



ENHANCING REGIONAL INVOLVEMENT:

A Study Of Rulemaking At EPA

Final Report

by

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## ENHANCING REGIONAL INVOLVEMENT:

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#### Executive Summary

##### Defining Rulemaking

Rulemaking is a generic term used to refer to all of the activities associated with the process of developing and reviewing EPA regulations.

##### Reasons for the Study

This Study was undertaken at the direction of Louis Gitto, Director of Region I's Administrative Services Division and completed by the Planning and Evaluation Branch. There were several reasons for the Study:

- ° Senior staff members at Region I believe that many of the difficulties which arise in the administration and enforcement of national environmental policies and programs stem from the fact that Regions and States do not have sufficient influence in EPA's rulemaking process.
- ° The statistics on Region I participation in rulemaking activities seem disappointing. (See Summary of Findings and Appendix A).
- ° Attention to rulemaking has been included in the performance standards of some Region I senior managers.
- ° Administrator Ruckelshaus has emphasized the importance of running an "open" Agency, and has said that Regions and States should play a "central role" in the rulemaking process.

##### Objectives of the Study

The objectives of this Study were to:

- ° Describe the existing EPA rulemaking process, highlighting points at which the Regions and States can become involved.
- ° Develop methods for increasing Regional and State influence in the existing rulemaking process.
- ° Package and present these various methods, and the advantages and disadvantages of administering them, in a manner conducive to decision-making.

### Methodology of the Study

#### The Project Team:

- ° Completed an extensive literature search and interviewed some 35 individuals from HQ, all ten Regions, and the States, and analyzed the information so obtained.
- ° Developed flowcharts of the formal EPA rulemaking process, identifying where Regions and States can influence proposed regulations, and the "pros" and "cons" of entering the process at these points.
- ° Developed, categorized and evaluated 43 different "action initiatives" which Regions can implement/pursue to increase/improve the effectiveness of their participation in rulemaking.
- ° Prepared six increasingly resource-intensive collections of complementary "action initiatives" known as "Option Packages" to aid decision-makers in planning the Region's approach to the rulemaking process.

### The Lexicon of Rulemaking

A number of specialized terms and acronyms are used in discussions of rulemaking. A Glossary has been included at the end of this Report to define unfamiliar terms and offer succinct explanations of basic rule-making concepts.

## "Option Packages" for the Decision-Maker

This Report offers six approaches or Option Packages for maintaining or modifying Regional involvement and influence in EPA rulemaking. These Option Packages are, of course, only representative of the wide range of approaches available. The decision-maker may select an Option Package or create a "tailor-made" Option Package by assembling ideas from more than one of the six Option Packages. If the decision-maker wants to create an Option Package "from scratch," he/she should refer to the comprehensive list of 43 "action initiatives" which the Project Team used to develop the six Option Packages. These action initiatives are categorized and evaluated in Indices at the end of the Report's Option Packages section.

Note that the six Option Packages prepared by the Project Team are presented in order of increasing resource intensity and difficulty of implementation. The sixth and final Package is a listing of various methods, primarily outreach programs, which can be used to enhance some of the other Packages.

- ° Option Package One, ending all Region I involvement in formal EPA rule-making processes, may result in a short-run resource savings. However, the long-run problems of implementing and enforcing programs which were developed without consideration of the Regional perspective might very well result in additional costs which far outweigh the initial savings. Consequently, forfeiting all formal involvement in rulemaking should be considered an expensive way of accomplishing nothing.
- ° Option Package Two, making no change in the way Region I currently participates in EPA rulemaking, would have no affect on resources spent, or on Regional effectiveness in rulemaking.
- ° Option Package Three includes beginning an education program in the Region; requiring the Regional Regulatory Contact (RRC) to send information to the Divisions and the RA's Office (a list of HQ Project Officer names and a status report on Regional involvement in rulemaking, respectively); and modifying certain internal systems. These modifications include changing a filing system, preparing presigned concurrence memos, and encouraging telephone communications between Regional staff and HQ. There are marginal "start-up" costs. Once implemented, this Package would require no additional resources and would increase the effectiveness of Region I in rulemaking.
- ° Option Package Four includes everything in Package Three with some additions. The main feature of this option is that the Region would adopt a Priority Regulation System (PRS). (These systems are describ-

ed in the next section of the Executive Summary.) Like Package Three, Option Package Four has marginal "start-up" costs, but would require no significant additional resources once implemented. This Option Package would have an even greater effect on Region I's rulemaking effectiveness than Package Three.

- ° Option Package Five includes everything in Packages Three and Four plus several modifications for increasing the effectiveness of the PRS. The education program mentioned in Package Three would be expanded to include briefing State officials. Also, the responsibilities of the Planning and Evaluation Branch would be expanded so that work would be done with HQ to improve the transmittal of rulemaking communications, and work would be done with the Divisions to improve the effectiveness of written comments which are sent to HQ. In addition, this package would incorporate rulemaking into Region I's performance standards; would coordinate Region I's rulemaking activity with other Regions and States; and would have the Region share status reports on proposed regulations with State agencies on a monthly basis. The various elements of this Package require substantially different amounts of resources, and many of these parts can be implemented separately. All of the Package's elements would increase the Region's effectiveness in rulemaking.
- ° Option Package Six outlines various outreach programs and modifications of external systems which may be used to enhance Option Packages Three, Four and Five. The costs of these various methods range from zero to substantial. Consequently, the decisionmaker should carefully review this Package in conjunction with the other Packages.

For a complete discussion of the choices which are available to decision-makers, please see "Option Packages and Action Initiatives."

