

Appendix A

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Appendix A Charts of Public Participation Requirements in Key Agency Programs

The following tables provide a summary of public participation requirements for select programs *managed by the Agency*. The Appendix does not list every regulation for every program; however, as examples, the tables demonstrate both a) the diverse range of requirements implemented by program offices, and b) how different laws and regulations are often interwoven within programs to establish broad opportunities for public engagement.

Because the programs are diverse, the following tables do not provide information in a consistent manner. Rather, each table reflects the specific requirement, by statute, as appropriately contained in corresponding regulations. For the Clean Water Act and the Safe Drinking Water Act, the Office of Water fully implements the Part 25 Regulations. (See Appendix D).

Table A -1 Public Participation Requirements for Air Programs

Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
103 Research Activities		E	Yes	No	No	Yes	Yes	Yes
104 Research Related to Fuels and Vehicles		E	Yes	No	No	Yes	Yes	No
105 Grants for support of air pollution planning and control programs		E	No	No	No	Yes	No	Yes
107 Air Quality Control Regions		E, S, T	Yes	Yes	Yes	Yes	Yes	No
108 Air Quality Criteria and Control Techniques		E	Yes	No	Yes	Yes	No	No

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other 2. Includes opportunity for public hearing 3. Funding authorized

Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
109 National Primary and Secondary Ambient Air Quality Standards		E	Yes	Yes	Yes	Yes	Yes	No
110 State Implementation Plans	40 CFR Parts 51, 49, 57, 88, 96	E, S, T, L, F	Yes	Yes	Yes	Yes	Yes	No
111 New Source Performance Standards	40 CFR Parts 60, 62, 51, and 49	E, S, T, L	Yes	Yes	Yes	Yes	Yes	No
112 Hazardous Air Pollutants	40 CFR Parts 61, 49, 51, 63, and 68	E, S, T, L, F	Yes	Yes	Yes	Yes	Yes	No
113 Federal Enforcement	40 CFR Parts 49, 51 and 65	E, S, T	Yes	Yes	Yes	Yes	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
114 Record keeping, inspections, monitoring and entry	40 CFR Parts 49, 51, 57, 64, 79, 80, 82	E, S, T, L	No	No	No	Yes	No	No
115 International Air Pollution	Notice	E, F	No	No	No	Yes	No	No
117 Advisory Committees	Notice	E	No	No	Yes	Yes	Yes	Yes
118 Federal Facilities	40 CFR Parts 49 and 88	E, S, L, F, T	No	No	No	No	No	No
119 Nonferrous smelter orders	40 CFR Part 49 and 57	E, S, T	Yes	Yes	No	Yes	No	No
120 Noncompliance Penalty	40 CFR Parts 66, 67, and 49	E, S, T	Yes	Yes	No	Yes	Yes	No
121 Consultation	40 CFR Parts 51 and 49	E, S, T, L	No	No	No	No	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
122 Listing of Unregulated Pollutants	Notice	E, F	Yes	Yes	Yes	Yes	Yes	No
125 Economic Disruption	40 CFR Parts 51 and 49	E, S, T, F	Yes	Yes	Yes	Yes	Yes	No
126 Interstate Pollution	Notice	S, T, L, E	Yes	Yes	Yes	Yes	Yes	No
127 Public Notification	News paper	S, T, L	Yes	No	No	Yes	No	Yes
129 Solid Waste Combustion	40 CFR Parts 60 and 62	E	Yes	Yes	Yes	Yes	Yes	No
130 Emission Factors	None	E	No	No	No	Yes	No	No
163 PSD Increments	40 CFR Part 51 and 49	E, T, S	Yes	Yes	Yes	Yes	Yes	No
164 Area Redesignation	40 CFR Part 51 and 49	F, T, S	Yes	Yes	Yes	Yes	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
165 PSD Pre-construction Requirements	40 CFR Parts 51, 52, and 49	E, S, T, F	Yes	Yes	Yes	Yes	Yes	No
166 PSD for Other Pollutants	40 CFR Parts 51, 52, and 49	E, S, T	Yes	Yes	Yes	Yes	Yes	No
169A Visibility Protection	40 CFR Part 51 and 49	E, F, S, T,	Yes	Yes	Yes	Yes	Yes	No
169B Visibility	40 CFR Part 51 and 49	E, F, S, T,	Yes	Yes	Yes	Yes	Yes	No
172 Non-attainment Plan Provisions	40 CFR Part 51 and 49	E, S, T, L	Yes	Yes	Yes	Yes	Yes	No
173 NSR Permit Requirements	40 CFR Part 51 and 49	E, S, T, L	Yes	Yes	Yes	Yes	Yes	No
174 Planning Procedures	40 CFR Part 51 and 49	E, T, S, L	No	No	Yes	Yes	No	No
175 Grants	40 CFR Parts 51, 49, 30, and 35	E, S, T, L	No	No	No	No	No	Yes

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
175A Maintenance Plans	40 CFR Parts 51 and 49	S, T, L	Yes	Yes	Yes	Yes	Yes	No
176 Limitations on Federal Assistance	23 CFR Parts 450 and 770, 40 CFR Parts 51, and 93	E, F, L	No	Yes	Yes	Yes	Yes	No
176A Interstate Transport Commissions	40 CFR Parts 51 and 49	E, S, T	Yes	Yes	Yes	Yes	Yes	No
179 Sanctions	Notice	E, F	Yes	Yes	No	Yes	Yes	No
181 Classifications and Attainment Dates	Notice	E, S, T	Yes	No	No	Yes	No	No
182 Plan Submissions and Requirements	40 CFR Part 51 and 49	T, S, L	Yes	Yes	Yes	Yes	Yes	No
183 Federal Ozone Measures	40 CFR Part 59	E	Yes	Yes	Yes	Yes	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
184 Control of interstate ozone air pollution	Notice	E	Yes	Yes	Yes	Yes	Yes	No
186 Classification and Attainment Dates - CO	Notice	E	Yes	No	No	Yes	No	No
187 Plan Requirements	40 CFR Part 51 and 49	T, S, L	Yes	Yes	Yes	Yes	Yes	No
188 Classification and Attainment Dates - PM	Notice	E	Yes	No	No	Yes	No	No
189 Plan Requirements	40 CFR Parts 51 and 49	T, S, L.	Yes	Yes	Yes	Yes	Yes	No
191 Plan deadlines NOx, lead, and SOx	40 CFR Part 51	T, S, L	Yes	Yes	Yes	Yes	Yes	No
202 Emission Standards for New Motor Vehicles	40 CFR Parts 85, 89, 91	E, F	Yes	Yes	Yes	Yes	Yes	No

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other 2. Includes opportunity for public hearing 3. Funding authorized

Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
205 Civil Penalties	40 CFR Parts 79, 89, 90, 91, 92	E	Yes	Yes	Yes	Yes	Yes	No
206 Engine Testing and Certification	40 CFR Parts 86, 89, 90, 91, 92	E	Yes	Yes	Yes	Yes	Yes	No
207 Compliance by vehicles in use	40 CFR Parts 85, 89, 90, 91, 92	E	Yes	Yes	Yes	Yes	Yes	No
208 Information Collection	40 CFR Parts 85, 86, 89, 90, 91, 92	E	No	No	No	Yes	No	No
209 State Standards	40 CFR Parts 89, 90, 91, 92	E	Yes	Yes	Yes	Yes	Yes	No
210 State Grants	40 CFR 35	E, F	No	No	No	Yes	No	Yes
211 Regulation of Fuels	40 CFR Parts 69, 79, 80, 92, and 49	E, S, T	Yes	Yes	Yes	Yes	Yes	No
213 Nonroad Engines and Vehicles	40 CFR Parts 89, 90, 91, 92	E	Yes	Yes	Yes	Yes	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
214 PM from Motor Vehicles	Report to Congress	E	No	No	No	Yes	No	No
215 High Altitude Adjustments	40 CFR Parts 89, 90, 91, 92	E	Yes	Yes	Yes	Yes	Yes	No
219 Urban bus Standards		E	Yes	Yes	Yes	Yes	Yes	No
231 Establishment of Aircraft Emission Standards	40 CFR Part 87	E	Yes	Yes	Yes	Yes	Yes	No
232 Enforcement of Emission Standards		E, F	Yes	Yes	Yes	Yes	Yes	No
242 Clean Fuel Vehicles	40 CFR Part 88	E	Yes	Yes	Yes	Yes	Yes	No
243 Standards for light-duty clean fuel vehicles	40 CFR Part 88	E	Yes	Yes	Yes	Yes	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
245 Standards for Heavy Duty Vehicles		E	Yes	Yes	Yes	Yes	Yes	No
246 Centrally Fueled Fleets	40 CFR Part 88	E	Yes	Yes	Yes	Yes	Yes	No
247 Vehicle Conversions		E	Yes	Yes	Yes	Yes	Yes	No
249 California Pilot Test Program		E	Yes	Yes	Yes	Yes	Yes	No
301 Administration	40 CFR Parts 50 to 99	E	Yes	Yes	Yes	Yes	Yes	Yes
304 Citizen Suits	40 CFR Part 54 and 49	E, S, T	Yes	Yes	Yes	Yes	Yes	Yes
312 Economic Impact Analyses	Report to Congress	E	No	No	No	Yes	No	No
317 Economic Impact Assessment	Impact Assessment	E	Yes	Yes	Yes	Yes	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
319 Air Quality Monitoring	40 CFR Part 58	E	Yes	Yes	Yes	Yes	Yes	No
320 Standardized Air Quality Modeling	Docket	E	Yes	Yes	Yes	Yes	Yes	No
325 Exemptions for certain territories	40 CFR Part 69	E	Yes	Yes	Yes	Yes	Yes	No
328 Outer Continental Shelf Activities	40 CFR Parts 55 and 49	E, F, S, T	Yes	Yes	Yes	Yes	Yes	No
402 Noise Abatement	Investigation	E	Yes	Yes	Yes	Yes	Yes	No
403 Sulfur Dioxide allowance Program	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
404 Phase I sulfur dioxide requirements	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
405 Phase II sulfur dioxide requirements	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
406 Allowances for States with emissions rates at or below .8 lbs/mmBtu	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
407 Nitrogen oxides emission reduction program	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
408 Acid Rain Permits Program	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
409 Repowered Sources	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
410 Election of Additional Sources	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/Other ³
411 Excess Emissions Penalty	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
412 Monitoring Reporting and Record Keeping Requirements	40 CFR Parts 72, 73, 74, 75, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
415 Clean Coal Technology regulatory incentives	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
416 Allowance Auctions	40 CFR Parts 72, 73, 74, 76, 77, 78	E	Yes	Yes	Yes	Yes	Yes	No
502 Operating Permit Programs	40 CFR Parts 70, 71, 49, and 64	E, T, S, L	Yes	Yes	Yes	Yes	Yes	No
507 Small Business Assistance	40 CFR Part 51, 49, 61, 70, 71	E, S, T	Yes	Yes	Yes	Yes	Yes	No
602 Listing of Class I and II Substances	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No

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Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/Other ³
603 Monitoring and Reporting Requirements	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
604 Phase-out of production and consumption of Class I substances	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
605 Phase-out of Class II substances	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
606 Accelerated Schedule	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
607 Exchange Authority	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
608 Recycling and emission reduction program	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
609 Servicing motor vehicle air conditioners	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other 2. Includes opportunity for public hearing 3. Funding authorized

Air Program Activities		Responsible Entity ¹	Responsibilities					
Clean Air Act Section	Regulation Citation		Public Notification	Public Comment	Public/ Stakeholder Meetings ²	Public Access to Information	Decision-Making Influence	Public Assistance/ Other ³
610 Nonessential products containing CFC	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
611 Labeling	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
612 Safe Alternatives	40 CFR Part 82	E, F	Yes	Yes	Yes	Yes	Yes	No
613 Federal Procurement	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
615 Authority of Administrator to control other ozone depleting substances	40 CFR Part 82	E	Yes	Yes	Yes	Yes	Yes	No
616 Transfers among parties to Montreal Protocol	40 CFR Part 82	E	Yes	Yes	No	Yes	Yes	N

1. · E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other 2. Includes opportunity for public hearing 3. Funding authorized

Table A-2 Public Participation Requirements by Statutes Affecting Programs of the Office of Prevention, Pesticides and Toxic Substances (OPPTS)

Statutes Affecting OPPTS Programs	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
Endangered Species Act (ESA)	F	T	T		T	T	T
Federal Food, Drug, and Cosmetic Act (FFDCA) ²	E, F	T	T	T	T	T	
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) ³	E, F	T	T	T	T	T	T
Pollution Prevention Act (PPA)	E				T		T
Residential Lead-Based Paint Control Act (aka Title X)	E, F, S, T, L,		T		T	T	T
Toxic Substances Control Act (TSCA) ⁴	E, F	T	T	T	T	T	T

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other 2. As amended by the Food Quality Protection Act (FQPA) 3. Ibid. 4. As amended.

