

# WE ACT Thriving Communities Technical Assistance Center (TCTAC)

EPA Region 2: NY & NJ

## *The Federal Rulemaking Process & Environmental Justice*

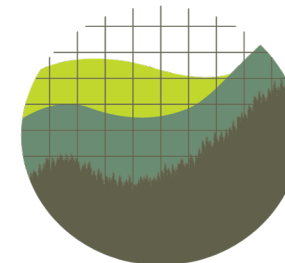


### **Presenter:**

**Al Huang (he/him)**

**Environmental Justice Director**

**October 16, 2024**

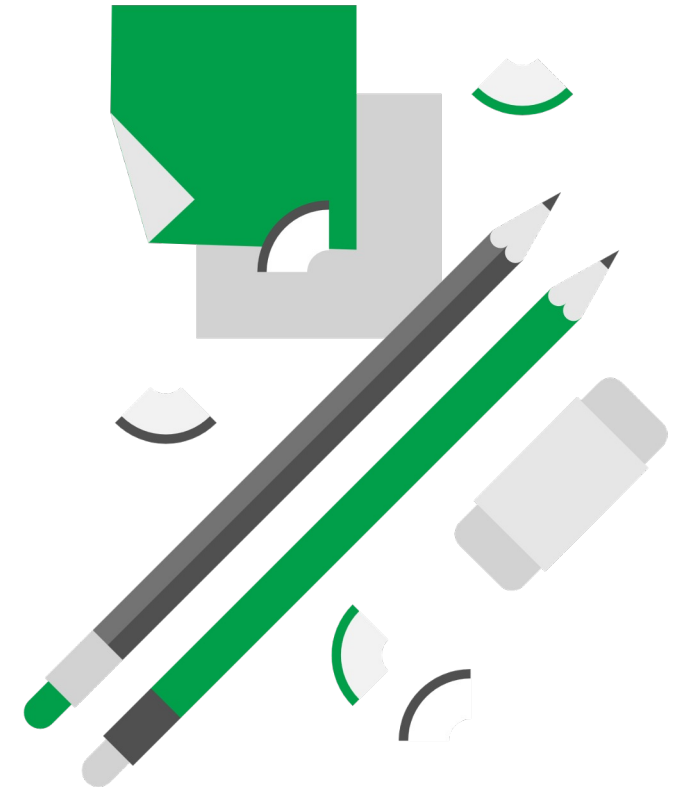


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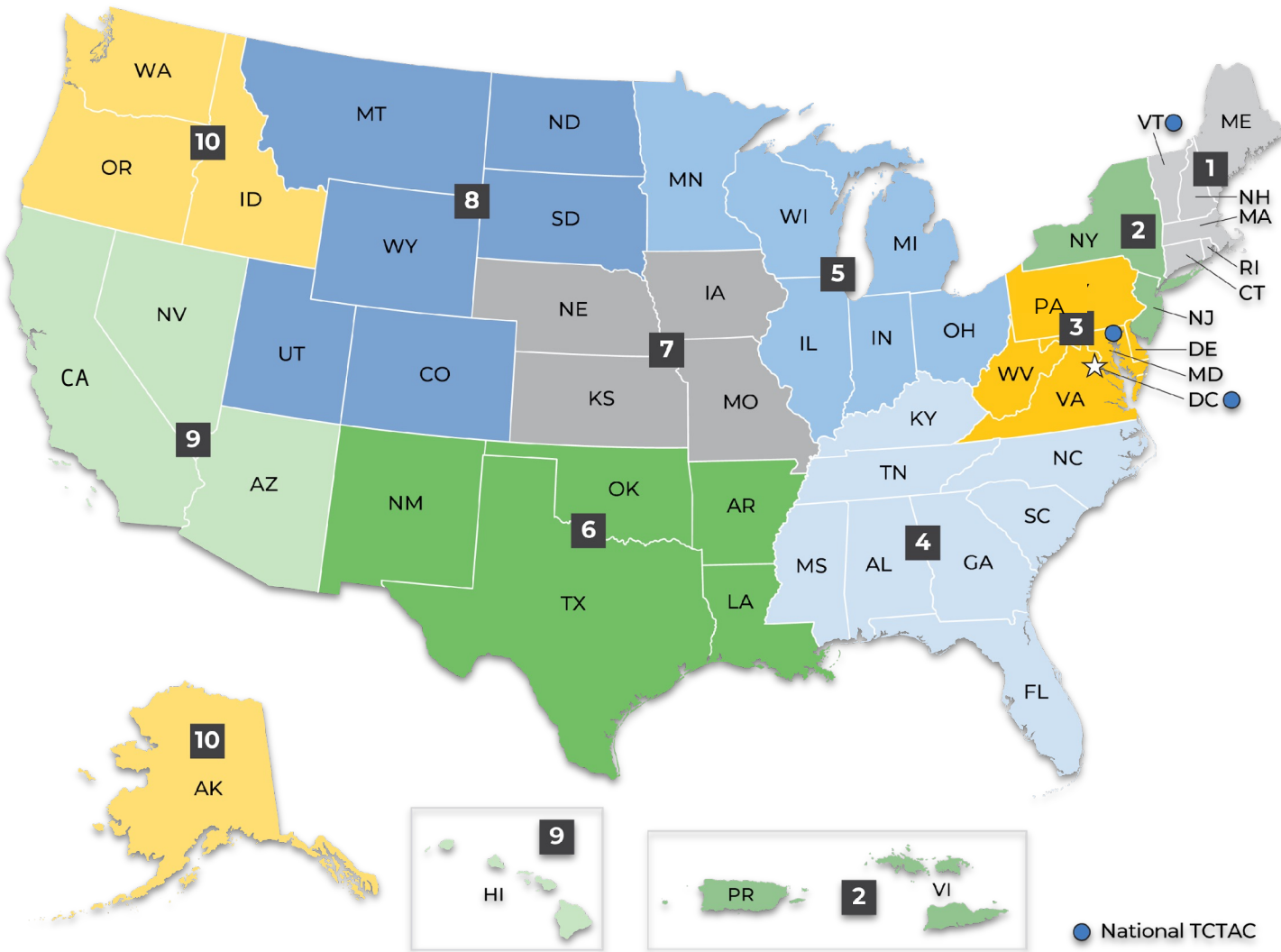
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# Logistics

