

# Public COMMENT PERIODS

## DESCRIPTION

The public comment period is the time during which EPA accepts comments from the public on proposed actions and decisions. Required by the Administrative Procedure Act, CERCLA, and other environmental laws, public comment periods enable citizens to participate in the administrative decision making process.

## REQUIRED ACTIVITY?

Yes. The list below provides the requirements for public comment periods, sorted by actions:

### REMEDIAL ACTIONS

- Additions to the NPL:
  - The NCP, at 40 CFR § 300.425(d)(5)(i), requires that “[t]o ensure public involvement during a proposal to add a release to the NPL, EPA shall [p]ublish the proposed rule in the *Federal Register* and solicit comments through a public comment period...”
- For the Proposed Plan:
  - CERCLA § 117(a)(2) requires that the Agency provide a “reasonable opportunity for submission of written and oral comments and an opportunity for a public meeting at or near the facility.”
  - The NCP, at 40 CFR § 300.430(f)(3)(c), specifies that the Agency must “[p]rovide a reasonable opportunity, not less than 30 calendar days, for submission of written and oral comments on the proposed plan and the supporting analysis and information located in the *information repository*, including the RI/FS. Upon timely request, the lead agency will extend the comment period by a minimum of 30 additional days...”
- For Consent Decrees and Enforcement Agreements:
  - The NCP, at 40 CFR § 300.430(c)(5)(i), requires that “[l]ead agencies entering into an enforcement agreement with *de minimis* parties... must allow an opportunity for comment and consideration of comments...”
  - CERCLA § 122(d) requires a public comment period for all consent decrees, regardless of nature or purpose.
  - 28 CFR 50.7 requires that a notice of any consent decree appear in the *Federal Register* 30 days prior to filing it in court, during which the agency must accept comments from the public to be reviewed by the Department of Justice.
- For Other Settlements:
  - CERCLA § 122(i)(2) requires that settlements be posted in the *Federal Register* at least 30 days prior to becoming final and that the agency open a comment period.
- For a Revised Proposed Plan:
  - The NCP, at 40 CFR § 300.430(f)(3)(ii)(B), requires an “additional public comment period on a revised proposed plan, when the lead agency determines the change could not have been reasonably anticipated by the public based on the information available in the proposed plan or the supporting analysis and information in the administrative record.”
- For deletion of a site from the NPL:
  - The NCP, at 40 CFR § 300.425(e)(4)(i), requires the Agency to “[p]ublish a notice of intent to delete in the *FEDERAL REGISTER* and solicit comment through a public comment period of a minimum of 30 calendar days...”

 [See Information Repository, Tab 21](#)

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## REMOVAL ACTIONS

- Actions with planning periods less than six months:
  - The NCP, at 40 CFR § 300.415(n)(2)(ii), requires a “public comment period, as appropriate, of not less than 30 days from the time the administrative record file is made available for public inspection.”
- Actions with planning periods greater than six months:
  - The NCP, at 40 CFR § 300.415(n)(4)(iii), requires not less than 30 calendar days, for submission of written and oral comments after completion of the EE/CA pursuant to § 300.820(a) upon timely request.

## MAKING IT WORK

### WHEN TO USE

Public comment periods are required by law at specific times. These times vary with the action that an administrative agency is taking. The times when the CIC must use a public comment period are listed above under “Required Activity?” However, the NCP, at 40 CFR § 300.430(c)(2)(ii)(A), states that the **Community Involvement Plan** should “ensure the public appropriate opportunities for involvement in a wide variety of site-related decisions, including site analysis and characterization, alternatives analysis, and selection of remedy...”. Thus, additional comment periods can be built into the **Community Involvement Plan**. See the attachments at the end of this Tab for a list of suggestions when inputs from the affected residents might be helpful. Additional public comment periods must be coordinated with the RPM or OSC.