#### Priority Regulation Systems (PRS)

Based on a thorough analysis of rulemaking and interviews both within and outside of Region I, the Project Team came to the conclusion that Region I's participation in rulemaking is less effective and efficient than it could be. Current Regional procedures for rulemaking: aggravate the time constraints already placed on commentors; overwhelm Region I senior managers with paper; and do not systematically focus resources and attention and useful information on Region I rulemaking activities. These factors amount to an ad hoc approach to rulemaking which fails to adequately highlight and influence proposed regulations of special interest to Region I.



The adoption of a Priority Regulation System (PRS), which is a centerpiece of this Report, would result in a more systematic approach to rulemaking thus greatly improving Region I's effectiveness in rulemaking at virtually no cost.

Region I does not have enough time or resources to become involved in the development of every proposed regulation in the rulemaking system. Furthermore, because the Region would not be directly affected by many of these regulations, it does not have the desire to become involved in their development. However, there are proposed regulations which would have great impact on New England, or which involve issues in which Region I has a certain level of expertise. A PRS recognizes these facts and focuses the Region's rulemaking efforts on these "top priority" regulations.

By trying its hardest to influence those regulations which it considers "top priority," the Region:

- ° Emphasizes the fact that it takes rulemaking seriously, and will approach the task in a thoughtful, organized manner.
- ° Clearly highlights those issues which are most important to the Region, and eliminates any possible confusion over what the Region's priorities are in rulemaking.
- ° Promotes the development of Regional strategies for influencing specific regulations.
- ° Simplifies the task of budgeting resources for rulemaking activity.
- ° Reduces the Division Director's regulatory review burden, allowing more time for active participation on pre-identified, top-priority regulations.
- ° Streamlines the commenting process which allows more time for review and preparation of more thoughtful and effective comments.
- ° Increases the Division's ability to shift old priorities and recognize new priorities.
- ° Improves the ability of the Divisions to monitor all developing regulations.

There are two major steps in implementing a PRS. First, the Region must determine which regulations it most wants to influence. To do this, the Division Directors would place all of the regulations in the EPA Regulatory Agenda on one of two lists, a "top priority" list or a "nominal involvement" list. Second, individual staff members would be assigned to monitor the development of specific regulations. Every regulation--even those not on the "top priority" list--would have such a pre-designated "contact person."

For a complete explanation of how a PRS works, please see Appendix B. To see how two other Regions have used such systems, please see Appendix E.

### The Rulemaking Process

The rulemaking process for the development of a single regulation can take from one-and-one-half years to four-and-one-half years, depending on a host of factors. Approximately 250 regulations are in some stage of development at any one time.

There are four phases to the development of a rule. These phases, and the key document for each of them, are:

- ° Internal Notification Phase (Start Action Request--SAR)
- ° Development Plan Phase (Advanced Notice of Proposed Rulemaking--ANPRM)
- ° Proposal Phase (Notice of Proposed Rulemaking--NPRM)
- ° Final Rule Phase (Final Notice of Rulemaking--FNR)

In the Internal Notification Phase, the HQ Program Office that wants to develop a regulation files an SAR. The SAR, which is approved by HQ's Office of Standards and Regulations (OSR), is used to notify all other EPA offices, including Regions, that the rulemaking process for the development of a new regulation has started. A Work Group is then formed to assist the Lead Program Office in studying and drafting the proposal and guiding it through the rulemaking process.

In the Development Plan Phase, the Lead Program Office and its Work Group prepare their plan for developing the regulation. This plan must be ap-



proved by the Steering Committee, and then by the Red Border Reviewers. Finally, the Administrator signs off, and the Advanced Notice of Proposed Rulemaking (ANPRM) is promulgated in the Federal Register.

In the two final phases, the Proposal Phase and the Final Rule Phase, the proposed regulation, or "regulatory development package," circulates through the system in much the same way the development plan did. The major difference is that in addition to Steering Committee and Red Border approvals and the Administrator's sign-off, these "regulatory development packages" must also be approved by the Office of Management and Budget (OMB) before the Notice of Proposed Rulemaking (NPRM) and Final Notice of Rulemaking (FNR) appear in the Federal Register. The FNR sets out the full text of the final version of the regulation and specifies when the regulation becomes effective.

Note that it remains unresolved whether the Administrator's sign-off will come before or after OMB's approval. Also, the Office of Legal and Enforcement Counsel (OLEC), which is represented on all Steering Committees and Red Border Reviews, has been split into two new offices, General Counsel and "Enforcement Counsel."

