



**DIRECTIVE NUMBER:** 9542.00-3

**TITLE:** (PIG-81-2) Federal Register Notice  
of Public Hearing and Comment Period  
on State Applications for Interim  
Authorization

**APPROVAL DATE:**

**EFFECTIVE DATE:**

**ORIGINATING OFFICE:**

**FINAL**

**DRAFT**

**STATUS:**

**REFERENCE (other documents):**

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United States Environmental Protection Agency  
Washington, DC 20460

# OSWER Directive Initiation Request

Interim Directive Number  
9542.00-3

### Originator Information

Name of Contact Person SPB	Mail Code - Branch OSW	Telephone Number 382-2210
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Lead Office <input type="checkbox"/> OERR <input checked="" type="checkbox"/> OSW	<input type="checkbox"/> OUST <input type="checkbox"/> OWPE <input type="checkbox"/> AA-OSWER	Approved for Review Signature of Office Director	Date
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Title  
(PIG-81-2) Federal Register Notice of Public Hearing and Comment Period on State Applications for Interim Authorization

Summary of Directive  
Memo answers the following. How should Federal Register notices regarding public hearing and comment on State applications for interim authorization be worded? What is the process for publishing such notice?

Key Words:  
State Authorization, Interim Authorization

Type of Directive (Manual, Policy Directive, Announcement, etc.)	Status <input type="checkbox"/> Draft <input checked="" type="checkbox"/> Final <input type="checkbox"/> New <input type="checkbox"/> Revision
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Does this Directive Supersede Previous Directives?  Yes  No  
Does It Supplement Previous Directives?  Yes  No  
If "Yes" to Either Question, What Directive (number, title)

Review Plan  
 AA-OSWER     OUST     OECM     Other (Specify)  
 OERR     OWPE     OGC  
 OSW     Regions     OPPE

Request Meets OSWER Directives System Format

Signature of Lead Office Directives Officer	Date
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Signature of OSWER Directives Officer	Date
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY POLICY DIRECTIVE NO.  
WASHINGTON, D.C. 20460

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95-00-00-00-00

OFFICE OF WATER  
AND WASTE MANAGEMENT  
PIG-81-2

MEMORANDUM

SUBJECT: Federal Register Notice of Public Hearing and  
Comment Period on State Applications for Interim  
Authorization

FROM: Steffen W. Plehn *Steffen W. Plehn*  
Deputy Assistant Administrator  
for Solid Waste (WH-562)

R. Sarah Compton *R. Sarah Compton*  
Deputy Assistant Administrator  
for Water Enforcement (EN-335)

TO: PIGS Addressees

ISSUE

How should Federal Register notices regarding public hearing and comment on State applications for interim authorization be worded? What is the process for publishing such notices?

DISCUSSION

A number of Regional Offices recently have asked about the wording and publishing of Federal Register notices required in 40 CFR 123.135(a). This guidance memorandum has been prepared to provide for national consistency and to expedite the approval process. This memorandum provides background information on the regulatory requirements and presents suggested wording and publication procedures for the notice. We wish to thank Laura Yoshii of the Region IX Hazardous Materials Branch and Cheryl Koshuta of the Office of Regional Counsel, Region X, for their invaluable assistance in the preparation of the model notice.

Section 123.135 of 40 CFR describes the approval process for complete State applications for interim authorization of hazardous waste management programs. Section 123.135(a)(1) directs the Regional Administrator to issue notice in the Federal Register, and in accordance with §123.39(a)(1), of a public hearing on the State's application for interim authorization. The Interim Authorization Guidance Manual suggests that this notice be published as soon as possible after the receipt of a complete State application. (The regulation allows up to 30 days after receipt before the notice must be issued.) The tighter schedule found in the Manual is based on making a final decision on the complete State application on an accelerated basis within 60 days.

Regional Offices should ensure that the application is complete before issuing the notice. The complete application should address all major issues raised by EPA during review of the draft application, as well as contain all required documents. When major issues have not been adequately addressed, it may be desirable for the State to submit additional information and application amendments before the application is considered complete and before the Federal Register notice is published. If, however, a notice is published and the State subsequently submits significant new information or program changes, it may be necessary to issue a second Federal Register notice announcing the availability of the new information and extending the public review and comment period. In some instances, it may become necessary to postpone the hearing or schedule a second hearing to provide adequate public consideration of the significant new information. This is a decision the Region should make on a case-by-case basis as the situation dictates. Efforts made at the outset to ensure that the State's application is complete before issuing the notice can avoid later confusion, delays, or impediments to public participation.

Section 123.135(a) requires that the public hearing be held by EPA no earlier than the 30th day after the Federal Register notice is published. Expedited publication of the notice will enable the hearing to take place close to the 30th day after the complete application is received, thus keeping us on the schedule toward timely approval of acceptable State programs.

