

# HOW ENVIRONMENTAL REGULATIONS ARE MADE

Environmental statutes generally empower an administrative agency, like the U.S. Environmental Protection Agency (EPA), to develop and promulgate regulations. The President may also empower an executive agency to promulgate regulations through an executive order.

Rule making is a process of adopting regulations in accordance with the federal Administrative Procedures Act (APA). This process involves publishing proposed regulations in the *Federal Register*, providing opportunity for the public to comment either through submission of written comments or through public hearings that concern the regulations; and publishing final regulations in the *Federal Register*, which have the force and effect of law when they become effective. Annually the regulations are combined into the *Code of Federal Regulations (C.F.R.)*

In an effort to improve the quality of rules and the efficiency with which they are written, EPA has made significant changes to the work done in advance of formally proposing a rule. Some important changes are:

- Institution of a three “tier” structure for rules planned and under development. This allows proper allocation of resources and management attention where they are most needed and to tailor procedures to fit different needs. Factors considered in tiering designations include:
  - Environmental and economic significance
  - External interest
  - Precedent-setting policy issues
  - Cross-media consequences
- Actions will be assigned to the lowest management level consistent with producing a quality action, although the lead Assistant Administrator/Regional Administrator retains ultimate responsibility. Assistant and Regional Administrators will have increased autonomy, as well as responsibility and accountability, in the development of Tier 1 and 2 actions. The management of Tier 3 actions will rest exclusively with the lead Assistant Administrator/Regional Administrator.
- Formal workgroups may not be necessary for a substantial portion of Agency actions in Tier 3, and Assistant Administrators and Regional Administrators are provided flexibility to determine procedures for Tier 3 actions. They will be responsible for assuring the appropriate participation of both internal and external stakeholders through project teams or task groups.
- The quality of data and analysis will be improved by requiring an “analytic blueprint” for actions in Tiers 1 and 2 and providing opportunity for stakeholder involvement early in the process.

## **Tiering**

Actions are assigned to tiers through a monthly “tiering process.” For each action, the lead Assistant Administrator/Regional Administrator proposes a tier designation. These tiering proposals are compiled by the Office of Policy, Economics and Innovations and circulated throughout the Agency for review. At this point, each office and region has the opportunity to question tiering placements by other offices/regions, may indicate preliminary interest in serving on a Tier 1 or 2 workgroup, or indicate interest in negotiating a Tier 3 side-agreement with the lead office. Once these issues have been negotiated among Agency programs and regions, the Administrator’s Office will reach final agreement on the tiering of actions. All side-agreements should be final by this point, but there will be subsequent opportunities to join a workgroup for Tier 1 and 2 actions when the Start Action Notice (SAN) is distributed to notify the Agency that work is beginning on an action.

## **Categories of Agency Actions to Be Tiered**

All rulemakings (Advance Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, Final), including all those statutorily mandated even if the promulgation date is expected to be far in the future will be tiered. Tiering will also include more of the Agency’s policy statements (e.g., OPP’s Ecological Task Force Policy), guidances (e.g., the Agency’s Risk Assessment Guidelines), strategies (e.g., the Groundwater Strategy), and non-regulatory programs (e.g., the Green Lights Program, the 33/50 Program). Reports to Congress are included.

### **1. Factors Considered in Placing an Action in Tier 1:**

- Unusually serious cross-agency or cross media policy concerns; serious cross-Agency or cross-media controversy.
- Unusually great impact on the public likely.
- Highly controversial in terms of external interest and/or much political interest.
- Highest-level management (Administrator, Deputy) involvement necessary or desired.
- Anticipated controversy with other Federal Agencies.

An action need not demonstrate each of the listed factors in order to be placed into Tier 1; one factor alone may be adequate to make a determination.

### **2. Factors Considered in Placing an Action in Tier 2:**

- Significant cross-media or cross-Agency policy concerns or controversy;
- Major interest from a variety of external groups;

- High-level management (Assistant Administrators/Regional Administrators) involvement from more than one Assistant Administratorship or region is necessary.

### **3. Factors Considered in Placing an Action in Tier 3:**

- This should be the designated tier for as many actions as possible, consistent with the requirements to produce quality actions.
- Tier 3 actions should be those where quality can be produced by the originating Assistant Administratorship without extensive, formal cross-Agency interactions.
- Tier 3 actions should be those that do not exhibit the characteristics defining Tier 1 or 2.
- Tier 3 may include actions that involve cross-Agency interaction, if such interaction can be accommodated by the use of “side agreements.”
- Tier 3 may include actions where external stakeholder participation is still needed.