- **This meeting is being recorded. The recording and slides will be shared on our TCTAC website.**
- **Please keep yourself muted while the presenter is speaking.**
- **If you have a question prior to the Q&A portion of this session, please drop it in the chat.**
- **During the Q&A section, we will answer questions from the chat, or you can use the “raise hand” reaction in Zoom.**



# Thriving Communities Technical Assistance Center (TCTAC) Regions



## There are 18 TCTACs:

• **3 National TCTACs**

• **15 Regional TCTACs**

- Region 1** CT, ME, MA, NH, RI, and VT
- Region 2** NJ, NY, Puerto Rico, the U.S. Virgin Islands and 8 federally-recognized Indian Nations (2 TCTACs)
- Region 3** DE, DC, MD, PA, VA, WV and 7 federally-recognized tribes
- Region 4** AL, FL, GA, KY, MS, NC, SC, and TN (2 TCTACs)
- Region 5** IL, IN, MI, MN, OH, and WI (2 TCTACs)
- Region 6** AR, LA, NM, OK, and TX
- Region 7** IA, KS, MO, and NE
- Region 8** CO, MT, ND, SD, UT, and WY
- Region 9** AZ, CA, HI, NV, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Marshall Islands, and Republic of Palau (2 TCTACs)
- Region 10** AK, ID, OR, WA and 271 native tribes (2 TCTACs)

National TCTAC

# EPA EJ THRIVING COMMUNITIES TECHNICAL ASSISTANCE CENTER (TCTAC) PROGRAM

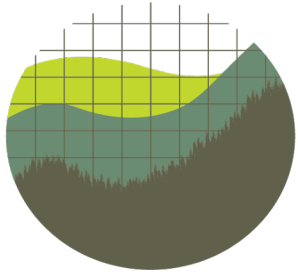


- The TCTAC program was launched by the **Environmental Protection Agency (EPA)**, in conjunction with the **Department of Energy (DOE)**, to ensure that environmental justice (EJ) communities receive the support they need to benefit from the funding directed by the Justice40 Initiative, Inflation Reduction Act, and Bipartisan Infrastructure Law

The WE ACT TCTAC's **goals** are to:

- Build power and knowledge in EJ communities
  - Create or strengthen EJ networks within our region
  - Help groups gain access to grant and funding opportunities
  - Help groups advance and address environmental and energy justice issues
- **Grant period:** 5 years, 2023-2028
  - **Region 2:** New York, New Jersey, 8 Indian Nations of New York



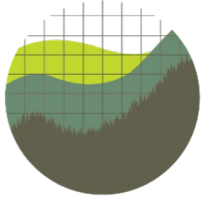


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# ***THE FEDERAL RULEMAKING PROCESS & ENVIRONMENTAL JUSTICE***





# *Outline for Today's Training*

We will answer the following questions:

- What are federal rules related to environmental protection and how do they impact an environmental justice community?
- What are the steps federal agencies take to make rules?
- How is environmental justice considered in rulemaking?
- What are opportunities for communities to influence the rulemaking process?

We will also discuss **EPA's Risk Management Plan (RMP) rule under the Clean Air Act** as a **case study** for how environmental justice communities can engage and influence federal rulemaking.

# HOW ARE FACILITIES REGULATED?



## LOCAL AND MUNICIPAL REGULATION

Cities and towns can have their own land use and zoning requirements that dictate how and where things are built.

## FEDERAL & STATE EJ LAWS AND POLICIES

## STATE REGULATION

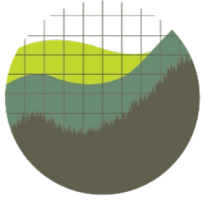
State legislatures pass laws and state agencies issue rules to implement the law.

## OTHER STATE LAWS

States have their own body of common law that regulates issues such as nuisance, noise, and odors.

## FEDERAL REGULATION

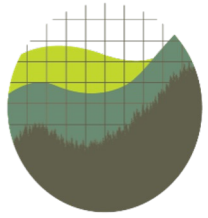
Congress passes laws and federal agencies issue rules to implement the law.



## *What Is a Federal Rulemaking?*

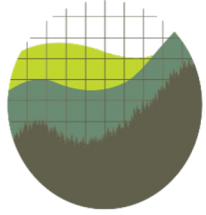
- Generally, a **rule/regulation** is a directive issued by a federal agency that interprets and enforces a law.
- The terms “rule” and “regulation” are often used interchangeably.
- **Federal agencies** create, amend, or repeal rules through a process called **rulemaking**.
- The agencies get their **authority** to issue rules from **laws passed by Congress**.
- When Congress passes a law, it often **delegates rulemaking authority to a specific agency** to achieve the law’s goals.
- For environmental laws, rulemaking is usually delegated to agencies such as the Environmental Protection Agency (EPA).
- Once a rule is finalized, it may often be followed by the issuance of more specific **guidance**.
- Rules have the **force of law**, guidance does not.





