

Regulatory Analysis, Environmental Justice and Rulemaking

Presentation for the
Science Advisory Board Environmental
Justice Technical Review Panel

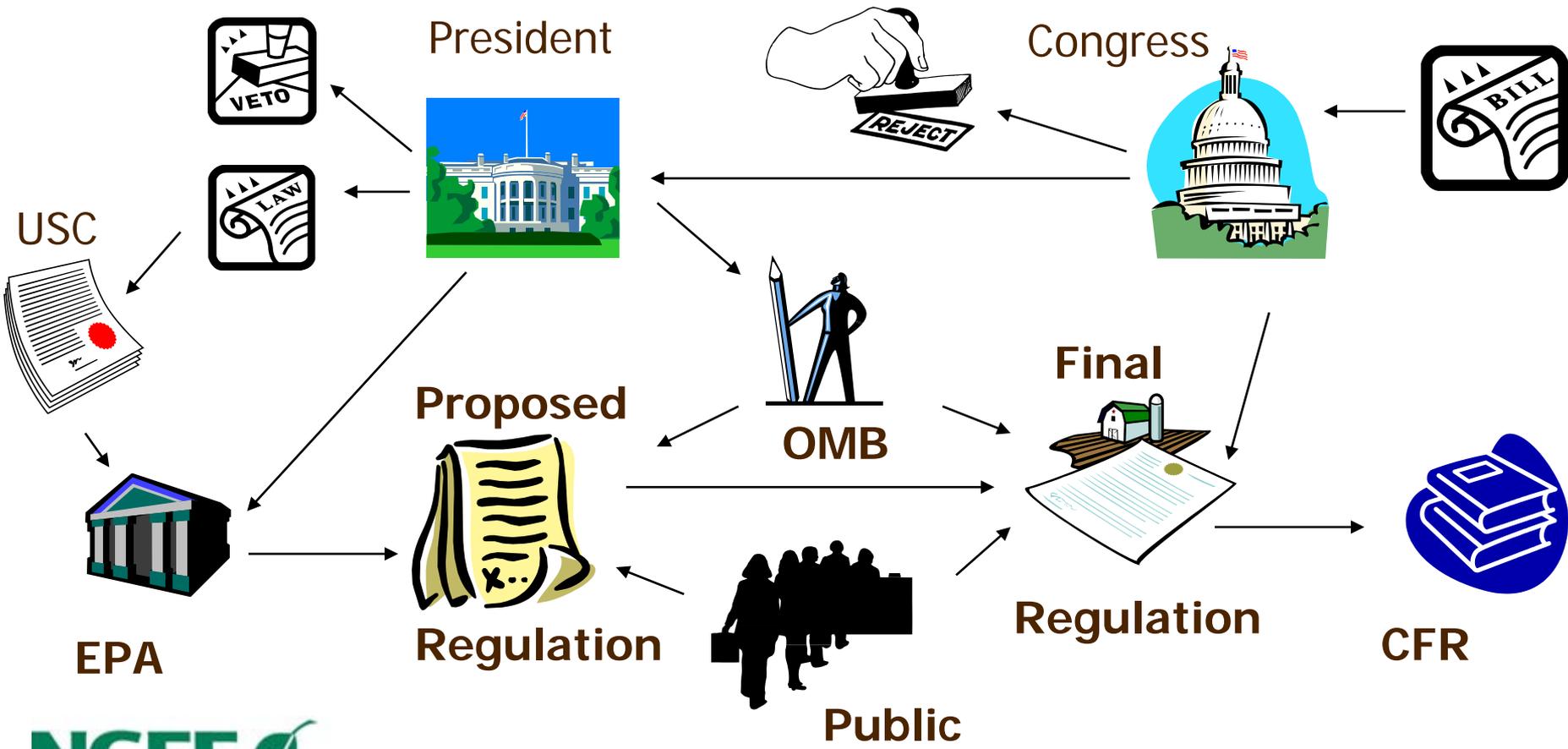
Al McGartland, Director, National Center for
Environmental Economics

June 19, 2013

What is a regulatory action?

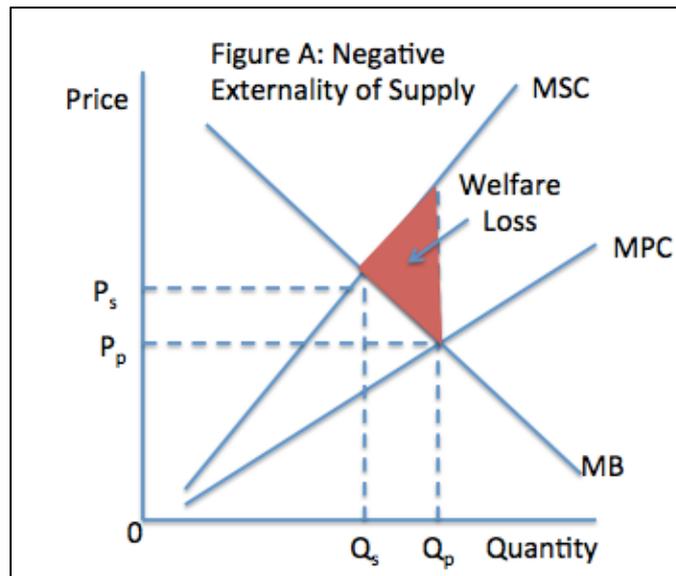
- E.O. 12866 defines a regulatory action as:
 - “any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.”
- Rule = Regulation = Regulatory Action = Rulemaking

