



January 30, 2024

To: Environmental Protection Agency

Re: Draft Revision of Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, 88 Fed. Reg. 78358 (Docket No. EPA–HQ–OA–2013–0320)

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)¹ respectfully submits the following comments to the Environmental Protection Agency (EPA) regarding its *Draft Revision of Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (Draft Revised EJ Technical Guidance).² Policy Integrity is a non-partisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.

EPA seeks comments on the Draft Revised EJ Technical Guidance, which highlights technical approaches that analysts can use to evaluate environmental justice concerns in regulatory actions. In these comments, Policy Integrity makes two recommendations to EPA:

- In Chapter 6, EPA should instruct analysts to document missing or incomplete data in as much detail as possible in cases where it is lacking; and
- EPA should instruct analysts to be as specific and transparent as possible when making analytical choices for assessing environmental justice concerns.

Background

EPA first published the *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (EJ Technical Guidance) in 2016.³ The purpose of the EJ Technical Guidance was to outline analytic expectations and discuss technical approaches and methods that can be used by EPA analysts to evaluate the environmental justice effects of regulatory actions. For the Draft Revised EJ Technical Guidance, EPA states, “Updates to the technical guidance reflect advancements in the state of the science; other new peer-reviewed Agency guidance documents; and new priorities and direction related to the conduct of environmental justice analysis, including Executive Order 14096.”⁴

¹ This document does not purport to represent the views, if any, of New York University School of Law.

² *Draft Revision of Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, EPA-HQ-OA-2013-0320 (Nov. 15, 2023) (Draft Revised EJ Technical Guidance).

³ *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*, EPA-HQ-OW-2023-0222-213 (2016) (EJ Technical Guidance).

⁴ *Public Comment on the Revised Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*,

Recommendations

In Section 3.1 of the Draft Revised EJ Technical Guidance, EPA “encourages analysts to document key reasons why a particular question cannot be addressed to help identify future priorities for filling key data and research gaps.”⁵ While the guidance expands on this point in Section 5.3.3.2 in the context of planning a Human Health Risk Assessment,⁶ as currently written, it is unclear if the guidance in Chapter 5 also applies to regulatory analyses in Chapter 6. EPA should provide similar guidance on when, and in how much detail to document cases of insufficient data and underdeveloped methodologies in Chapter 6.

Consistent with the guidance in the updated Circular A-4, this documentation would create a public record that may encourage researchers to address the identified insufficiency in the future.⁷ Documenting data or methodological gaps signals to academics and communities that there are areas where more research is needed and provides them with an incentive to fill the need. It also raises public awareness about the need and importance of data acquisition. In the environmental justice context, this awareness can signal to communities to explore methods of generating the data in collaboration with academics, as well as with agencies.

EPA should instruct analysts to document the status of available data and methods in as much detail as possible. This includes, but is not limited to, whether the data are missing or incomplete; available but not of the desired granularity (spatially or temporally); and/or available for only subsets of the population (e.g., more data available for urban regions compared to rural ones). EPA should also instruct analysts to document whether the scientific literature falls short methodologically, and what data and methodology would be needed to quantify environmental justice effects. EPA should also make it clear that qualitative analyses are complements of such documentation, not substitutes for them.

In addition, EPA should advise analysts to be as transparent as possible when making analytical choices for evaluating environmental justice concerns. Specifically, researchers should disclose when and why they chose a particular approach, method, or dataset over another and/or provide a concrete justification when they decide that a particular analysis is either not required or does not offer additional insights. Doing so is consistent with the guidance in the updated Circular A-4, which states that analysts “should aim for transparency about key methods, data, and other analytical choices” made in their analysis and specifically, “when distributional effects are relevant to the agency’s decision, you should summarize your results and describe your analysis in a manner that supports transparency and comprehensibility for policymakers and the public.”⁸

88 Fed. Reg. 78358, EPA–HQ–OA–2013–0320 (November 15, 2023).

<https://www.federalregister.gov/documents/2023/11/15/2023-25126/public-comment-on-the-revised-technical-guidance-for-assessing-environmental-justice-in-regulatory>

⁵ Draft Revised EJ Technical Guidance at 15–16.

⁶ *Id.* at 38.

⁷ OFF. OF MGMT. & BUDGET, CIRCULAR A-4 2 (Nov. 9, 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf> (Circular A-4 Update)(“[I]t is helpful to outline the data collection or analysis that would enable quantification or monetization, even if doing such data collection or analysis is currently infeasible. Doing so may encourage research that would allow for such effects to be quantified or monetized in future regulations.”).

⁸ Circular A-4 Update at 4, 65.

Conclusion

Overall, the Draft Revised EJ Technical Guidance is much improved from its previous version and will go a long way in addressing environmental justice in regulatory actions. EPA can further improve upon the guidance by providing more clarity and instruction to analysts on documenting missing or incomplete data in as much detail as possible and instructing analysts to be as transparent as possible when making analytical choices for assessing environmental justice issues.

Respectfully,

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