



President Biden Issues Long-Awaited Update to Clinton-era Environmental Justice Executive Order

By Hannah Perls

On April 21, 2023, [President Biden issued Executive Order \(EO\) 14096](#), “Revitalizing Our Nation’s Commitment to Environmental Justice for All,” updating President Clinton’s [EO 12898](#), “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” Environmental justice (EJ) groups have long criticized the 1994 order for not specifying how agencies should fulfill its mandates, nor creating accountability mechanisms to ensure agencies comply. President Biden’s EO broadens the scope of the 1994 order and offers agencies specific guidance on how to take EJ-related concerns into consideration while fulfilling their statutory mandates, including under the National Environmental Policy Act (NEPA). Key changes are summarized in the table below.

Read [EELP’s analysis of the 2023 EO here](#). For updates on the order’s implementation, visit [EELP’s Federal EJ Tracker](#).

Key Differences Between the 1994 EO and the 2023 EO on Environmental Justice

Topic	1994 EO (EO 12898)	2023 EO (EO 14096)
Expanded Application and Scope of Review		
Covered Executive Agencies	Applies to 13 agencies, with the option for the president to add more	Applies to all executive agencies, including several not named under the 1994 order: the Departments of Education, Treasury, State, and the Small Business Administration.
Covered Federal Activities	Applies to agency “programs, policies, and activities”	Applies to any agency “rulemaking, guidance, policy, program, practice, or action” and “may include” permitting-related actions, including reissuance of licenses and permits
Populations of Concern	Agencies must analyze relevant impacts on “minority populations and low-income populations.”	Expands communities of concern to all “with environmental justice concerns” including geographically dispersed populations (e.g., migrant farmworkers)
Covered Effects	Agencies must identify and address “disproportionately high and adverse human health or environmental effects”	Lowers the threshold and broadens the scope of relevant effects by requiring agencies to identify, address, and analyze “disproportionate and adverse human health and environmental effects (including risks),” including cumulative impacts and effects related to climate change.
Independent Agencies	Requests independent agencies to comply	CEQ to create public accountability mechanism by posting list of independent agencies that commit to voluntarily comply with the order
Definition of “Environmental Justice”	None	Establishes the first government-wide definition of environmental justice, with an explicit focus on Tribes and people with disabilities, and consideration of cumulative environmental impacts and climate change-related effects.



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Statute-Specific Provisions		
NEPA	Not discussed	Requires agencies to consider disparate impacts on communities with environmental justice concerns in their NEPA reviews, including sex- and disability-specific impacts, and requires EPA to review other agencies' EJ analyses under section 309 of the Clean Air Act
Nondiscrimination in Federally Funded Activities	Not discussed	Reaffirms federal agencies' duty under Title VI of the Civil Rights Act of 1964 to ensure state agencies and other recipients of federal funding do not discriminate on the basis of race.
Emergency Planning and Community Right-to-Know Act (EPCRA)	Agencies must collect and publish data on the race, national origin, and income of communities near facilities that have a "substantial" environmental effect and are subject to EPCRA.	Agencies must hold a public meeting following an EPCRA-qualifying release within 6 weeks, with at least 72 hours' notice. EPA will submit an annual report to the White House on trends in toxic releases to inform the White House's EJ Research Plan.
Public Engagement and Implementation Provisions		
Public Engagement	Agencies "may" translate crucial documents for people with limited English proficiency	Shifts the burden onto federal agencies to ensure meaningful community engagement, including by providing "timely opportunities" for communities to participate in agency decisions, "fully consider[ing]" communities' input, and ensuring information is accessible to people with limited English proficiency or disabilities
Public Accountability Mechanisms	Agencies must develop an internal EJ strategy but are not required to update the strategy or share it publicly.	Requires agencies to publish EJ Strategic Plans (to be updated every four years), and self-assessments of progress made on the plans (published every two years). These will likely include opportunities for public comment and feedback.
New Implementation Capacity	None	Creates new White House EJ offices and subcommittees to coordinate order implementation and assess data gaps essential to identifying EJ impacts. Requires agencies in the Interagency Council to designate an EJ Officer
Filling Data Gaps	Agencies must "assist" in coordinating interagency data collection and allow minority and low-income populations to comment on the design of agencies' research strategies.	New White House Subcommittee to host annual summit on EJ-related science, data, and research, and prepare and update biennially an EJ Research Plan with recommendations for agencies.