Table A-3: Public Participation Requirements by Associated Regulations Affecting Programs of the Office of Prevention, Pesticides and Toxic Substances (OPPTS)

OPPTS Program Areas	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
Federal Food, Drug, and Cosmetic Act (FFDCA)							
Food Additive Regulations (40 CFR 177) ³	E	T	T	T	T		
Formal Evidentiary Public Hearing (40 CFR 179)	E	T		T	T		
Objection & Request for Hearings (40 CFR 178)	E			T	T		
Procedures for Setting Tolerances for Pesticides in Food (40 CFR 180)	E	T	T		T		
Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)							
Certification of Pesticide Applicators (40 CFR 171)	E						T
Emergency Use Exemptions (40 CFR 166)	E	T	T				
Endangered Species Program	E, F		T		T		T

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other

OPPTS Program Areas	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
Experimental Use Permits (40 CFR 172)	E	T	T				
Hearings - Procedural Rule (40 CFR 164)	E	T		T	T		
Pesticide Registration and Classification Procedures (40 CFR 152 & 153)	E	T	T				
Procedures for Rescission of State Primary Enforcement Responsibility (40 CFR 173)	E (OECA)	T	T	T			T
Registration Standards - Docketing and Public Participation Procedures (40 CFR 155)	E	T	T	T	T		
Special Review Procedures (40 CFR 154)	E	T	T	T	T		
State Registration of Pesticides to Meet Special Local Needs (40 CFR 162)	E	T	T	T			

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other

OPPTS Program Areas	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
Worker Protection Standards (40 CFR 170)	E, F, S	T	T				T
Pollution Prevention Act (PPA)							
Pollution Prevention Grant Program	E	T			T	T	T
- Environmental Justice Through Pollution Prevention	E	T			T	T	T
- Pollution Prevention Information Network	E	T			T	T	T
- Pollution Prevention Incentive for States (PPIS)	E	T			T	T	T
Residential Lead-Based Paint Control Act (aka Title X)							
Lead Program (40 CFR 745)	E, F	T	T		T	T	T
- Disclosure at Renovation (§406)	E, F	T	T		T	T	T
- Disclosure at Sale or Lease (§1018)	E, F	T	T		T	T	T

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other

OPPTS Program Areas	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
- Model State Accreditation Program (§404)	E, F	T	T		T	T	T
- Training & Certification for Abate-ments (§402)	E, F	T	T		T	T	T
Toxic Substances Control Act (TSCA)							
Asbestos Program (40 CFR 763)	E, F, S, T, L	T	T	T	T	T	T
- Asbestos in Schools Program	E, F, S, T, L	T	T	T	T	T	T
- Asbestos Model Accreditation Program	E, S, T, L	T	T	T	T	T	T
- Asbestos Worker Protection Program	E, S, T, L	T	T	T	T	T	T
Data Reimbursement (40 CFR 791)	E	T	T	T	T	T	T
Chemical Information Reporting Rules							

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other

OPPTS Program Areas	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
- Recordkeeping & Reporting (40 CFR 704)	E, F						
- Preliminary Information (PAIR) (40 CFR 712)	E, F	T	T		T	T	T
- Health & Safety Data (40 CFR 716)	E	T	T		T	T	T
- Allegations under §8(c) (40 CFR 717)	E	T			T		T
- Allegations under §8(e) (Policy)	E	T			T		T
Chemical Specific Regulations							
- Metalworking Fluids (40 CFR 747)	E	T	T	T	T	T	T
- Water Treatment Chemicals (40 CFR 749)	E (OW)				T		
- Dioxins (40 CFR 766)	E	T	T	T	T	T	T
Citizen Suits Procedural Rule (40 CFR 702)	E	T	T	T	T	T	T
Export and Import Requirements (40 CFR 707)	E, F	T	T		T	T	T

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other

OPPTS Program Areas	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
Inventory Update Rule (IUR) (40 CFR 710)	E	T	T		T	T	T
PCBs Program (40 CFR 761)	E, F	T	T	T	T	T	T
- PCB Disposal Program	E	T	T	T	T	T	T
- PCB Use Authorization Program	E	T	T	T	T	T	T
PMN Program							
- PMN Process (40 CFR 720)	E	T	T		T	T	T
- PMN Exemptions (40 CFR 723)	E	T	T		T	T	T
- TSCA Biotech/Microorganisms (40 CFR 725)	E	T	T		T	T	T
SNUR Program (40 CFR 721)	E	T	T	T	T	T	T
Testing Program (40 CFR 790-799)							
- Enforceable Consent Agreements (ECAs)	E, F	T	T	T	T	T	T

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other

OPPTS Program Areas	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
- Test Rules	E	T	T		T	T	T
TSCA Section 6 Procedural Rule (40 CFR 750)	E, F	T	T	T	T	T	T

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other

Table A-4: Public Participation Requirements Affecting the Superfund Program

Superfund Program Remedial Public Participation Requirements	Responsibilities						
	Prior Notification	Public Comment	Public Meetings	Feedback	Public Access to Information	Decision- Making Influence	Public Assistance/ Other
Listing	Yes (R)	60 days (R)	No	RS (R)	No	No	No
RIFS	Yes (S)	30 days (R)	1 (S)	RS (S)	Repository (S) Admin Rec	No	\$ Available (R)
Design	Yes (R)	No	No	No	Repository (S) Admin Rec	No	\$ Available (R)
Construct	No	No	No	No	No	No	\$ Available (R)
Deletion	Yes (R)	30 days	No	RS (R)	Repository (R) Admin Rec	No	No

RS = Responsiveness Summary

(S) = By Statute

(R) = By Regulation

(P) = By Policy

(E) = By Executive Order

Table A-5: - Public Participation Requirements by Policies Issued by the Office of Regulatory Enforcement (ORE) in the Office of Enforcement and Compliance Assurance (OECA)

ORE's standard practice is to solicit public notice and comment on significant policies issued regarding enforcement matters. For example, when the Audit Policy was issued, the policy was placed in the Federal Register and a public hearing was held. The same holds true for the SEP Policy, the BEN Model used to calculate the economic benefit gained by a violator, and other specific enforcement policies. However, not all these policies in of themselves recommend public participation as a part of the policy.

We also seek public participation in certain types of enforcement settlements. All Consent Decrees settled for us by the Department of Justice are noticed in the federal register and made available for notice and comment prior to final entry by the court, but DOJ has the responsibility for issuing the notice and responding to the comments.

ORE is responsible for the enforcement of most of the statutes under EPA's responsibility, but does not have responsibility for the public participation requirements for the rulemaking aspects of the statutes. In addition, we share responsibility for some statutes with other offices within OECA (e.g. The RCRA Corrective Action program is enforced in OSRE).

Table A-5: - Public Participation Requirements by Policies Issued by the Office of Regulatory Enforcement (ORE) in the Office of Enforcement and Compliance Assurance (OECA)

ORE Policies and Regulations Containing Public Participation Requirements	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
“Guidance on the Use and Issuance of Administrative Orders Under Section 7003 of RCRA”	E	T	T	T	T	T	
“Supplemental Environmental Projects Policy”	E	T	T	T	T	T	T
40 CFR §22.45- Supplemental rules governing public notice and comment in proceedings under sections 309(g) and 311(b)(6)(B)(ii) of the Clean Water Act and section 1423(c) of the Safe Drinking Water Act.	E	T	T	T	T	T	

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other

Table A-6: Public Participation Requirements by Policies Issued by the Office of Federal Activities (OFA) within the Office of Enforcement and Compliance Assurance (OECA)

The following table provides requirements under OFA’s programs within OECA.

Statutes Affecting Programs	Responsible Entity ¹	Responsibilities					
		Public Notification	Public Comment	Public Meetings	Public Access to Information	Decision-Making Influence	Public Assistance/ Other
National Environmental Policy Act (42 U.S.C. 4321 <i>et seq.</i>)	E	X	X		X	X	
40 CFR Part 6 – Procedures for Implementing the Requirements of the Council on Environmental Quality on the National Environmental Policy Act	E	X	X	X	X	X	

1. E - EPA; F - Other Federal Agency; S - State; L - Local; T - Tribal; O - Other

Appendix B

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Appendix B: List of Commenters

Below is a list of stakeholders that provided comments on the Federal Register Notice, dated November 30, 1999. To view all of the comments, please visit the stakeholders website at <http://www.epa.gov/stakeholders/public/comment.htm>.

Name	Organization
Renette Anderson	Utah State Department of Environmental Quality
Thomas T. Traceski	Department of Energy
Douglas I. Greenhaus	National Automobile Dealers Association
Jim J. Tozzi	Multinational Business Services, Inc.
Keri N. Powell	New York Public Interest Research Group
Michael Luzier	National Association of Home Builders
Paul Orum	Working Group on Community Right-To-Know
Halina Caravello	HSE/Q&RA
Brigid D. Klein	Chemical Specialties Manufacturers Association
Sanford Lewis	Good Neighbor Project
Thomas C. Beierle	Resources for The Future
Emery Graham	City of Wilmington, DE
Lenny Seigel	Center for Public Environmental Oversight
Beth Resnick	National Association of County and City Health Officials
Hope C. Taylor	Clean Water Fund, NC
Chris Trepal	Earth Day Coalition (provided comments in two separate documents)
Joe Gentile	Affiliation not provided
John J. Wislocki	Affiliation not provided
H. van Schreven	Affiliation not provided
Emily Green	Sierra Club Great Lakes Program
Joel S. Hirschhorn	National Governors' Association
Sarah Cahill	Resources for The Future
Dave Seglin	Chicago Department of Transportation
Jim Colston	Orange County Sanitation District, CA
David Matusow	Affiliation not provided
Lorene L. Sigal	Affiliation not provided
Jessica T. Sandler	People for the Ethical Treatment of Animals
Lisa Brown	EPA
Marva King	EPA
Candace Carraway	EPA

“...citizens now face the daunting task of determining what should occur in their backyards – what kinds of activity are productive, yet acceptably sustainable. Second, they must transform their traditionally antagonistic relationships with experts into partnerships for environmental protection; to determine what the tolerable activities are, given continuous change in the nature of risks and our understanding of how to respond to them, they need to fuse the broad experience of professional practitioners with the contextual intelligence that only citizens possess....Within broad limits local units set their own environmental performance targets and devise the means to achieve them. In return, they provide detailed reports on actual performance and possible improvements to public authorities.”

Charles Sabel, Archon Fung, and Bradley Karkkainen

“Beyond Backyard Environmentalism - How communities are quietly refashioning environmental regulation”

Appendix C

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Appendix C: List of Public Participation Policy Workgroup Members

Kathleen Bailey (Co-chair)	Office of Policy, Economics & Innovation
Deborah Dalton (Co-chair)	Office of the General Counsel/Conflict Prevention and Resolution Center
Patricia Bonner (editor/post 3/2000 lead)	Office of Policy, Economics & Innovation
Shirley Bruce	Region 6
Charlotte Cottrill	Office of Environmental Information
Bruce Engelbert	Office of Emergency and Remedial Response
Jayne Fontenot	Region 6
Danny Gogal	Office of Enforcement & Compliance Assurance/ Environmental Justice
Mary Henigin	Office of Air Quality Planning and Standards
Angela Hofmann	Office of Prevention, Pesticides, and Toxic Substances
Marjorie Jones	Office of Water
David Nicholas	Office of Solid Waste and Emergency Response
Angela Nugent	Science Advisory Board
Wendy Oatis	Office of General Counsel
Heidi Paulsen	Office of Pesticide Programs
Sonya Pennock	Region 8
Christine Psyk	Region 10
Deb Ross	Office of Cooperative Environmental Management
Robert Shippen	Office of Water
Jan Shubert	Office of Emergency and Remedial Response
Nicholas Targ	Office of Enforcement & Compliance Assurance/ Environmental Justice
Theresa Trainor	Office of Sustainable Ecosystems and Communities
Claudia Walters	Office of Research & Development
Cynthia Wolf	Region 6

“Government programs are improved and civic trust is substantially elevated when government agencies reach out to engage citizens directly in agenda setting, program development and policy implementation. Agencies that do this soon learn that citizens have much to add, that they are important repositories of experience and ideas. Citizens benefit as well from the opportunities to see problems from broader perspectives and from the enhanced civic skills that come from working with trained government professionals and other citizens in problem-solving activities.”

National Academy of Public Administration Panel on Civic Trust and Citizen
Responsibility, June 1999

Appendix D

U.S. Environmental Protection Agency's 1981 Policy on
Public Participation and Title 40 Part 25 of the Code of Federal
Regulations —Public Participation in Programs Under the Resource
Conservation and Recovery Act, the Safe Drinking Water Act, and
the Clean Water Act

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Appendix D

U.S. Environmental Protection Agency's 1981 Policy on Public Participation and Title 40 Part 25 of the Code of Federal Regulations—Public Participation in Programs Under the Resource Conservation and Recovery Act, the Safe Drinking Water Act, and the Clean Water Act

This Appendix provides the text for two of the key documents that define Agency policies, processes, and procedures for engaging the public in decision making and program implementation. The Policy, published in 1981, establishes the objectives of public participation in EPA programs, outlines essential elements that must be incorporated in any public participation effort, discusses a number of public participation mechanisms with ground rules for their effective use, and assigns responsibility for planning, managing, funding, and carrying out public participation activities to EPA managers. The intent of the Policy is to ensure that managers plan in advance needed public involvement in their programs, that they consult with the public on issues where public comment can be truly helpful, that they use methods of consultation that will be effective both for program purposes and for the members of the public who take part, and finally that they are able to apply what they have learned from the public in their final program decisions.

The Part 25 regulations set forth minimum requirements and suggested program elements for public participation in activities under the Clean Water Act (Pub. L. 95–217), the Resource Conservation and Recovery Act (Pub. L. 94–580), and the Safe Drinking Water Act (Pub. L. 93–523). These regulations have also been used as the foundation for public participation for other EPA programs not associated with these acts.

