadvantaged-communities-map>.

⁴⁹ For more information about the Community Change Grants Program, and the workforce development elements, see the Notice of Funding Opportunity: <https://www.epa.gov/system/files/documents/2023-11/epa-community-change-grants-notice-of-funding-opportunity-november-2023.pdf>; see also *Inflation Reduction Act Community Change Grants Program*, EPA <https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-community-change-grants-program>.

⁵⁰ For more information about the Solar for All initiative, see the Notice of Funding Opportunity: <https://www.grants.gov/search-results-detail/348957>; see also *Solar for All*, EPA <https://www.epa.gov/greenhouse-gas-reduction-fund/solar-all>.

⁵¹ See *Clean School Bus Program*, EPA <https://www.epa.gov/cleanschoolbus>.

⁵² See *Clean Heavy-Duty Vehicle Program*, EPA <https://www.epa.gov/inflation-reduction-act/clean-heavy-duty-vehicle-program#:~:text=The%20Inflation%20Reduction%20Act%20invests.vehicles%20between%20now%20and%202031>.

⁵³ See *The Environmental Justice Thriving Communities Technical Assistance Centers Program*, EPA <https://www.epa.gov/environmentaljustice/environmental-justice-thriving-communities-technical-assistance-centers>.

⁵⁴ *Biden-Harris Administration Announces \$177 Million for 17 New Technical Assistance Centers Across the Nation to Help Communities Access Historic Investments to Advance Environmental Justice*, EPA (Apr. 13,

Another opportunity where EPA may consider supporting, as appropriate, workforce training and/or job creation is while conducting environmental reviews under NEPA — for example, on infrastructure projects subject to NEPA. As part of these NEPA reviews, EPA can identify and utilize applicable substantive statutory authority that may be available for incorporating workforce training and/or job creation as part of the proposed project. Similarly, when commenting on other federal agencies’ NEPA documents under Section 309 of the CAA, EPA can identify whether sister agencies have considered workforce training and/or job creation opportunities as part of the proposed project, as applicable and appropriate. Additionally, EPA could encourage sister agencies that have the relevant authorities to conduct community engagement to identify workforce training and job creation opportunities to incorporate as part of the proposed project, in consultation with unions and employers, as relevant.

Finally, in circumstances where EPA has limited authority to effectuate workforce training and job creation, EPA could work closely with communities to understand their particular needs and priorities, and, consistent with EO 14096’s “whole-of-government approach,” could identify opportunities across federal, state, and local governments to address communities’ concerns. Other agencies, such as the Department of Labor (DOL), may be useful in advancing job creation in communities with environmental justice concerns where EPA’s authority is limited. For example, on July 13, 2023, EPA and DOL entered into a Memorandum of Understanding (MOU) to “promote good jobs . . . that support the green economy and develop strong training and career pathways into these jobs for all workers.”⁵⁵ The MOU identifies the individual and combined resources and expertise that both agencies can use to expand equitable access to quality environmental jobs.

iii. Mitigating disproportionate effects and addressing the contribution of federal activities to preexisting adverse effects (Section 3(a)(vi))

Through EJ Legal Tools and the CIA, EPA has evaluated legal authorities that could potentially be relevant for adopting or requiring measures to avoid, minimize, or mitigate disproportionate and adverse effects of federal activities, and addressing any contribution of such federal activities to adverse effects already experienced by communities with environmental justice concerns. EJ Legal Tools and the CIA identify a broad range of legal authorities that can be employed to address existing disproportionate and adverse effects identified in environmental justice assessments, as appropriate and consistent with the statutes EPA administers — including through standard-setting, permitting, cleanup, emergency response, funding, planning, state program oversight, and considering climate resilience. The types of federal activities that may have contributed to disproportionate effects already experienced by communities with environmental justice concerns can include: the development and operation of federal facilities, federally-permitted mining, under-investment in drinking water and sewage management infrastructure, fossil fuel leasing and extraction, pipeline authorizations,

2023), <https://www.epa.gov/newsreleases/biden-harris-administration-announces-177-million-17-new-technical-assistance-centers>.

