

# A CITIZEN'S GUIDE TO THE FEDERAL REGULATORY PROCESS

*Former agency staffers describe best practices  
for making YOUR voice heard  
when agencies make decisions about public policy  
and your community*

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## ABOUT THIS GUIDE

As former employees of the U.S. Environmental Protection Agency, we want to share what we learned about how federal agencies make regulatory decisions and how members of the public can effectively engage in an agency's decision-making process. Most of the important policy decisions that agencies make are subject to a public notice-and-comment rulemaking process that gives everyone a chance to provide expertise, relevant information, and opinions on what decision the agency should make. Many decisions that do not require rulemaking still involve, or can be influenced by, the public. The purpose of this guide is to let you know what we have found to be the best ways to get agencies to listen to what you have to say.

The guide is mainly focused on agency decisions that have nationwide effect, are made by notice-and-comment rulemaking, and take the form of regulations. National regulations can have a big impact on the health, safety, and welfare of all Americans.

Agencies also make decisions that affect particular states. Many federal statutes give states an important role in achieving the statute's purpose, and the federal agency implementing the statute usually has a role in reviewing, approving, and/or overseeing state actions. Many important state actions are subject to public notice-and-comment requirements, as are federal approval (or disapproval) of those actions, giving everyone the chance to weigh in at both levels of government decision-making.

Of more local significance, federal (and state) agencies make decisions concerning particular facilities, sites, or activities. For example, EPA (or a delegated state agency) makes decisions about whether, where, and how a major industrial facility can be built; whether and how a hazardous waste site must be cleaned up; and whether a particular facility is violating the law and should be stopped. What decision is made can have a profound effect on nearby communities. While federal regulations guide the agency's decision-making, most of these place-specific decisions are subject to a public notice-and-comment process to consider local circumstances and perspectives, and those that do not can still be influenced by the public.

Federal agencies are not all-knowing. Regulations and other policy decisions are best crafted when federal regulators hear the views of the public, preferably early in the process. People with scientific or technical knowledge of the relevant issues, businesses that may be subject to the agency action, and ordinary citizens whose lives and livelihoods may be affected all have important contributions to make to an agency's understanding of what it is trying to accomplish. We know first-hand that the most effective, efficient, and fair agency decisions are the result of broad public participation.

Often missing or muted in the development of agency decisions are the concerns of members of communities of color, low-income communities, and tribes. They are more likely to live near polluting facilities and less likely to have access to adequate health care, safe and affordable housing, good schools, and other drivers of economic opportunity. They are also more likely to lack resources – financial, political, and otherwise – to have their voices heard and protect themselves and their interests. The inequities they face exacerbate the vulnerabilities they suffer. Too often federal agencies have failed to fully consider and address the impact of their decisions on these “environmental justice” (EJ) communities. Federal agency decision-making must involve members of EJ communities to achieve equal justice for all communities.

In this guide, we describe the many layers and levers of action that members of the public can take to influence federal agency decision-making so we can all make our voices heard.

We are grateful to former EPA colleagues and Union of Concerned Scientists staff who reviewed and helped us improve this guide.

Ellen Kurlansky  
Nancy Ketcham-Colwill  
Jim Ketcham-Colwill  
Carol Campbell  
Joni Teter

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## Key Terms

**Law (or statute or legislation):** A bill passed by a legislature (e.g., Congress) and signed by the executive (e.g., the President)

**Agency (or department):** Part of the executive branch of government, responsible for implementing laws in a specific area (e.g., the Department of Health and Human Services, the Department of Labor, the Environmental Protection Agency)

**Regulation (or rule):** Requirements or limits issued by an agency under authority given to that agency by a law. To issue most rules, an agency must go through an extensive public notice and comment rulemaking process. Final rules have the force of law.

**Executive order:** An order issued by the President, giving direction to one or more executive branch agencies. Executive orders do not have the force of law and cannot change the law.

# I. FEDERAL REGULATIONS

## Section 1: Why We Have Regulations

Congress makes the laws, but it often tells federal agencies to figure out the nuts and bolts of how to achieve a law's objectives. Important decisions about how to implement a law generally take the form of regulations. For example, federal environmental laws call for clean air and clean drinking water but leave it to the Environmental Protection Agency (EPA) to determine, after looking at the science and hearing from the public, how much pollution is too much. EPA and state environmental agencies then take steps such as issuing permits to facilities like factories and power plants to ensure pollution limits will be met. Across the spectrum of laws passed by Congress to benefit the nation, agencies are charged with issuing regulations and taking other actions to achieve the laws' objectives. Without agency action, many laws have little or no practical effect.

As described in the next section, regulations and other legally binding agency decisions are usually made using a rigorous process which ensures that agencies consider all relevant information and public comments in making its decisions. In the case of regulations, relevant

information generally includes a careful consideration of the potential costs and benefits of regulatory options, to help agencies design rules that achieve their purposes in an efficient way.

Analyses show that federal regulations overall achieve benefits much larger than their costs. The Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB), which oversees federal regulation, issues a report each year on the costs and benefits of federal rules. You can find these benefit-cost reports at <https://www.whitehouse.gov/omb/information-regulatory-affairs/reports/>.

## Forcing an Agency's Hand

Congress sometimes requires agencies to issue regulations by a specific date and sometimes authorizes members of the public to sue an agency that fails to perform such a “mandatory duty.” Several environmental statutes, such as the Clean Water Act and the Clean Air Act, include “mandatory duty” citizen suit provisions. See, e.g., [33 U.S. Code Section 1365](#) and [42 U.S. Code Section 7604](#). Interest groups and others have long made use of mandatory duty suits to force an agency to implement regulatory provisions that are essential to achieving Congress’ purposes in passing a statute.

## Section 2: How Regulations Are Made

Agencies don’t have a free hand in making (or changing) regulations and other legally binding decisions. They must comply with the laws that authorize their actions and govern the process of making regulations (rulemaking).<sup>i</sup> Presidential orders require additional steps.

Rulemaking is typically a long and painstaking process, but it provides the public with much of the information needed to understand what’s at stake as well as opportunities to tell agencies where they’ve gone right or wrong.

This section of the guide briefly explains how a regulation is made, changed, or repealed. Many of the same steps are required for other agency actions that have the force of law. Links at the end of this guide provide more information on the rulemaking process.

## Rulemaking in a Nutshell

### PROPOSED RULE → PUBLIC COMMENT PERIOD → FINAL RULE

*Based on:*

Law

Facts

Analyses

Opportunity for anyone

to submit a comment, or speak

at a public hearing, if any

*Based on:*

Law

Facts

Analyses

Consideration of  
public comments

### **Legal Requirements for the *Content* of Regulations**

Agencies must follow Congress's directions in making or changing regulations and other decisions that have the force of law. Congress typically tells an agency when or under what circumstances a rule should be written, what it should accomplish, and what the agency should consider in crafting it. It also sets the parameters for other actions the agency takes. If the agency doesn't follow Congress's directions, its decisions can be overturned by a court.

Agencies must do a lot of homework before issuing a regulation or taking other actions. Federal law requires an agency to collect and analyze relevant information, including scientific, technical, and/or economic information, and make decisions that make sense in light of that information. If an agency fails to do either, a court can overturn all or part of the rule and send the agency back to the drawing board.

Agencies must also comply with other federal laws that govern regulatory decisions, including those that require agencies to minimize paperwork,<sup>ii</sup> burdens on small businesses<sup>iii</sup> and state and local governments,<sup>iv</sup> and impacts on the environment<sup>v</sup> and endangered species.<sup>vi</sup> In addition, agencies must obey presidentially issued executive orders requiring other steps, including estimating the costs and benefits of regulations deemed "significant" based on cost or other factors.<sup>vii, viii</sup>

### **Legal Requirements for the *Process* of Making Regulations**

Agencies generally must follow a process that gives every one of us a chance to learn about a proposed rule or other action, say what we think about it, and compel the issuing agency to consider and respond to our views.

**Publishing a proposal:** With few exceptions, an agency must give the public notice of, and an opportunity to comment on, a proposed rule *before* the agency makes a final decision. To accomplish this, the agency issues a “notice of proposed rulemaking” in the Federal Register, the official journal of the federal government accessible online at [www.federalregister.gov](http://www.federalregister.gov). The agency may also post the notice or a link to the notice on its own website.

A proposal notice is – or should be – a gold mine of information. The agency is required to describe the action being proposed and the information on which it is based. It must also explain how, in its opinion, the proposed action is consistent with the relevant law and facts. Except for legally protected confidential information, all the information used by the agency must be available for public review and can usually be found in an electronic docket accessible online.

See [Section 4A](#) for how to find a notice of proposed rulemaking that has been published in the Federal Register. The notice provides the electronic docket number for the rule. The docket can be accessed online by going to <http://www.regulations.gov/>, typing the docket number into the “search” field, and clicking on “search.”

**Asking for public comment:** As part of the proposal notice, the agency lets the public know when, where, and how to submit comments. Agencies generally must give the public at least 30 days from the date the proposal is published in the Federal Register to comment. Under very limited circumstances, agencies can shorten the time for comment.

In some cases, an agency also holds a public hearing where anyone can make remarks. The proposal notice usually provides the date and location of any public hearing. Sometimes an agency holds a public hearing only if one is requested, and it describes in the notice when and how to submit a request. Anyone is entitled to request a hearing.

All written comments and public hearing statements are included in the docket for the rulemaking, which is usually available online. Anyone can access the docket and read what has been submitted, and if the comment period is still open, submit comments that respond to other comments, if desired (for example, to correct mistakes or rebut arguments). The docket for the rulemaking becomes the “administrative record” on which the agency must base its decision and defend it in court should the final regulation or action be challenged.

Although not required, agencies may provide additional opportunities for public input. Representatives of businesses and public interest groups often ask to meet with agency officials, for example, and their requests are often granted. Agencies must document these meetings, including who attended and what views were aired, in a memorandum or other

submission to the docket for the rulemaking. This ensures that all comments made to an agency are in the public record.

It is important to realize that a rulemaking is not an election or a referendum. The agency need not do what the majority of commenters recommend, but the agency must consider each substantive comment and explain its reasoning if a comment is not taken. Factually supported and well-reasoned comments are more likely to carry the day, regardless of the number of commenters who agree.

**Issuing a final regulation or action:** The agency must consider all the public comments it receives in making final decisions about a rule, and respond to all “significant” comments (i.e., those that provide new information or analysis or make reasoned arguments for how and why the proposal should be changed).

