

US EPA ARCHIVE DOCUMENT

United States Environmental Protection Agency
Public Participation Policy
Issued January 19, 1981

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 pre commitment 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.

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 by the nature of their purposes or activities 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 decisionmaking. 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.

- 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 nonadjudicatory 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.

(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 prehearing 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.

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;
- 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.

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 (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.

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)

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**

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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.

§ 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, 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.

(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.

(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.

(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 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.