APPENDIX D-1: EPA'S 1981 POLICY ON PUBLIC PARTICIPATION

ENVIRONMENTAL PROTECTION AGENCY

Responsiveness Summary and Preamble on Public Participation Policy

AGENCY: Environmental Protection Agency

ACTION: Policy

SUMMARY: This Policy is designed to provide guidance and direction to public officials who manage and conduct EPA programs on reasonable and effective means of involving the public in program decisions. The Policy applies to programs under the Clean Air Act (Pub. L. 95-95), Quiet Communities Act (Pub. L. 95-609) Resource Conservation and Recovery Act (Pub. L. 94-580), Toxic Substances Control Act (Pub. L. 94-469), Federal Insecticide, Fungicide and Rodenticide Act (Pub. L. 95-396) Safe Drinking Water Act (Pub. L. 95-190), and the Clean Water Act (Pub. L. 95-217).

The Policy establishes the objectives of public participation in EPA programs, outlines essential elements that must be incorporated in any public participation effort, discusses a number of public participation mechanisms with ground rules for their effective use, and assigns responsibility for planning, managing, funding, and carrying out public participation activities to EPA managers. The intent of the Policy is to ensure that managers plan in advance needed public involvement in their programs, that they consult with the public on issues where public comment can be truly helpful, that they use methods of consultation that will be effective both for program purposes and for the members of the public who take part, and finally that they are able to apply what they have learned from the public in their final program decisions.

The Policy provides a uniform set of guidelines and requirements applicable to all EPA programs, thus assuring a consistent base level of effort. The Policy applies to all EPA activities as well as to State and local activities funded or delegated by EPA. EPA will develop work plans as part of the annual budget development cycle, and amend program regulations as needed to incorporate the Policy. Affected programs are listed in the Appendix to the Policy.

DATES: The Policy is effective on January 19, 1981.

FOR FURTHER INFORMATION CONTACT: Sharon F. Francis, Special Assistant for Public Participation, Office of the Administrator (A-100). Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, telephone 202/245-3066.

SUPPLEMENTARY INFORMATION: The Policy which takes effect with this publication is the result of long and careful consideration on the part of EPA, State and local agencies, and the diverse public that are actively concerned with EPA programs. EPA already enjoys a substantial amount of involvement from an active and interested public. Indeed, to that public goes substantial credit for progress made in cleaning up environmental pollution over the last 10 years. There has been recognition, however, both inside and outside the Agency, that new steps need to be taken to ensure that members of the public affected by EPA programs are given an earlier and better opportunity to be heard in EPA decision making.

EPA has received a significant volume of thoughtful criticism of its performance in implementing its legally mandated public participation activities and its more general responsibility to involve the public

in governmental decisions. The desire of the public to have a stronger role in shaping government programs which affect their lives, businesses, and communities, and also the growing need for governmental units at all levels to participate in the programs of other governmental entities has stimulated this criticism. Government decision-makers have become increasingly aware of the capability of the public to make constructive use of opportunities for involvement. This new awareness has been accompanied by increased practical experience in using a variety of techniques to facilitate public involvement.

For these reasons, EPA has recognized the need to improve public involvement in governmental decisions by clarifying the rights and responsibilities of potential participants and those responsible for administering public participation programs. This will lead to better decisions, more satisfactory opportunities for the public to pursue their goals through government, and greater public confidence in government because decisions will be made with participation by interested and affected members of the public.

Both EPA and members of the public have more demands on their scarce time and resources than can be filled, and need to use them where the results can be most effective. This Policy's common objectives, procedures and emphasis on results will benefit the entire Agency, and will give the public new confirmation that EPA intends to be as responsive as possible to public questions, concerns and preferences.

This Policy is the result of analysis and reforms instituted at the Administrator's direction by the Agency Task Force on Public Participation. The Policy was initially proposed in the Federal Register on April 30, 1980. In order to ensure that the proposed Policy received attention from the various sectors of the public active in EPA's programs, the Agency mailed copies of the proposal to a nationwide mailing list that included business and industry, labor organizations, professional and trade associations, news media, consumer and women's organizations, environmental and public interest groups, Black, Hispanic, and Native American organizations, scientific, public health, legal and planning societies, and State agencies.

Additionally, each of EPA's ten regional offices received copies of the Policy for distribution to their constituent lists at the regional, State and local level. A number of regional offices wrote and distributed summaries of the proposed Policy, as well as held meetings to give members of the public opportunity to raise questions and express their views. Public meetings were held in Boston, Chicago, Columbus, Minneapolis, Denver, Seattle, Portland, Boise, Anchorage, and Washington. As a result of these outreach efforts, close to 500 members of the public took part in discussions and offered comment on the proposal.

The following analysis of the comments received, in terms of the affiliation of the person commenting, provides insight on the expectations and needs of various sectors of the public.

Written comments were received from people in forty-two States, with the largest number of comments coming from States where EPA's regional offices had also stimulated public meetings, namely Massachusetts, Connecticut, Minnesota, Ohio and Washington.

Written comments were in almost every case substantive and extensive, often running many pages in length. In almost all cases, the people who wrote had been involved with EPA programs either as public participants or program managers, and their comments reflected this reservoir of practical experience.

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The largest section of the public who commented were public interest groups, including environmental, consumer, and local civic groups. They provided 30% of the comments received and were closely followed by economic interests, including industries, business, and trade association with 27%. Additionally, 15% of comments came from State agencies, 10% from citizens-at-large, 10% from local officials, 6% from other federal agencies, and 2% from academic institutions.

Over 420 issues were addressed, and of these, the ones that drew the greatest amount of discussion were the following: the composition of advisory groups; whether to provide financial assistance to the participating public, and under what criteria; whether to apply the Policy to State agencies carrying out EPA programs; and the content and use of Responsiveness Summaries.

Eighty-five percent of those who commented supported a final Policy as strong as or stronger than the one the Agency proposed in late April, and this support came from all sectors of the public. In the case of State agencies, for example, only 7 of the 44 who commented were negative about EPA's emphasis on public participation or wanted to see it weakened. The other 37 agencies all wanted a Policy and wanted it even stronger than EPA proposed. Economic interests expressed opinions on both sides of the issue, but 20% wanted it stronger and 50% supported the Policy as proposed.

Those who opposed the proposed Policy said that EPA should not be in the business of stimulating participation. People who are really concerned, they said, will come forth and participate on their own. This assumes, however, that people on their own will know that environmental decisions are about to be made, that these decisions will affect them, and that they will have enough background information to be able to contribute to what is usually a technical and complex discussion.

The Agency agrees that public participation must not be a contrived exercise, nor should it be undertaken with the purpose of manipulating the public into agreement with a governmental position. EPA recognized its responsibility to give affected sectors of the public a fair opportunity to know of forthcoming governmental decisions and to be heard when those decisions are made. Clear requirements will make public involvement more cost-effective, both for EPA management and for the various sectors of the public.

It is clear from widespread support for an effective policy that EPA's emphasis on public participation struck a responsive chord in all sectors of the public. The public's thoughtfully reasoned statements for amplifying or strengthening aspects of the Proposed Policy have convinced us of the merit of a number of changes. EPA recognizes the commitment it is now making to more open and effective consultation with the public. This policy will provide a strong and practical framework to guide our interactions in the months and years ahead.

Summary of Response to Public Comment

The following sections respond to major points raised in comments made by the public.

1. *Objectives of EPA's Policy:* There was support from all sectors for the objectives stated in the proposed Policy, but a number of people called for additions as well. These include the role of the public in identifying and selecting among alternatives, the importance of early and continuing involvement, the significant opportunity that public participation affords for anticipating and reducing conflicts, and the need to create equal access to the regulatory process. Commenters also pointed out that objectives need to be comprehensive since they provide the yardstick for evaluation. All of these suggestions have merit and EPA has added them to the final Policy.

2. Application of the Policy to EPA Programs Under State Administration: Most of the laws administered by EPA designate certain programs which can be administered by a State, instead of by EPA, if the State Program meets statutory and regulatory criteria. The proposed Policy required EPA to provide for public participation in the process of deciding to approve such State programs. It also provided that, after approval, the State would assume responsibility for meeting the public participation requirements.

In the preamble to the proposed Policy, EPA drew attention to this matter, and specifically asked for comment on whether the Agency should apply the Policy to EPA programs when conducted by States. A major proportion of commenters from all categories preferred the option as proposed, on the grounds that participation is needed and beneficial to program decisions regardless of who administers the program. A much smaller number of commenters favored permitting States to achieve substantially equivalent results to EPA's Policy; however, none responded to EPA's request for "specific suggestions for wording and evaluation criteria" since "substantially equivalent provisions have a history of being easy to espouse but difficult to demonstrate." After reading all the comments, EPA concluded that the Policy, as proposed, has sufficient flexibility within a context of practical requirements that it will be beneficial to State program administration.

Two years ago, when EPA proposed its regulation for public participation in Clean Water, Drinking Water and Solid Waste programs (40 CFR Part 25), the question of applying the requirements to States was intensely controversial. Now, with more than a year of experience in those programs, the worst apprehensions have not materialized and public participation has begun to prove its constructive role. Most State agencies, therefore, were not troubled by the proposal. In view of the comments received and the discussion above, EPA finds no need to alter this aspect of the Policy.

3. Consistency with Part 25 Regulations for Public Participation in Water and Waste Management Programs: In Proposing the Policy, EPA made conscious effort to ensure compatibility between its provision and those of the earlier Part 25 regulation for programs under the Clean Water Act, Safe Drinking Water Act, and Resource Conservation and Recovery Act. Two additions that EPA is now making to the Policy will further remove the differences between the two documents and bring the Policy into closer alignment with Part 25. One change is the requirement that EPA review and require further efforts as needed to achieve the balanced membership requirement for advisory groups. The other change is that EPA may require corrective action on the part of State program grantees to ensure compliance with the Policy. While differences in wording remain between the two documents, EPA holds that 40 CFR Part 25 fulfills the intent and requirements of the Policy in the procedural areas (Section D. of Policy) of common subject matter. If differences remain between Part 25 and the Policy, Part 25 will control. The sections of the Policy on work plan, assistance to the public, and authority and responsibility augment the requirements contained in 40 CFR Part 25, and apply to all programs of the Agency.

4. How to Identify the Public Who Should Participate: Many of those who commented on the Identification section of the Policy liked our emphasis on developing a contact list of interested or affected members of the public at the outset of a participation opportunity. Several pointed out, however, that contact lists need frequent updating, especially on lengthy projects. This change we are incorporating. A number of those who commented on this section requested that the Policy indicate the uses of a contact list, and we have revised the Policy to do so.

5. Ways to Inform and Reach the Public: The majority of comments asked for amplification of the Outreach section. Commenters sent many valuable suggestions, many of which the final Policy incorporates. Some general areas of concern with which we agree, and have responded to in the final

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Policy, include the following: (1) public access to information is critical to successful public participate programs; (2) information must be translated from “technical” language into language understandable to the lay public; (3) outreach activities should be emphasized as ongoing activities so the public can be kept up to date on matters of concern; and (4) the uninterested but impacted publics’ views need to be solicited in some manner.

Specific comments addressed each of the major sections of Outreach. Under *Methods*, commenters suggested further use of a variety of techniques, many of which we have added to the final version. Under *Content*, it was suggested that materials be prepared in clear, concise language to inform the public of triggering events which initiate a proposed action, and provide details on supporting research analysis and methodology. These suggestions, along with the availability of Environmental Impact Statements, were included in the final Policy. Under *Notification*, the major concerns were that notices should inform the public about the initiation of a decision-making process and that we should describe the type of media notice required. In the *Depositories* section, commenters suggested public and university libraries as appropriate locations, and that consideration ought to be given to accessibility, travel time, parking, and availability during off-work hours. We agreed with these suggestions and included them in the final Policy.

6. *Public Notification of Financial Assistance Awards*: We received complaints from the public that often they never hear about EPA funded projects that provide participation opportunities in programs of State, substate, and local governments. They suggested that we incorporate some type of requirement that notice be given either at the time EPA receives applications, or after award acceptances. After careful consideration, and with a conscious effort to keep the Policy consistent with 40 CFR Part 25 regulations, we have added a section under *Timing* that the recipient give public notice within 45 days of award acceptance.

7. *Methods to Improve Communication Between EPA and the Public*: Many commenters were dissatisfied with the *Dialogue and Hearing* section. They felt we placed too much emphasis on describing hearing requirements, and did not give enough attention to other methods of ensuring communication between EPA and the public. We responded to these concerns by amplifying the *Dialogue* section to include these suggestions and listing other methods of soliciting and using public input. These methods include review groups, workshops, conferences, personal correspondence and conversations, meetings, and citizen panels.

8. *Suggestions for Improvement of Hearing Format*: All sectors of the public responding felt that hearing procedures needed to move away from rigid rituals and be more attuned to listening and responding to the public’s views. We agree that public hearings can be more successful if they are conducted in a non-intimidating manner, and if the public has been informed of the issues and has access to pertinent information prior to the hearing. Those who commented on the Content of Notice section stressed the importance of early and clear discussion of the issues and alternatives the public is asked to comment upon. Under *Conduct of Hearing*, many commenters asked for more informality and opportunity for questions and answers in the hearing. People also commented that hearings are often located too far from the affected area. We have revised the Policy to incorporate these ideas.