Where EPA fits: From laws to regulations



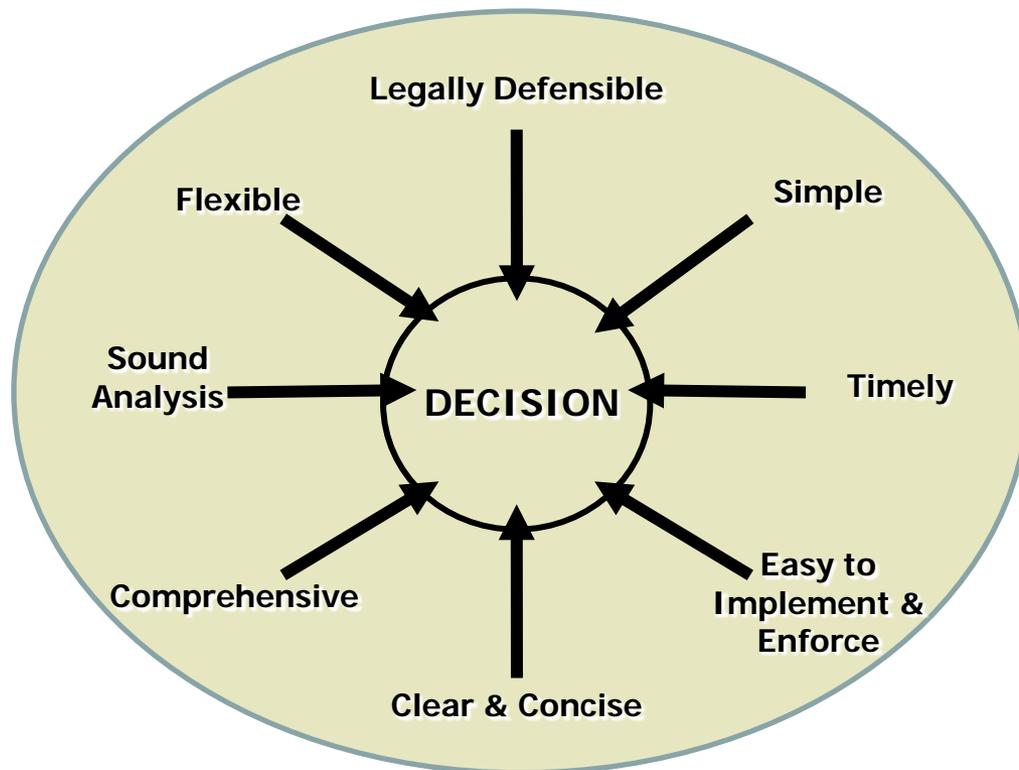
Why we have a regulatory process

- Market failures (externalities, imperfect information, public goods)
 - Improved government operations
 - Social goals (redistributive, civil rights, privacy, etc)