⁵⁵ See *Memorandum of Understanding Between the United States Department of Labor and the United States Environmental Protection Agency*, <https://www.dol.gov/sites/dolgov/files/OPA/GoodJobs/Docs/EPA-MOU.pdf> at 2.

routing of highways and other transportation corridors, permitting concentrations of polluting facilities, lack of community input, and past discriminatory practices with ongoing impact such as federal Tribal policies, redlining, and other discriminatory land-use and housing policies and practices, discussed in section II.c. below.

b. Meaningful Engagement

EO 14096 emphasizes the importance of public participation in agency decision-making, and it directs federal agencies to provide opportunities for the meaningful engagement of potentially affected persons and communities with environmental justice concerns. This includes:

- Providing timely opportunities for the public to share information and concerns;
- Fully considering public input as part of decision-making processes;
- Conducting outreach and providing meaningful access to individuals with limited English proficiency, individuals with disabilities, and groups of people who are not regular participants in federal decision-making; and
- Providing technical assistance, tools, and resources to facilitate meaningful and informed public participation.⁵⁶

EPA's organic statutes generally give the agency broad authority to conduct public outreach,⁵⁷ and certain statutes also authorize EPA to provide technical assistance or educate the public to facilitate meaningful engagement.⁵⁸ Whenever EPA has authority to consider environmental

⁵⁶ EPA defined meaningful involvement prior to EO 14096 in the context of rulemaking to mean 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." See *Guidance on Considering Environmental Justice During the Development of Regulatory Actions*, EPA (May 2015), <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf> Part 3A.

⁵⁷ See, e.g., 42 U.S.C. § 7607(d) (establishing procedural requirements for certain CAA rulemakings, including the opportunity to request a public hearing); 40 C.F.R. § 131.20(a) (requiring states to hold regular public hearings for the purpose of reviewing applicable water quality standards under the Clean Water Act); 42 U.S.C.A. § 6974(b) (articulating public participation and notice requirements for hazardous waste permits issued under the Resource Conservation and Recovery Act).

⁵⁸ See, e.g., 42 U.S.C. § 9617(e)(1) (granting EPA the authority to provide technical assistance grants to affected groups or individuals to help them interpret information about Superfund sites); 42 U.S.C. 7403(a) (authorizing EPA to encourage, cooperate with, and render technical services and financial assistance to public and private entities to, among other things, conduct, and promote the coordination and acceleration of demonstrations and studies relating to the causes, effects, and prevention of air pollution); 33 U.S.C. 1254(a) and (b) (authorizing EPA to encourage, cooperate with and render technical services to promote the coordination and acceleration of demonstrations, studies, and training relating to the causes, effects, prevention, and elimination of water pollution); 42 U.S.C. 6981(a) (authorizing EPA to encourage, cooperate with and render technical services to promote the coordination of demonstrations, studies, training, and public education programs relating to, among other things, the operation and financing of solid waste management programs).

justice and conduct public outreach, engagement, participation, etc., the Agency can consider the elements of meaningful engagement described above.⁵⁹

c. Historical Inequities and Systemic Barriers

Achieving environmental justice, as defined in EO 14096, includes fully protecting people from the effects of the legacy of racism or other structural or systemic barriers. Historical inequities and systemic barriers include segregation, redlining,⁶⁰ exclusionary zoning, and other discriminatory land use decisions or patterns.⁶¹ Patterns of siting and permitting for polluting facilities can also reflect historical inequities faced by communities with environmental justice concerns.

The EO directs agencies to “*identify, analyze, and address* historical inequities, systemic barriers, or actions related to any federal regulation, policy, or practice that impair the ability of communities with environmental justice concerns to achieve or maintain a healthy and sustainable environment”⁶² (emphasis added). This charge can also be viewed as interrelated with the legal charges discussed above to address both the contribution of federal activities to adverse effects already experienced by communities with environmental justice concerns and effects unrelated to federal activities. For example, zoning, land use policies, and other local actions that impact communities today may be the result of a history of discrimination. As described in EPA’s FY 2022-2026 Strategic Plan, it is often easier to site an eighth facility in a community that already has seven than in a community that has none, including when certain areas are zoned as industrial as a legacy of earlier land use policies or decisions.