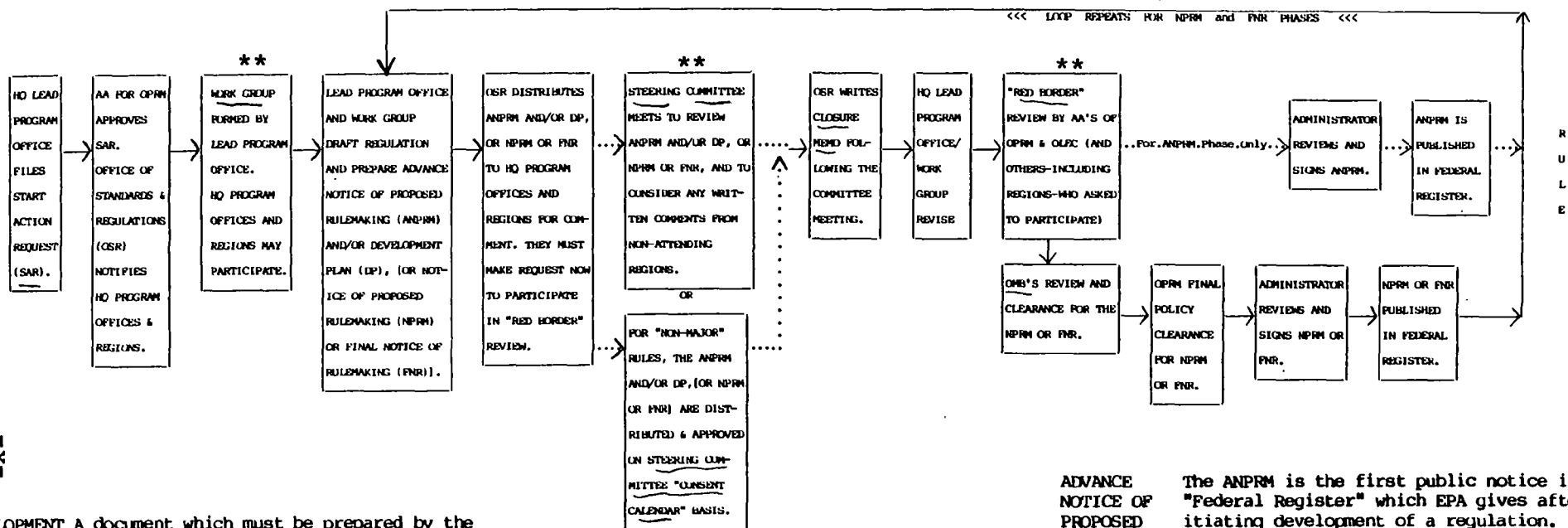
Regions and States have the opportunity to comment on proposed regulations prior to each of the three Steering Committee meetings in the rulemaking process. Regions and States can also participate in the decision-making aspects of rulemaking. Representatives from both Regions and States can participate on Work Groups, and Regions can be represented on Steering Committees and Red Border Reviews, although the latter is extremely rare. A general "rule-of-thumb" is that the earlier in the process that Regions become involved, the more influence they have, but this involvement can be resource intensive; later involvement is cheaper, but less effective. Note, of course, that Regions and States can also attempt to influence rulemaking through informal contacts with HQ Program Offices.

The Flowchart on the following page illustrates the highlights of the rulemaking process and provides definitions for some of the basic terms. For a concise depiction of how each rulemaking phase works, please see "EPA Rulemaking in 4 Phases." For a detailed, comprehensive description of the entire rulemaking process, please see Appendix C.

The Project Team has also collected important HQ memoranda on the rulemaking process. This information can be found in Appendix H. If even more detailed information about rulemaking is required, contact HQ's Office of Standards and Regulations (OSR) to obtain a copy of "Managing the Process" which was prepared as part of EPA's Regulation Management Series. The reader should be advised, however, that many parts of that document have been superseded and are now inaccurate.

# HIGHLIGHTS OF EPA RULEMAKING

(Source: P&E Branch, Region I)



**DEVELOPMENT PLAN: (DP)** A document which must be prepared by the Lead Program Office within 60 days of the approval of the SAR. The plan briefly sets out the objectives, analytic framework, resource needs, budget, and schedule for the rule to be developed.

**STEERING COMMITTEE: (SC)** The Steering Committee meeting is THE point at which comments by all EPA Offices and Regions are considered. The SC is composed of one representative each from: HQ Program, Administrative, and R&D Offices; OPRM; OLEC; and any Regions which wish to participate.

**STEERING COMMITTEE "CONSENT CALENDAR":** An alternative method of obtaining SC approval. The "Consent Calendar" may be used only if: the rule is non-major; there are no controversial issues; and the entire Work Group agrees to this review option. "Consent Calendar" packages are distributed and approval is obtained by the mere passage of time (typically two weeks) without objection.

**"NON-MAJOR" RULE:**

The standard definition of this term derives from Executive Order #12291. It refers to a rule which will have less than \$100 million in economic impact.

**CLOSURE MEMO:**

A memorandum prepared by OPRM's Office of Standards and Regulations which summarizes the results of the Steering Committee meeting, any comments of non-attending Regions, the SC's disposition of these and any special requests for participation on "Red Border" Review.

**"RED BORDER" REVIEW:**

A policy review of a proposed regulation by senior-level management. Only the AA's of OPRM and OLEC MUST give their approval to a proposed regulation during "Red Border." Typically, they are the only senior managers who participate. All other Offices and the Regions must have requested participation during the course of Steering Committee deliberations.

**ADVANCE NOTICE OF PROPOSED RULEMAKING: (ANPRM)**

The ANPRM is the first public notice in the "Federal Register" which EPA gives after initiating development of a regulation. An ANPRM is usually, but not necessarily, prepared and published. It is short and conceptual and usually appears within 10 months of the start of rulemaking, i.e. the SAR.

**NOTICE OF PROPOSED RULEMAKING: (NPRM)**

The NPRM is mandatory and either the first or second public notice EPA gives of a developing regulation (depending on whether or not an ANPRM was published). The NPRM is usually quite detailed, sets out the full text of the proposed rule and its background and solicits public comment. It must be published in the "Federal Register" and usually appears there within 28 months of the start of rulemaking, i.e. the SAR.

**FINAL NOTICE OF RULEMAKING: (FNR)**

The FNR must be published in the "Federal Register" when EPA completes the development of a regulation. It sets out the full text of the final version of the regulation. It normally appears within 52 months of the start of rulemaking, i.e. the SAR. The effective date is specified in the FNR.