After deciding on a final regulation or action, the agency issues a notice of a final rule or action in the Federal Register. The notice or supporting materials must include an explanation of any changes made from the proposal and the agency’s responses to all significant comments. The agency may also prepare various technical and other documents to explain and support its decision and include those in the docket.

### ***Other Agencies Can Comment and the White House Has a Lot of Sway***

For agencies, the public rulemaking steps described above are only part of the process. Presidential executive orders add two rounds of “interagency review” so that White House and other federal agency officials have a chance to weigh in on drafts of “significant” proposed and final rules *before* they go public.<sup>ix</sup> Important goals of “interagency review” are coordination of federal agency actions and consistency of those actions with the President’s policies, to the extent permitted by law.

The Office of Information and Regulatory Affairs (OIRA) in the White House Office of Management and Budget (OMB) is the gatekeeper of the interagency review process and determines which rules are “significant” based on cost and other factors. OIRA usually meets with outside groups upon request and keeps a public log of those meetings. That log is accessible online at <https://www.reginfo.gov/publicvdo/eom12866Search> under the tab: “Regulatory Review.” *During these meetings*, OIRA officials listen but generally don’t engage in discussion or debate.

Getting OIRA’s ear can be useful. As a strictly legal matter, White House officials, including the president, are not authorized by most laws to make decisions about regulations. But the

agency heads who are authorized to make these decisions work for the President. OIRA and other White House officials are often important advisors to the president, so they can have considerable clout. Moreover, OIRA controls when the interagency review process begins and ends. That adds to the sway that the White House has over a regulation's outcome.

## Agency Steps for Issuing a Rule

### Develop and Publish a Proposed Rule

- Consider the law authorizing the rule – what is the rule supposed to accomplish and how?
- Research the relevant facts, including scientific, economic and technical information
- Develop a draft proposed rule that complies with the law and makes sense of the facts
- Conduct economic and other required analyses of the draft proposal
- Assemble a docket that includes all the relevant information and analyses
- Draft a Federal Register (FR) notice describing and explaining the draft proposal in light of the law, facts and analyses
- For “significant” rules, send draft notice for review by OIRA and other federal agencies
- Revise the draft notice and underlying analyses, etc., in light of inter-agency review
- Publish the notice of the proposed rule in the FR; make the notice and docket electronically available

### Solicit Public Comment

- Usually give the public 30 days or longer to submit written comments
- Sometimes hold a public hearing where anyone can speak
- When asked, sometimes agree to meet or talk with members of the public

### Develop and Publish the Final Rule

- Consider all public comments, written and oral, made about the proposed rule
- Develop a draft final rule in light of the public comments and other relevant information
  - If the draft final rule is significantly different from the proposed rule, provide another round of public notice and opportunity to comment
- Revise the economic and other analyses to reflect the draft final rule
- Draft responses to all significant comments
- Draft a FR notice describing and explaining the draft final rule in light of the law, facts, analyses, and public comments
- For “significant” rules, send draft notice for review by OIRA and other federal agencies
- Revise the draft notice and underlying analyses, etc., in light of inter-agency review
- Publish the notice of the final rule in the FR; update the docket; and make the rule and docket electronically available

### **3: How to Participate Effectively in Federal Rulemaking**

It's worth saying again – your voice counts. If federal agencies and other decision-makers, including members of Congress, don't hear what the public thinks about a proposed rule, they may hear only, or mainly, from powerful interest groups. We all have a stake in how agencies implement laws passed by Congress to protect and benefit all the people. In this section, we offer suggestions on how to make your participation in the rulemaking process as effective as possible.

#### ***Taking the Initiative: Engaging with the Agency Before Proposal***

Savvy interest group representatives don't wait until a rule or other regulatory action is proposed to let an agency know their views. Typically, they informally provide information and views to agency officials early in the rule development process to influence the direction and shape of the agency's proposal. This may have as much or more impact as the comments received through the formal notice-and-comment process after a rule is proposed.

You, too, can take the initiative and ask to talk with government officials about a proposal they are developing. Depending on circumstances, you might choose to ask for a meeting or phone call with a political appointee or with the career technical staff working on the proposal. Explain why you have a stake in the regulatory action and observe that the agency often talks with industry and other stakeholders prior to proposal. In our experience, the agency tries to accommodate this type of request if time allows. Be aware that the extent of opportunity that agency officials provide for early, informal public input will vary from administration to administration and rule to rule.

The Unified Agenda of Regulatory and Deregulatory Actions, which is typically updated in spring and fall, is a key resource for those who wish to provide early, informal input prior to a rule's proposal. For each federal agency, that document lists each planned regulatory action, the schedule for each action, and names and contact information for responsible agency staff. It is available online at <https://www.reginfo.gov/public/do/eAgendaMain>. Calling the listed contact person can be good first step in learning whether and how you can engage in the agency's development of its proposed action.

For a few rules – usually more complicated and potentially controversial ones – the agency may announce a public process for gathering early informal public input prior to a rule's proposal. Ways to find out about these opportunities include calling agency staff, monitoring the agency's website, or reading trade publications.

In some cases, contacting an agency's regional office may also be a good way of learning about and providing early input about an upcoming agency action. Many agencies have regional offices that are responsible for interacting with the states in their region. The regional office for your state may be able to act as a bridge between you and the agency office developing the proposal so that ideas and concerns you raise on behalf of yourself or your community are more likely to be understood. As we describe later in this guide, regional offices typically have the lead for taking agency actions that apply to specific facilities or sites in the states in their regions. Check agency websites for information about regional offices and contacts for those offices.

## ***Public Comment Periods and Hearings***

These are important opportunities for being heard about an agency proposal after it is published. Agencies are looking for information about the issues their proposal is supposed to address, how well the proposal resolves the issues, and whether the proposal can be improved. They also pay close attention to arguments about whether the proposal complies with the law. As we explain below, your comments can contribute to an agency's understanding of problems being addressed and solutions being proposed. While agencies don't make decisions based on how many people comment one way or another, the number of commenters supporting (or opposing) a rule does send an important signal about the level of public support for or concern about the proposed approach.

You generally have more than 30 days to prepare and submit comments. Most agencies post a proposed rule on their website the day it is signed. The official comment period begins several days or weeks later when the proposal is published in the Federal Register. By taking advantage of the earlier web posting of the proposed rule, you can buy yourself additional time for commenting.

Submitting comments is easy to do. See [Section 4B](#) for the nuts and bolts of how to submit comments.

You can also consider making a statement at a public hearing, if one is held. Taking part in a hearing sends another important signal to the agency about the level of public concern or support. It is an opportunity to speak directly to agency representatives, including managers and staff who developed the proposal. Agency representatives are there to listen, not to engage in debates with hearing speakers, but they sometimes ask questions. A hearing can also be a rallying point for grassroots efforts and an opportunity to get attention from the press and public. The "Dates" section of the notice indicates where and when any hearing(s) will be held, or how a hearing can be requested.

## ***Tips for Effectively Communicating Your Views***

You have the **power** to make an agency consider your views by submitting a comment or making a hearing statement or both. Every comment submitted during a public comment period or made as part of a public hearing statement becomes part of the rulemaking record. By law, the agency must consider every comment, respond to all significant comments, and base its final decisions on the full rulemaking record.

If the agency fails to respond to a valid point you've made — such as a well-supported argument for changing the proposed approach — the final rule or action may be vulnerable to a lawsuit. A court could require the agency to consider your point and determine whether to change the rule, and if the point is central enough to the rule, the court might even strike down (“vacate”) the rule.

Here are good rules of thumb for communicating your views so that their value is clear. Agency staff read all the public comments and are responsible for communicating them up the chain and for responding to them. You want the agency to pay attention to what you have to say.

**Explain why you're commenting.** Say why you care about the proposal. If you or someone you know is affected by the activity being regulated, explain that (for example, your child's asthma is made worse by pollution from a nearby facility). Include any relevant personal or professional anecdotes you're willing to share. Telling the agency that you have a personal or professional stake in the proposed action helps bring home the proposal's potential real-world impact and raises the political stakes of ignoring your comments. It may also help provide a legal basis for a lawsuit challenging an agency's final decision. If you are a member of a community of color, low-income community, or tribe, point that out so that agency officials have the benefit of your experience.

**If you have expertise, say so.** You don't have to be an expert to make a valid and valuable comment, but if you are, let the agency know. Agencies often rely on their own experts or other experts with whom they have developed a relationship. Independent experts can bring new or different perspectives to bear that the agency will be obligated to consider. Comments that draw on expertise have that much more weight.

**Provide any relevant information you have.** Agency staff are on the lookout for new information. EPA, for example, is required to base many of its rules on scientific, technical, and economic information. If you provide useful information, your comment are sure to get on the agency's radar screen. Examples include:

- Scientific, technical, or other relevant reports or studies that the agency hasn't considered in developing its proposal, or interpretations of reports or studies the agency is overlooking.
- Economic and/or engineering information that affects the feasibility, costs, or benefits of the proposal or alternatives.
- News reports about events in your community that relate to the proposal.
- Other anecdotal information that illustrates the need for the rule or its stringency or approach, especially if it can be tied to data about the broader public impact. Although an agency can downplay anecdotal evidence, it is much harder to ignore information indicating broader impacts.

**Be constructive.** If you support the general direction of an agency proposal, say so. If you think the proposal has problems, point those out. In both cases, explain your reasons. When you believe a proposed approach is problematic, suggest alternatives that would address your concerns to the extent you can. For example, if you believe a proposal goes too far, try to identify a different approach that would more efficiently accomplish the law's objective. If you believe a proposal doesn't go far enough and the agency has claimed that more stringent approaches would cost jobs or have other negative impacts, consider whether a change in approach could provide the desired benefits at a lower cost.

You might also explore whether the agency's economic analysis is sound and, if so, suggest that the federal government offer job training or other economic help for communities with affected workers. Even if the agency is not able to take your suggestions, it may be able to enlist other agencies or ask Congress for help.

**Be civil.** How you present yourself and phrase your comments matters. Rude or discourteous behavior and comments can distract attention from the merits of the comments made.

**Don't write a lot if less will do.** Longer comments are not necessarily better or more effective than short ones. What's important is to communicate clearly and explain or support any claims you make.

**Stick to what you know.** You don't need to comment on everything in the proposal. While all aspects of a proposal are open for public comment, agencies sometimes request comments on specific issues or alternative approaches. Those requests can signal that the agency needs more information or is still mulling how to craft aspects of the rule. You are

not obligated to respond to specific requests for comment, but if you have relevant information or insights, sharing those with the agency may make your comments especially influential. In general, it's best to focus your comments on what you know and what matters to you.