The regulation also provides that where significant public interest in a hearing is not expressed the hearing may be cancelled if a statement to that effect was included in the public notice. Also, State participation is required in any public hearing held by EPA.

In addition to EPA's Federal Register notice, public notice must be issued in accordance with 40 CFR §123.39(a)(1). This section requires the notice to be:

"... circulated in a manner calculated to attract the attention of interested persons including: (i) publication in enough of the largest newspapers in the State to attract statewide attention; and (ii) mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested."

The regulations also specify that EPA must afford the public 30 days after the notice to comment on the State's submission and must note the availability of the State's submission for inspection and copying by the public. The State submission must, at a minimum, be available in the main office of the lead State agency and in the EPA Regional Office.

The Guidance Manual's review procedure for complete applications states that the Regional Workgroup and Headquarters Review Team must complete their respective reviews prior to the public hearing, in order to facilitate interpretation of public comments received at the hearing. After the hearing has been held and public comments have been submitted, the State Delegation Coordinator will be responsible for preparing responses to the comments. The responses are to be reviewed by the Regional Workgroup and the Headquarters Review Team.

The §123.135(b) requirements for interim authorization approval state that within 90 days after the initial notice in the Federal Register, the Administrator must make a final determination whether or not to approve the State's program, taking into account any comments submitted. The Administrator must give notice of this final determination in the Federal Register and in accordance with §123.39(a)(1). The Administrator must include a concise statement of the reasons for this determination and a response to significant comments received. Pages 1.2-8 and 1.2-9 of the Guidance Manual provide additional information concerning the content, timing, and concurrences in the Regional Administrator's Action Memorandum and official Federal Register notice of approval.

#### DECISION

We believe that consistent wording in the Federal Register notices will promote public understanding of the program and ensure that all regulatory requirements are satisfied. A model Federal Register notice which meets the requirements of 40 CFR 123.135(a) has been developed and is attached. This model has been reviewed and approved by Federal Register attorneys and editors. We suggest that all Regional Offices use this basic format and wording, with the addition of appropriate details concerning names, places, times, etc.

The Model Federal Register notice contains optional sections on Conduct of Hearings and Preparation of Transcripts. A specific format for the hearings is not set forth in the regulations. Thus, the format which is suggested in this model can be changed to meet specific situations which may arise regarding the various States. Once the format is established, this section can be used in conjunction with the background information section of the notice as general opening remarks for the hearing.

The suggested format provides for a panel to receive testimony and to pose questions, as appropriate, to persons testifying. The panel should recognize that its role is not one of defending a particular course of action (i.e. approval or disapproval), the State's program, or the Federal regulations. The decision to approve or disapprove interim authorization can be made only after the hearing; thus, the Agency will not have a final decision to defend at the hearing. However, in some cases the Agency may have developed a preliminary conclusion based on review of the application prior to the hearing. In such cases the public should be fully informed as to the Agency's "leanings". This can be handled as a "Major Issue" identified in the Federal Register hearing notice. Also, as a minimum, the hearing chairperson should identify the Agency's preliminary conclusion in the opening remarks and should explain that the conclusion is only tentative, pending the review of public comments and the proceedings of the hearing.

The purpose of the hearing is to receive information from and the opinions of the public, and the panel should be encouraged to ask clarifying questions of the public as appropriate. The panel is to consist of EPA personnel, especially those who have personally reviewed the State's application in depth.

We suggest that a representative of the State be present to testify first, including in the testimony a brief description of the State program, and to participate in any question and answer session which the panel might provide at the hearing's conclusion. (Any general question and answer session should be off the record.)

States may desire to use the hearing to satisfy their own legal requirements to hold public hearings. Regional Offices should then determine whether a joint EPA - State hearing is desirable, considering the purpose of the State's hearing and its relationship to EPA's hearing requirement. In some cases joint hearings would be very cost-effective: States would not have to bear the cost of conducting separate hearing; and the public could avoid the cost of appearing at multiple hearings.

However, at joint hearings where the State participates on the hearing panel we must avoid any appearance of State involvement in EPA's decision-making. The hearing chairperson can avoid such appearances by carefully and clearly explaining the situation in the opening remarks. State participation on the panel should be noted in the "Conduct of Hearing" portion of the Federal Register hearing notice. Persons presenting testimony should be asked to identify whether their comments are for purposes of the State proceedings or the EPA proceedings.

The model also contains an optional section for listing major issues of interest to EPA. This section is designed to set out and briefly describe specific problems or issues which have arisen during review of the State's application. The listing of major issues may help to focus comments on particular problems facing EPA in the decision whether to grant interim authorization to the State.