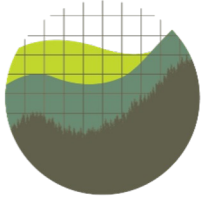
# *What Is the Rulemaking Process?*





# *Key Terms in the Rulemaking Process*

- The **Administrative Procedures Act (APA)** governs the basic requirements that federal agencies must follow when creating rules, such as requiring agencies to **provide public notice and seek comment** prior to enacting most new regulations.
- The **Federal Register** is where an agency must publish any major change in its policies and rules that may affect the public. All stages of rulemaking are noticed and posted in the Federal Register. The postings will often call for public comments.
- The **rulemaking docket** contains all of an agency's relevant rulemaking announcements, materials, supporting documents (e.g., economic and environmental analyses), studies and other references, all public comments, and other relevant documents.
- **Dockets** for agency rulemakings can be found at [Regulations.gov](https://www.regulations.gov). You can access any electronic docket on this site by searching with a unique identifier such as the docket number or ID or a keyword.
- **Public comments** are formal responses submitted by individuals, organizations, or other stakeholders in response to requests for public comments by federal agencies.



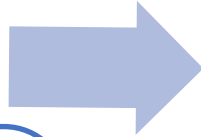
# Pre-Rule Stage

## Initiating Rulemaking

**Legal Mandate:** Congress specifically requires a rule and may set a timeline for the initiation of rulemaking.

**Agency Identification of Need:** Agency decides to propose a new rule or to modify an existing rule.

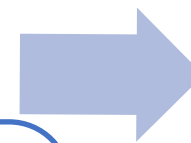
**Petition for Rulemaking:** Stakeholders ask or petition an agency to renew, modify, initiate or withdraw a rule.



## Agency Publishes Plans

Agencies publish their plans to initiate rulemaking in an annual **Regulatory Plan or Unified Agenda** posted on [reginfo.gov](http://reginfo.gov) and [regulations.gov](http://regulations.gov).

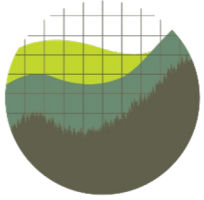
The plan/agenda is a good way to start thinking about what rules are coming up that you may want to comment on.



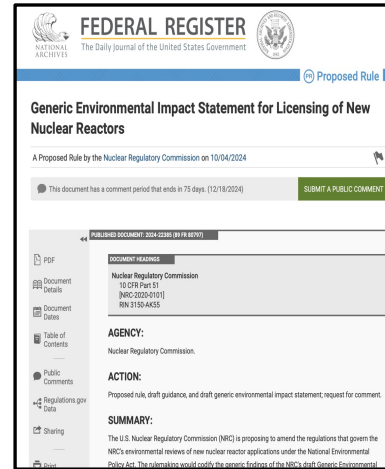
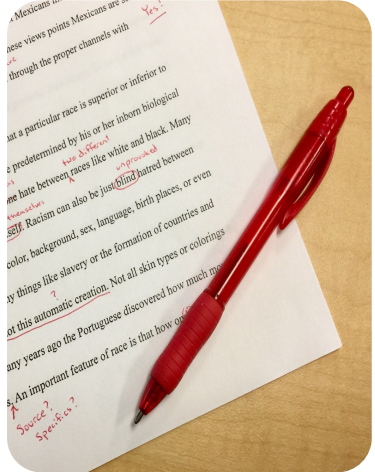
## Request for Comments

**Request for Information (RFI):** General request for comments on how to implement a law, whether an agency should issue a new rule, or if there is a need to change an existing rule.

**Advance Notice of Proposed Rulemaking (ANPRM):** Describes rule that agency is considering, explains issues, and asks the public specific questions, including whether a rulemaking should be initiated.



# Proposed Rule Stage



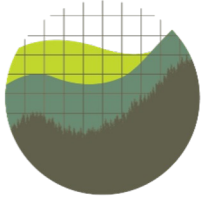
Agency drafts proposed rule.

If a rule is significant, the Office of Information and Regulatory Affairs (OIRA) of the Office of Management Budget (OMB) in the White House performs an interagency review of the rule.

Notice of Proposed Rulemaking (NPRM)

Public Comment Period





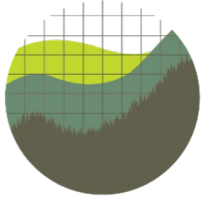
## *Proposed Rule Stage – NPRM and Public Comment Period*

Notice of  
Proposed  
Rulemaking  
(NPRM)

- Published in the **Federal Register**.
- Begins with a “**Summary**” of the issues and actions under consideration.
- The “**Supplementary Information**” discusses the merits of the proposed rule, cites important data and other information used to develop the action, and details its choices and reasoning.
- Typically, the **full text of the regulation** appears after the “**Preamble**” section.
- May contain the **Regulatory Impact Analysis** and **Environmental Justice Analysis**.