### **Meet deadlines.**

- For written comments, make sure you submit them before the deadline listed in the rulemaking notice. Comment periods close at 11:59 pm Eastern Time on the date comments are due – don't cut it close. If your comments are late, the agency may choose to consider them but is not obliged to do so.
- For a public hearing, know your time limit and make sure your remarks will fit into the allotted time. The time limit (for example, 5 or 10 minutes per person) is often announced in the Federal Register notice of proposed rulemaking. While the time for your oral statement is limited, you can prepare a longer written statement and have that included in the rulemaking record.

### ***Meetings and Phone Calls with Agency Officials After Proposal***

Less usual – but potentially potent – avenues for making your voice heard are calling and meeting with officials in the relevant agency and/or the White House Office of Information and Regulatory Affairs (OIRA) within OMB. Experienced stakeholders make liberal use of these avenues. Meetings and phone calls are not substitutes for public comments, but they can draw attention to your views and give you additional information and insight into the agency's thinking.

Individual members of the public are unlikely to get a meeting or call with top officials, but that shouldn't stop you from asking. Doing so signals keen interest in the rule. You should be able to meet or talk with agency staff working on the rule. The "For Further Information" section of the proposal's Federal Register notice lists the name, phone number, and email address of the contact person for the rule. You can ask the contact person questions, say what you think, and ask for a meeting or phone call with key agency managers or staff. For the agency, a meeting or phone call will be an opportunity to listen and learn, not engage in a debate. Still, you can explain your views and learn more about the agency's thinking, which might be useful in developing your comments. Reaching out to the agency's regional office for your state may also be useful, particularly if the proposal relates to industries, sites, or other important aspects of that region. Contact information for agency officials and agency regional offices is generally available on the agency's website.

To ask for a meeting or phone call with officials at OIRA, submit the [online meeting request form](#) on OIRA's website. (For help filling out the form, see [Section 4C](#) of this guide.) Staff from the agency whose action you want to discuss are generally included in meetings or phone calls with OIRA.

After a meeting or phone call, agency and/or OIRA officials (depending on who was involved) are required to docket a memorandum documenting who was involved and the topics discussed.

## ***Amplifying Your Comments***

There is political power in numbers. Agencies do not make decisions based on the number of comments for or against a proposal, but the more people you can enlist to comment on an agency proposal, the stronger the signal you send that the political stakes are high. Enlisting your members of Congress (MoCs), state and local officials, and others with political clout can also add to the clout of your views.

Consider these strategies for amplifying your comments:

- Ask other people you know who share your opinions to sign your comment or send their own comments. Let people know about this guide so they can learn about rulemakings and how to comment effectively.
- If you're a member of a group that shares your view (for example, a professional association, community organization, or religious group), ask if the group would like to comment. Interest groups often encourage their members to submit a letter or postcard that the interest group has drafted to support or oppose a proposal. These mass letter-writing campaigns can indicate strong public interest, but agencies will generally count form letters as a single submission, regardless of how many copies they receive. It is always more effective to submit individual comments, even if they make many of the same points as a form letter and especially if you include your own examples, information, or insights.
- If you have professional expertise or a compelling personal story to share, see if local media outlets would be interested in running an article or segment on the topic, or publishing an op-ed or letter to the editor you have written. You may have the angle the media is looking for to explain how an agency's proposal could affect the local community or even the nation as a whole.

- Use social media to spread the word about an agency proposal, explain what’s at stake, and urge others to comment. Remember that simply sharing on social media doesn’t count in the rulemaking process, so also share how to submit comments.
- Send your comments to your members of Congress and ask them to submit their own comments, weigh in with the agency, and/or issue a public statement. Agencies pay close attention to what members of Congress say, particularly if the member holds a position on a committee or in leadership that oversees or controls the agency’s budget. **Section 4D provides links and resources that help you identify your members of Congress and send them emails that can include the comments you send to an agency.**
- Similarly, you may be able to elicit comments or statements from other elected officials with a stake in the agency’s proposed action (for example, governors and mayors), former agency officials, or even celebrities. High-profile allies can encourage the agency to pay more attention to your cause.

## How You Can Weigh In

### Consider Contacting the Agency Prior to Proposal

- Learn about planned development of a proposed rule or action, and meet with agency officials to communicate your information and views
  - Section 3 of this guide helps you find out about planned proposals

### Learn from the Proposal After it is Published

- Access a proposed rule or action and supporting information on the federal government’s regulations website, <http://www.regulations.gov/>
  - Section 4A of this guide helps you find out about published agency proposals
- Review the proposed rule or action and supporting information, or make use of other organizations’ websites that provide summaries

### Comment on the Proposal

- Submit written comments during the public comment period
- Speak at a public hearing if a hearing is held
- Ask for a meeting or phone call with staff or managers of the agency or with OIRA

### Amplify your Comments

- Ask others to join your comments or to submit their own
- Send your written comments to your members of Congress and ask them to weigh in
  - Section 4D of this guide helps you identify and email your members of Congress
- Use social and conventional media to raise awareness and the political stakes

## Section 4: The Nuts and Bolts of Participating in the Rulemaking Process

### ***Subsection A – How to Find Out About Proposed Rules***

There are two main ways to find out what federal agency proposals are open for public comment, when comments can be submitted, and when and where public hearings are scheduled.

#### **Option #1: Monitor agency proposals on your own**

Federal agencies publish their proposed rules and other public notices in the *Federal Register* (<http://www.federalregister.gov/>). There are various ways to use the site:

- You can click “browse” and select an agency of interest. The agency page includes, among other things, a list of recent significant actions, starting with the most recent.
- The agency page also allows you to subscribe via email or RSS feeds to receive notification of new Federal Register notices from that agency. To reduce the number of notifications, pick the “significant actions” option.
- Also on the Federal Register website, the “sections” icon enables you to see a list and brief description of recently published notices within certain areas of interest – e.g., environment, health and public welfare, world, money, and science and technology. Within each category, you can click on specific subtopics (e.g., endangered species) to see relevant notices, starting with the most recent.
- You can use the advanced search engine on the FederalRegister.gov to narrow your search by selecting the type of document (e.g., proposed rule), agency, time period, etc.
- You can go to the “[Public Inspection](#)” [web page to](#) access to certain important or complex documents before they publish in the Federal Register.

A second method is to monitor [Regulations.gov](http://www.regulations.gov), the federal government’s centralized site for soliciting public comments online. Using the search function, type in the name of the agency of interest and check the box marked “Only show documents open for comment.” You can limit the search to certain types of agency actions (e.g., proposed rules, notices) and order the documents according to the date when public comments are due, from newest to oldest.

A third method is to monitor an agency’s website for information on what rules are being developed or reviewed and when you can comment on them. Agencies often issue a press

release about significant proposals, and most agency websites make it easy to find press releases. In addition, agencies typically have a page that lists proposed rules that are open for comment, and some agencies also offer notifications that can help you track rules under development or existing rules being reviewed. See endnote<sup>x</sup> for hyperlinks to relevant pages for the Environmental Protection Agency, the Health and Human Services Department, the Occupational Safety and Health Administration, and the Securities and Exchange Commission.

If you are looking for a particular proposed rule by a particular agency, you can use an internet search engine to find it. Often internet search engines work better than the search engines on agencies' websites, sad to say.

## **Option #2: Rely on interest groups to do the monitoring for you**

Another option is to check the website of -- or join -- interest groups in your areas of interest (for example, consumer product safety, environmental protection, industry associations) that follow agency actions in those areas. You can select a few priority areas on which to focus. Many groups, such as the Union of Concerned Scientists, will send you action alerts that give you an opportunity to comment on major regulatory proposals. Action alerts often provide online forms with sample language, making it easier for you to submit comments. Please see [Section 3](#) on how you can make your comments more effective than a form letter by, among other things, explaining why the agency's proposed action matters to you, providing information, and offering your own perspective.

## ***Subsection B: How to submit a comment on a proposed rule***

Every notice of proposed rulemaking contains instructions on when, how and where to submit public comments. Those instructions, including the docket number for that action, are near the beginning of the notice in sections commonly titled "Dates", "Addresses", and "General Information." The notice also may announce plans for a public hearing where you could tell agency officials in person what you think, along with details on how to participate.

Most agencies let you submit comments electronically or on paper. Submitting comments online is easiest for most people. Once you find your way to the web address for an agency rulemaking, submitting comments can be just a few clicks away. The government-wide portal for submitting comments electronically is [Regulations.gov](https://www.regulations.gov). Searching by docket number on regulations.gov will pull up the relevant docket including the proposed rule, the agency's supporting materials, and public comments already submitted. For any proposal open for comment, the docket page has a "comment" button and specifies the comment deadline. You can paste your comments into the online comment form if they meet the word limit. Or you

can attach files to the online form. That option is useful if your comments are long, consist of multiple documents, or contain formatting that you want to maintain.

### ***Subsection C: How to request a meeting with OMB's Office of Information and Regulatory Affairs***

To ask for a meeting or phone call with officials at OMB's Office of Information and Regulatory Affairs (OIRA), you can use OIRA's online form:

<https://mobile.reginfo.gov/public/do/eo/neweomeeting>. The form asks for the Regulatory Information Number (RIN) of the action you want to discuss. You can find the RIN for a rule or action by clicking the button titled "How the E.O. 12866 Meeting Scheduling Works," then clicking the link to the [EO Regulatory Review Search](#) page under Step 1. Although the search options are complex, you can just choose the name of the agency, ignore everything else, and click "search." That will display a list of all the agency's rules that are pending review at OIRA, along with their RIN numbers. The rest is easy; just follow the meeting request directions and answer the confirmation emails sent by OIRA. Before the meeting you will be able to upload any documents you want to share with OIRA.

Under OIRA policy, the subject, date, and participants of its meetings are publicly disclosed on [Reginfo.gov](#) along with any written materials received.

### ***Subsection D: How to contact your members of Congress***

Using the public comments that you send to an agency is an easy way to bring issues you care about to the attention of your members of Congress.

You can use the official [Congress.gov](#) website to identify and contact your senators and representatives. On the right side of the home page, type your address into the blank field and click "contact your member." That will produce a "Your Members" page that identifies your members and includes links to their websites. Once you're on a member's website, choose the "contact" button and an email form will appear. Unfortunately, members' email forms generally do not let you attach files. If your comments are too long to fit in the email form, call the member's office and ask how you can send a document. You can get the office's phone number by clicking on the member's name on the "Your Members" page.