9. *45-Day Notice Prior to Hearings*: Although some commenters felt that a 45-day notice prior to the date of a hearing was a needless delay of time and would slow down the process, others felt that 45 days was much too short a time to expect individuals or groups to prepare adequately for a hearing, and some said that a 60 or 90-day notice would be more appropriate for proper preparation. Approximately 30% of the respondents favored a 30-day or less notice period, with the remaining

70% favoring a 45-day or longer period. However, the bulk of the comments favored keeping the hearing notice requirement at 45 days. The major reasons for the 45-day notice period include: (1) there is little control over mail deliveries, and often the interested public receives information too late to prepare effectively for hearings; (2) many groups meet once a month and need time to meet and discuss the notice to decide on a course of action; (3) travel time over long distances is often involved to acquire and review material; and (4) the review material is often complex and requires time for research.

Additionally, we received comments concerning the discretion given to Assistant Administrators and Regional Administrators to waive the 45-day requirement to 30 days or less in emergency situations, or if the issues are not complex or controversial. Some commenters objected to the waiver saying it gives the Assistant Administrators and Regional Administrators too much discretionary power, and feared they may use the waiver more often than necessary. We feel some flexibility must be maintained here, and that the Assistant Administrators and Regional Administrators would be able to make exceptions they feel are warranted. However, we have stated that those objecting to a waiver may appeal to the Administrator of EPA.

10. *Composition of Advisory Groups*: One of the subjects most widely discussed in the proposed Policy has been the composition of advisory groups. Almost all who commented on this subject believed EPA was fair and used good judgment to prescribe a balance of backgrounds among advisory group members; however, a great many commenters believed certain categories sympathetic to their own viewpoints should be given added weight, or others of contrasting views should be prohibited.

Overall, commenters favored EPA's proposal balance of categories two-to-one, and we intend to retain this provision, with two important additions: tribal officials have been added as another category of public official, and we have made clear that elected public officials should not be from the decision-making body the group is advising. Several people wanted "citizens with economic interests" and "organizations with economic interests" as two separate categories, but we do not agree with this proposal. We prefer to leave the citizen-at-large category unencumbered so appointing officials can have room to select a variety of individuals with potentially worthwhile contributions.

11. *Proof of Effort to Achieve Advisory Group Composition*: A number of those who commented were concerned that the balanced membership of advisory groups could be manipulated if there is not some degree of oversight by EPA. They also pointed out that the 40 CFR Part 25 regulation has a section calling for demonstration of "proof of effort," and this section had given valuable oversight to agencies with advisory groups. We agree that federal guidance may be valuable in this area and consequently have added a section that requires advice, assistance, review, and approval by EPA.

12. *Use of Advisory Group Recommendations*: A number of people experienced with advisory groups reported their frustration with instances when the group felt their recommendations were being suppressed by the agencies they advised. Since a major purpose of this Policy is to improve openness on the part of governmental entities, we have added a short section to the Policy which makes it clear that advisory group recommendations should be publicly available.

13. *The Frequency and Use of Responsiveness Summaries*: The great majority of those who commented on the subject of Responsiveness Summaries supported EPA's requirement, and thought these summaries would provide an important addition to decision-making. A few people pointed out, however, that our emphasis should not be on documenting public views as much as it should be on using them. We agree with these comments and have added some language to reflect this

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emphasis. Additionally, there was a certain amount of misunderstanding that Responsiveness Summaries would be required after every hearing or meeting. This is not our intent, but rather it is that Responsiveness Summaries be prepared at “key decision points.” These will be identified in public participation work plans, as well as in program regulations where they are being revised to incorporate provisions of this Policy.

14. How Much Feedback Should Be Provided to the Public on the Results of its Participation?:

EPA’s proposal that feedback be provided received strong support from all sectors of the public. A number of commenters wanted to see feedback provided within a time limit, such as 60 days, though others recognized the burden that such acknowledgments would place on the Agency’s staff. Throughout the comments on this section was the desire on the part of participants to know substantively why their suggestions were or were not accepted. EPA does not have the staff resources to be able to commit itself to interim replies of a substantive nature, especially when the number of comments on many issues run into the thousands. We do, however, recognize a serious commitment to providing feedback and thus are revising the policy to state that all “participants in a particular activity (must) receive feedback,” not just “have access” to it as stated in our earlier proposal.

15. The Use of Work Plans: In EPA’s initial proposal, public participation work plans were contemplated for two reasons: first, good public participation needs to be carefully planned, and second, the resource outlays needed for public participation should be built into program operating budgets. Many members of the public, as well as State and substate officials who commented on the Policy, supported EPA’s emphasis upon work plans. In fact, several said work plans should be discussed earlier in the Policy, a suggestion we have taken. Additionally, we have added some clarifying and strengthening language on the content of work plans and the timing of their preparation. Work plans will be developed at both the program and project levels, and EPA will provide guidance on the content of these documents.

16. The Use of Public Funds to Assist the Participating Public: To a large extent the debate over financial assistance to members of the public or public organizations focused on the use of such funds in regulatory or adjudicatory proceedings. The debate was rendered moot by Congress in its action on EPA’s 1981 appropriation which prohibited use of EPA funds for that purpose. The final Policy reflects the removal of this controversial aspect. Other types of public participation funding (e.g. travel expenses for witnesses at public hearings on hazardous waste disposal siting) proved uncontroversial and occasioned little comment. It is the Agency’s intention to continue to fund such non-regulatory, non-adjudicatory participation.

17. The Responsibility of EPA Officials for Implementing the Policy: Many people who commented on the Policy liked the Agency’s proposal which outlined the authority and responsibility of various Agency officials for ensuring the Policy’s implementation. Several pointed out, however, that the language was confusing and duplicative. Therefore, we have rewritten that section with separate duties identified for Regional Administrators, Associate Administrators, the Director of the Office of Public Awareness, and the Administrator. These sections should clarify the previous ambiguities.

18. Ensuring Compliance with the Policy: A large proportion of commenters wanted reassurance that this Policy is more than a collection of good intentions, and that EPA will stand behind its provisions and enforce them. They were particularly concerned with State and substate assistance recipients, and urged EPA to develop enforcement sanctions. While we hope that sanctions will not be necessary, we have amended the Policy with a section on sanctions that gives greater emphasis to Policy enforcement.

19. *Relationship Between Public Participation Policy and Environmental Impact Statement (EIS) Process:* Several people noted that the proposed Policy was silent on how the Policy fits with the Agency's EIS procedures. EISs are undertaken primarily for grants for wastewater treatment plans, new source National Pollutant Discharge Elimination System (NPDES) permits, and certain major regulations. Many of the goals of this public participation Policy and EPA's EIS programs are similar. The requirements of the new Policy will serve to reinforce, and in some cases, supplement existing EIS procedures. In revising the Policy, we have added a number of references to EISs to emphasize this relationship.

20. *Overall Evaluation of Effectiveness:* Several commenters from Federal or State government agencies, as well as several citizens with years of experience as active participants, drew attention to the importance of evaluating the Policy. They said this should be done both to oversee how well its provisions are being followed and to identify, where possible, the results of improved public involvement on Agency decisions and program implementation. EPA is committed to evaluating this Policy within three years from the date of publication. This will be done under the direction of the Administrator's Special Assistant for Public Participation. This evaluation will include such matters as effectiveness of requirements, enforceability, resource expenditures, alternative public participation methods, public reaction, and reporting requirements.

Conclusion

EPA has made a number of additions and improvements to the proposed Policy on the basis of what it learned from the public during the comment period. Indeed, the revised Policy itself is a good example of how public involvement augments the Agency's work. The overwhelming proportion of statements came from people with long experience in public policy. All reflected a similar outlook: they, like EPA, want to make the system work better. Among many interesting statements, a few examples indicate the challenge of the public's expectations.

A planning board chairman from a small New England town spoke of the resentment that the public has come to feel toward the work of bureaucrats. From his experience in marshaling talent to address local problems, he suggested that EPA consider recruiting broad based citizen task forces or advisory groups to develop all the Agency's regulations and other major policy items. They should be given a deadline, and only if they failed to produce, should EPA step in and do the work. "That would be real participation," he said.

A major national chemical manufacturer opened its statement by saying the Policy is not needed, since the company believes it duplicates existing procedures. The company continued, however, to urge substantial reform of EPA practices in order to give the public a much earlier opportunity for participation before the bureaucratic momentum becomes too great to accept any changes. They also advocated genuine responsiveness to the public, not just a "superficial consideration of comments."

A citizen group that has been working for years to reduce adverse environmental consequences from two oil refineries cited a series of disappointing interactions with EPA; delays in obtaining requested material for review prior to hearings; difficulties in seeing pertinent material even when they visited State offices; the high costs of reproducing documents; and a feeling that government agencies were giving substantial amount of time and assistance to industrial applicants, but were not even willing to answer the questions of opponents, let alone assist them more substantially. The group also had the impression that EPA had its mind made up at the time of a public hearing, and the citizens felt their

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own efforts were wasted.

Statements such as these reveal the frustration that many members of the public have experienced when trying to work with the Agency, and they also point to the motivation and high hopes that the public continues to hold about participating in environmental protection issues. Public participation lies at the heart of the Agency's credibility with the public. It affords the best tested recipe for citizens to influence the governmental decisions that affect their lives and pocketbooks. This Policy takes an important step in defining when EPA will undertake public participation, and in saying that when we do it, we intend to do it right.

Members of the public who wish to obtain the background Compilation of Issues with their disposition and List of Commenters on this Policy may do so by contacting: Sharon F. Francis, Special Assistant for Public Participation, Office of the Administrator (A-100), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone 202/245-3066. Dated: January 13, 1981.

Douglas M. Costle,
Administrator.

Final EPA Policy on Public Participation

This Policy addresses participation by the public in decision-making, rulemaking, and program implementation by the Environmental Protection Agency (EPA), and other governmental entities carrying out EPA programs. The term, "the public" as it is used here, means the people as a whole, the general population. There are a number of identifiable "segments of the public" who may have a particular interest or who may be affected one way or another by a given program or decision. In addition to private citizens, "the public" includes, among others, representatives or consumer, environmental, and minority groups; the business and industrial communities; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; universities, educational, and governmental associations: and public officials, both elected and appointed.

"Public participation" is that part of the agency's decision-making process that provides opportunity and encouragement for the public to express their views to the agency, and assures that the agency will give due consideration to public concerns, values, and preferences when decisions are made.

A. Scope

The requirements and procedures contained in this Policy applies to the Environmental Protection Agency and other governmental entities carrying out EPA programs (referred to herein as "agency"). The activities covered by this Policy are:

EPA rulemaking, when regulations are classified as significant, (under terms of Executive Order 12044);

The administration of permit programs as delineated in applicable permit program regulations; Program activities supported by EPA financial assistance (grants and cooperative agreements) to State and substate governments:

--The process leading to a determination of approval of State administration of a program in lieu of Federal administration;

--Major policy decisions, as determined by the Administrator, appropriate Associate Administrator, Regional Administrator, or Deputy Assistant Administrator, in view of EPA's responsibility to involve the public in important decisions.

When covered activities are governed by EPA regulations or program guidance, the provisions of the Policy shall be included at appropriate points in these documents. Before those changes are made, the provisions of the existing regulations or program guidance shall govern.

B. Purpose

The purpose of this Policy is to strengthen EPA's commitment to public participation and establish uniform procedures for participation by the public in EPA's decision-making process. A strong policy and consistent procedures will make it easier for the public to become involved and affect the outcome of the agency's decisions.

This in turn will assist EPA in carrying out its mission, by giving a better understanding of the public's viewpoints, concerns, and preferences. It should also make the agency's decisions more acceptable to those who are most concerned and affected by them.

Agency officials will provide for, encourage, and assist participation by the public. Officials should strive to communicate with and listen to all sectors of the public. Where appropriate, this will require them to give extra encouragement and assistance to some sectors, such as minorities, that may have fewer opportunities or resources.

The Policy identifies those actions which are required and others that are discretionary, on the part of agency managers. The Policy assumes, however, that agency employees will strive to do more than the minimum required, and is not intended to create barriers to more substantial or more significant participation. The Policy recognizes the agency's need to set priorities for its use of resources, and emphasizes participation by the public in decisions where options are available and alternatives must be weighed, or where substantial agreement is needed from the public if a program is to be carried out.

Public participation must begin early in the decision-making process and continue throughout the process as necessary. The agency must set forth options and alternatives beforehand, and seek the public's opinion on them. Merely conferring with the public after a decision is made does not achieve this purpose.

Agency officials must avoid advocacy and precommitment to any particular alternative prior to decision-making. The role of agency officials is to plan and conduct public participation activities that provide equal opportunity for all individuals and groups to be heard. Officials should actively seek to facilitate resolution of issues among disagreeing interests whenever possible.

Decision makers are aware that issues which are not resolved to the satisfaction of the concerned public may ultimately face time-consuming review. If the objectives of EPA's public participation program are achieved, delays to accommodate litigation should be reduced.

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C. Objectives

In establishing a policy on public participation, EPA has the following objectives:

- To use all feasible means to create early and continuing opportunity for public participation in agency decisions;
- To promote the public's involvement in implementing environmental protection laws;
- To make sure that the public understands official programs and the implications of potential alternative courses of action;
- To solicit assistance from the public in identifying alternatives to be studied, and in selecting among alternatives considered;
- To keep the public informed about significant issues and changes in proposed programs or projects, as they arise;
- To create equal and open access for the interested and affected parties to the regulatory process;
- To make sure that the government understands public goals and concerns, and is responsive to them;
- To demonstrate that the agency consults with interested or affected segments of the public and takes public viewpoints into consideration when decisions are made;
- To anticipate conflicts and encourage early discussions of differences among affected parties;
- To foster a spirit of mutual trust, confidence, and openness between public agencies and the public.