Public  
Comment  
Period

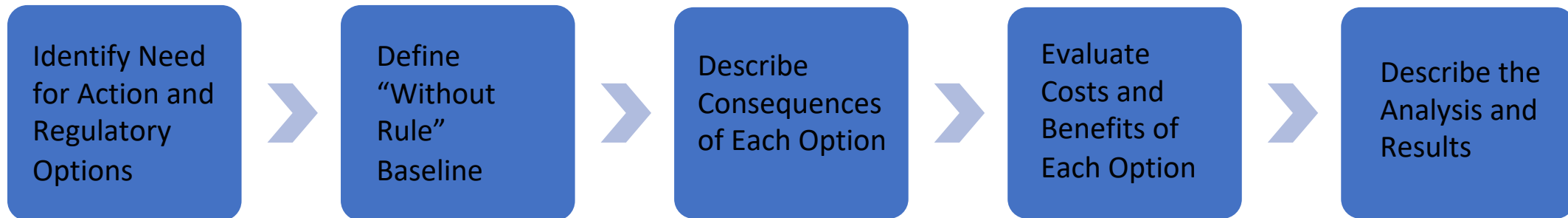
- Typically, the public comment period for a new rule is **60 days**, but depending on the rule, can also be **30** or **90 days**.
- Comments are accepted through [Regulations.gov](https://www.regulations.gov).
- After comment period closes, agency **reviews all comments received**.
- Agency then decides **whether to make changes** in response to the comments.
- Holding a **public hearing(s)** is discretionary, unless required by the specific law the rulemaking is under and/or depending on agency policy.

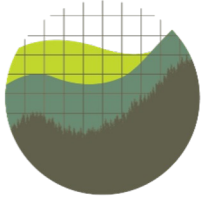


# *What Is a Regulatory Impact Analysis?*

- When considering significant rules, agencies must conduct a **Regulatory Impact Analysis**.
- Includes the evaluation of a variety of **economic and environmental impacts**.
- Are published along with proposed rules and are part of the rulemaking docket.
- May also consider, where relevant and appropriate, values such as **equity, human dignity, fairness, potential distributional impacts**, privacy, and personal freedom.

## Basic Steps an Agency Takes in a Regulatory Impact Analysis

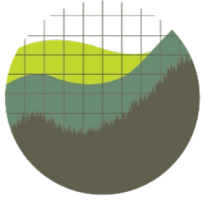




# What Is Cost-Benefit Analysis?

- Cost-benefit analysis is a tool used in the **Regulatory Impact Analysis** to ensure that **benefits of a rule justify the costs to society**.
- In rulemaking, benefits and costs should be **quantified and monetized** to the extent possible, and presented in both **physical units** (e.g., number of illnesses avoided) and **monetary terms**.
- When quantification of a particular benefit or cost is not possible, it should be described **qualitatively**.
- Those who bear the costs of a regulation and those who enjoy its benefits often are not the same people.
- **Distributional Analysis (DA)** is an analytical tool that provides insight into how the costs and benefits are distributed across the population and economy (e.g., by income groups, race, sex, industrial sector, age, geography).
- **Regulatory Impact Analyses** should, but in practice do not always, provide a **description of distributional effects** so that decisionmakers can properly consider them along with the effects on economic efficiency (i.e. net benefits).

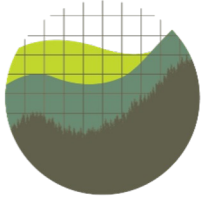




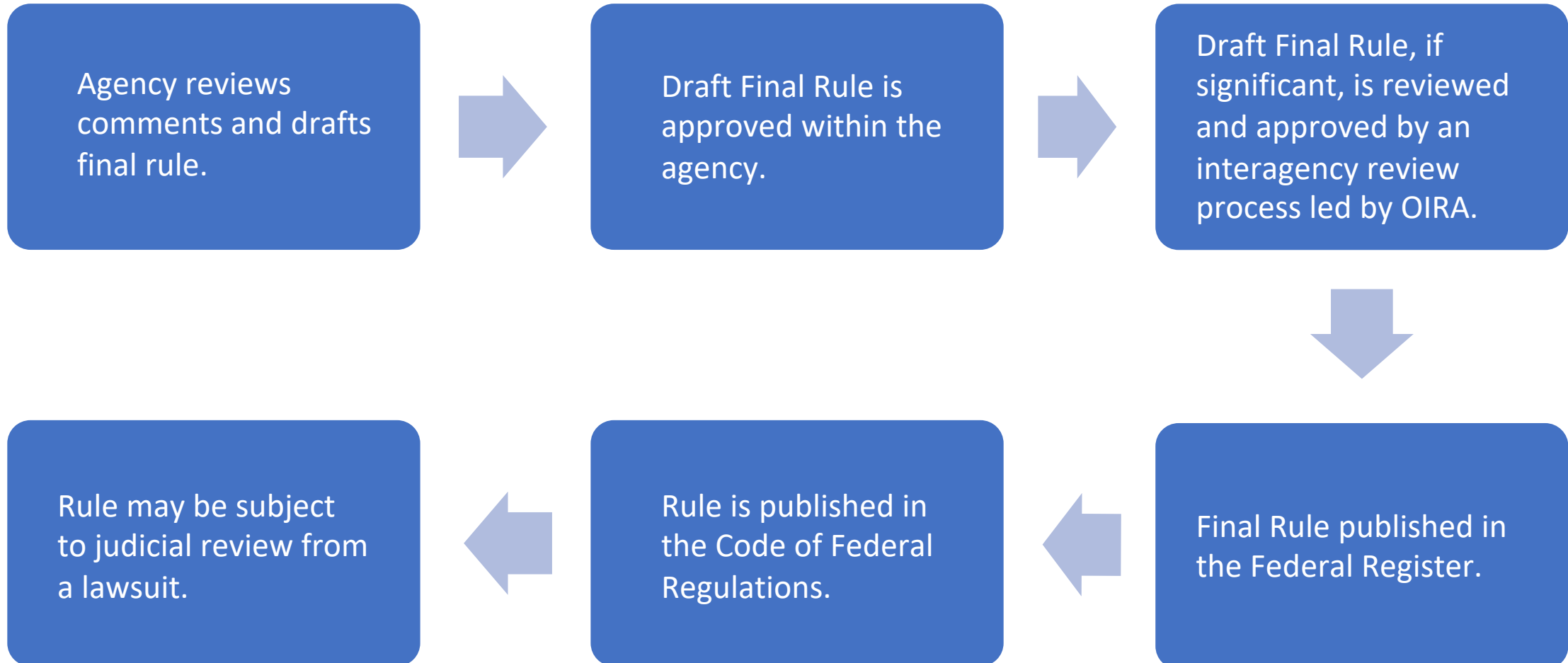
# *What Is an Environmental Justice Analysis (EJ Analysis)?*