Another useful site is <https://www.usa.gov/elected-officials/>. The site has contact information for state and local officials, as well as for members of Congress.

Find more about engaging with policymakers from the Science Network at the Union of Concerned Scientists at <https://www.ucsusa.org/resources/engaging-policymakers>.

## **Section 5: How to Follow Up After a Regulation is Issued**

An agency's issuance of a final regulation or other action is not necessarily the end of the story. All agency final actions can be challenged in court. Sometimes new information becomes available that the agency should consider. And agencies often take steps following issuance of a rule or action that can have an impact on how effective the rule will be in practice or how entities subject to the rule should comply. The public can have a role in any of these situations. Also key to a rule's effectiveness is how vigorously it is enforced. The public is generally not involved in agency decisions about whether and how to take an enforcement action against an alleged violator, but there are important ways for the public to wield influence.

### ***Court Challenge***

Court review of agency action is a vital check on agency power and discretion. The possibility of court review helps keep an agency on its toes. Courts consider whether an agency has followed the procedural and substantive requirements of the law, and made reasonable judgments in light of the relevant facts and public comments. If a court finds that the agency has failed in one or more ways, the agency will likely have to go through the rulemaking process all over again. This guide does not attempt to cover the many hoops that challenging an agency action in court entails. Few individuals have the wherewithal to mount court suits against a federal agency, but if you are a member of a group that does have the desire and capacity to challenge an agency action in court, that option is available.

### ***New Information Becomes Available***

Agencies are required to consider all of the relevant information available to the agency at the time it makes its final decision. The rulemaking process helps bring to light information about which the agency may not have been aware when developing its proposal. But sometimes new information becomes available only after the agency had made its decision. If the new information is of such central relevance to the agency's decision that it stands a good chance of changing the decision, anyone can petition the agency to reconsider its decision in light of that information. Getting the agency to grapple with new information is a good way to ensure that the agency's action achieves the law's objectives for that action.

## ***Implementing a Regulation Entails Additional Agency Steps***

The basic purpose of regulations is to define how statutory objectives will be met, but sometimes even regulations need more explanation than the regulations provide on their own. Agencies may issue guidance, memoranda, or other statements that help regulated parties understand how to comply with a regulation or provide further explanation of what the regulation means when it calls for outcomes that are not defined by specific numerical or other measurable thresholds. Like Congress, agencies sometimes use broad language in regulations to cover a broad set of circumstances. In guidance, agencies may tease out what circumstances may call for what actions under the regulations.

These post-regulation statements do not have the force of law, but they can be critical to how well the regulation works. If you have expertise to lend or want to help in the development of post-regulation explanations, ask the agency to be involved. Agencies are NOT required to involve the public in taking most implementation steps, but an agency may be open to providing an opportunity to suggest approaches or even comment on elements of draft guidance. Just ask. You can start by reaching out to the contact person listed in the Federal Register notice of the final agency action and asking what, if any, guidance or other implementation steps the agency may take.

## ***Tracking Agency Implementation and Regulated Entities' Compliance – and Possibly Taking an Alleged Violator to Court Yourself***

For the last several decades, agencies have been increasingly required to document the results of their efforts. In some cases, agencies issue periodic reports of what its programs or regulations have accomplished. For example, see EPA's [air quality trends reports](#) and its [progress reports on air pollution from power plants](#). Sometimes Congress will ask, and the agency will answer, questions about how well an agency program is working, and either the congressional committee or the agency will post the agency's answers on its website. For example, [see EPA's response to Congress providing information on decentralized wastewater systems](#). Check an agency's website for information the agency may have on hand about how a regulation or other action is working.

Many regulations require periodic reporting by the entities being regulated. These compliance reports can often be obtained (minus any legally protected confidential information) by asking the regulated entity or the agency for them. Some compliance information is available online. To find out what compliance information you can access, try calling an agency's public affairs or

communications office. The person you talk with will likely know (or be able to find out) who at the agency can answer your question.

An agency's record of enforcing a regulation can also be telling. A regulation that is not enforced is not likely to get the results the agency touted when issuing it. EPA keeps track of its enforcement actions in ways that are accessible on the agency's website (see [EPA's enforcement-data-and-results page](#)). For other agencies, asking the agency's information office about what's available and where to find it is a good place to start in assessing whether a regulation has been given teeth. And if you know or suspect that a regulated entity is not complying with a regulation, you may have the option of taking the entity to court yourself. Many environmental statutes, for instance, give citizens the power to enforce against regulated entities even when the agency does not. That option is described in [Section 8](#) of this guide.

## **II. OTHER FEDERAL ENVIRONMENTAL ACTIONS WITH LOCALIZED IMPACTS**

In addition to regulations that apply nationwide, agencies make place-specific decisions that can profoundly affect a community's health and welfare. Whether and how to clean up a hazardous waste site or open up an area to oil and gas drilling; whether to permit a large industrial facility to be built in a particular place with (or without) safeguards; how much pollution to permit a facility to discharge into air or water; and whether and how to stop a facility from violating regulatory requirements are among the many decisions that federal and state agencies make that can make a community a healthy, safe, desirable place to live – or not. These place-specific decisions are typically guided by national regulations, but most entail another round of public process to consider local circumstances and viewpoints. And while enforcement decisions are generally made by an agency alone, members of the public can play a role in some circumstances, including taking violators to court when allowed by statute.

Research has shown that government decisions too often have had an unequal and negative impact on communities of color, low-income communities, and tribes. Public engagement in an agency's decision-making process, particularly by members of the communities most affected and their allies, is one of the chief ways to help ensure that agencies act in the interest of the public they are supposed to serve. Fortunately, many of these decisions are required to be made using a public notice-and-comment process that gives community members and others the right to make their voices heard. In some cases, grants and other types of assistance are available to help communities, particularly communities that are overburdened with adverse environmental impacts, engage in an agency's decision-making process. These communities –

typically communities of color, low-income communities, and tribes – are referred to as “environmental justice” or “EJ” communities.<sup>xi</sup>

This section of the guide focuses primarily on actions taken by EPA and state environmental agencies that have localized and potentially big impacts on nearby communities. For many of these actions, EPA’s regional offices and the state agencies in their region have the lead. (The locations of the 10 EPA regional offices, the states that each serves, and their phone numbers are available in [EPA’s online organization chart](#).) Other federal and state agencies take similar actions to accomplish the objectives of the statutes they administer, and use similar procedures including opportunities for public comment.

## Environmental Injustice

Environmental harm is not borne equally.

Members of communities of color, low-income communities, and tribes are often disproportionately hurt by pollution for identifiable reasons. They are more likely to live near polluting facilities such as power plants, industrial plants, landfills and hazardous waste sites.<sup>xii</sup> They are also more likely to lack resources – financial, political and otherwise – to protect themselves from polluted air and water and the threats of climate change. Members of these “environmental justice” or “EJ” communities often have less access to environmental information and adequate health care, including preventive care,<sup>xiii</sup> making them more vulnerable to the health impacts of pollution and climate change.

In the U.S., people of all races suffer from poverty, but the poor are disproportionately people of color. Racial disparities in economic opportunity and housing patterns, which affect environmental risk, result from a long history of explicit and systemic racism in the United States. In recognition of these facts, President Clinton issued Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, in 1994. The executive order remains in effect.

Among the environmental problems putting these people more at risk are:

**Climate pollution:** Climate change is already bringing more extreme storms, heat waves, fires, and floods. Low-income people are more vulnerable to climate change impacts and have fewer resources for adapting or recovering from those impacts. For example, the threat of death from heat waves is greater for people whose homes lack air conditioning, and low-income people are more likely to live in low-lying, flood-prone areas. As we saw in New Orleans during Hurricane Katrina, poor and mostly Black people lived in the portion of the city most vulnerable to flooding. They did not have the means to escape from the city, and most lacked the resources to rebuild their homes and livelihoods after the disaster. Indigenous people have

special vulnerabilities; the changing climate can threaten access to traditional foods such as fish and game and wild crops with cultural significance.

The World Health Organization has found that human health impacts are among the most significant consequences of climate change and that the poor suffer the most from these impacts.<sup>xiv</sup> For example, an association has been found between maternal exposure to higher temperatures and increased risk of adverse pregnancy outcomes including premature births, low birthweight, or stillborn births. Minority groups and especially Black mothers are at the highest risk.<sup>xv</sup>

**Air pollution threats:** Fine particle pollution is associated with premature death and serious health problems including lung conditions, heart attacks, and asthma attacks. Studies indicate that, on average, Black and Hispanic Americans and people living in poverty are exposed to higher levels of fine particle air pollution than the general population.<sup>xvi</sup> A 2020 Harvard study found that a small increase in exposure to particle pollution results in a significant increase in deaths from COVID-19, thus magnifying racial health risk disparities.<sup>xvii</sup>

**Toxic threats:** Toxic pollution can sicken and kill, and people of color and low-income people often live or work closest to it. Migrant farmworkers, many of whom are Hispanic, are at risk from the widely used pesticide chlorpyrifos, despite evidence that the pesticide harms the brains of children. Many power plants have leaking impoundments for coal ash, which contains toxic metals. The people who live nearby are disproportionately people of color.

## Section 6: Permitting

### *What is permitting?*

Under many environmental statutes, a large industrial facility, other major pollution source, or waste facility must obtain a permit before it can be built, operated, or modified. Depending on the statute and type of facility, the permitting process determines whether and how a facility can be built (or modified) and what requirements and limits apply to the facility's operation. Most permits are developed through a public notice and comment process so members of the public can weigh in on what the permit should or should not allow – or whether a permit should be issued at all.

## ***Who issues permits?***

State environmental agencies do most of the permitting under federal environmental laws. EPA has delegated to many state agencies its authority to issue permits under the Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Resource Conservation and Recovery Act (RCRA, governing hazardous waste facilities), and the Clean Air Act (CAA)). One exception is the CWA Section 404 (Wetlands) Program, under which permits are issued by the U.S. Army Corps of Engineers except in Michigan, New Jersey, and Florida, which have assumed the Section 404 permit program from the Corps. EPA has an oversight role with respect to delegated state programs and the Corps' Section 404 program. EPA retains primary permitting authority for federal lands and for tribal lands, with a few exceptions. EPA also retains primary permitting authority when a state fails to adopt a permit program meeting federal requirements.