**\*\*** Denotes key points for formal Regional input. Note, however, that informal input is possible at any time.

## Regional Interviews

One element of this Study was a series of in-depth interviews with staff members who serve as Regional Regulatory Contacts in each of the ten EPA Regions. All ten of the Regions had one opinion in common: the most serious problem the Regions currently face in the rulemaking process is insufficient review time during the commenting periods. The Regions, technically, are given two weeks to prepare their comments, however, the average number of days the Regions actually have is significantly less. One-half of the Regions say they have an average of five working days to review and comment on proposed regulations. Furthermore, five of the Regions view the commenting process as an ineffective means for influencing regulations. All of the Regions think that because of their "field experience" in implementing and enforcing programs their comments deserve particular attention when new regulations are being developed.

For highlights of Regional attitudes, please see the "Summary of Findings." For a full comparison of the Regions, see the matrices in "Summary of Information and Opinions, Regions I-X."

## State Interviews

The Project Team also conducted interviews to obtain the perspective of State environmental officials in New England towards rulemaking. The main complaint that the States had was not that they do not receive adequate information, but that when they try to become involved in rulemaking they are not treated as equal partners. Instead, they are simply treated as another interest group. Furthermore, when they do participate in rulemaking, they are often not kept up-to-date on the status of the developing regulation. States, like the Regions, feel they offer an important and experienced perspective on actual program management and enforcement.

For highlights of State attitudes, please see the "Summary of Findings." For a full discussion of the State interviews, please see "Summary of State Viewpoints."

## Making Comments More Effective

Because the commenting process is, and will probably continue to be, the most common method for Regions to participate in rulemaking, and because

there is a general feeling among Regions that their comments are often ineffective, the Project Team prepared a list of methods for making comments more effective. In addition, it collected samples of particularly well-written comments which can be used as examples. It is also important that staff members realize the importance of informal communication with HQ Program Offices via telephone.

### The Federal Advisory Committee Act and Public Participation

The Federal Advisory Committee Act (FACA) is a 1972 Act of Congress designed to regulate any group of non-Federal Government employees which serves in an advisory role to any agency or branch of the Federal Government. Briefly stated, FACA requires such advisory committees be formally chartered, keep records, and operate in a manner open to the public. Advanced notice of advisory committee meetings must appear in the Federal Register. FACA raises two important issues in a discussion of rulemaking.

First, several people in Region I told the Project Team that they thought it would be valuable if the Divisions, or the Region as a whole, could regularly meet with members of the academic community, public interest groups, and representatives of business and industry, in the form of organized advisory committees. However, the Region must be mindful of FACA in this context.

The second involves relations between Federal Agencies and the States. The Project Team heard complaints from State officials that FACA has been raised by some EPA Officials as a bar to a "equal partnership" between EPA and the several States in rulemaking, despite the fact that Federal environmental statutes, as well as others, make the States co-regulators with Federal Agencies.

Regarding the first issue, the case law clearly holds that Federal Agencies may not purposely structure meetings so as to avoid the requirements of FACA. Nevertheless, it is possible to structure meetings which meet the requirements and spirit of FACA and still serve as a vehicle for obtaining public input on EPA operations and regulations, without imposing costly burdens, legal or otherwise, on EPA. Region III, in fact, has developed an experimental "Public Outreach" program which allows public discussions and input without violating the Act. (For a description of this program, see Appendix I.)

In light of the difficulties FACA has caused for State involvement in rulemaking, the National Governors Association has tried, thus far unsuc-

cessfully, to amend FACA so States could deal directly with EPA prior to the public comment period for proposed regulations. Until such a change is made, State participation in rulemaking may remain somewhat limited.

Please see Appendix E for a more complete discussion of how FACA affects EPA rulemaking, a list of principal judicial cases, and a copy of the Act.

#### The 1982 Report on EPA Rulemaking

In the course of its interviews, the Project Team was asked by several people about a report done by outside consultants in 1982 on the subject of the EPA rulemaking process for HQ's OSR. Such a report was written and OSR has prepared a summary of it. It is included in Appendix G.



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## PREFACE

### Background

A combination of factors led to the preparation of this report. First, it was perceived by senior staff at EPA Region I and in several New England States that the Region and the States have not exercised sufficient influence over the content of regulations. This in turn is seen to cause difficulties in some cases in the delegation and implementation of national environmental policies and programs. Placing regulatory development and review low on the list of Regional priorities results in what one Region I media official termed "eternal crisis management." Second, the statistics on Region I participation in developing the Regional Priority List and in commenting seemed disappointing. Third, attention to rulemaking was recently added to the performance standards of several Region I senior managers. Fourth, since his appointment, Administrator Ruckelshaus has emphasized the importance of opening EPA processes in general to all interested publics and affected bodies. Finally, Louis Gitto, Director of the Administrative Services Division at EPA Region I, requested that this report be prepared because of his longstanding interest in EPA rulemaking and an effective Regional presence in that process.

### Purpose

The purpose of this report is: to explain the EPA rulemaking process as it currently exists, showing the key points and methods for

effective Regional and State participation; to clarify the factors that bear on the extent and quality of involvement in rulemaking by various participants; to develop options which maximize Regional influence in EPA rulemaking while minimizing delays and resource drains; and to formulate and present these options in a manner conducive to decision-making.

### Methodology

This report was prepared by the Planning and Evaluation Branch, Administrative Services Division, EPA Region I, in June and July, 1983. Two summer interns from Harvard University, David Struhs of the Kennedy School of Government and Greg Peterson of the Law School, completed the study with Norman Willard, Attorney-Advisor, as Project Supervisor. After reviewing and analyzing all pertinent HQ guidance, memos, directives and reports, and statistics on Region I participation in rulemaking for FY82 and FY83, the project team then:

- ° Interviewed Regional Regulatory Contacts in all ten Regions to identify the various Regional mechanisms for rulemaking participation and review and to obtain suggestions for improving the process.
- ° Consulted with environmental officials in two New England States (Massachusetts and Vermont) to identify mechanisms used by the Region I States to participate in the regulatory

review process and to obtain suggestions for improving the process.