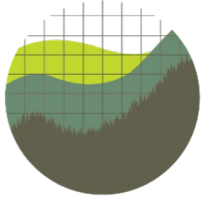
- [Executive Order 14,096](#) (2023) calls on federal agencies to **identify, analyze, and address the potential for disproportionate and adverse human health or environmental effects** of federal programs, policies, and activities in specific communities or for populations of concern (e.g., low income, people of color, Tribes).
- EO says agencies should consider the impacts from **climate change, cumulative impacts, historic inequities, and systematic barriers** to accessing federal policies and programs in their actions.
- EO says agencies should include **meaningful, accessible community involvement** in their decisionmaking processes.
- An **EJ analysis** focuses on identifying and analyzing specific **socio-demographic characteristics**, such as race, ethnicity, and income, that may correlate with **higher exposure to pollution, lack of environmental benefits, or increased vulnerability**.
- Also focuses on identifying and analyzing the role of **existing and historical conditions** that might contribute to the vulnerability of already heavily burdened communities/populations.
- Typically appears in the docket either in the **Regulatory Impact Analysis**, in the **preamble** to a proposed rule, or as a **technical support document**.





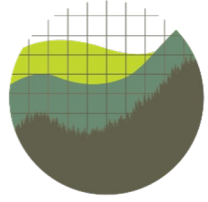
## *Final Rule Stage*





# *OIRA: Why Should You Engage? How?*

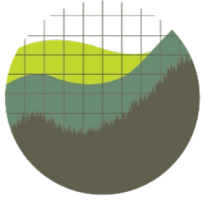
- OIRA ensures agency compliance with the **regulatory principles** in Executive Order 12,866, which include promoting public participation at all stages of rulemaking, incorporating public comment, considering alternatives to the rulemaking, and analyzing both costs and benefits.
- **OIRA** also ensures that rules are consistent with law, promote the president's priorities, and benefit the public.
- You can **submit comments** or **meet** with OIRA **while a rule is under their review** at either the proposal or final stage.
- If you want to **request a meeting**, you must use the form available at [Reginfo.gov](https://www.reginfo.gov).
- Effective to raise comments regarding the **equity and potential distributive impacts** of rules. It is also a good opportunity to **reinforce points** you've previously made to the agency.
- OIRA meetings are **not a substitute** for public comments.
- A log (see [Reginfo.gov](https://www.reginfo.gov)) is kept of all meetings between OIRA and all groups and individuals regarding a rule under review.



# *Public Comments: Why Do It?*



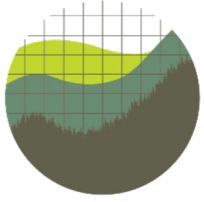
- To **convince the agency** to change or improve the proposal, or to adopt a particular proposal (in response to an RFI/ANPRM).
- To **bolster the administrative record** with evidence supporting the action or to provide the agency with additional information it might not otherwise have.
- To **preserve arguments** for parties to litigate. (When do we do this? When we oppose the rule or want to defend it!)
  - An argument cannot be raised in litigation against an action unless it was raised to the agency during the comment period.
  - The **agency has a legal obligation to respond to all substantive comments**. If they respond poorly to your comment, this could support your legal argument in subsequent litigation that they didn't adequately consider the issue.
- To **engage stakeholders and communities** to organize and build power around issues.
- To **signal political support/opposition**.
- Prepare your comments with a goal in mind!



# *What Should I Raise in My Comments?*



- **Social, Health, Safety, and/or Environmental Impacts:** Explain how the rule could affect communities, public health, safety, the environment, and/or specific populations (e.g., low-income groups, workers, or minority communities).
- **Vulnerable Populations/EJ:** Identify how certain groups might be disproportionately affected by the rule (e.g., race, income, children, elderly, persons with disabilities).
- **Omission of Costs or Benefits:** Highlight any costs or benefits that the agency may have overlooked or underestimated in its analysis. For example, the rule might not fully account for certain economic, environmental, or social impacts.
- **Non-monetized Effects:** If the rule doesn't account for important non-monetized benefits or harms (such as social equity or quality-of-life impacts), emphasize the importance of these factors.
- **Lived Experience:** Sharing personal experiences or expertise can provide valuable context for the agency. Personal stories about how the rule will affect you or your community (positively or negatively) can be powerful in highlighting real-world consequences.
- **Public Engagement:** If you believe there needs to be more public input or a public hearing on the issue, you can request it in your comments. This can help extend the dialogue and increase transparency.