D. General Procedures for All Programs

Each Assistant Administrator, Office Director, or Regional Administrator shall determine forthcoming decisions or activities to which this Policy should be applied, and take the steps needed to assure that adequate public participation measures are developed and implemented.

To ensure effective public participation in any decision or activity, the agency must carry out five basic functions: Identification, Outreach, Dialogue, Assimilation, and Feedback.

1. *Identification.* It is necessary to identify groups or members of the public who may be interested in, or affected by, a forthcoming action. This may be done by a variety of means: developing a contact list of persons and organizations who may have expressed an interest in, may be affected by or have an interest in forthcoming activity; requesting from others in the agency or from key public groups, the names of interested and affected individuals to include; using questionnaires or surveys to find out levels of awareness; or by other means. If EPA is required to file an Environmental Impact Statement (EIS), the scoping process can be used to identify interested parties.

The responsible official(s) shall develop a contact list for each program or project, and add to the list whenever members of the public request it. The list should be updated frequently, and it will be most useful if subdivided by category of interest or geographic area.

The contact list shall be used to send announcements of participation opportunities, notices of meetings, hearings, field trips and other events, notices of available reports and documents, and for identifying members of the public who may be considered for advisory group membership and other activities.

2. *Outreach.* The public can contribute effectively to agency programs only if it is provided with accurate, understandable, pertinent and timely information on issues and decisions. The agency shall make sure that adequate, timely information concerning forthcoming action or decision reaches the public. The agency shall provide policy, program, and technical information at the earliest practical times, and at places easily accessible to interested and affected persons and organizations, so they can make informed and constructive contributions to decision-making. Information and educational programs shall be developed so that all levels of government and the public have an opportunity to become familiar with the issues and the technical data from which they emerge. Informational materials shall highlight significant issues that will be the subject of decision-making. Special efforts shall be made to summarize complex technical materials for the public.

- a. *Methods.* The objective of the agency's public outreach program is to insure that the public understands the significance of the technical data so that rational public choices can be made. Outreach programs require the use of appropriate communication tools, and should be tailored to start at the public's level of familiarity with the subject.

The following, among other approaches, may be used for this purpose:

- (1) publications, fact sheets, technical summaries, bibliographies;
- (2) questionnaires, surveys, interviews;
- (3) public service announcements, and news releases;
- (4) educational activities carried out by public organizations.

- b. *Content.* Outreach materials must include background information (e.g. statutory basis, rationale, or the triggering event of the action); a timetable of proposed actions; summaries of lengthy documents or technical material where relevant; a delineation of issues; alternative courses of action or tentative determination which the agency may have made; whether an EIS is, or will be, available; specific encouragement to stimulate active participation by the public; and the name of an individual to contact for further information.

Whenever possible, the social, economic, and environmental consequences of proposed decision and alternative should be clearly stated in outreach material. Technical evidence and research methodology should be explained. Summaries of technical documents should be footnoted to refer to the original data. Fact sheets, news releases, summaries, and similar publications may be used to provide notice of availability of materials and to facilitate public understanding of more complex documents, but should not be a substitute for public access to the complete documents.

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- c. *Notification.* The agency must notify all parties on the contact list and the media of opportunities to participate and provide appropriate information, as described in the first paragraph of Section 2.b. above. Printed legal notices are often required by program regulations, but do not substitute for the broader notice of the media and contact list required by this section.
- d. *Timing.* Notification (above) must take place well enough in advance of the agency's action to permit the public to respond. Generally, it should take place not less than 30 days before the proposed action, or 45 days in the case of public hearings (exceptions in the case of public hearings are discussed under Dialogue, below).

Where complex issues or lengthy documents are presented for public comment, the comment period should allow enough time for interested parties to conduct their review. This period generally should be no less than 60 days. Where participation opportunities are to be provided in programs of State, substate, and local governments supported by EPA financial assistance, notice shall be given by the recipient to the public within 45 days after award acceptance.

- e. *Fees for Copying.* Whenever possible, the agency should provide copies of relevant documents, free of charge. Free copies may be reserved for private citizens and public interest organizations with limited funds. Any charges must be consistent with requirements under the Freedom of Information Act as set forth in 40 CFR Part 2.
- f. *Depositories.* The agency shall provide one or more central collections of documents, reports, studies, plans, etc. relating to controversial issues or significant decisions in a location or locations convenient to the public. Depository arrangements should be made when possible with public libraries and university libraries. Consideration must be given to accessibility, travel time, parking, transit, and to availability during off-work hours. Copying facilities, at reasonable charges, should be available at depositories.

3. *Dialogue.* There must be dialogue between officials responsible for the forthcoming action or decision and the interested and affected members of the public. This involves exchange of views and open exploration of issues, alternatives, and consequences.

Public consultation must be preceded by timely distribution of information and must occur sufficiently in advance of decision-making to make sure that the public's options are not foreclosed, and to permit response to public views prior to agency action. Opportunities for dialogue shall be provided at times and places which, to the maximum extent feasible, facilitate attendance or participation by the public. Whenever possible, public meetings should be held during non-work hours, such as evenings or weekends, and at locations accessible to public transportation.

Dialogue may take a variety of forms, depending upon the issues to be addressed and the public whose involvement is sought. Public hearings are the most familiar forum for dialogue and often are legally required, but their use should not serve as the only forum for citizen input. When used, hearings should be at the end of a process that has given the public earlier opportunity for becoming informed and involved. Often other techniques may serve a broader purpose:

- Review groups or ad hoc committees *may confer on the development of a policy or written materials;*
- Workshops *may be used to discuss the consequences of various alternatives, or to negotiate differences among diverse parties;*

- Conferences *provide an important way to develop consensus for changing a program or the momentum to undertake new directions;*
- *Task forces* can give concentrated and experienced attention to an issue;
- Personal conversations and personal correspondence *gives the individualized attention that some issues require;*
- Meetings *offer a good opportunity for diverse individuals and groups to express their questions or preferences;*
- A series of meetings *may be the best way to address a long and complex agenda of topics;*
- Toll-free lines *can aid dialogue, especially when many questions can be anticipated or time is short;*
- A hearing panel *compiled of persons from representative public groups may be used in non-adjudicatory hearings to listen to presentations and review the hearing summary.*

This list is not exhaustive, but it indicates the importance for program managers in being flexible and choosing the right techniques for the right occasions.

a. Requirements for public hearings.

- (1) Timing of Notice. Notices must be well publicized and mailed to all interested and affected parties on the contact list (see 1. above) and to the media at least 45 days prior to the date of the hearing. However, when the Assistant Administrator or Regional Administrator find that no review of substantial documents is necessary for effective participation and there are no complex or controversial matters to be addressed, the notice requirement may be reduced to no less than 30 days in advance of the hearing. Additionally, in permit programs, notice requirements will be governed by permit regulations and will be no less than 30 days. Notice for EISs are covered by EIS regulation which calls for a 45-day review period, with an optional 15-day extension. Notice of the EIS hearing is generally contained in the Draft EIS. Hearings on EISs are usually held before the end of the EIS review period, but no earlier than 30 days after the EIS notice. Assistant Administrators or Regional Administrators may further reduce or waive the requirements for advance notice of a hearing in emergency situations where there is imminent danger to public health and safety or in situations where there is a legally mandated timetable. Assistant Administrators may also reduce this requirement if they determine that all affected parties would benefit from a shorter time period.

Members of the public who object to a waiver may appeal to the Administrator, stating their reasons in detail.

- (2) Content of Notice. The notice must identify the matters to be discussed at the hearing and must include or be accompanied by: (a) a discussion of alternatives the public is being asked to comment upon and the agency's tentative conclusions on major issues (if any); (b) information on the availability of an EIS and bibliography of other relevant materials (if appropriate), (c) procedures and contact for obtaining further information; and (d) information which the agency particularly solicits from the public.

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- (3) Provision of Information. All reports, EISs and other documents and data relevant to the discussions at the public hearings must be available to the public on request after the notice, as soon as they become available to agency staff. Background information should be provided no later than 30 days prior to the hearing.
- (4) Conduct of Hearing. The agency conducting the hearing must inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account under law and regulations, the agency's tentative conclusions (if any), and the information which the agency particularly solicits from the public. Whenever possible, the hearing room should be set up informally. The agency should allocate time for presentations, questions and answers, as well as formal commentary on the record. When needed, a pre-hearing meeting to discuss the issues should be held. Procedures must not inhibit free expression of views. When the subject of a hearing addresses conditions in a specific geographic area, the hearing itself should be held in that general area.
- (5) Record of Hearing. The hearing record must be left open for at least ten days to receive additional comment, including any from those unable to attend in person, and may be kept open longer, at the discretion of the hearing officer. The agency must prepare a transcript or record of the hearing itself and add additional comments to the complete record of the proceeding. This must be available for public inspection and copying at cost at convenient locations. Alternatively, copies shall be provided free. If tapes are used, they should be available for use and copying on conventional equipment. When a Responsiveness Summary (see Assimilation below) is prepared after a hearing, it must be provided to those who testified at or attended the hearing, as well as anyone who requests it.

b. *Requirements for advisory groups.* Formation of an advisory group is one of the methods that can be chosen to gain sustained advice from a representative group of citizens.

The primary function of an advisory group is to assist elected or appointed officials by making recommendations to them on issues which the decision making body and the advisory group consider relevant. These issues may include policy development, project alternatives, financial assistance applications, work plans, major contracts, interagency agreements, budget submissions, among others.

Advisory groups can provide a forum for addressing issues, promote constructive dialogue among the various interests represented on the group, and enhance community understanding of the agency's action.

- (1) Requirements for Federal EPA Advisory Committees: When EPA establishes an advisory group, provisions of the Federal Advisory Committee Act (Pub. L. 92-463) and General Service Administration (GSA) Regulations on Federal Advisory Committee Management must be followed.
- (2) Requirements for State and Substate and Local Advisory Committees: (Explanatory Note: The following guidelines do not apply to advisory committees, as defined by the Federal Advisory Committee Act, which are established or utilized by EPA.) In instances where regulations, program guidance, or the public participation work plans of State, substate, or local agencies call for advisory groups, the following special requirements will apply:

(a) Composition of Advisory Groups. Agencies must try to constitute advisory groups so that

the membership includes the major affected parties, reflects a balance of interests, and consists of substantially equivalent proportions of the following groups:

- Private citizens. This portion of the advisory group would not include anyone who is likely to incur a financial gain or loss greater than that of an average homeowner, taxpayer, or consumer as a result of any action that is likely to be taken by the managing agency;
- Individual citizens or representatives of organizations that have substantial economic interests in the plan or project;
- Federal, State, local, and tribal officials. These may be both elected and policy-level appointed officials, so long as the elected officials do not come from the decision-making body the group is advising;
- Representatives of public interest groups. A “public interest group” is an organization which has a general civic, social, recreational, environmental, or public health perspective in the area, and which does not directly reflect the economic interests of its membership.

Generally, where an activity has a particular geographic focus, the advisory group should be composed of persons from that geographic area, unless issues involved are of wider application.

Where problems in meeting the membership composition arise, the agency should request advice and assistance from EPA or the State in the case of a delegated program. EPA shall review the agency’s efforts to comply, and approve the advisory group composition, or, if the agency’s efforts were inadequate, require additional actions.

(b) Resources for Advisory Groups. To the extent possible, agencies shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for mailing, duplicating, technical assistance, and other purposes the advisory group and the agency have agreed upon. The agency should establish a system for reimbursing advisory group members for reasonable out-of-pocket expenses that relate to their participation on the advisory group.

- (3) Advisory Group Recommendations: Recommendations, including minority reports and the minutes of all meetings of an advisory group, are matters of public information. As soon as these become available to agency staff, the agency must provide them to the public on request and distribute them to relevant public agencies. Advisory groups may communicate with EPA or the public as needed, or request EPA to perform an evaluation of the assisted agency’s compliance with the requirements of this part.

4. *Assimilation*. The heart of public participation lies in the degree to which it informs and influences final agency decisions. Assimilating public viewpoints and preferences into final conclusions involves examining and analyzing public comments, considering how to incorporate them into final program decisions, and making or modifying decisions according to carefully considered public views. The agency must then demonstrate, in its decisions and actions, that it has understood and fully considered public concerns. Assimilation of public views must include the following three elements:

- a. *Documentation*. The agency must briefly and clearly document consideration of the public’s views in Responsiveness Summaries, regulatory preambles, EISs or other appropriate forms.

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This should be done at key decision points specified in program guidance or in work for public participation.

b. *Content.* Each Responsiveness Summary (or similar document) must:

- *explain briefly the type of public participation activity that was conducted;*
 - i identify or summarize those who participated and their affiliation;
 - describe the matters on which the public was consulted;
 - summarize the public's views, important comments, criticisms and suggestions;
 - disclose the agency's logic in developing decisions; and
- set forth the agency's specific responses, in terms of modifying the proposed action, or explaining why the agency rejected proposals made by the public.

c. *Use.* The agency must use Responsiveness Summaries in its decision-making. In addition, final Responsiveness Summaries that are prepared by an agency receiving financial assistance from EPA must also include that agency's (and where applicable, its advisory group's) evaluation of its public participation program.