Similarly, federal policies of past eras, including termination, relocation, and assimilation, collectively did lasting damage to Tribal communities’ baseline health, environments, spirituality, culture, subsistence practices, and economies, making them more susceptible to pollution stressors. These actions may have also contributed to Tribal vulnerabilities to climate

⁵⁹ EPA’s Public Participation Guide includes many examples of tools the Agency can use to inform the public, generate and obtain input, and build consensus. *See generally, Introduction to the Public Participation Toolkit*, EPA https://www.epa.gov/sites/default/files/2014-05/documents/ppg_english_full-2.pdf. Since EPA’s release of its first Public Involvement Policy in 1981, to strengthen EPA’s commitment to public participation, EPA has reaffirmed its commitment with subsequent revisions to this policy. Most recently, in October 2023 EPA issued its draft Meaningful Involvement Policy which builds upon the agency’s commitment to public participation and provides an agency-wide approach to meaningful involvement that can be tailored by programs and regions during decision-making processes. *See generally, Achieving Health and Environmental Protection Through EPA’s Meaningful Involvement Policy*, EPA (October 2023), https://www.epa.gov/system/files/documents/2023-12/final_meaningful-involvement-policy_eams_11.7.2023_508.pdf.

⁶⁰ Redlining is “the denial of access to financial services such as mortgage loans or insurance for people living in minority neighborhoods.” Helen C. S. Meier and Bruce C. Mitchell, *Tracing the Legacy of Redlining: A New Method for Tracking the Origins of Housing Segregation*, NATIONAL COMMUNITY REINVESTMENT COALITION (Feb. 2022), <https://ncrc.org/redlining-score/>. The Climate and Economic Justice Screening Tool (CEJST), developed by the Council on Environmental Quality (CEQ), includes data on census tracts that experienced historic underinvestment based on redlining maps created by the federal government’s Home Owners’ Loan Corporation (HOLC) between 1935 and 1940. *See Methodology*, CLIMATE AND ECONOMIC JUSTICE SCREENING TOOL <https://screeningtool.geoplatform.gov/en/methodology>.

⁶¹ *See* EO 14096 Section 1.

⁶² *See id.* Section 3(a)(iii).

disruption and other environmental issues. The growth of the U.S. industrial sector also created heavy pollution in some locations, causing environmental impacts to Indigenous communities through mining, fossil-fuel energy development and use, and other land-use practices.⁶³ Another way Tribes and Indigenous Peoples are disproportionately exposed to legacy and other pollution is subsistence consumption—a practice that is integral to Indigenous identity and culture—of fish or other foods with high levels of mercury or other chemicals as the principal portion of their diet.⁶⁴

To the extent historical inequities and systemic barriers continue to contribute to pollution and other burdens on the health and environment of communities with environmental justice concerns, the discussion of potentially available legal authorities in EJ Legal Tools and the CIA should accommodate consideration of, and ways to address, these environmental injustices as well. Legal analysis should relate the environmental justice concern to the specific historical inequities faced by that particular community or Tribe.⁶⁵

III. EPA-Specific Directives

EO 14096 includes a few charges directed specifically to EPA. These include Section 3(b), regarding EPA’s authority to carry out environmental reviews under Section 309 of the CAA; Section 6(c)-(d), regarding community notification on toxic chemical releases; and Section 7(j), regarding the environmental justice clearinghouse.

a. NEPA and Section 309 of the CAA

EO 14096 Section 3(a)(ix) directs federal agencies, including EPA, to carry out environmental reviews under NEPA “in a manner that: (A) analyzes direct, indirect, and cumulative effects of Federal actions on communities with environmental justice concerns;⁶⁶ (B) considers best available science and information on any disparate health effects (including risks) arising from exposure to pollution and other environmental hazards, such as information related to the race, national origin, socioeconomic status, age, disability, and sex of the individuals exposed; and

⁶³ See *U.S. Global Change Research Program, Fifth National Climate Assessment, Chapter 16: Tribes and Indigenous Peoples* (2023) available at <https://nca2023.globalchange.gov/chapter/16/>.

