

## Environmental Protection Agency

## § 24.20

documents could not have been submitted before hearing in accordance with the requirements of §24.14 (c) and (e). The Agency may then present matters solely in rebuttal to matters previously presented by the respondent. The Presiding Officer may allow the respondent to respond to any such rebuttal submitted. The Presiding Officer may exclude repetitive or irrelevant matter. The Presiding Officer may upon request grant petitioner leave to respond to submissions made by respondent pursuant to this paragraph or §24.14(e).

### §24.16 Transcript or recording of hearing.

(a) The hearing shall be either transcribed stenographically or tape recorded. Upon written request, such transcript or tape recording shall be made available for inspection or copying.

(b) The transcript or recording of the hearing and all written submittals filed with the Clerk by the parties subsequent to initial issuance of the order including post-hearing submissions will become part of the administrative record for the proceeding, for consideration by the Presiding Officer and Regional Administrator.

### § 24.17 Presiding Officer's recommendation.

(a) The Presiding Officer will, as soon as practicable after the conclusion of the hearing, evaluate the entire administrative record and, on the basis of the administrative record, prepare and file a recommended decision with the Regional Administrator. The recommended decision must address all material issues of fact or law properly raised by respondent, and must recommend that the order be modified, withdrawn or issued without modification. The recommended decision must provide an explanation, with citation to material contained in the record for any decision to modify a term of the order, to issue the order without change or to withdraw the order. The recommended decision shall be based on the administrative record. If the Presiding Officer finds that any contested relief provision in the order is not supported by a preponderance of

the evidence in the record, the Presiding Officer shall recommend that the order be modified and issued on terms that are supported by the record, or withdrawn.

(b) At any time within twenty-one (21) days of service of the recommended decision on the parties, the parties may file comments on the recommended decision with the Clerk. The Clerk shall promptly transmit any such comments received to the Regional Administrator for his consideration in reaching a final decision.

## Subpart D—Post-Hearing Procedures

### §24.18 Final decision.

As soon as practicable after receipt of the recommended decision, the Regional Administrator will either sign or modify such recommended decision, and issue it as a final decision. If the Regional Administrator modifies the recommended decision, he shall insure that the final decision indicates the legal and factual basis for the decision as modified. The Regional Administrator's decision shall be based on the administrative record.

### §24.19 Final order.

If the Regional Administrator does not adopt portions of the initial order, or finds that modification of the order is necessary, the signatory official on the initial administrative order shall modify the order in accordance with the terms of the final decision and file and serve a copy of the final administrative order. If the Regional Administrator finds the initial order appropriate as originally issued, the final decision shall declare the initial administrative order to be a final order, effective upon service of the final decision. If the Regional Administrator declares that the initial order must be withdrawn, the signatory official on the initial administrative order will file and serve a withdrawal of the initial administrative order. This may be done without prejudice.

### §24.20 Final agency action.

The final decision and the final administrative order are final agency actions that are effective on filing and

service. These actions are not appealable to the Administrator.

**PART 25—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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- 25.11 Work elements in financial assistance agreements.
- 25.12 Assuring compliance with public participation requirements.
- 25.13 Coordination and non-duplication.
- 25.14 Termination of reporting requirements.

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 decisionmaking. They are applicable to all covered activities and programs described in § 25.2(a).

(b) Requirements and suggested program elements which govern the struc-

ture 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