5. *Feedback.* The agency must provide feedback to participants and interested parties concerning the outcome of the public's involvement. Feedback may be in the form of personal letters or phone calls, if the number of participants is small. Alternatively, the agency may mail a Responsiveness Summary to those on the contact list, or may publish it.

a. *Content.* The feedback that the agency gives must include a statement of the action that was taken, and must indicate the effect the public's comments had on that action.

b. *Availability.* Agency officials must take the initiative in giving appropriate feedback, and must assure that all public participants in a particular activity are provided that feedback. As Responsiveness Summaries are prepared, their availability should be announced to the public. When regulations are developed, reprints of Preambles and final regulations must be provided to all who commented.

E. Work Plans

A work plan is a written document used for planning a public participation program. It may be an element of regulatory development plans or program plans. Each work plan should include the following elements: objectives, schedules, techniques, audiences and resources requirements. Work plans should be completed on both a program and project level or for each activity identified under Scope of the Policy.

Public participation work plans, undertaken by EPA or by applicants for EPA financial assistance, shall set forth, at a minimum:

1. Key decisions subject to public participation;
2. Staff contacts and budget resources to be allocated to public participation;
3. Segments of the public targeted for involvement;
4. Proposed schedule for public participation activities to impact program decisions;
5. Mechanism to apply the five basic functions - Identification, Outreach, Dialogue, Assimilation, and Feedback - outlined in Section D of this Policy.

Reasonable costs of public participation incurred by assisted agencies, including advisory group expenses, and identified in an approved public participation work plan, will be eligible for financial assistance, subject to statutory or regulatory limitations. Assistant Administrators and Regional Administrators will ensure that program work plans are developed in a timely manner for use in the annual budget planning process. Work plans will be reviewed by the Special Assistant for Public Participation, who will work with program and regional managers to ensure that work plans adequately carry out this Policy. Work plans may be used as public information documents.

F. Assistance to the Public

EPA recognizes that responsible participation by the various elements of the public in some of the highly technical and complex issues addressed by the agency requires substantial commitments of time, study, research analysis, and discussion. While the Agency needs the perspectives and ideas that citizens bring, it cannot always expect the public to contribute its efforts on a voluntary basis.

Assistant Administrators, office Directors, and Regional Administrators can provide funds to outside organizations and individuals for public participation activities which they, as EPA managers, deem appropriate and essential for achieving program goals, and which clearly do not involve rulemaking or adjudicative activities.

Participation Funding Criteria-Any financial assistance awarded by the Agency for non-regulatory or non-adjudicatory participation should be based on the following criteria:

- (1) whether the activity proposed will further the objectives of this Policy;
- (2) whether the activity proposed will result in the participation of interests not adequately represented;
- (3) whether the applicant does not otherwise have adequate resources to participate; and
- (4) whether the applicant is qualified to accomplish the work.

These are the primary tests for public participation financial assistance. From among those who meet these tests, the Agency will make special efforts to provide assistance to groups who may have had fewer opportunities or insufficient resources to participate.

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G. Authority and Responsibility

Public participation has an integral part in the accomplishment of any program. It should routinely be included in decision-making and not be treated as an independent function. Managers shall assure that personnel are properly trained, and that funding needs are incorporated in their specific budgets.

Responsibility and accountability for the adequacy of public participation programs belong primarily to the Regional Administrators and the Assistant Administrators, under the overall direction of the Administrator.

1. *The Administrator* maintains overall direction and responsibility for the Agency's public participation activities. Specifically, the Administrator, aided by the Special Assistant for Public Participation, will:

- (a) establish policy direction and guidance for all EPA public participation programs;
- (b) review public participation program work plans, including resource allocation;
- (c) coordinate public participation funding to outside groups to ensure the most economical expenditures;
- (d) provide technical advice and assistance as appropriate;
- (e) develop guidance and training needed to ensure that program personnel are equipped to implement the Policy;
- (f) provide incentives to agency personnel to ensure commitment and competence; and
- (g) evaluate at least annually the adequacy of public participation activities conducted under this Policy, and the appropriateness and results of public participation expenditures.

2. *Assistant Administrators* have the following responsibilities:

- (a) identify and address those activities where application of this Policy is required;
- (b) identify and address those forthcoming major policy decisions where the Policy should be applied;
- (c) ensure that program work plans are developed annually to provide for adequate public participation in the above decisions and activities;
- (d) implement approved work plans for public information and public participation activities;
- (e) ensure that, as regulations for the programs cited in the Appendix of the Policy are amended, they incorporate the Policy's provisions;
- (f) evaluate the appropriateness of public participation expenditures and activities under their jurisdiction, revising and improving them as necessary;
- (g) encourage coordination of public participation activities;

- (h) provide guidance and assistance to support regional office activities;
- (i) seek public participation in decisions to modify or develop major national policies, at their discretion;
- (j) consider funding authorized pilot and/or innovative demonstration projects;
- (k) consider measures to ensure Policy implementation in appropriate managers' performance standards;
- (l) provide financial assistance, as appropriate and available, for authorized public participation activities at the national level.

3. *Regional Administrators* have the following responsibilities:

- (a) identify and address those EPA and EPA-assisted activities where application of this Policy is required;
- (b) identify and address those forthcoming EPA and EPA-assisted major policy decisions where the Policy should be applied;
- (c) ensure that work plans are developed annually by the programs and recipients to provide for adequate public participation in the above decisions and activities;
- (d) implement approved work plans for public information and public participation activities;
- (e) ensure that public participation is included by applicants in the development of program funding applications to EPA, and in other decisions as identified by this Policy;
- (f) provide guidance and technical assistance to recipients on the conduct of public participation activities;
- (g) evaluate annually public participation activities of State, substate, or local entities, revising and improving them as necessary;
- (h) encourage coordination of public participation activities;
- (i) support and assist the public participation activities of Headquarters;
- (j) ensure that Regional staff are trained, and resources allocated for public participation program;
- (k) incorporate measures to ensure Policy implementation in managers' performance standards;
- (l) provide small grants to representative public groups for needed public participation work;
- (m) evaluate the appropriateness of public participation expenditures and activities, revising and improving them as necessary.

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4. The Director, Office of Public Awareness has an important role in the development and support of Agency public participation activities. The Director will:

- (a) assist Headquarters and regional programs in identifying interested and affected members of the public in compiling project contacts lists;
- (b) support Headquarters and regional program in development and distribution of outreach materials to inform and educate the public about environmental programs and issues, and participation opportunities;
- (c) develop annual public awareness/participation support plans to complement public participation work plans and identify resources requirements.

H. Compliance

Assistant Administrators, Office Directors, and Regional Administrators are responsible for making certain that, for the activities under their jurisdiction, all those concerned comply with the public participation requirements set forth in this Policy.

Regional Administrators will evaluate compliance with public participation requirements in appropriate State and substate programs supported by EPA financial assistance. This will be done during the annual review of the States' program(s) which is required by grant provisions, and during any other program audit or review.

If the Regional Administrator is not satisfied that this Policy is being carried out, he or she should defer the grant award until these conditions can be met where that course is legally permissible. A Regional Administrator may grant a waiver from specific requirements in this Policy upon a showing by the agency that proposed action will result in substantially *greater* public participation than would be provided by the Policy.

The Administrator of EPA has final authority and responsibility for ensuring compliance. Citizens with information concerning apparent failures to comply with these public participation requirements should first notify the *appropriate* Regional Administrator or Assistant Administrator, and then if necessary, the Administrator. The Regional Administrator, Assistant Administrator, or Administrator will make certain that instances of alleged noncompliance are promptly investigated and that corrective action is taken where necessary.

Appendix—List of Citations Covering Program Grants, Delegations, or Permits to States and Substate Governments

The Public Participation Policy will be incorporated in program regulations that cover financial assistance or delegations of authority to State or substate governments or approval of State programs. Where consolidated awards exist under these provisions, they also will be covered. Programs under the Clean Water Act, Safe Drinking Water Act, and the Resource Conservation Recovery Act are already covered by this Policy insofar as they have been amended, or will be amended, to incorporate 40 CFR, Part, 25. Consolidated permit programs are covered by 40 CFR Parts 122, 123, and 124. Regulations that refer to existing programs now covered by the Policy will have to be amended to incorporate its provisions. Where programs regulations are not yet written, the Policy shall be incorporated.

Clean Air Act (Pub. L. 95-95)

Air Pollution Control Program Grants

Sec. 105-Grants to State and local air pollution control agencies for support of air pollution planning and control programs. (Catalogue of Federal Domestic Assistance No.66001.)

Sec. 106-Grants to interstate air quality agencies and commissions to develop implementation plans for interstate air quality agencies and commissions to develop implementation plans for interstate air quality control regions. [When funded].

Urban Mass Transportation Technical Studies Grants (DOT)

Sec. 175-Grants to organizations of local elected officials with transportation or air quality maintenance responsibilities for air quality maintenance planning. (CFDA No. 20.505)

Sec. 210-Grants to State agencies for developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs. [When funded].

Quiet Communities Act (Pub. L. 95-609)

Quiet Communities—State and Local Capacity Building Assistance

Sec. 14(c)-Grants to State and substate governments and regional planning agencies for planning, developing, evaluating, and demonstrating techniques for quiet communities. (CFDA No. 66.031.)

Toxic Substances Control Act (Pub. L. 94-469)

State Toxic Substance Control Projects

Sec. 28-Grants to State for establishing and operating programs to complete EPA efforts in preventing or eliminating risks to health or environment from chemicals. (CFDA No. 66.800.)

Federal Insecticide, Fungicide and Rodenticide Act (Publ. L. 95-398) Pesticides Enforcement Program Grant

Sec. 23(a)-Funding to States/Indian tribes through cooperative agreements for enforcement and applicator training and certification. (CFDA No. 66-700.)

Resource Conservation and Recovery Act (Pub. L. 94-580)

Sec. 3005(a)-Issuance of permits for treatment, storage and disposal of hazardous waste.

Sec. 3006-Delegation of authority to administer and enforce hazardous waste program.

Sec. 4002-State Planning Guidelines. Solid and Hazardous Waste Management Program Support Grants

Sec. 4007-Approval for State, local, and regional authorities to implement State or Regional Solid Waste Plans and be eligible for Federal assistance. (CFDA No. 66.451)

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Sec 4008-Grants to State and substate agencies for solid waste management, resource recovery and conservation, and hazardous waste management. (CFDA No. 66.451.)

Sec. 4009-Grants to States for rural areas solid waste management facilities. (CFDA No. 66.451.)

Solid Waste Management Demonstration Grants

Sec. 8006-Grants to State, municipal, interstate or intermunicipal agency for resource recovery systems or improved solid waste disposal facilities. (CFDA No. 66.452.)

Solid Waste Management Training Grants

Section 7007-Grants or contracts for States, interstate agency, municipality and other organizations for training personnel in occupations related to solid waste management and resource recovery. (CFDA No 66.453.)

Safe Drinking Water Act (Pub. L. 95-190)

Sec. 1421(b)-Issuance of permits for underground injection control programs.

State Public Water System Supervision Program Grants

Sec. 1443(a)-Grants to States for public water system supervision. (CFDA 66.432.)

State Underground Water Source Protection–Program Grants

Sec. 1443(b)-Grants to States for underground water source protection programs. (CFDA66.433.)

Clean Water Act (Pub. L. 95-217)

Construction Grants for Wastewater Treatment Works

Sec. 201-Grants to State, municipality, or intermunicipal agencies for construction of wastewater treatment works. (CFDA 66.418.)

Water Pollution Control-State and Interstate Program Grants

Sec. 106-Grants to State and Interstate agencies for water pollution control administration. (CFDA 66.419.)

Water Pollution Control-State and Area-wide Water Quality Management Planning Agency

Sec. 205(g)-Delegation of management of construction grants programs to State designated agency(ies). (CFDA 66.438.)

Sec. 208-Grants for State and area-wide waste treatment management planning. (CFDA 66.426.)

Water Pollution Control-Lake Restoration Demonstration Grants

Sec. 314-Clean Lakes Program.

Sec. 402(a)-Issuance of permits under National Pollutant Discharge Elimination System.

Sec. 404-Issuance of permits for disposal of dredge and fill materials.

Pub. L. 94-580, Sections 3005 & 3006;

Pub. L. 95-190, Sections 1421-1423;

Pub. L. 95-217, Section 402;

Pub. L. 95-217, Section 404;

Pub. L. 95-95, Section 165;

Proposed consolidated permit regulations, covering; Hazardous Waste Program under RCRA; UIC Program under SDWA. NPDES and Section 404 of the Clean Water Act, and the PSD Program under the Clean Air Act.

APPENDIX D-2: TITLE 40 PART 25 OF THE CODE OF FEDERAL REGULATIONS

Environmental Protection Agency § 25.2

PART 25—PUBLIC PARTICIPATION IN PROGRAMS UNDER THE RE-SOURCE CONSERVATION AND RECOVERY ACT, THE SAFE DRINKING WATER ACT, AND THE CLEAN WATER ACT

Sec.

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AUTHORITY: Sec. 101(e), Clean Water Act, as amended (33 U.S.C. 1251(e)); sec. 7004(b), Resource Conservation and Recovery Act (42 U.S.C. 6974(b)); sec. 1450(a)(1), Safe Drinking Water Act, as amended (42 U.S.C. 300j-9).