Permitting done by EPA is primarily the work of EPA's regional offices. The permitting roles of EPA and state agencies are dynamic. EPA can take back a program from a state due to poor performance, or states can give back programs that they have been delegated or authorized to run. EPA can comment and object to a state proposed permit. If EPA's issues are not resolved, EPA can, in many cases, issue a federal permit, and the regulated facility will have to comply with the most stringent requirements of both permits.

For more information on permitting in a particular state or tribal land, find out whether the state, tribe, or EPA is the primary implementor of a permitting program. You can call the relevant EPA regional office (see [map of EPA regions](#)) or search for the name of the permit program and "state program authority." Even where EPA remains the primary permitting agency, there will be a documented work-sharing agreement (Performance Partnership Agreement) between the state/tribe and EPA on permit issuance and oversight. States and tribes that are not delegated or authorized to run permit programs still sometimes draft permits which EPA then evaluates, changes as needed, and issues (or not).

## ***How can the public get involved?***

All EPA-related permit actions, regardless of statute, require public notice and a public comment period. Under most statutes, public comment periods on permits typically are 30 days long.

For example, under the Clean Water Act (CWA), EPA or the delegated state or tribal agency provides notice of -- and an opportunity to comment on -- draft permits and new source determinations, a preliminary step to permitting under that statute. (For EPA-issued CWA

permits, if the agency determines that the source is new and decides an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) is needed, draft permits are prepared *after* draft EISs are issued.)

Notification of permitting actions, including public hearings on draft permits, may occur via mail, email, newsletters, environmental bulletins, newspapers, radio, websites, press releases, the Federal Register, and any other method to effectively inform all interested communities.

The permitting agency's notice of a draft permit (or a CWA new source determination) often will provide much of the information you need to understand what is at stake. Permitting agencies know that their decisions will impact local communities so they are primed to hear what you have to say. Take advantage of the opportunity to submit written comments and/or speak at a hearing. The tips in this guide for how to do both effectively in the context of rulemaking also apply to permitting. The guide's suggestions for how to amplify your comments or otherwise turn up the heat may also prove useful in the case of permitting decisions that are high stakes for the permit applicant and potentially affected communities.

Permitting a large facility can be a long process. The examples provided below of how public involvement led to better permitting outcomes also show how long the process can be. If engaging in a permit process seems daunting, consider joining forces with an interest group whose concerns align with yours. National groups like the Sierra Club, EarthJustice, and the Environmental Integrity Project may already be involved or be willing to get involved. And local community groups are likely active in the process already.

## ***Environmental justice and permitting***

Permitting decisions unavoidably affect nearby communities and can raise environmental justice issues in overburdened communities, which are often communities of color, low-income communities, and tribes. As explained above, EJ communities have borne more than their share of the health and environmental consequences of polluting facilities as a result of private and public sector decision-making that did not fully or fairly consider the interests of those communities. EPA has acknowledged and made efforts to address this sad fact. On May 9, 2013, EPA published [“EPA Activities to Promote Environmental Justice in the Permit Application Process,”](#) which discusses promising practices for enhancing engagement with overburdened communities during the permitting process. More recently, in its October 2016 [“EJ \[Environmental Justice\] 2020 Action Agenda,”](#) EPA pledges to conduct enhanced outreach to overburdened communities, perform analyses of potential local impacts on those communities, and establish “appropriate permit terms and conditions to address environmental justice concerns to the extent supported by the relevant information and law.” EPA further states that

where it is “unable to address community concerns in EPA permit terms and conditions, EPA will identify other federal, state, or local agencies, or other entities who may be able to assist.”

These policy pronouncements by EPA are important. They open the door to more active and meaningful engagement by EPA with EJ communities as part of the permitting process. While policy pronouncements do not have the force of law and can change with circumstances (like a change in administration), they are powerful levers for members of EJ communities and their allies to use.

### ***Challenging a permit***

Issuance of a permit, like issuance of a regulation, is not necessarily the end of the story. Permits can be legally challenged by the permit applicant, members of affected communities, or other interested parties. Permits issued by state agencies can be appealed through state appeal processes. Permits issued by EPA and in some cases state agencies can be appealed to the agency’s Environmental Appeals Board (EAB), which acts on behalf of EPA’s Administrator.

In reviewing EPA permits, the EAB considers not only the relevant law and facts but whether EPA permitting officials followed agency policy. As described above, EPA has adopted policies for better involving and addressing the concerns of EJ communities in its permitting decisions. Appeals to the EAB can be a good way to ensure that EPA is upholding its EJ policies. Provisions for appealing permits to the EAB are found in the Code of Federal Regulations at 40 CFR Section 124. “Friend of the court” (or amicus) briefs can be filed in an appeal brought by someone else. See [EPA’s website](#) for more details. EAB decisions can be appealed to federal courts.

## Success Stories of Public Involvement in Permitting

An excellent example of how public involvement in permitting can lead to better outcomes for nearby communities is the permit issued under the Clean Water Act (CWA) for the Mandan, Hidatsa, and Arikara (MHA) Nation Clean Fuels Refinery in 2011. The facility was determined to be a new source, so a National Environmental Policy Act (NEPA) process was used to evaluate the proposed refinery for impacts to wetlands, surface and groundwater under the CWA, and impacts to air quality under the Clean Air Act. It also assessed hazardous waste management permitting needs under RCRA. The public was able to engage in the multiple rounds of developing the environmental impact statement (EIS) under NEPA and a permit under the CWA. An administrative record for both the NEPA and permit processes was available for public review. Newspapers, document repositories, radio, websites, Federal Register notices, electronic records, etc., were used to disseminate information. With the benefit of public input, significant efforts were made in the NEPA and permit processes to mitigate the potential impacts of the refinery on the tribes and surrounding community. (See [Record of Decision](#) and the box below.)

An EJ community in North Carolina was concerned about proposed air permits for two asphalt plants in their county. EPA Region 4 and the North Carolina Department of Environmental Quality (NCDEQ) gave a community-based, online air permitting training course with a focus on how to effectively participate in permitting as a member of the public. As a result, the community was better able to participate in the process. (See [EPA Annual Environmental Justice Progress Report FY 2020](#).)

## Section 7: Superfund Hazardous Waste Cleanups

### ***What is Superfund?***

The country's most dangerous hazardous waste sites are targeted for cleanup by the Superfund program authorized by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The worst sites are placed on the National Priority List (NPL), which triggers a process for cleanup paid for by the entities responsible for the site or CERCLA funding paid for by taxpayers. The public, including members of communities in which hazardous waste sites are found, can be involved in agency decision-making about whether sites should be placed on the NPL and how they should be cleaned up.

## ***Who implements Superfund?***

EPA and its regional offices directly implement the Superfund program, but there are work-sharing agreements with the states, and states may be the cleanup lead on some sites. States are also responsible for long-term maintenance of Superfund sites once remedies are in place. There are different funding and cleanup arrangements in Superfund. Sometimes potentially responsible parties (PRPs) lead the cleanup with EPA and state oversight, enforced through an administrative order that is lodged in federal district court. Sometimes cleanup funds awarded to EPA and/or the state from responsible parties are used for the cleanup. If no responsible party can be identified, cleanup is done with the Superfund, which is now funded by U.S. taxpayers instead of the original tax on the chemical and petroleum industries, which Congress has not reauthorized.

## ***How can the public get involved?***

Superfund has many points at which public involvement and engagement can occur. EPA proposes sites for listing on the NPL, and the public has an opportunity to comment on the agency's proposal. Once a site is listed, it may be cleaned up with various tools under either the short-term removal program, the long-term remedial program, or a combination of the two. Sites that are not listed may still be cleaned up under emergency, time critical, or non-time critical removal actions. Both the remedial and removal program involve the community and provide opportunities for input and comment on proposed plans and decision documents. Check out EPA's [Superfund Community Involvement Handbook](#) for more information about all the ways Superfund solicits community input. See EPA's [Superfund community involvement tools and resources page](#) for more information and tips on how to participate.

Superfund goes an extra mile in encouraging and facilitating public involvement, which can be especially important for EJ communities affected by sites on the NPL. It allows EPA to set up and fund [community advisory groups \(CAGS\)](#) to participate in and affect site activities and cleanup decisions. CAGS are a good way for the affected community to get involved in the Superfund process. CAGS can facilitate information exchange, including community members' perspectives of site issues and practices. See [Section 12](#) on "Funding for Community Involvement" for more information about grants that EPA makes available to help local communities effectively engage in Superfund decision-making.

Other practices used in Superfund include community interviews, site-specific community involvement plans, and strategies with different communication methods such as public meetings, workshops, information repositories, fact sheets, websites, community feedback,

mailings, media coverage, etc. [“Citizen’s Guides to Cleanup Technologies”](#) in both English and Spanish can be accessed by communities on EPA’s website.

Citizens can help determine the cleanup goals for a site, as well as the final uses of the site once it is cleaned up. Some examples of projects where citizen involvement helped determine outcomes include a golf course within the Anaconda Superfund site (contaminated by ore processing) in Montana, and a soccer field in Leadville, Colorado, within the California Gulch Superfund site (contaminated by mining operations). In Midvale, Utah, EPA’s Region 8 office worked closely with the city to develop a remedy that allowed former smelter slag piles to be redeveloped into a mixed-use housing and commercial center, providing jobs and transit access for an EJ community.

## **Section 8: Enforcement**

### ***Why enforce (do we really need to ask)?***

Regulations and permits can achieve their purpose only if those subject to them comply. EPA often encourages compliance by providing regulated entities with technical and other assistance, but the possibility of enforcement remains crucial to inducing compliance. Opportunities for public involvement in agency enforcement decisions are limited. Agencies generally have broad discretion in how they enforce their requirements, but members of the public can help induce an agency to take meaningful enforcement action in several ways described below.

A helpful online tool for tracking EPA and state enforcement efforts is EPA’s [Enforcement and Compliance History Online \(ECHO\)](#). This system provides publicly available compliance and enforcement information for regulated facilities nationwide. It is a good starting point for gauging how vigorously public health and environmental protections are being enforced.

### ***Who enforces?***

As with permitting, most enforcement is done by state agencies authorized by EPA to conduct enforcement under the main EPA environmental statutes. Agreements between EPA and the state agency delineate who does what. EPA retains oversight responsibility and can file its own actions or over-file on state-issued enforcement actions as deemed necessary. EPA regional offices conduct independent monitoring, inspections, enforcement, and compliance assistance as appropriate or required by various laws. Sometimes EPA conducts national initiatives targeting specific industries whose members have common non-compliance problems.

Interested parties, including members of the public, can sometimes join EPA or state enforcement actions or settlements.