- ° Surveyed attitudes of Region I senior managers and staff as well as those of Headquarters' Office of Standards and Regulations on EPA rulemaking and the participation of States, Regions and the publics in the rulemaking process.
- ° Developed a flowchart showing the EPA rulemaking process, highlighting its key steps, time frames, participant groups and functions, and opportunities for State and Regional participation. Reviewed this chart for completeness and accuracy with OSR.
- ° Developed resource-conscious options to increase Regional influence in EPA rulemaking.
- ° Formulated and presented findings and options in report formatted to give ready access to advantages, disadvantages and other pertinent information necessary for the informed consideration of decisionmakers.

Many individuals in the Region, Headquarters, our Region I States, and the other Regional Offices contributed substantially to this report. The project team would like to express its thanks to the individuals listed in Appendix J of this report for their time and support.



## SUMMARY OF FINDINGS

### REGION I FACTS

- ° In FY82, Region I listed 8 regulations as priorities on the RPL; 3 of these 8 regulatory packages came to Region I in FY82; of those 3, Region I commented on none.
- ° Region I was one of the two Regions which listed the smallest number of regulations on HQ's FY83 RPL survey (10 proposed regulations selected out of 262, or 3.8%). None of these 10 proposals have been circulated to the Regions for comment in FY83 to date.
- ° Of the 5 regulations on Region I's FY82 RPL response which did not come to the Region for comment, 4 were in various Work Group stages and 1 was at OMB during FY82. Of the 10 regulations on the Region's FY83 RPL response which did not come to Region I for comment, 4 were in various Work Group stages, 3 were at OMB or in "Red Border" Review, 2 were withdrawn, and Regional review was eliminated for 1 due to deadline constraints and delays at OMB and OPRM.
- ° In FY82, Region I commented on 17 of the 110 regulatory packages which came to the Region (15.5%); in FY83, to date, Region I has commented on 5 of 54 (9.3%).

### REGIONAL ATTITUDES

- ° Both the special technical expertise and knowledge of the national picture in HQ Program Offices, and the field experience of the Regions and States are necessary for sound and workable regulations.
- ° Regional staffs feel they generally have little influence in EPA rulemaking; they are sometimes frustrated because HQ Program Offices rarely explain why Regional comments are not incorporated.
- ° Region I Division Directors generally feel the formal commenting process is too late to really influence regulatory development and that it involves too much time and paperwork.

## SUMMARY OF FINDINGS (cont.)

- ° Region I Division Directors view rulemaking as a low priority due to the perceived lack of influence on the content of regulations and resource shortages.
- ° Region I staff-level personnel feel that a lack of Regional involvement in developing regulations results in eventual problems with enforcement and delegation.
- ° Region I Branch Chiefs and staff perceive environmental, administrative, economic, political and staff development benefits to joining Work Groups.

## STATES' ATTITUDES

- ° New England States are most often involved in EPA rulemaking by EPA HQ or by Associations of State Officials.
- ° New England's State Environmental Agencies are frustrated because they are not treated as "equal partners" when they try to become involved in rulemaking.
- ° However, New England State Environmental Agencies have joined some Work Groups and have both the interest and resources to join more.

## TIME SHORTAGES

- ° EPA Regions have, on average, 5-7 work days, and often even less, in which to review and comment on proposed regulations.
- ° All EPA Regions feel they have insufficient time for review and comment and would like to have more time.



## SUMMARY OF FINDINGS (cont.)

### HOW TO HAVE AN IMPACT ON REGULATORY DEVELOPMENT

- Regional Divisions can make direct, informal contacts with HQ Program Offices in order to attempt to influence regulatory development.
- Regions have 3 standard and 3 optional points at which they can become involved in formal EPA rulemaking:
  - Standard: Steering Committee Review in Development, Proposal and Final Rule Phases;
  - Optional: Join Work Group in Internal Notification Phase; "Red Border" Review in Proposal and Final Rule Phases.
- Regions can join Steering Committee meetings at their pleasure but must now request participation in "Red Border" Review.
- Regions best influence a regulation early in its development, but this can be expensive; later involvement is cheaper, but less effective.
- A Priority Regulation System (PRS) can be an effective way to improve Regional influence in rulemaking; PRS's are now being used in Regions VI (Dallas), VIII (Denver), IX (San Francisco), and X (Seattle).
- Minor changes in approaches to/procedures for commenting can make Region I's comments much more effective at minimal cost to the Region.
- Coordination between Regions and between Regions and States is sometimes useful in enhancing influence in rulemaking.

## SUMMARY OF FINDINGS (cont.)

### OTHER FINDINGS

- ° FACA limits EPA's ability to seek advice from States or other external groups in rulemaking.
- ° However, there are effective methods for increasing public participation in EPA operations without violating FACA.
- ° Region I Division Directors and New England State Officials want more information about the formal EPA rulemaking process.

## Option Packages And Action Initiatives

### INTRODUCTION

There are many means available to increase Regional and State influence on the content of EPA regulations. This section of the Report sets out some forty-three action initiatives to enhance the effectiveness of participation in EPA rulemaking. These action initiatives have been set out in indices by category, e.g. education program, their costs estimated, and their advantages and disadvantages described.

To assist decision makers in creating a suitable plan for participation in rulemaking, we pre-selected certain action initiatives to create six Option Packages. Each successive Option Package would require a greater resource commitment. (The schematic which follows highlights the relative "costs" associated with three of the Option Packages.)