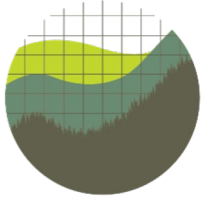


# *Tips for Preparing Public Comments*



- Be specific.
- Say what you support, as well as what you don't like.
- Tell your story. Explain your stake in the issue and why it matters.
- Support your points with as much facts as possible.
- Use your first two pages wisely.
  - **Short Introduction** – usually 1-2 pages laying out the key points clearly and succinctly.
  - Use of **bullet points** can be very effective here.
  - Use **bold text** for key points in the introduction.
- Use Headlines.
  - **Headlines** should always be argumentative statements, such that a reader can read just the headline and know the section's main argument.
  - Every distinct point should get a headline. Use your judgment but err on the side of more headlines.
  - Agencies often hire third-party contractors to summarize comments for the agency and they may just pull the headers and bullets.





# *EPA Risk Management Plan (RMP) Rule: A Case Study of EJ in Rulemaking*

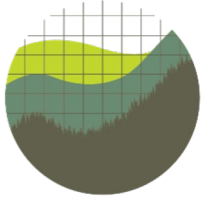




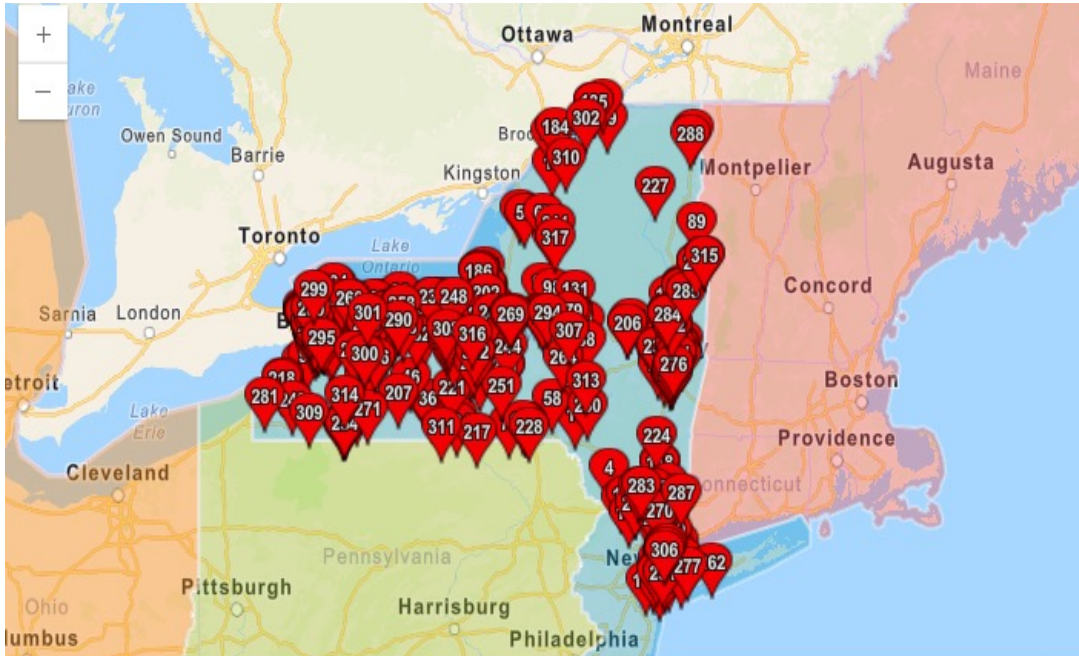


Play Video by Clicking on Image Above or [Here](#).