Tribes may have enforcement authorities and take enforcement actions, but EPA does most enforcement in Indian country. Enforcement for federal facilities with EPA permits or hazardous waste clean-up activities is led by EPA.

## ***Environmental justice and enforcement***

EPA's EJ 2020 Action Agenda promotes the use of tools such as [EJScreen](#), an enforcement and compliance mapping data tool, to help EPA regional offices and co-regulators (states, tribes, and local government) focus enforcement activities in overburdened communities where there is a high likelihood of facility non-compliance with environmental laws. In the [EPA Annual Environmental Justice Progress Report FY 2020](#), the agency selected national compliance initiatives for the following three years based on those likely to have the most positive impacts on vulnerable communities. As political leadership changes and years pass, EPA will likely revisit these priorities and perhaps revise or expand them.

## ***Role, scope and public involvement in settlement agreements***

Not every enforcement action goes to trial. EPA or state agencies and alleged violators often reach settlement agreements that get good results for less time and money. Settlement agreements may include environmental monitoring, requirements for public posting of compliance data, mitigation, penalties, and even prison time for intentional violations.

In past years, settlement agreements reached by EPA with alleged violators sometimes included supplemental environmental projects (SEPs). SEPS allow the agency to direct that a portion of the fine levied against a violator be invested in on-the-ground projects in the local community, an extremely helpful way to improve conditions in affected communities. The Trump administration ended the use of SEPs in March 2020. The Biden administration began steps to reinstate use of SEPS in February 2021, but as of April their use was still severely restricted by a Justice Department rule.<sup>xviii</sup>

Some statutes provide public notice and other opportunities to comment on proposed consent decrees and draft settlement agreements as well as on Superfund enforcement agreements. Check national and regional EPA websites for more information.

## ***Citizen enforcement***

Under most federal environmental statutes, including the air, water, waste, toxic substances laws, citizens can enforce pollution protections themselves and provide a spur to compliance that EPA and state agencies are not (yet) providing. Citizens can file enforcement action under those laws against alleged violators (including the U.S. government) of legal requirements, including those established by regulation or in permits. See for example [33 U.S. Code Section 1365 for the Clean Water Act citizen suit provisions](#), and [42 U.S. Code Section 7604 for the Clean Air Act citizen suit provisions](#). “Citizen” is defined as any person adversely affected by the alleged violation. Typically, advance notice must be given to EPA and the state before a citizen suit is filed, and they can decide to join the action.

A number of national or regional organizations (such as the [Environmental Integrity Project](#), [EarthJustice](#), [Sierra Club](#), [Natural Resources Defense Council](#), and [Trout Unlimited](#)) bring legal actions against violators on behalf of citizens, sometimes in conjunction with local groups. There are also state organizations that will provide legal assistance to citizens who wish to intervene in an enforcement action or bring an action on their own behalf.

Most federal environmental statutes also provide another kind of citizen enforcement action: against EPA itself for failure to perform a “mandatory duty” under the statute. See the statutory provisions cited above. Since EPA (and other agencies) have discretion in deciding what enforcement actions to take, “mandatory duty suits” are generally not available to prod EPA to take a particular enforcement action. But where a statute *requires* EPA to establish regulations, act on a state plan, or take another action establishing legally enforceable requirements by a date certain, mandatory duty suits may be an effective mechanism to get EPA to act. National environmental groups have made good use of mandatory duty suits to do just that.

## **SECTION 9: National Environmental Policy Act (NEPA)**

The National Environmental Policy Act (NEPA) is the bedrock environmental law requiring federal agencies to assess and mitigate the potential environmental impacts of major decisions they make such as providing funding or issuing permits for highways, pipelines, or other facilities or activities. Federal agencies consider potential impacts on overburdened (EJ) communities as part of the NEPA process. There is a plethora of guidance documents on this topic. See [EPA’s website on Environmental Justice and the National Environmental Policy Act](#). Some of the more helpful guidance includes:

- [Promising Practices for EJ Methodologies in NEPA Reviews](#), March 31, 2016
- [Community Guide to Environmental Justice and NEPA Methods](#), March 2019
- [Environmental Justice: Guidance Under the National Environmental Policy Act](#), EPA Pub.No:300-B-16-001, White House Council on Environmental Quality, December 1997

## Successfully Advancing Environmental Justice through NEPA

An example of an environmental impact statement (EIS) that thoroughly examined the effects on a disadvantaged tribal community was the EIS prepared for the MHA Refinery permit, described above in the permitting section. EPA partnered with other federal agencies and obtained public comment at multiple points of the NEPA process. With the benefit of public input, EPA ultimately sited the facility to minimize wetland impacts; worked with project engineers to design a close looped system with no land application of facility waste; specified the fuel source and size so that air emissions did not contribute to deterioration of air quality; added monitoring and reporting to the water permit to ensure the safety of the facility; conducted a health assessment of the tribe; had a Biological Opinion written; and analyzed and considered every environmental permit that might be needed. The public process was extremely thorough, including six public hearings and multiple consultations with the MHA tribal government. (See [Record of Decision](#).)

Some states have their own state environmental policy acts, modeled after NEPA. In these states, the lead federal agency for an action works with the state to figure out the work-share agreement. Like NEPA itself, states' NEPA counterparts provide opportunities for public involvement.

In September 2020, CEQ regulations for implementing NEPA were revised, limiting the public's opportunities to comment on both draft and final EISs. The [revised regulations](#) require commenters to provide much more specificity and documentation of data and methods to support any changes they seek. (See 40 CFR Chapter V, Part 1503 for more information on public comment requirements.) The revised regulations also limit what actions need to undergo full environmental analysis, limit indirect and cumulative impact analysis, limit the scope of alternatives analysis, and limit the timing of the process and the length of documents, which could affect the overall quality of NEPA analysis and final decisions. As of March 2021, the revised regulations are being challenged in court and reviewed by the Biden administration for possible suspension, revision or rescission under an [executive order](#) issued January 20, 2021.<sup>xix</sup>

## III. MORE RESOURCES FOR GETTING INVOLVED

### Section 10: Environmental Information About Local Facilities

EPA has many databases with location-specific information on air quality, water quality, Superfund and RCRA waste sites, etc. A comprehensive listing of these resources is beyond the scope of this guide, but many are listed on EPA's [web page on location-specific environmental information](#).

Among the tools listed on that page is [Envirofacts](#), which integrates environmental and facility information. One of the best EPA mapping tools available, Envirofacts is searchable by an address, city, county, waterbody, points of interest, or a zip code. For communities, Envirofacts is a good starting point for learning what facilities and environmental issues are nearby. The Envirofacts website explains how to use the mapping tool as well as access information across all environmental programs.

### Section 11: Additional Environmental Justice Resources

EPA has an [EJ Hotline](#) for anyone to call if they are experiencing or have the potential to experience adverse environmental and public health impacts in their residence and communities.

In 2020, EPA launched an online [RCRA Public Participation Toolkit](#) to help communities become more actively involved in permit and cleanup decisions for hazardous waste facilities. RCRA Corrective Action sites produce similar documents and public processes to Superfund, but typically a state is the lead oversight agency for a facility's cleanup.

Visit EPA's Office of Environmental Justice website for more information on tools and resources.

Both the [EJ 2020 Action Agenda](#), which is USEPA's EJ Strategic Plan for 2016-2020, and [EPA's Annual Environmental Justice Progress Report FY 2020](#) are helpful documents to review to gain an understanding of the types of activities and the focus of EPA's work with EJ communities.

See the section below for information about EPA grants targeting EJ communities.

## Section 12: Funding for Community Involvement

If your community is experiencing a public health or environmental problem, EPA and other federal agencies have grant programs that may be of help. EPA sometimes holds training workshops on grant writing and management as well as grant management workshops for existing grantees. Attending these workshops or taking [EPA's online training for grant recipients](#) can increase your chances of producing an acceptable application that will be funded. Check with the public information officer at the EPA regional office for your state and [EPA's grant website](#) to find out about training opportunities and workshops.

As for actual money, check for funding opportunities on the [EPA grants website](#), including the [EPA-region-specific grants page](#) and the [community funding opportunities page](#). Look at [Grants.gov](#) to find out what competitive grants are available from other federal agencies, learn about grant requirements, obtain applications, and receive notices of grant opportunities. To obtain grants, it helps to be or have the help of a non-profit organization capable of carrying out the work, managing and tracking the money received, and providing required reports.

States may also have money for communities. Check a state's website for opportunities.

***Environmental Justice.*** EPA's EJ program has several grant programs for communities including collaborative problem-solving grants (CPS) and environmental justice small grants (EJSG). The CPS grants go to community-based organizations to build partnerships with other local stakeholders to develop solutions to local environmental and public health issues for underserved communities. In 2021, each grant is approximately \$160,000 over two years. The EJSG are 1-year grants, up to \$50,000 in 2021, to help communities understand and address exposure to multiple environmental harms and risks. For more information, go to the national [EPA EJ website](#).

More information on EJ funding opportunities can be obtained by subscribing to the EJ listserv by writing a blank email to [join-epa-ej@lists.epa.gov](mailto:join-epa-ej@lists.epa.gov).

***Superfund.*** Superfund has many opportunities for communities near Superfund sites to receive monetary or other assistance to help them become more involved in cleanup decisions. These include [Technical Assistance Grants \(TAGs\)](#), which provide up to \$50,000 per site funding for hiring technical advisors to help communities interpret and understand technical information about their site, and the [Technical Assistance Services for Communities \(TASC\) program](#), which provides independent assistance at no cost to the community to explain

technical findings and answer questions. Communities can also access conflict resolution and mediation assistance through [EPA's Conflict Prevention and Resolution Center](#).

## **APPENDIX 1: REGULATION VS. DEREGULATION**

Following are some of the stock arguments made by those who support deregulation (repealing or easing regulations) and our response to those arguments. If an agency relies on any of these claims, you may want to include the relevant rebuttals in your comments on the proposal. If you hear your members of Congress or other elected officials spout these talking points, you may want to let them know you know better.

### **CLAIM: *“Regulations cost too much”***

Congress often calls for regulations to prevent people or businesses from acting in ways that help themselves but harm other people. Changing unsafe or otherwise risky products and practices can increase costs to those making those products or using those practices. But those changes save members of the public money, as well as pain and suffering, by avoiding harms including illness, injuries, or even death. Stopping discriminatory and unfair business practices may increase costs to those engaged in those practices, but it protects our civil rights and provides more equal opportunities. Many rules have impacts that benefit the economy. For example, rules that prevent illness or injury increase worker productivity because workers miss work less often, and some rules bolster market opportunities for cleaner or safer technologies.