### HOW TO USE

The key to effectively using public comment periods as a tool for community involvement is to make sure that community members know when comments will be accepted, for how long they will be accepted, and how to submit them.

For formal comment periods, you can use **Public Notices** and **Fact Sheets** to inform the public of when and how to direct comments to EPA. If you use **Public Notices**, make sure you have such notices printed in a paper that residents actually read. In some cases, it is best to put a small legal notice in some newspapers and buy a display ad in other, more popular local publications. For *ad hoc* comment periods, use the appropriate communications tools for the community.

Once you have notified the local community of a formal or informal comment period, develop an organized system to receive, catalogue, and respond to comments. Do what works best for you to assure that no comments fall through the cracks. Although public comment periods have an end date after which the period is closed, it is EPA policy to receive public comments after the close of the comment period. In fact, it is EPA policy to receive comments from the public throughout the remedial process.

## TIPS

- Avoid sending the message that a decision has already been reached; this is how the majority of citizens view EPA’s Proposed Plan.

[See Community Involvement Plans, Tab 7](#)



[See Public Notices, Tab 33; Fact Sheets, Tab 15](#)



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- In your response, tell the citizen how the site team interpreted the comment and the decision about the comment (if appropriate, *i.e.*, whether the comment was useable as submitted, useable with some modifications [explain], or not useable).
- Do not use comment periods if you have no intention of considering comments received. This will only breed frustration and resentment among community members.
- Set up an easy system for documenting and responding to comments that works best for you.

## **RELATED TOOLS/RESOURCES IN THE TOOLKIT**

- [Community Involvement Plans, Tab 7](#)
- [Responsiveness Summaries, Tab 36](#)

## **ATTACHED ITEMS WITHIN THIS TOOL**

- Attachment 1: Good Times for Comment Periods
- Attachment 2: The Public Comment Period

## **ATTACHMENT 1: Good Times for COMMENT Periods**

- When identifying PRPs—announce the PRP list and solicit comments; this must be coordinated with and approved by the EPA enforcement attorney in charge of your site.
- When identifying the contaminants—announce what you know and solicit comments.
- When writing the Community Involvement Plan—release the draft and solicit comments.
- When analyzing test results—announce results, initial interpretation, and solicit comments.
- Before moving onto the Feasibility Study—announce the end of the Remedial Investigation (RI), including the various options being considered for remediating the site as a result of the RI, and solicit comments.
- Before finishing the Proposed Plan—announce the leading alternative, with modifications resulting from citizen input, and solicit further comments.
- When the design process reaches 75% completion—share the progress with the residents (some Regions require a public meeting at this point) and solicit comments.
- Before beginning the planning for actual implementation or construction—announce how you are considering to implement the remedy and solicit comments.

## **ATTACHMENT 2: THE PUBLIC COMMENT PERIOD**

Although citizen involvement is encouraged throughout the Superfund process, the public comment period is a formal invitation for citizens to participate in site decisions. A public comment period is required by law on the Proposed Plan for a Superfund site and is announced in the newspaper. Citizens have 30 days, or more as specified in the announcement, to provide comments to EPA in writing. In addition, comments may be given verbally to EPA at the public meeting, also required by law for the Proposed Plan. Written comments must be post marked by the closing date announced in the ad.

EPA often schedules other comment periods, not required by law, to enhance community participation in site decisions. These comment periods are usually only two weeks and are announced informally to people who have shown an interest in the site. For instance, these people may include the Technical Assistance Group or Citizen Advisory Group, citizens on various site mailing lists, and others who have signed in at public meetings or have provided comments to EPA previously. In addition, most EPA Regions accept comments from citizens at any time.

The most useful comments EPA receives are those that explain why a proposed action is good or unacceptable. If commenters feel important points are missing from a proposed decision or the conclusion is based on wrong assumptions or incorrect scientific data, they need to point this out to EPA and describe exactly what is wrong and why. If possible, commenters should describe alternative information or actions.