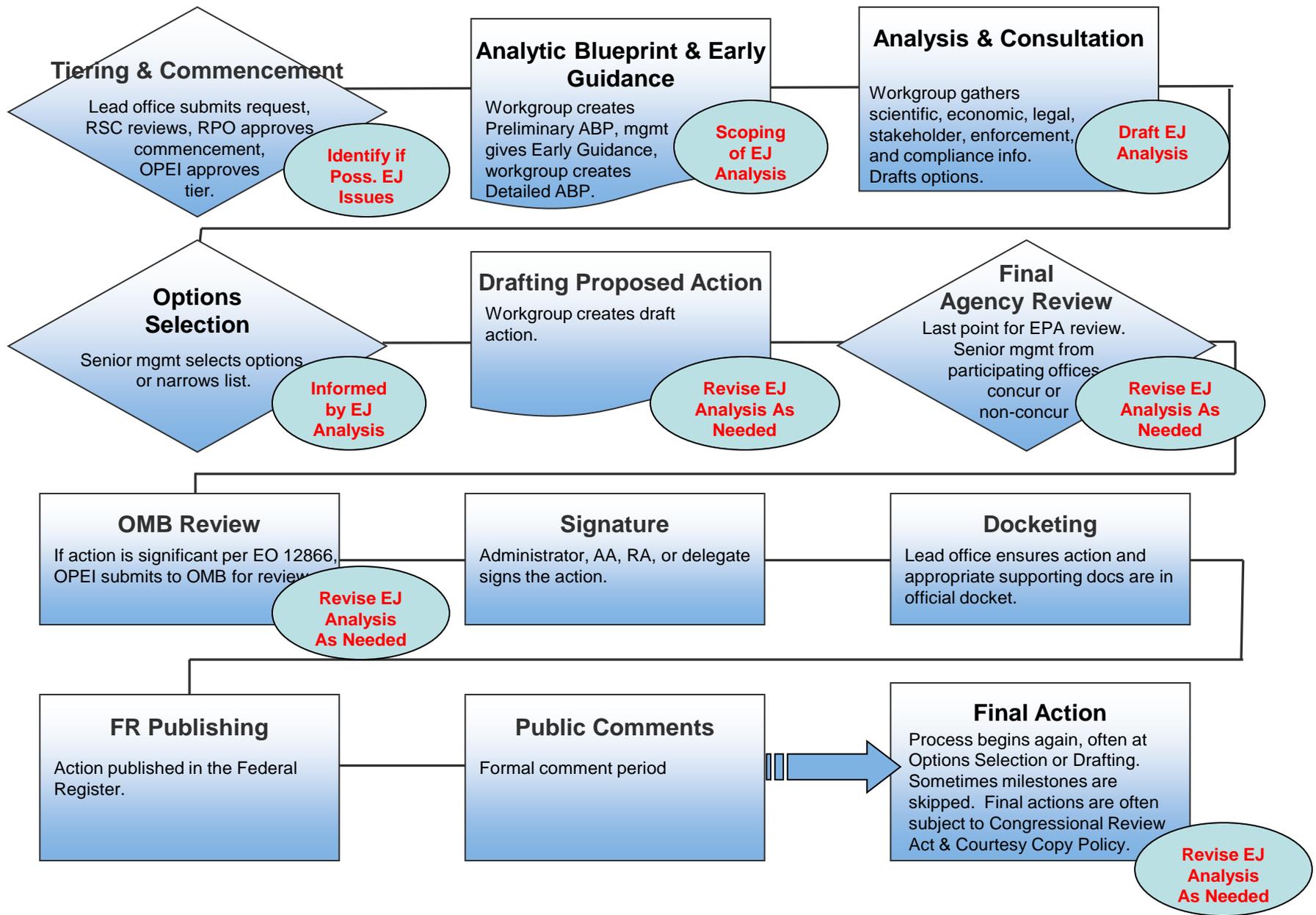
Source: 12congwi.wordpress.com

Principles of sound regulation: Components of the rule-making process



- Political Concerns
- Statutory Instruction
- Institutional Feasibility
- Technical Feasibility
- Benefits & Cost (Economic Efficiency)
- Ethics
 - Distributional Justice
 - **Environmental Justice**
- Sustainability
- Enforceability

Action Development Process for Tier 1 & 2 Regulatory Actions



EJ Questions Asked During the Action Development Process

- 1. How did your public participation process provide transparency and meaningful participation for minority, low-income, and indigenous populations, and tribes?**
- 2. How did you identify and address existing and new disproportionate environmental and public health impacts on minority, low-income, and indigenous populations?**
- 3. How did the actions taken under #1 and #2 impact the outcome or final decision?**

Source: Interim Guidance on Considering Environmental Justice During the Development of an Action (2010)

Draft Technical Guidance for Assessing Environmental Justice in Regulatory Analysis

- Currently conducting analysis of EJ issues to inform this rulemaking process but with no overarching analytic guidance.
- Technical guidance will
 - make explicit EPA’s analytic expectations and ensure potential EJ concerns are appropriately considered.
 - improve quality and increase consistency across analyses of EJ issues.

Appendix

Incorporating Environmental Justice into the Action Development Process

Tiering and Commencement

- Consider what type of EJ analysis is relevant for the action
- Determine if someone with EJ expertise should be on the workgroup

Analytic Blueprint and Early Guidance

- Describe briefly what EJ issues will be evaluated
- Receive early guidance from managers to determine appropriate level of EJ analysis and engagement of EJ stakeholders based on
 - Stakeholder interest
 - Available data, resources, and time
 - Impacts that EJ concerns may have on the outcome of the action
- Developing Detailed Analytic Blueprint (DABP) that describes **how will EJ issues will be evaluated**

Analysis and Consultation:

- Develop regulatory options
- Complete data gathering, consultation with key stakeholders, **analyses and peer review for EJ** as laid out in DABP

Incorporating Environmental Justice into the ADP, cont.

Options Selection:

- How EJ concerns are factored into the development of the options will vary considerably by action
- Describe activities and efforts to assess identified EJ concerns and to involve affected communities and stakeholders.

Draft Proposed Action:

- Describe how the regulation is supported by the results of the analyses for EJ

Final Agency Review (FAR):

- This is the final opportunity for internal EPA review of whether identified EJ concerns have been adequately considered and addressed, and to ensure proper documentation of those efforts

After FAR:

- OMB and interagency review with changes to address concerns as needed
- Receive public comment on EJ

Develop the Final Action:

- Repeat most of above steps, **revising EJ analyses as needed**