Option Package VI is clearly the most resource intensive, and contains many activities that would involve the Region in extensive outreach. For this reason decision-makers may be interested in pursuing only some of the activities listed in Option Package VI.

In like manner, the decision-makers can choose a mix of action initiatives from any Option Package to develop an appropriate and specific plan for increasing Regional influence on Agency rulemaking.

Note that each action initiative in the Options Packages includes, in parentheses, a citation to other parts of this report, e.g. the Indices of Action Initiatives and the Appendix, where more complete information is provided.

OPTION PACKAGE NUMBER ONE

- ° END ALL REGION I INVOLVEMENT IN FORMAL EPA RULEMAKING PROCESSES  
(See Index V-7)

OPTION PACKAGE NUMBER TWO

- ° MAKE NO CHANGE IN THE WAY REGION I CURRENTLY PARTICIPATES IN EPA  
RULEMAKING PROCESSES

Cost Estimate: No change in Region I Workyears devoted to rulemaking activities.

### OPTION PACKAGE NUMBER THREE

#### Begin An Education Program

- ° BRIEF RA, DRA, DDs AND STAFF ON EPA RULEMAKING PROCESS AND HOW AND WHEN TO GET INVOLVED IN ORDER TO HAVE MAXIMUM IMPACT (See Index I-1 & 2)
- ° SEND BRIEFING PACKAGES FROM REGION I BRIEFINGS ON THE EPA RULEMAKING PROCESS TO APPROPRIATE STATE OFFICIALS (See Index I-3)
- ° HAVE RA, DRA, DDs ASK ABOUT REGULATORY CONCERNS WHEN VISITING WITH STATE OFFICIALS (See Index I-4)

#### Increase Responsibilities of the RRC / P&E Branch

- ° HAVE RRC REPORT STATUS OF REGION I INVOLVEMENT IN RULEMAKING TO THE RA ON A REGULAR BASIS (See Index II-1)
- ° HAVE RRC GIVE NAMES OF HQ PROJECT OFFICERS TO DIVISIONS FOR TRANSMITTAL TO APPROPRIATE STATE OFFICIALS (See Index II-4)

#### Modify Internal Systems

- ° HAVE RRC USE AN SAR-BASED FILING SYSTEM AND KEEP "HISTORIES" OF REGULATIONS CURRENTLY UNDER DEVELOPMENT (See Index III-1)
- ° PREPARE PRE-SIGNED "NO COMMENT" SHEETS AND HAVE DDs INSTRUCT STAFF ON WHEN TO USE THEM (See Index III-2)
- ° HAVE REGION I COMMENTORS CALL THE REGULATORY AUTHOR OR THE HQ PROJECT OFFICER BEFORE AND AFTER COMMENTING (See Index III-3 & 4)

Cost Estimate: No additional work years would have to be devoted to rulemaking activities under this Package.

OPTION PACKAGE NUMBER FOUR

IN ADDITION TO  
ALL ITEMS IN PACKAGE THREE:

Increase Responsibilities of the RRC / P&E Branch

- ° HAVE THE RRC SEND SARs TO THE RA'S OFFICE AS WELL AS TO THE DDs, BUT ON A "BATCHED" BASIS (See Index II-2)
- ° HAVE THE RRC, OR THE PLANNING & EVALUATION BRANCH, PREPARE STATISTICS AND AN ANNUAL REPORT TO THE RA ON REGION I PARTICIPATION IN EPA RULEMAKING (See Index II-5)

Develop and Use a Priority Regulation System (PRS)

- ° ESTABLISH, MAINTAIN AND OPERATE UNDER A 2-TIERED, SAR-BASED, REGIONAL PRIORITY REGULATION SYSTEM (PRS) (See Index IV-1, 2 & 3 and Appendix B)
- ° HAVE THE RRC, RATHER THAN DIVISION STAFF, RETURN THE PRE-SIGNED "NO COMMENT" SHEETS, BASED ON CONTACT BETWEEN THE RRC AND STAFF WITHIN A SPECIFIED TIME FRAME (See Index IV-3 and Appendix B)

Cost Estimate: A marginal increase in work years would be required in order to start-up a Priority Regulation System (PRS), but this slight increase would be offset by resource savings once a PRS was established.



OPTION PACKAGE NUMBER FIVE

I N   A D D I T I O N   T O

A L L   I T E M S   I N   P A C K A G E S   T H R E E   &   F O U R :

Begin An Education Program

- ° BRIEF STATE OFFICIALS ON THE EPA RULEMAKING PROCESS AND HOW AND WHEN TO BECOME INVOLVED IN ORDER TO HAVE MAXIMUM INFLUENCE (See Index I-3)

Increase Responsibilities of RRC / P&E Branch

- ° HAVE THE RRC WORK CLOSELY WITH HQ'S OSR TO DEVELOP A BETTER (FASTER) METHOD OF TRANSMITTING REGULATORY PACKAGES (See Index II-3)
- ° HAVE THE PLANNING & EVALUATION BRANCH AND/OR THE RRC WORK TO IMPROVE THE EFFECTIVENESS OF REGION I'S WRITTEN COMMENTS (See Index II-8 and Appendix D)