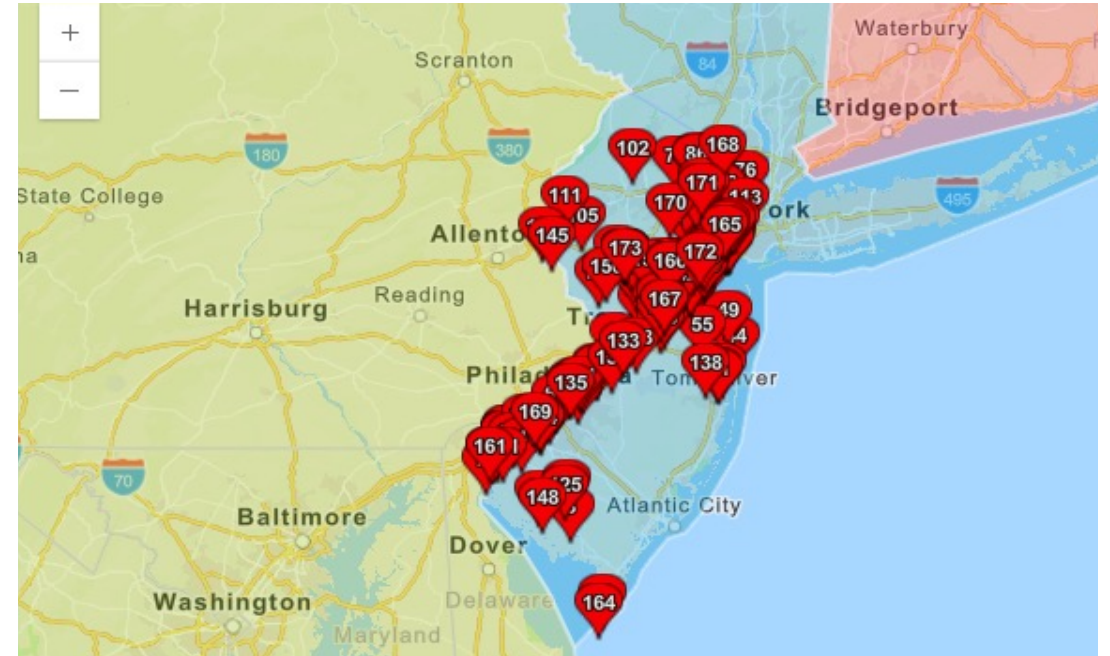




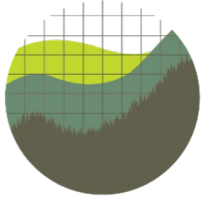
# *RMP Regulated Facilities in New York and New Jersey*



**317** RMP Facilities NY



**173** RMP Facilities in NJ

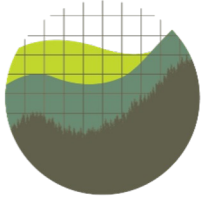


# *Who Are Coming Clean and EJHA?*

- **Coming Clean** is a network of over 100 organizations and technical experts — including grassroots activists, community leaders, scientists, health professionals, business leaders, lawyers, and farmworker advocates — committed to principled collaboration to advance a nontoxic and just world for all.
- **Environmental Justice Health Alliance for Chemical Policy Reform (EJHA)** is a national network of grassroots environmental and economic Justice organizations and advocates in fenceline communities in 10 states that are disproportionately impacted by toxic chemicals from legacy contamination and ongoing exposure to polluting facilities.

coming clean

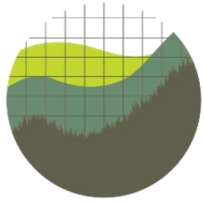




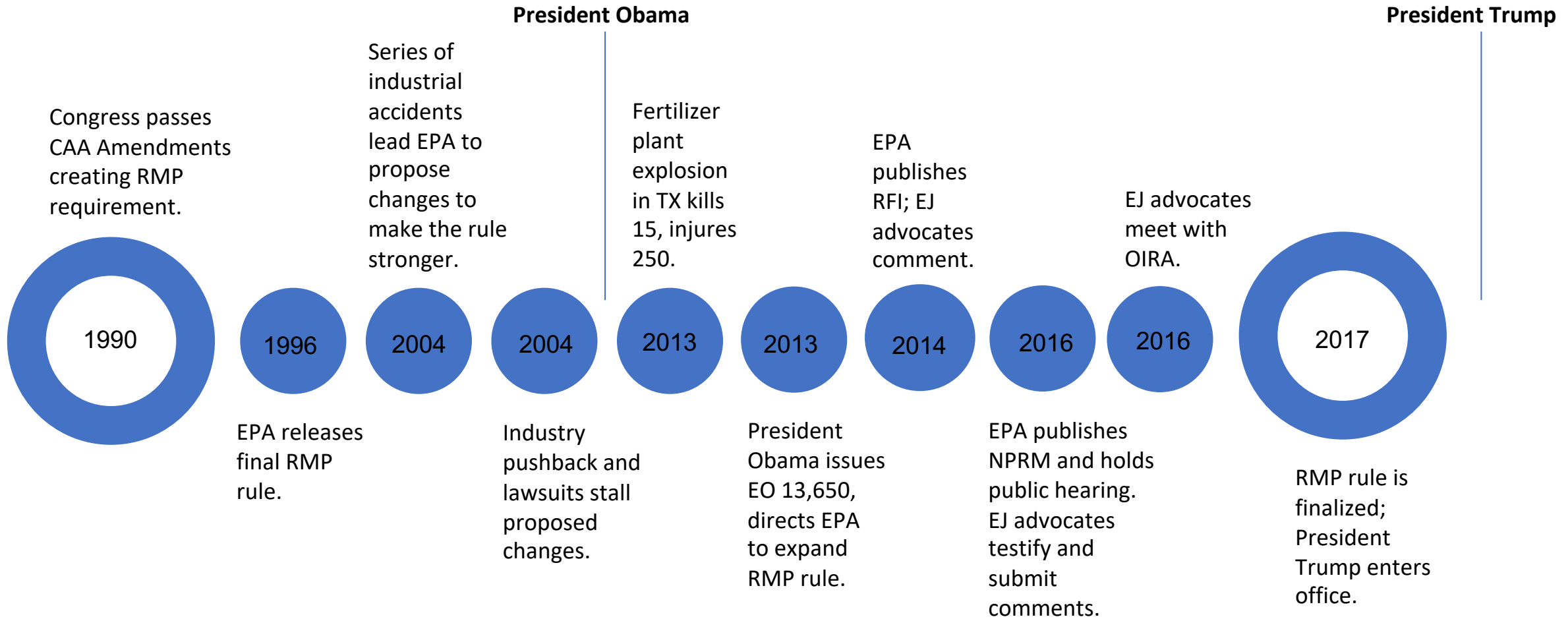
# *What Is the EPA RMP Rule?*

- When Congress passed the Clean Air Act (CAA) Amendments of 1990, it required EPA to publish regulations and guidance for **chemical accident prevention** at facilities using *substances that pose the greatest risk of harm from accidental releases*.
- The law requires EPA to develop a **Risk Management Plan (RMP)** for these facilities that include:
  - a **hazard assessment**;
  - a **prevention** program; and
  - an **emergency response** program.