⁶⁴ See CEQ, *Environmental Justice Guidance under the National Environmental Policy Act*, 3 (1997); U.S. EPA, 2021f.

⁶⁵ Where relevant, this analysis should also focus on the barriers that impair communities with environmental justice concerns from receiving equitable access to human health or environmental benefits, per EO 14096 Section 3(b)(iv), and should consider the federal policy priorities in EO 14091, “Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” 88 FR 10825 (Feb. 16, 2023), which emphasize a comprehensive approach to advancing equity for all. For example, the analysis could, among other things, strive to identify and remove barriers and legacy exclusions such as linguistic and cultural barriers that have prevented communities from participating in and benefiting from the development of federal policies and programs. See, e.g., EO 14091, Section 5.

⁶⁶ While EO 14096 does not include a definition for “communities with environmental justice concerns,” NEPA defines the term to mean “those communities that may not experience environmental justice as defined in [EO 14096]. To assist in identifying communities with environmental justice concerns, agencies may use available screening tools, such as the Climate and Economic Justice Screening Tool and the EJSscreen Tool, as appropriate to their activities and programs.” 40 C.F.R. § 1508.1(f) (effective July 1, 2024).

(C) provides opportunities for early and meaningful involvement in the environmental review process by communities with environmental justice concerns potentially affected by a proposed action.”⁶⁷ As noted in EJ Legal Tools, NEPA encompasses consideration of cumulative and disproportionate impacts and requires agencies to meaningfully engage with communities on federal actions that have the potential to significantly impact them.⁶⁸ Moreover, CEQ’s regulations now direct agencies, consistent with current best practices, to consider environmental justice in environmental reviews and encourage measures to avoid or reduce disproportionate effects on communities, including cumulative effects.⁶⁹

In terms of EPA-specific directives, when reviewing other federal agencies’ NEPA documents pursuant to EPA’s responsibilities under Section 309 of the CAA, 42 U.S.C. 7609, EO 14096 Section 3(b) further directs EPA to “assess whether each agency analyzes and avoids or mitigates disproportionate human health and environmental effects on communities with environmental justice concerns.” EPA’s assessment of whether an agency’s NEPA documents analyze and avoid or mitigate disproportionate effects can include whether the agency properly considered the action-specific EO 14096 charges summarized in section II and the NEPA charges detailed in this section. This provides EPA the opportunity to identify additional analysis or potential alternatives or mitigation for disproportionate effects, as appropriate, that an agency could include in its NEPA analysis for a proposed action.

b. The Emergency Planning and Community Right-to-Know Act (EPCRA)

EO 14096 Section 6 directs federal agencies to undertake a variety of tasks to better ensure community notification of toxic chemical releases under EPCRA. Two of the four elements, Section 6(a)-(b), apply to all federal agencies. Section 6(a) directs all federal agencies to report in accordance with EPCRA after considering applicable EPA guidance and without regard to SIC or NAICS code.⁷⁰ Section 6(b) directs all agencies to hold a public meeting providing the information required under EPCRA section 304(b)(2) — including information on the nature of the release, known or anticipated health risks, and proper precautions to take. The agency

⁶⁷ While EO 12898 did not specifically address NEPA, the accompanying Presidential Memorandum highlighted the foundational elements of NEPA, directing agencies that are conducting environmental reviews to analyze environmental, health, and socio-economic effects of federal actions; address “significant and adverse environmental effects . . . on minority communities and low-income communities” whenever feasible; and provide opportunities for community input in the NEPA process, including by improving accessibility measures.
⁶⁸ See *EPA Legal Tools to Advance Environmental Justice*, EPA (May 2022), <https://www.epa.gov/system/files/documents/2022-05/EJ%20Legal%20Tools%20May%202022%20FINAL.pdf> at 154-56.