SOURCE: 44 FR 10292, Feb. 16, 1979, unless otherwise noted.

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§ 25.1 Introduction.

This part sets forth minimum requirements and suggested program elements for public participation in activities under the Clean Water Act (Pub. L. 95–217), the Resource Conservation and Recovery Act (Pub. L. 94–580), and the Safe Drinking Water Act (Pub. L. 93–523). The applicability of the requirements of this part is as follows:

- (a) Basic requirements and suggested program elements for public information, public notification, and public consultation are set forth in § 25.4. These requirements are intended to foster public awareness and open processes of government decision making. They are applicable to all covered activities and programs described in § 25.2(a).
- (b) Requirements and suggested program elements which govern the structure of particular public participation mechanisms (for example, advisory groups and responsiveness summaries) are set forth in §§ 25.5, 25.6, 25.7, and 25.8. This part does not mandate the use of these public participation mechanisms. It does, however, set requirements which those responsible for implementing the mechanisms must follow if the mechanisms are required elsewhere in this chapter.
- (c) Requirements which apply to Federal financial assistance programs (grants and cooperative agreements) under the three acts are set forth in §§ 25.10 and 25.12(a).
- (d) Requirements for public involvement which apply to specific activities are set forth in § 25.9 (Permit enforcement), § 25.10 (Rulemaking), and § 25.12 (Assuring compliance with requirements).

§ 25.2 Scope.

- (a) The activities under the three Acts which are covered by this part are:
 - (1) EPA rulemaking, except non-policy rulemaking (for example publication of funding allotments under statutory formulas); and State rulemaking under the Clean Water Act and Resource Conservation and Recovery Act;
 - (2) EPA issuance and modification of permits, and enforcement of permits as delineated by § 25.9;
 - (3) Development by EPA of major informational materials, such as citizen guides or handbooks, which are expected to be used over several years and which are intended to be widely distributed to the public;
 - (4) Development by EPA of strategy and policy guidance memoranda when a Deputy Assistant Administrator determines it to be appropriate;
 - (5) Development and implementation of plans, programs, standards, construction, and other activities supported with EPA financial assistance (grants and cooperative agreements) to State, interstate, regional and local agencies (herein after referred to as “State, interstate, and substate agencies”);
 - (6) The process by which EPA makes a determination regarding approval of State administration of the Construction Grants program in lieu of Federal administration; and the administration of the Construction Grants Program by the State after EPA approval;

(7) The process by which EPA makes a determination regarding approval of State administration of the following programs in lieu of Federal administration: The State Hazardous Waste Program; the NPDES Permit Program; the Dredge and Fill Permit Program; and the Underground Injection Control Program;

(8) Other activities which the Assistant Administrator for Water and Waste Management, the Assistant Administrator for Enforcement, or any EPA Regional Administrator deems appropriate in view of the Agency's responsibility to involve the public in significant decisions.

(b) Activities which are not covered by this part, except as otherwise provided under (a)(8) or (c) of this section, are activities under parts 33 (Subagreements), 39 (Loan Guarantees for Construction of Treatment Works), 40 (Research and Development Grants), 45 (Training Grants and Manpower Forecasting) and 46 (Fellowships) of this chapter.

(c) Some programs covered by these regulations contain further provisions concerning public participation. These are found elsewhere in this chapter in provisions which apply to the program of interest. Regulations which govern the use and release of public information are set forth in part 2 of this chapter.

(d) Specific provisions of court orders which conflict with requirements of this part, such as court-established timetables, shall take precedence over the provisions in this part.

(e) Where the State undertakes functions in the construction grants program, the State shall be responsible for meeting these requirements for public participation, and any applicable public participation requirements found elsewhere in this chapter, to the same extent as EPA.

(f) Where the State undertakes functions in those programs specifically cited in § 25.2(a)(7), the State shall be responsible for meeting the requirements for public participation included in the applicable regulations governing those State programs. The requirements for public participation in State Hazardous Waste Programs, Dredge and Fill Permit programs, Underground Injection Control programs and NPDES permit programs are found in part 123 of this chapter. These regulations embody the substantive requirements of this part.

(g) These regulations apply to the activities of all agencies receiving EPA financial assistance which is awarded after [the effective date of final regulations], and to all other covered activities of EPA, State, interstate, and substate agencies which occur after that date. These regulations will apply to ongoing grants or other covered activities upon any significant change in the activity (for example, upon a significant proposed increase in project scope of a construction grant). Parts 105 (Public Participation in Water Pollution Control) and 249 (Public Participation in Solid Waste Management) will no longer appear in the Code of Federal Regulations; however, they will remain applicable, in uncodified form, to grants awarded prior to the effective date of this part and to all other ongoing activities.

§ 25.3 Policy and objectives.

(a) EPA, State, interstate, and substate agencies carrying out activities described in §25.2(a) shall provide for, encourage, and assist the participation of the public. The term, "the public" in the broadest sense means the people as a whole, the general populace. There are a number of identifiable "segments of the public" which may have a particular interest in a given program or decision. Interested and affected segments of the public may be affected directly by a decision,

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either beneficially or adversely; they may be affected indirectly; or they may have some other concern about the decision. In addition to private citizens, the public may include, among others, representatives of consumer, environmental, and minority associations; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; public officials; and governmental and educational associations.

(b) Public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views. Public participation includes providing access to the decision-making process, seeking input from and conducting dialogue with the public, assimilating public viewpoints and preferences, and demonstrating that those viewpoints and preferences have been considered by the decision-making official. Disagreement on significant issues is to be expected among government agencies and the diverse groups interested in and affected by public policy decisions. Public agencies should encourage full presentation of issues at an early stage so that they can be resolved and timely decisions can be made. In the course of this process, responsible officials should make special efforts to encourage and assist participation by citizens representing themselves and by others whose resources and access to decision-making may be relatively limited.

(c) The following are the objectives of EPA, State, interstate, and substate agencies in carrying out activities covered by this part:

(1) To assure that the public has the opportunity to understand official programs and proposed actions, and that the government fully considers the public's concerns;

(2) To assure that the government does not make any significant decision on any activity covered by this part without consulting interested and affected segments of the public;

(3) To assure that government action is as responsive as possible to public concerns;

(4) To encourage public involvement in implementing environmental laws;

(5) To keep the public informed about significant issues and proposed project or program changes as they arise;

(6) To foster a spirit of openness and mutual trust among EPA, States, substate agencies and the public; and

(7) To use all feasible means to create opportunities for public participation, and to stimulate and support participation.

§ 25.4 Information, notification, and consultation responsibilities.

(a) *General.* EPA, State, interstate, and substate agencies shall conduct a continuing program for public information and participation in the development and implementation of activities covered by this part. This program shall meet the following requirements:

(b) Information and assistance requirements.

(1) Providing information to the public is a necessary prerequisite to meaningful, active public involvement. Agencies shall design informational activities to encourage and facilitate the public's participation in all significant decisions covered by § 25.2(a), particularly where alternative courses of action are proposed.

(2) Each agency shall provide the public with continuing policy, program, and technical information and assistance beginning at the earliest practicable time. Informational materials shall highlight significant issues that will be the subject of decision-making. Whenever possible, consistent with applicable statutory requirements, the social, economic, and environmental consequences of proposed decisions shall be clearly stated in such material. Each agency shall identify segments of the public likely to be affected by agency decisions and should consider targeting informational materials toward them (in addition to the materials directed toward the general public). Lengthy documents and complex technical materials that relate to significant decisions should be summarized for public and media uses. Fact sheets, news releases, newsletters, and other similar publications may be used to provide notice that materials are available and to facilitate public understanding of more complex documents, but shall not be a substitute for public access to the full documents.

(3) Each agency shall provide one or more central collections of reports, studies, plans, and other documents relating to controversial issues or significant decisions in a convenient location or locations, for example, in public libraries. Examples of such documents are catalogs of documents available from the agency, grant applications, fact sheets on permits and permit applications, permits, effluent discharge information, and compliance schedule reports. Copying facilities at reasonable cost should be available at the depositories.

(4) Whenever possible, agencies shall provide copies of documents of interest to the public free of charge. Charges for copies should not exceed prevailing commercial copying costs. EPA requirements governing charges for information and documents provided to the public in response to requests made under the Freedom of Information Act are set forth in part 2 of this chapter. Consistent with the objectives of §25.3(b), agencies may reserve their supply of free copies for private citizens and others whose resources are limited. (5) Each agency shall develop and maintain a list of persons and organizations who have expressed an interest in or may, by the nature of their purposes, activities or members, be affected by or have an interest in any covered activity. Generally, this list will be most useful where subdivided by area of interest or geographic area. Whenever possible, the list should include representatives of the several categories of interests listed under § 25.3(a). Those on the list, or relevant portions if the list is subdivided, shall receive timely and periodic notification of the availability of materials under § 25.4(b)(2).

(c) *Public notification.* Each agency shall notify interested and affected parties, including appropriate portions of the list required by paragraph (b)(5) of this section, and the media in advance of times at which major decisions not covered by notice requirements for public meetings or public hearings are being considered. Generally, notices should include the timetable in which a decision will be reached, the issues under consideration, any alternative courses of action or tentative determinations which the agency has made, a brief listing of the applicable laws or regulations, the location where relevant documents may be reviewed or obtained, identification of any associated public participation opportunities such as workshops or meetings, the name of an individual to contact for additional information, and any other appropriate information. All advance notifications under this paragraph must be provided far enough in advance of agency action to permit time for public response; generally this should not be less than 30 days.

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(d) *Public consultation.* For the purposes of this part, “public consultation” means an exchange of views between governmental agencies and interested or affected persons and organizations in order to meet the objectives set forth in § 25.3. Requirements for three common forms of public consultation (public hearings, public meetings, and advisory groups) are set forth in §§ 25.5, 25.6, and 25.7. Other less formal consultation mechanisms may include but are not limited to review groups, ad hoc committees, task forces, workshops, seminars and informal personal communications with individuals and groups. Public consultation must be preceded by timely distribution of information and must occur sufficiently in advance of decision-making to allow the agency to assimilate public views into agency action. EPA, State, interstate, and substate agencies shall provide for early and continuing public consultation in any significant action covered by this part. Merely conferring with the public after an agency decision does not meet this requirement. In addition to holding hearings and meetings as specifically required in this chapter, a hearing or meeting shall be held if EPA, the State, interstate, or substate agency determines that there is significant public interest or that a hearing or meeting would be useful.

(e) *Public information concerning legal proceedings.* EPA, State, interstate, and substate agencies shall provide full and open information on legal proceedings to the extent not inconsistent with court requirements, and where such disclosure would not prejudice the conduct of the litigation. EPA actions with regard to affording opportunities for public comment before the Department of Justice consents to a proposed judgment in an action to enjoin discharges of pollutants into the environment shall be consistent with the Statement of Policy issued by the Department of Justice (see title 28, CFR, chapter 1, § 50.7).

§ 25.5 Public hearings.

(a) *Applicability.* Any non-adjudicatory public hearing, whether mandatory or discretionary, under the three Acts shall meet the following minimum requirements. These requirements are subordinate to any more stringent requirements found elsewhere in this chapter or otherwise imposed by EPA, State, interstate, or substate agencies. Procedures developed for adjudicatory hearings required by this chapter shall be consistent with the public participation objectives of this part, to the extent practicable.

(b) *Notice.* A notice of each hearing shall be well publicized, and shall also be mailed to the appropriate portions of the list of interested and affected parties required by § 25.4(b)(5). Except as otherwise specifically provided elsewhere in this chapter, these actions must occur at least 45 days prior to the date of the hearing. However, where EPA determines that there are no substantial documents which must be reviewed for effective hearing participation and that there are no complex or controversial matters to be addressed by the hearing, the notice requirement may be reduced to no less than 30 days. EPA may further reduce or waive the hearing notice requirement in emergency situations where EPA determines that there is an imminent danger to public health. To the extent not duplicative, the agency holding the hearing shall also provide informal notice to all interested persons or organizations that request it. The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency’s tentative determination on major issues (if any), information on the availability of a bibliography of relevant materials (if deemed appropriate), and procedures for obtaining further information. Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least 30 days before the hearing. Earlier availability of materials relevant to the hearing will further assist public participation and is encouraged where possible.

(c) *Locations and time.* Hearings must be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. Accessibility of public transportation, and use of evening and weekend hearings, should be considered. In the case of actions with Statewide interest, holding more than one hearing should be considered.

(d) *Scheduling presentations.* The agency holding the hearing shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers. However, the agency shall reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.

(e) *Conduct of hearing.* The agency holding the hearing shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if any), and the information which is particularly solicited from the public. The agency should consider allowing a question and answer period. Procedures shall not unduly inhibit free expression of views (for example, by onerous written statement requirements or qualification of witnesses beyond minimum identification).

(f) *Record.* The agency holding the hearing shall prepare a transcript, recording or other complete record of public hearing proceedings and make it available at no more than cost to anyone who requests it. A copy of the record shall be available for public review.

§ 25.6 Public meetings.

Public meetings are any assemblies or gathering, (such as conferences, informational sessions, seminars, workshops, or other activities) which the responsible agency intends to be open to anyone wishing to attend. Public meetings are less formal than public hearings. They do not require formal presentations, scheduling of presentations and a record of proceedings. The requirements of § 25.5 (b) and (c) are applicable to public meetings, except that the agency holding the meeting may reduce the notice to not less than 30 days if there is good reason that longer notice cannot be provided.