The notice should be double-spaced. The original signed notice and four copies should be sent to:

Federal Register Office (PM-223)  
U.S. Environmental Protection Agency  
401 M Street, S. W.  
Washington, D. C. 20460

Attention: Carolyn Ward

A copy of the notice should also be sent to the HQ Review Team Leader, for placement in the HQ Library with a copy of the State application. (The notice should indicate that an application copy is available for public inspection at the EPA HQ Library).

The EPA Federal Register Office will add appropriate log and billing numbers and transmit the notice for publication. Generally, EPA's Federal Register Office can review and transmit the notice within a day. The notice should be published within an additional three days. If you need information or special assistance concerning publication, call Carolyn Ward at FTS 297-0778.

Attachment

U.S. ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123 (Subpart F)

[State] Application for Interim Authorization, Phase I,  
Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region \_\_\_\_.

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA has promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (as amended) to protect human health and the environment from the improper management of hazardous waste. Phase I of the regulations were published in the Federal Register on May 19, 1980 (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the availability for public review of the [State] application for Phase I interim authorization, inviting public comment, and giving notice of a public hearing to be held on the application.

DATE: Comments on the [State] interim authorization application must be received by [a date at least thirty days from the date of publication of this notice].



PUBLIC HEARING: EPA will conduct a public hearing on the [State] interim authorization application at [Time] on [a date no earlier than 30 days after the date of publication of this notice]. EPA reserves the right to cancel the public hearing if significant public interest in a hearing is not expressed. The State of \_\_\_\_\_ will participate in the public hearing.

ADDRESSES: The public hearing will be held at:

[Room number, address, city, state].

Copies of the [State] interim authorization application are available at the following addresses for inspection and copying by the public:

[Address and phone number of the main office of the lead State agency];

[Address and phone number of EPA Regional Office];

EPA Headquarters Library, Room 2404, 401 M Street, S.W.,  
Washington, D.C.

Written comments and requests to speak at the hearing should be sent to:

[Name, address and phone number of person at EPA Regional Office].

FOR FURTHER INFORMATION CONTACT:

[Name, address and phone number of EPA Regional Office contact person].

SUPPLEMENTARY INFORMATION: In the May 19, 1980 Federal Register (45 FR 33063) the Environmental Protection Agency promulgated Phase I of its regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. EPA's Phase I regulations establish, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous wastes, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

The May 19 regulations also include provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for interim authorization, the State hazardous waste program must, among other things:

- (1) have been in existence prior to August 17, 1980, and
- (2) be "substantially equivalent" to the Federal program.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123 Subpart F, (45 FR 33479).

The State of \_\_\_\_\_ has submitted a complete application to EPA for Phase I interim authorization. Copies of the State submittal are available for public inspection and comment as noted above. A public hearing is to be held on the submittal, unless significant public interest is not expressed, as also noted above.

#### CONDUCT OF HEARING

(Note: Where joint hearings are held to satisfy State as well as Federal hearing requirements, this section should be reworded to reflect any changes in hearing format and conduct. See discussion of joint hearings on page 4 of PIG - 81 - 2.)

The hearing is intended to provide an opportunity for interested persons to present their views and submit information for consideration by EPA in the decision whether to grant [State] interim authorization for Phase I of the RCRA program. A panel of EPA employees involved in relevant aspects of the decision will be present to receive the testimony.

The hearing will be informally structured. Individuals providing oral comments will not be sworn in, nor will formal rules of evidence apply. Questions may be posed by panel members to persons providing oral comments; however, no cross-examination by other participants will be allowed.

The State will testify first and present a short overview of the State program. Other commenters will then be called in the order in which their requests were received by EPA. As time allows, persons who did not sign up in advance but who wish to comment

on the State's application for Phase I interim authorization will also be given an opportunity to testify.

Each organization or individual will be allowed as much time as possible for oral presentation based on the number of requests to participate and the time available for the hearing. As a general rule, in order to ensure maximum participation and allotment of adequate time for all speakers, participants should limit the length of their statements to 10 minutes. The public hearing will be followed, as time permits, by a question and answer session during which participants may pose questions to members of the panel.

#### PREPARATION OF TRANSCRIPTS

A transcript of the comments received at the hearing will be prepared. To ensure accurate transcription, participants should provide written copies of their statements to the hearing chairperson. Transcripts will be available from [person and address] approximately [ ] days after the hearing at a cost of \$[ ].

#### MAJOR ISSUES OF INTEREST TO EPA

In order for a State program to receive interim authorization, it must be substantially equivalent to the Federal program. EPA is soliciting comment on all aspects of the substantial equivalence of the [State] program to the Federal hazardous waste management program. The Agency is particularly interested in public comment on the following issues:

[List specific points where questions exist as to substantial equivalence.]

Dated: [date]

[Signature]  
Regional Administrator