Modify Internal Systems

- ° REQUIRE DDs TO REGULARLY INFORM THE RA ON THE PROGRESS AND STATUS OF ALL "TOP PRIORITY LIST" (TPL) REGULATIONS (See Index III-5)
- ° DIVISIONS OBTAIN WORKING DRAFTS OF PROPOSED "TOP PRIORITY LIST" (TPL) REGULATIONS AND COMMENT ON THEM (See Index V-6 and Appendix D)
- ° ESTABLISH REGION I "WORK GROUPS" TO STUDY, DRAFT AND RESPOND TO PROPOSED "TOP PRIORITY LIST" (TPL) REGULATIONS (See Index III-6 and Appendix D)
- ° JOIN THE WORK GROUP FOR "TOP PRIORITY LIST" (TPL) REGULATIONS (See Index III-7, Index IV-1,2 & 3 and Appendices B and D)
- ° PARTICIPATE IN STEERING COMMITTEE AND "RED BORDER" REVIEWS FOR MOST "TOP PRIORITY LIST" (TPL) REGULATIONS (See Index IV-1,2 & 3 and Appendices B and D)
- ° ADD ATTENTION TO RULEMAKING TO REGION I PERFORMANCE STANDARDS (See Index III-12)

OPTION PACKAGE NUMBER FIVE (cont.)

Develop and Use A Priority Regulation System (PRS)

- ° USE THE PRIORITY REGULATION SYSTEM (PRS) TO FOCUS ADDITIONAL RESOURCES ON "TOP PRIORITY LIST" (TPL) REGULATIONS (See Index IV-1,2 & 3 and Appendix B)

Expand Outreach Activities / Modify External Systems

- ° HAVE THE RA, DRA AND DDS COORDINATE REGION I INVOLVEMENT WITH A PROPOSED REGULATION WITH OTHER REGIONS AND WITH STATES (See Index I-5 and Appendix D)
- ° SEND COPIES OF THE ACTION MEMOS FOR EVERY REGULATORY PACKAGE RELATED TO A "TOP PRIORITY LIST" (TPL) REGULATION TO STATE OFFICIALS (See Index V-1)
- ° SHARE THE NEWLY-CREATED WEEKLY STATUS FORMS WITH STATE AGENCIES, BUT ON A MONTHLY BASIS (See Index II-6)

Cost Estimate: Approximately 2 to 5 additional Region I workyears would have to be devoted to rulemaking activities. It is extremely difficult to predict costs because of variables, e.g. complexity of the regulation, intensity of Work Group activity, extra-agency interest, etc.

OPTION PACKAGE NUMBER SIX

S E L E C T   A N Y   O N E   O R   S E V E R A L  
O F   T H E   F O L L O W I N G  
T O   E N H A N C E  
P A C K A G E   T H R E E ,   O R   F O U R ,   O R   F I V E :

Increase Responsibilities of RRC / P&E Branch

- ° HAVE THE PLANNING & EVALUATION BRANCH CONDUCT POLLS ON SUGGESTIONS FOR IMPROVING EXISTING REGULATIONS AND REPORT RESULTS TO EPA HQ (See Index II-7)

Modify Internal Systems

- ° RELOCATE THE RRC IN THE RA'S OFFICE (See Index III-8)

Expand Outreach Activities / Modify External Systems

- ° ENCOURAGE ALL PROGRAM OFFICES TO PLACE RULEMAKING AND PERHAPS PROPOSED RULES ON THE AGENDA AT NATIONAL MEDIA STAFF GATHERINGS (See Index V-3)
- ° ENCOURAGE ALL DIVISIONS TO ESTABLISH REGION I / NEW ENGLAND STATE STAFF GATHERINGS AND TO PLACE RULEMAKING AND PROPOSED RULES ON THE AGENDA (See Index V-2)
- ° ENCOURAGE THE OFFICE OF REGIONAL OPERATIONS (OReo) TO TAKE THE LEAD IN IMPROVING REGIONAL COOPERATION AND COORDINATION (See Index V-4)
- ° REQUEST LISTS OF WORK GROUP MEMBERS, PHONE NUMBERS, ETC., FROM HQ OSR OR HQ PROGRAM OFFICES (See Index V-5)
- ° ESTABLISH AND CONDUCT A PUBLIC OUTREACH PROGRAM (See Index V-8 and Appendix I)
- ° ESTABLISH AN ADVISORY COMMITTEE FOR EACH DD (See Index V-9)
- ° INCLUDE RULEMAKING IN WORKLOAD MODELS AND OBTAIN MORE RESOURCES FROM HQ (See Index III-10 & 11 and Index V-10)
- ° PERSUADE EPA HQ TO GIVE REGIONS A THIRD WEEK FOR REVIEW AND COMMENT ON REGULATORY PACKAGES (See Index V-11 and Summary of Information and Opinions, Regions I - X)

OPTION PACKAGE NUMBER SIX (cont.)

- ° REQUIRE A RESPONSE FROM HQ PROGRAM OFFICES TO REGIONAL COMMENTS  
(See Index V-12)
- ° HAVE REGION I TAKE THE RESPONSIBILITY FOR DEVELOPING A REGULATION  
(See Index V-13)
- ° ENCOURAGE CONGRESS TO REVISE THE FEDERAL ADVISORY COMMITTEE ACT  
(FACA) IN ORDER TO ALLOW CLOSER EPA-STATE CONSULTATION (See Index  
V-14 and Appendix E)

Cost Estimate: As specific action initiatives will be selected from  
this Package, no cost estimates can be provided.