Regulations are designed to achieve their objectives at low or reasonable cost. Since the 1980s, presidents have required federal agencies to estimate the costs of a regulation as part of the rulemaking process. For bigger ticket rules (generally those that have annual costs of \$100 million or more), agencies must also conduct a cost-benefit analysis and consider alternative approaches. The economic experts at the Office of Information and Regulatory Affairs in the White House Office of Management and Budget set a high bar for these analyses. Agencies are required to quantify the costs and benefits to the extent possible, and to identify and weigh benefits that cannot be quantified. Agencies must also make their analyses available for public review and comment as part of the rulemaking process so the analyses can be improved before final decisions are made.

Many regulations provide benefits that exceed – and for many environmental regulations, far exceed – their costs. Some rules, like the greenhouse gas/fuel economy standards for cars and trucks, even pay for themselves in a short period of time and go on to save consumers large

amounts of money over the long term. Claims that regulations cost too much typically focus just on the costs to the regulated business or person, and ignore the benefits and savings to other members of the public. Fair evaluation of a regulation requires looking at both costs and benefits to society as a whole, as well as justice issues involving the distribution of those benefits and costs.

### **CLAIM: “Regulations cost jobs”**

Regulations generally have only a small impact on jobs compared to other economic factors. Job losses in industries like coal mining and manufacturing are largely the result of automation and price competition with lower-cost fuels and lower-wage countries. Some regulations are estimated to cause economic shifts large enough to result in loss of some jobs and creation of other jobs, such as regulations combatting pollution that have the effect of incentivizing newer, cleaner technologies such as wind and solar power. Regulations can drive creation of jobs needed for compliance, such as in industries that build equipment for reducing pollution or making cars safer. Some regulations safeguard existing jobs by protecting natural resources important to tourism, farming or fishing.<sup>xx</sup> Other regulations make jobs safer and workplaces fairer. (For more references on jobs impacts of regulation, see endnote <sup>xxi</sup>.)

To the extent a regulation has any negative impact on jobs, it is the result of a transparent effort to protect the public from well-documented, significant risks that Congress directed the regulating agency to address. No one argues with banning dangerous drugs even though jobs producing and distributing those drugs are lost in the process.

### **CLAIM: “Regulations are imposed by unelected bureaucrats”**

Agencies can only issue regulations authorized by the laws Congress writes, and all members of Congress are elected. Laws generally specify what a regulation should accomplish and how. Moreover, Congress has the power to repeal regulations by amending laws or passing new legislation.

The top agency officials empowered by Congress to issue regulations are appointed by the President and can be fired by the President. They are also typically confirmed by the Senate. Since the 1980s, presidents have required that agencies submit their draft rules to the White House Office of Management and Budget for review. If White House officials, including the President, don't like a draft rule, they can and do ask the rule-writing agency to consider changing it. While agency heads are not elected officials, they take an oath to implement their

duties in accordance with the law, and they are expected to advance the policy agenda of the President, the nation's top elected official, to the extent consistent with the law.

**CLAIM: *"States can take care of the problem"***

The purpose of federal regulation is to assure minimum protections across the country. Laws passed by Congress call on EPA, for example, to set national standards that will protect Americans in every state from various types of pollution. National standards help states protect the health and welfare of their residents when competing with one another for business, and provide businesses with a level playing field from one state to the next. Since many forms of pollution don't respect state boundaries, national standards or programs are also important for protecting the air we breathe, the water we drink, and the water bodies many states share, like the Colorado and Mississippi Rivers, the Chesapeake Bay, and the Great Lakes.

Federal laws most often call on states to take primary responsibility for implementing environmental programs with EPA support and oversight, creating long term federal-state partnerships. In the case of EPA's clean air program, for example, states develop and implement programs to meet national air quality standards that are intended to provide consistent protection nationwide from common pollutants. States develop programs within their borders that are tailored to each state's circumstances, and enforce emission limits against violating polluters. EPA is ultimately responsible for ensuring that national air quality and emissions standards are met. Congress recognized that federal oversight and enforcement provide strong incentives for states and regulated entities to meet national standards. When these standards are not met, the law empowers EPA to step in to provide the protections that Congress sought for all Americans.

## APPENDIX 2: OTHER GUIDES FOR MORE INFORMATION

Listed below are other useful guides, available as of April 2021 at the links provided below, for participating in regulatory decision-making at the federal level and state levels. These guides provide additional detail on some topics discussed in this guide. This list is not comprehensive; you may wish to search for guides focusing on your particular public participation activity on the web, including the website of the relevant agency.

### GENERAL GUIDES ON CITIZEN PARTICIPATION IN THE FEDERAL RULEMAKING PROCESS

Office of the Federal Register, “A Guide to the Rulemaking Process.”

[https://www.federalregister.gov/uploads/2011/01/the\\_rulemaking\\_process.pdf](https://www.federalregister.gov/uploads/2011/01/the_rulemaking_process.pdf)

Department of Health and Human Services, “How to Participate in the Rulemaking

Process.” <https://www.hhs.gov/sites/default/files/regulations/rulemaking-tool-kit.pdf>

Environmental Law Institute, “A Citizen’s Guide to Influencing Agency Action.”

<https://www.eli.org/research-report/citizens-guide-using-federal-environmental-laws-secure-environmental-justice>

Center for Effective Government, “Notice and Comment Rulemaking.”

<http://www.foreffectivegov.org/node/3463>

Congressional Research Service, “The Federal Rulemaking Process: An Overview,”

Maeve P. Carey, Coordinator, Analyst in Government Organization and Management, June 17, 2013. <https://fas.org/sgp/crs/misc/RL32240.pdf>

### COMPREHENSIVE GUIDE TO CITIZEN PARTICIPATION OPPORTUNITIES UNDER FEDERAL ENVIRONMENTAL LAWS

Environmental Law Institute, “A Citizen’s Guide to Using Federal Environmental Laws to

Secure Environmental Justice.” <https://www.epa.gov/sites/production/files/2015-04/documents/citizen-guide-ej.pdf>

## **GUIDES FOR INFLUENCING ENVIRONMENTAL PERMITTING – STATE AND FEDERAL**

Georgia Department of Environmental Management, “Guide for Citizen Participation: How to Make Your Voice Heard on Community Environmental Issues,” November 2018.  
<http://adem.alabama.gov/moreInfo/pubs/citizensguide.pdf>

Indiana Department of Environmental Management, “Citizens’ Guide to IDEM: An Introduction to IDEM’s Procedures for Issuing Environmental Permits, Overseeing Cleanups, Preparing Environmental Reports and Plans, and Writing Environmental Rules,” March 2014, Draft update prepared for posting on December 12, 2014.  
[http://www.in.gov/idem/files/citizens\\_guide.pdf](http://www.in.gov/idem/files/citizens_guide.pdf)

**AIR:** Michigan Department of Environmental Quality, “A Citizen’s Guide to Participation in Michigan’s Air Pollution Control Program,” April 2007.  
[http://www.michigan.gov/documents/deq/deq-ess-caap-citizensguidetomiairpollutioncontrol\\_195548\\_7.pdf](http://www.michigan.gov/documents/deq/deq-ess-caap-citizensguidetomiairpollutioncontrol_195548_7.pdf)

**AIR:** U.S. EPA, “Participate in the Permitting Process,” (web page).  
<https://www.epa.gov/title-v-operating-permits/participate-permitting-process>

**WATER:** Ellen J. Kohler, Tipp of the Mitt Watershed Council, “A Citizen’s Guide to Water Quality Permitting: Understanding the National Pollutant Discharge Elimination System (NPDES) Program and Its Role in Michigan,” 2005.  
[https://www.watershedcouncil.org/uploads/7/2/5/1/7251350/npdes\\_ebook.pdf](https://www.watershedcouncil.org/uploads/7/2/5/1/7251350/npdes_ebook.pdf)

**HAZARDOUS WASTE:** Arkansas Department of Energy and Environment, “The Hazardous Waste Permitting Process: A Citizen Guide,” (web page).  
<https://www.adeq.state.ar.us/hazwaste/technical/permits/process.aspx>

**HAZARDOUS WASTE:** U.S. EPA, “Public participation and citizen action,” (Web page with links to multiple guides)  
<https://archive.epa.gov/epawaste/hazard/web/html/index-46.html>

## **GUIDES FOR USING NEPA TO INFLUENCE PROJECTS AND POLICIES**

CEQ, “A Citizen’s Guide to the NEPA: Having Your Voice Heard,” – two versions, 2007 and 2021. [https://ceq.doe.gov/get-involved/citizens\\_guide\\_to\\_nepa.html](https://ceq.doe.gov/get-involved/citizens_guide_to_nepa.html)

“Community Guide to Environmental Justice and NEPA Methods,” Product of the Federal Interagency Working Group on Environmental Justice & NEPA Committee, March 2019.

<https://www.energy.gov/sites/prod/files/2019/05/f63/NEPA%20Community%20Guide%202019.pdf>

Environmental Protection Agency, “How Citizens Can Comment and Participate in the National Environmental Policy Act Process.” <https://www.epa.gov/nepa/how-citizens-can-comment-and-participate-national-environmental-policy-act-process>

## ENDNOTES

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<sup>i</sup> For example, the Administrative Procedure Act, 5 U.S. Code 551 et seq. See <https://www.epa.gov/laws-regulations/summary-administrative-procedure-act>

<sup>ii</sup> Paperwork Reduction Act, 44 U.S. Code 3501 et seq. See <https://www.epa.gov/laws-regulations/summary-paperwork-reduction-act>

<sup>iii</sup> Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq. See <https://www.epa.gov/laws-regulations/summary-regulatory-flexibility-act-amended-small-business-regulatory-enforcement>

<sup>iv</sup> Unfunded Mandates Reform Act of 1995, 2 U.S. Code 1501 et seq. See <https://www.epa.gov/laws-regulations/summary-unfunded-mandates-reform-act>

<sup>v</sup> National Environmental Policy Act, 42 U.S. Code 4321 et seq. See <https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>

<sup>vi</sup> Endangered Species Act, 16 U.S. Code 1531 et seq. See <https://www.epa.gov/laws-regulations/summary-endangered-species-act>

<sup>vii</sup> For example: E.O. 12866, Regulatory Planning and Review (See <https://www.epa.gov/laws-regulations/summary-executive-order-12866-regulatory-planning-and-review>); E.O. 13563, Improving Regulation and Regulatory Review; E.O. 13132, Federalism; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13045, Protection of Children From

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Environmental Health Risks and Safety Risks; E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use; E.O. 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

<sup>viii</sup> One tactic used by the Trump administration was changing cost-benefit analyses to make rules look less beneficial to the public. In proposing to rescind EPA's Waters of the US rule, for example, the administration changed the cost-benefit analysis that had shown that the rule's benefits would significantly exceed its costs. By removing some benefits (e.g., wetlands protection) from the equation, they tried to hide the fact that rescinding the rule would result in a net loss for the public. Pointing out this kind of flawed decision-making can be really helpful in public comments on a rulemaking.