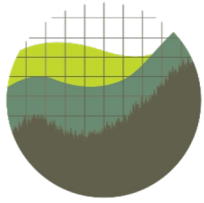




# History of the RMP Rule







# History of the RMP Rule

Trade associations, oil and chemical companies, and 10 states file petitions with EPA requesting the rule be reconsidered and stayed.

EPA delays effective date to 2019.

EJ advocates meet with OIRA to oppose rule.

## President Biden

EPA announces that it plans to restore the RMP rules.

EPA holds 3 public hearings on NPRM. EJ advocates testify and urge EPA to strengthen the rule.

EJ advocates publish reports - one finds that there have been over 825 hazardous chemical incidents since 2021.

EPA finalizes rule.

2017

2017

2017

2018

2019

2019

2021

2022

2022

2022

2022

2023

2024

EPA proposed to delay rule until 2019.

EPA proposes new rule that rolls back President Obama-era amendments.

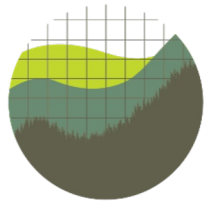
EPA finalizes RMP rule that rolls back President Obama-era amendments.

EPA releases a NPRM, which reintroduces President Obama-era rules that never took effect.

EJ advocates and over 80 allied organizations file joint comments.

EJ advocates and green groups have joint meetings with OIRA to support and strengthen the rule.



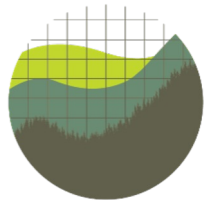


# RMP Rule Is Finalized by EPA!

The **Final RMP Rule** incorporates many key recommendations from EJ advocates including, but not limited to:

- requiring petroleum refineries, chemical plants, and coal product manufacturing facilities to assess whether they could use safer chemicals and processes;
- requiring all RMP facilities to assess climate-related hazards;
- requiring backup power for existing air monitors;
- improving worker participation in hazard assessments;
- making certain RMP data publicly available; and
- requiring third-party compliance audits and investigations of the root cause of incidents.

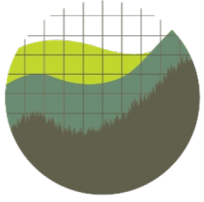
The screenshot shows the EPA website page for the Risk Management Program (RMP) Rule. The page header includes the EPA logo and navigation links for Environmental Topics, Laws & Regulations, Report a Violation, and About EPA. The main heading is "Risk Management Program (RMP) Rule" with a "CONTACT US" link. A sidebar on the left contains links for RMP Home, About RMP, Guidance and Fact Sheets, Submitting an RMP, Accessing RMP Information, and General Duty Clause. The main content area features the title "Risk Management Program Safer Communities by Chemical Accident Prevention Final Rule" and a "On this page:" section with links to Rule Summary, Rule History, and Additional Resources. Below this is a "Rule Summary" section with text: "On February 27, 2024, EPA Administrator Michael S. Regan signed the Safer Communities by Chemical Accident Prevention rule, which finalizes revisions to the Risk Management Program to further protect vulnerable communities from chemical accidents, especially those living near facilities in industry sectors with high accident rates. The final rule includes new safeguards such as identifying safer technologies and chemical alternatives, requiring implementation of safeguard measures in certain cases, more thorough incident". A "Basic Information" sidebar on the right lists "Legal Authorities" (42 U.S.C. §7412(r)), "Code of Federal Regulations Citations" (40 CFR Part 68), and "Docket Numbers" (EPA-HQ-OLEM-2022-0174).



## *RMP Rule's EJ Analysis*

- EPA's EJ analysis shows that people of color and low-income populations are more likely to be in proximity to RMP facilities, and at greater risk (more likely to be exposed if a hazardous release occurs) than other populations.
- EPA cites three studies/reports, including one from **EJHA** that found populations vulnerable to releases from chemical facilities were disproportionately Black or Latino.
- Analysis includes narrative of steps taken to ensure “fair treatment” and “meaningful participation” in the rulemaking process.
- EPA did not perform a **distributional analysis** in the **Regulatory Impact Analysis**.



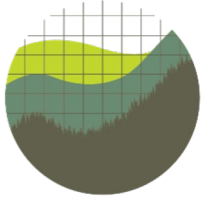


# *How EJ Communities Built Power on the RMP Rule and Won*

- **Organize a Coalition, Build a Campaign**
- Coming Clean and EJHA prioritized EPA's RMP rule and organized a multi-year campaign to defend the rule and urge EPA to strengthen it to better prevent, prepare for, and respond to chemical disasters.
- Coalition spent almost 20 years documenting issues at RMP facilities, issuing reports, and meeting with agency and elected officials to demand action.
- Organized joint comment letters where over 80 organizations and experts signed on.







# How EJ Communities Built Power on the RMP Rule and Won

- Engaged media to heighten national awareness, especially when hazardous chemical disasters made national news.
- Partnered with mainstream NGOs on strategy, comments, and agency meetings.
- Brought in various experts to comment on the proposed rules.
- Stuck to the battle all the way to the end – regardless of what administration was in office – participating at every level and opportunity that was available.



# Questions & Answers



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