§ 25.7 Advisory groups.

(a) *Applicability.* The requirements of this section on advisory groups shall be met whenever provisions of this chapter require use of an advisory group by State, interstate, or substate agencies involved in activities supported by EPA financial assistance under any of the three Acts.

(b) *Role.* Primary responsibility for decision-making in environmental programs is vested by law in the elected and appointed officials who serve on public bodies and agencies at various levels of government. However, all segments of the public must have the opportunity to participate in environmental quality planning. Accordingly, where EPA identifies a need for continued attention of an informed core group of citizens in relation to activities conducted with EPA financial assistance, program regulations elsewhere in this chapter will require an advisory group to be appointed by the financially assisted agency. Such advisory groups will not be the sole mechanism for public participation, but will complement other mechanisms. They are intended to assist elected or appointed officials with final decision-making responsibility by making recommendations to such officials on important issues. In addition, advisory groups should foster a constructive interchange among the various interests present on the group and enhance the prospect of community acceptance of agency action.

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(c) Membership.

(1) The agency receiving financial assistance shall assure that the advisory group reflects a balance of interests in the affected area. In order to meet this requirement, the assisted agency shall take positive action, in accordance with paragraph (c)(3) of this section, to establish an advisory board group which consists of substantially equivalent proportions of the following four groups:

- (i) *Private citizens.* No person may be included in this portion of the advisory group who is likely to incur a financial gain or loss greater than that of an average homeowner, taxpayer or consumer as a result of any action likely to be taken by the assisted agency.
- (ii) *Representatives of public interest groups.* A “public interest group” is an organization which reflects a general civic, social, recreational, environmental or public health perspective in the area and which does not directly reflect the economic interests of its membership.
- (iii) Public officials.

(iv) Citizens or representatives of organizations with substantial economic interests in the plan or project.

(2) Generally, where the activity has a particular geographic focus, the advisory group shall be made up of persons who are residents of that geographic area.

(3) In order to meet the advisory group membership requirements of paragraph (c)(1) of this section, the assisted agency shall:

- (i) Identify public interest groups, economic interests, and public officials who are interested in or affected by the assisted activity.
- (ii) Make active efforts to inform citizens in the affected area, and the persons or groups identified under paragraph (c)(3)(i) of this section, of this opportunity for participation on the advisory group. This may include such actions as placing notices or announcements in the newspapers or other media, mailing written notices to interested parties, contacting organizations or individuals directly, requesting organizations to notify their members through meetings, newsletters, or other means.
- (iii) Where the membership composition set forth in paragraph (c)(1) of this section is not met after the above actions, the assisted agency shall identify the causative problems and make additional efforts to overcome such problems. For example, the agency should make personal contact with prospective participants to invite their participation.
- (iv) Where problems in meeting the membership composition arise, the agency should request advice and assistance from EPA.

(d) The assisted agency shall record the names and mailing addresses of each member of the advisory group, with the attributes of each in relation to the membership requirements set forth in paragraph (c)(1) of this section, provide a copy to EPA, and make the list available to the public. In the event that the membership requirements set forth in paragraph (c)(1) of this section are not met, the assisted agency shall append to the list a description of its efforts to comply with those requirements and an explanation of the problems which prevented compliance. EPA shall review the

agency's efforts to comply and approve the advisory group composition or, if the agency's efforts were inadequate, require additional actions to achieve the required membership composition.

(e) Responsibilities of the assisted agency.

(1) The assisted agency shall designate a staff contact who will be responsible for day-to-day coordination among the advisory group, the agency, and any agency contractors or consultants. The financial assistance agreement shall include a budget item for this staff contact. Where substantial portions of the assisted agency's responsibilities will be met under contract, the agency shall require a similar designation, and budget specification, of its contractor. In the latter event, the assisted agency does not have to designate a separate staff contact on its own staff, if the Regional Administrator determines that the contractor's designation will result in adequate coordination. The staff contact shall be located in the project area.

(2) The assisted agency has such responsibilities as providing the advisory group with information, identifying issues for the advisory group's consideration, consulting with the advisory group throughout the project, requesting the advisory group's recommendations prior to major decisions, transmitting advisory group recommendations to decision-making officials, and making written responses to any formal recommendation by the advisory group. The agency shall make any such written responses available to the public. To the maximum extent feasible, the assisted agency shall involve the advisory group in the development of the public participation program.

(3) The assisted agency shall identify professional and clerical staff time which the advisory group may depend upon for assistance, and provide the advisory group with an operating budget which may be used for technical assistance and other purposes agreed upon between the advisory group and the agency. (4) The assisted agency shall establish a system to make costs of reasonable out-of-pocket expenses of advisory group participation available to group members. Time away from work need not be reimbursed; however, assisted agencies are encouraged to schedule meetings at times and places which will not require members to leave their jobs to attend.

(f) *Advisory group responsibilities and duties.* The advisory group may select its own chairperson, adopt its own rules of order, and schedule and conduct its own meetings. Advisory group meetings shall be announced well in advance and shall be open to the public. At all meetings, the advisory group shall provide opportunity for public comment. Any minutes of advisory group meetings and recommendations to the assisted agency shall be available to the public. The advisory group should monitor the progress of the project and become familiar with issues relevant to project development. In the event the assisted agency and the advisory group agree that the advisory group will assume public participation responsibilities, the group should undertake those responsibilities promptly. The advisory group should make written recommendations directly to the assisted agency and to responsible decision-making officials on major decisions (including approval of the public participation program) and respond to any requests from the agency or decision-making officials for recommendations. The advisory group should remain aware of community attitudes and responses to issues as they arise. As part of this effort, the advisory group may, within the limitations of available resources, conduct public participation activities in conjunction with the assisted agency; solicit outside advice; and establish, in conjunction with the assisted agency, subcommittees, ad hoc groups, or task forces to investigate and develop recommendations on particular issues as they arise. The advisory group should undertake its responsibilities fully and promptly in accordance with the policies and requirements of this part. Nothing shall preclude the right of the advisory group from requesting EPA to perform an evaluation of the assisted agency's compliance with the requirements of this part.

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(g) *Training and assistance.* EPA will promptly provide appropriate written guidance and project information to the newly formed advisory group and may provide advice and assistance to the group throughout the life of the project. EPA will develop and, in conjunction with the State or assisted agency, carry out a program to provide a training session for the advisory group, and appropriate assisted agency representatives, promptly after the advisory group is formed. The assisted agency shall provide additional needed information or assistance to the advisory group.

§ 25.8 Responsiveness summaries.

Each agency which conducts any activities required under this part shall prepare a Responsiveness Summary at specific decision points as specified in program regulations or in the approved public participation work plan. Responsiveness Summaries are also required for rulemaking activities under §25.10. Each Responsiveness Summary shall identify the public participation activity conducted; describe the matters on which the public was consulted; summarize the public's views, significant comments, criticisms and suggestions; and set forth the agency's specific responses in terms of modifications of the proposed action or an explanation for rejection of proposals made by the public. Responsiveness Summaries prepared by agencies receiving EPA financial assistance shall also include evaluations by the agency of the effectiveness of the public participation program. Assisted agencies shall request such evaluations from any advisory group and provide an opportunity for other participating members of the public to contribute to the evaluation. (In the case of programs with multiple responsiveness summary requirements, these analyses need only be prepared and submitted with the final summary required.) Responsiveness summaries shall be forwarded to the appropriate decision-making official and shall be made available to the public. Responsiveness Summaries shall be used as part of evaluations required under this part or elsewhere in this chapter.

§ 25.9 Permit enforcement.

Each agency administering a permit program shall develop internal procedures for receiving evidence submitted by citizens about permit violations and ensuring that it is properly considered. Public effort in reporting violations shall be encouraged, and the agency shall make available information on reporting procedures. The agency shall investigate alleged violations promptly.

§ 25.10 Rulemaking.

(a) EPA shall invite and consider written comments on proposed and interim regulations from any interested or affected persons and organizations. All such comments shall be part of the public record, and a copy of each comment shall be available for public inspection. EPA will maintain a docket of comments received and any Agency responses. Notices of proposed and interim rulemaking, as well as final rules and regulations, shall be distributed in accordance with § 25.4(c) to interested or affected persons promptly after publication. Each notice shall include information as to the availability of the full texts of rules and regulations (where these are not set forth in the notice itself) and places where copying facilities are available at reasonable cost to the public. Under Executive Order 12044 (March 23, 1978), further EPA guidance will be issued concerning public participation in EPA rulemaking.

A Responsiveness Summary shall be published as part of the preamble to interim and final regulations. In addition to providing opportunity for written comments on proposed and interim regulations, EPA may choose to hold a public hearing.

(b) State rulemaking specified in §25.2(a)(1) shall be in accord with the requirements of paragraph (a) of this section or with the State's administrative procedures act, if one exists. However, in the event of conflict between a provision of paragraph (a) of this section and a provision of a State's administrative procedures act, the State's law shall apply.

§ 25.11 Work elements in financial assistance agreements.

(a) This section is applicable to activities under § 25.2(a)(5) except as otherwise provided in parts 30 or 35.

(b) Each applicant for EPA financial assistance shall set forth in the application a public participation work plan or work element which reflects how public participation will be provided for, encouraged, and assisted in accordance with this part. This work plan or element shall cover the project period. At a minimum, the work plan or element shall include:

(1) Staff contacts and budget resources to be devoted to public participation by category;

(2) A proposed schedule for public participation activities to impact major decisions, including consultation points where responsiveness summaries will be prepared;

(3) An identification of consultation and information mechanisms to be used;

(4) The segments of the public targeted for involvement.

(c) All reasonable costs of public participation incurred by assisted agencies which are identified in an approved public participation work plan or element, or which are otherwise approved by EPA, shall be eligible for financial assistance.

(d) The work plan or element may be revised as necessary throughout the project period with approval of the Regional Administrator.

§ 25.12 Assuring compliance with public participation requirements.

(a) *Financial assistance programs—*

(1) Applications. EPA shall review the public participation work plan (or, if no work plan is required by this chapter for the particular financial assistance agreement, the public participation element) included in the application to determine consistency with all policies and requirements of this part. No financial assistance shall be awarded unless EPA is satisfied that the public participation policies and requirements of this part and, any applicable public participation requirements found elsewhere in this chapter, will be met.

(2) *Compliance—*

(i) *Evaluation.* EPA shall evaluate compliance with public participation requirements using the work plan, responsiveness summary, and other available information. EPA will judge the adequacy of the public participation effort in relation to the objectives and requirements of § 25.3 and § 25.4 and other applicable requirements. In conducting this evaluation, EPA may request additional information from the assisted agency, including records of hearings and meetings, and may invite public comment on the agency's performance. The evaluation will be undertaken as part of any mid-project review required in various programs under this chapter; where no such review is required the review shall be

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conducted at an approximate mid-point in continuing EPA oversight activity. EPA may, however, undertake such evaluation at any point in the project period, and will do so whenever it believes that an assisted agency may have failed to meet public participation requirements.

(ii) *Remedial actions.* Whenever EPA determines that an assisted agency has not fully met public participation requirements, EPA shall take actions which it deems appropriate to mitigate the adverse effects of the failure and assure that the failure is not repeated. For ongoing projects, that action shall include, at a minimum, imposing more stringent requirements on the assisted agency for the next budget period or other period of the project (including such actions as more specific output requirements and milestone schedules for output achievement; interim EPA review of public participation activities and materials prepared by the agency, and phased release of funds based on compliance with milestone schedules.) EPA may terminate or suspend part or all financial assistance for noncompliance with public participation requirements, and may take any further actions that it determines to be appropriate in accordance with parts 30 and 35 of this chapter (see, in particular, § 30.340, Noncompliance and 30.615–3, Withholding of Payments, and subpart H of part 30, Modification, Suspension, and Termination).

(b) *State programs approved in lieu of Federal programs.* State compliance with applicable public participation requirements in programs specified in § 25.2(a) (6) and (7) and administered by approved States shall be monitored by EPA during the annual review of the State's program, and during any financial or program audit or review of these programs. EPA may withdraw an approved program from a State for failure to comply with applicable public participation requirements.

(c) *Other covered programs.* Assuring compliance with these public participation requirements for programs not covered by paragraphs (a) and (b) of this section is the responsibility of the Administrator of EPA. Citizens with information concerning alleged failures to comply with the public participation requirements should notify the Administrator. The Administrator will assure that instances of alleged noncompliance are promptly investigated and that corrective action is taken where necessary.

§ 25.13 Coordination and Non-duplication.

The public participation activities and materials that are required under this part should be coordinated or combined with those of closely related programs or activities wherever this will enhance the economy, the effectiveness, or the timeliness of the effort; enhance the clarity of the issue; and not be detrimental to participation by the widest possible public. Hearings and meetings on the same matter may be held jointly by more than one agency where this does not conflict with the policy of this paragraph. Special efforts shall be made to coordinate public participation procedures under this part and applicable regulations elsewhere in this chapter with environmental assessment and analysis procedures under 40 CFR part 6. EPA encourages interstate agencies in particular to develop combined proceedings for the States concerned.

§ 25.14 Termination of reporting requirements.

All reporting requirements specifically established by this part will terminate on (5 years from date of publication) unless EPA acts to extend the requirements beyond that date.