⁶⁹ See, e.g., *Biden-Harris Administration Finalizes Reforms to Modernize Environmental Reviews, Accelerate America’s Clean Energy Future, Simplify the Process to Rebuild our Nation’s Infrastructure, and Strengthen Public Engagement*, THE WHITE HOUSE (Apr. 30, 2024) <https://www.whitehouse.gov/ceq/news-updates/2024/04/30/biden-harris-administration-finalizes-reforms-to-modernize-environmental-reviews-accelerate-americas-clean-energy-future-simplify-the-process-to-rebuild-our-nations-infrastructure/>.

⁷⁰ This directive is an extension of long-standing federal policy. See, e.g., EO 12856, “Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements,” 58 FR 4198 (Aug. 3, 1993); *Emergency Planning and Community Right-to-Know Act (EPCRA) and Federal Facilities*, EPA <https://www.epa.gov/enforcement/emergency-planning-and-community-right-know-act-epcra-and-federal-facilities> (“Federal facilities are required to comply with all provisions of EPCRA.”).

must provide notice of the public meeting within 72 hours of the release and hold the public meeting within 6 weeks of the release.

The other two elements, Section 6(c)-(d), are directed at EPA. Section 6(c) directs EPA to evaluate available legal authorities and consider any additional steps it may require or encourage non-federal facilities that report releases under EPCRA to take in connection with the report. Section 6(d) directs EPA to provide the Environmental Justice Subcommittee with an annual report on trends in data in the Toxic Release Inventory (TRI) (under EPCRA section 313) to inform the development of the Research Plan (see EO Section 5(a)(iii)).

c. Environmental Justice Clearinghouse

EO 14096 Section 7(j) directs EPA, in coordination with the White House Environmental Justice Interagency Council (IAC), to establish a public, internet-based, whole-of-government clearinghouse of culturally and linguistically appropriate and accessible materials related to environmental justice. Such materials should include (i) information describing the activities of the IAC to address issues related to environmental justice; (ii) information on technical assistance, tools, and resources to assist communities with environmental justice concerns in building capacity for public participation; (iii) copies of training materials developed by the IAC to help individuals and employees understand and carry out environmental justice activities; and (iv) any other information deemed appropriate.

EPA has developed an EJ Clearinghouse, which continues to be updated and supplemented as the agency receive submissions of proposed resources and suggestions for improved user experience.⁷¹

Conclusion

While broadening and deepening the federal government's commitment to environmental justice, EO 14096 remains consistent with EO 12898 in its focus on the protection of human health and the environment for all. Therefore, the directives in EO 14096 are unlikely to change the conclusions drawn about the scope of EPA's legal authorities discussed in EJ Legal Tools and the CIA. For example, in many cases, EPA's discretionary authority to consider environmental justice stems from basic statutory authority allowing for the consideration of public health or welfare or broad discretion to consider a balancing of economic, social, and environmental factors. EO 14096 reaffirms and strengthens the federal government's commitment to protecting the environment and health of all people, and thus the broad EPA authorities that have been identified to date should be fully consistent with the directives and policy goals of EO 14096.

As with EJ Legal Tools and the CIA, this Addendum is not intended to prescribe when and how the Agency should undertake specific actions. While many of EPA's legal authorities are clear, others may involve interpretive issues or consideration of legal risk calling for further

⁷¹ EPA's EJ Clearinghouse can be accessed here: <https://www.epa.gov/environmentaljustice/forms/ej-clearinghouse>.

analysis. Without the context of specific applications, this document does not attempt to characterize any such legal issues. Policy decisions about undertaking particular actions are the responsibility of the Agency's headquarters and regional programs, which consider a wide range of decision-making factors, including resource constraints. As always, when considering the scope of the Agency's applicable legal authority to advance environmental justice, it is essential to engage with OGC and/or ORC early in the Agency's decision-making process to ensure potential legal issues are identified and addressed.