<sup>ix</sup> E.O. 12866, which governs interagency review, provides for some transparency. It requires OIRA to place in a public docket any written comments received from other agencies during the interagency review process. It also requires agencies to identify for the public all the changes made to a proposed or final rule that were made at the suggestion or recommendation of OIRA. Some statutes add further transparency requirements. In the case of the Clean Air Act, for example, the draft rules submitted for interagency review and written comments from OIRA and other agencies must be submitted to the docket for the rulemaking.

<sup>x</sup> Links to some agency web pages for finding rules open for comment:

- The **Environmental Protection Agency (EPA)** has a page advising the public how to stay abreast of regulatory developments -- <https://www.epa.gov/laws-regulations/get-involved-epa-regulations>. At the time of this writing it appears that both this overview page and a page purporting to list EPA rules open for comment (<https://www.epa.gov/dockets/view-dockets-open-public-comment-program-office>) are incomplete and in need of updates.
- The **Department of Health and Human Services (HHS)** has a web page that shows all current rulemakings open for comment: <https://www.hhs.gov/regulations/comment-on-open-rules/index.html>. Another page has information on reviews of existing rules: <https://www.hhs.gov/open/retrospective-review/index.html?language=en>.
- The **Occupational Health and Safety Administration (OSHA)** has a "Laws and Regulations" web page with links to recent Federal Register notices, its regulatory agenda, and rulemakings open for comment: <https://www.osha.gov/law-regs.html>
- The **Securities and Exchange Commission (SEC)** has a page on how to comment that includes a link to rulemakings open for comment:

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<https://www.sec.gov/rules/submitcomments.htm>. The SEC also lists its recently proposed rules and offers notifications (in the form of an RSS feed) of its proposed rules at <https://www.sec.gov/rss/rules/proposed.xml>

<sup>xi</sup> For an introduction to environmental justice by the volunteer group Save EPA, see 2017 blog “The Trump Administration Proposes to Eliminate EPA’s Environmental Justice Program,” <http://saveepaalums.info/environmental+justice>.

<sup>xii</sup> Susan A. Perlin, David Wong & Ken Sexton, “Residential Proximity to Industrial Sources of Air Pollution: Interrelationships among Race, Poverty, and Age,” *Journal of the Air & Waste Management Association*, 2001, 51:3, 406-421. <https://doi.org/10.1080/10473289.2001.10464271>. Center for Effective Government, “Living in the Shadow of Danger: Poverty, Race and Unequal Chemical Facility Hazards,” January 2016. <https://www.foreffectivegov.org/shadow-of-danger/>. “Toxic Wastes and Race at Twenty 1987—2007,” United Church of Christ, March 2007. <https://www.nrdc.org/sites/default/files/toxic-wastes-and-race-at-twenty-1987-2007.pdf> . EPA, EJ Screening report for the Clean Power Plan, July 2015. <https://archive.epa.gov/epa/cleanpowerplan/ej-screening-report-clean-power-plan.html> (showing that 52 percent of people who live within three miles of a power plant identify as minority, versus 36 percent of the U.S. population).

<sup>xiii</sup> Michael Gochfeld and Joanna Burger, “Disproportionate Exposures in Environmental Justice and Other Populations: The Importance of Outliers,” *American Journal of Public Health*, December 2011 [101(Suppl 1): S53–S63]. [10.2105/AJPH.2011.300121](https://doi.org/10.2105/AJPH.2011.300121)

<sup>xiv</sup> World Health Organization, COP24 Special Report, Health and Climate Change, December 2018. <https://www.who.int/globalchange/publications/COP24-report-health-climate-change/en/>

<sup>xv</sup> [Bruce Bekkar, MD; Susan Pacheco, MD; Rupa Basu, PhD](#); et al; “Association of Air Pollution and Heat Exposure With Preterm Birth, Low Birth Weight, and Stillbirth in the US: A Systematic Review,” *JAMA Network*, June, 2020. [https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2767260?utm\\_source=For\\_The\\_Media&utm\\_medium=referral&utm\\_campaign=ftm\\_links&utm\\_term=061820](https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2767260?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=061820)

<sup>xvi</sup> Citing three studies:

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- Michelle L. Bell and Keita Ebisu, “Environmental Inequality in Exposures to Airborne Particulate Matter Components in the United States,” *Environmental Health Perspectives*, Vol. 120 No. 12, December 1, 2012.  
<https://ehp.niehs.nih.gov/doi/10.1289/ehp.1205201>
  - Ihab Mikati, Adam F. Benson, Thomas J. Luben, Jason D. Sacks, and Jennifer Richmond-Bryant, “Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status,” *American Journal of Public Health*, American Public Health Association, April 2018 (published online March 7, 2018).  
<https://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2017.304297?journalCode=ajph&>
  - See also Tessum, CW, et.al., “Inequity In Consumption of Goods and Services Adds to Racial–Ethnic Disparities in Air Pollution Exposure,” *Proceeding of the Natural Academy of Sciences (PNAS)* March 26, 2019 [116 (13) 6001-6006]; first published March 11, 2019. <https://doi.org/10.1073/pnas.1818859116>

<sup>xvii</sup> Xiao Wu, Rachel C. Nethery, Benjamin M. Sabath, Danielle Braun, Francesca Dominici, “Exposure to air pollution and COVID-19 mortality in the United States,” 2020.04.05.20054502; [https://projects.iq.harvard.edu/files/covid-pm/files/pm\\_and\\_covid\\_mortality\\_med.pdf](https://projects.iq.harvard.edu/files/covid-pm/files/pm_and_covid_mortality_med.pdf); E. Gould and V. Wilson, “Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality,” Economic Policy Institute, 2020. <https://www.epi.org/publication/black-workers-covid/>

<sup>xviii</sup> See February 24, 2021, news article by Lisa Whitney Coleman in EHS Daily at <https://ehsdailyadvisor.blr.com/2021/02/supplemental-environmental-projects-seps-welcomed-back-by-many/>; February 4, 2021, Justice Department memo at <https://www.justice.gov/enrd/page/file/1364716/download>; April 26 2021, EPA memo at <https://www.epa.gov/sites/production/files/2021-04/documents/usingallappropriateinjunctiverelieftoolsincivilenforcementsettlement0426.pdf>; and related May 5, 2021, news article by Ellen M. Gilmer in Bloomberg Law Environment and Energy Report at <https://news.bloomberglaw.com/environment-and-energy/environmental-enforcement-tool-still-stymied-by-trump-regulation>.

<sup>xix</sup> Kirkland and Ellis blog post, “Biden Administration’s Energy, Environmental and Climate Policies: Latest Updates and Actions,” March 29, 2021.

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<https://www.kirkland.com/publications/blog-post/2021/03/biden-energy-environmental-climate-updates>

<sup>xx</sup> The Washington Post, “The Race to Save Florida’s Devastated Coral Reef from Global Warming,” by Chris Mooney, June 25, 2017.

[https://www.washingtonpost.com/graphics/2017/business/environment/florida-reef/?utm\\_term=.6d8f11b268c5](https://www.washingtonpost.com/graphics/2017/business/environment/florida-reef/?utm_term=.6d8f11b268c5)

<sup>xxi</sup> Examples of articles and studies on job impacts of regulation:

- Hafstead, Marc and Robertson C. Williams III, “How Do Environmental Policies Affect Employment?” Resources (Resources for the Future’s online magazine), Issue 190, Fall 2015. See <http://www.rff.org/research/publications/how-do-environmental-policies-affect-employment>
- Semuels, Alana, “Do Regulations Really Kill Jobs?” The Atlantic, January 19, 2017. See <http://www.theatlantic.com/business/archive/2017/01/regulations-jobs/513563/>
- Irons, John, and Shapiro, Isaac, “Regulation, employment and the economy: Fears of job loss are overblown,” Economic Policy Institute, Policy Paper #305, April 12, 2011. See [http://www.epi.org/publication/regulation\\_employment\\_and\\_the\\_economy\\_fears\\_of\\_job\\_loss\\_are\\_overblown/](http://www.epi.org/publication/regulation_employment_and_the_economy_fears_of_job_loss_are_overblown/)
- Morgenstern, R. D., W. A. Pizer, and J. S. Shih. 2002, *Jobs versus the Environment: An Industry-Level Perspective*. Journal of Environmental Economics and Management 43(3):412-436. See <http://www.rff.org/files/sharepoint/WorkImages/Download/RFF-DP-99-01>
- Elmendorf, Douglas W., Director of Congressional Budget Office, “Policies for Increasing Economic Growth and Employment in 2012 and 2013,” Testimony before Budget Committee of U.S. Senate, November 15, 2011, pp. 45-46. See <https://www.cbo.gov/publication/42717?index=12437>

For examples of job impacts of some individual regulations, see for example:

- U.S. Environmental Protection Agency, “Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards,” EPA-452/R-11-011, chapter 6, December 2011. See <https://www.epa.gov/sites/production/files/2015-11/documents/matsriafinal.pdf>.
- Bivens, Josh, “The ‘toxics rule’ and jobs: The job-creation potential of the EPA’s new rule on toxic power-plant emissions,” Environmental Policy Institute, Issue Brief #325, February 7, 2012. See <http://www.epi.org/publication/ib325-epa-toxics-rule-job-creation/>

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- U.S. Occupational Safety and Health Administration, “OSHA Fact Sheet – OSHA’s Proposed Crystalline Silica Rule: Overview,” August 2013. See [https://www.osha.gov/silica/factsheets/OSHA\\_FS-3683\\_Silica\\_Overview.html](https://www.osha.gov/silica/factsheets/OSHA_FS-3683_Silica_Overview.html)
  - U.S. Department of Labor, “Fact Sheet: Final Rule to Update the Regulations Defining Delimiting the Exemption for Executive, Administrative, and Professional Employees,” May 2016. See <https://www.dol.gov/whd/overtime/final2016/overtime-factsheet.htm>