# OPTION PACKAGES TO INCREASE REGIONAL IMPACT ON RULEMAKING

"Costs" & Impact Increase Left to Right

PACKAGE 3

PACKAGE 4

PACKAGE 5

OUTREACH &  
EXTERNAL  
MODIFICA-  
TION

(SEE ALSO  
INDEX V &  
PACKAGE 6)

°RA,DRA,DDs coordinate involve-  
ment with other Regions & States  
°Copies of Action Memos to States  
°Send States status form monthly

DEVELOP &  
USE A PRS

°Establish & maintain 2-tier SAR-  
based Priority Regulation System

SAME AS OPTION 4

MODIFY  
INTERNAL  
SYSTEMS

°Change to SAR-based files  
°Call rule author/HQ Project Off-  
icer before & after commenting  
°DDs/Staff prepare/use pre-signed  
"No Comment" sheets

SAME AS OPTION 3

°DDs keep RA informed of progress  
of "TPL" rules  
°Create intra-Reg.I "work groups"  
°Obtain working drafts of propo-  
sed rules, comment on them  
°Join Work Group for "TPL" rules  
°Join Steering Committee & "Red  
Border" for most "TPL" rules  
°Add rulemaking to Region I per-  
formance standards

PLUS

SAME AS OPTION 3 & 4

INCREASE  
RESPONSI-  
BILITIES  
OF RRC  
AND/OR  
P & E  
BRANCH

°Regularly report to RA on Region  
I involvement in rulemaking  
°Give HQ Project Officers' names  
to State Officials

°Prepare statistics & annual rep-  
ort to RA on Reg.I in rulemaking  
°Return pre-signed "No Comment"  
sheets for most "NIL" rules  
°Send SARs to RA as well as DDs

PLUS

SAME AS OPTION 3

°Work with OSR to find faster way  
to transmit regulatory packages  
°Work to improve effectiveness of  
Region I's written comments

PLUS

SAME AS OPTION 4

EDUCATION  
PROGRAM

°Brief RA,DRA,DDs,Staff on rule-  
making, key points & methods  
°Send briefing books to States  
°RA,DRA,DDs solicit State views  
on regulatory concerns

SAME AS OPTION 3

-18-

°Brief State Officials on rule-  
making, key points & methods

PLUS

SAME AS OPTION 3 & 4

# INDEX I: BEGIN AN EDUCATION PROGRAM.

	EASE OF MAKING THE CHANGE	EASE OF ADMINIS- TRATION	RESOURCE DEMAND OF ADMINIS- TRATION	USED IN OTHER REGION	ADVANTAGES	DISADVANTAGES
1. Brief the RA, DRA and DDS on the role of the Region in rulemaking, highlighting the methods for increasing the Region's impact in the process and the role of their individual offices in the process. Distribute flow charts and other informational material. Remind them that the action memos attached to the regulatory development packages by HQ's Lead Office may be used as "executive summaries."	easy	easy	low	parts	Senior level policy makers gain a better understanding of Region I's role in rulemaking, and how its participation can best be improved.	
2. Brief the Division staffs on the role of the Region in rulemaking, highlighting the importance of their roles in the process and the assistance that the RRC can provide. Distribute flow charts and informational materials. Include a discussion of how comments can be written clearly, so they have the maximum possible impact.	easy	easy	low	parts	Staff members gain a better understanding of their role in the rulemaking process and of the assistance available to them in this area.	Some Division staff members might resent being told by non-technical personnel how to improve written comments.
3. Brief appropriate State officials on the role of the Region and the States in rulemaking, highlighting the methods for increasing the State's impact on the process. Distribute flow charts and other informational material.	easy	moderate	medium to high	no	State officials gain a better understanding of the Agency's rulemaking process and how they can become involved.	Some State officials might develop unrealistic expectations, then become discouraged with the limitations and difficulties of State involvement.
4. Remind the RA, DRA and DDS that when they visit State officials they should make a point of asking if they have particular concerns about existing or proposed regulations that the regional office should bring to headquarter's attention.	easy	easy	low to high	yes	The Region's role as a liaison provides the States with a valuable link to the entire Agency, including HQ. Encourages intra-Regional cooperation.	A commitment to follow up could add expense.
5. Remind RA, DRA and DDS that the Region can increase its impact on the development of proposed regulations if it coordinates its involvement with (solicits the support of) other Regions and the States. It is important that they develop and maintain networks with their colleagues in other offices.	easy	easy	low	yes	Coordination of State and Region I efforts increases the impact that both have on the Agency's rulemaking process.	The States within the Region, along with other Regional Offices, will occasionally disagree on an issue, placing Region I in a difficult position.
6. Brief HQ's Program Offices on the importance of Regional and State involvement in the rulemaking process. Cite examples of where this participation resulted in better regulations, and examples of where the lack of participation resulted in difficulties with implementation and delegation.	moderate	moderate	medium	no	May convince future Project Officers to give increased attention to Regional participation in rulemaking.	It may be difficult to target the proper level personnel at HQ.

INDEX II: INCREASE RESPONSIBILITIES OF THE REGIONAL REGULATORY CONTACT/PLANNING AND EVALUATION BRANCH.

	EASE OF MAKING THE CHANGE	EASE OF ADMINISTRATION	RESOURCE DEMAND OF ADMINISTRATION	USED IN OTHER REGION	ADVANTAGES	DISADVANTAGES
1. Require the RRC to report the status of the Region's involvement in rulemaking to the RA on a regular basis.	moderate	easy	low	yes	Keeps RA up-to-date on Region I's rulemaking activity; would elevate importance of the RRC position and the rulemaking process in general.	Would increase the paper flow, particularly in the RA's office; this information could be given to the RA by the RRC in a more condensed form.
2. Require the RRC to circulate SARs to the RA's office as well as the applicable Division Directors.	easy	easy	low	yes, priority SARs	Would notify DDs and RA of new proposals which are entering the rulemaking process. They could plan on the level of the Region's involvement in their development.	
3. Have the RRC work with HQ's OSR to develop a better (faster) method of transmitting regulatory development packages.	easy	easy	low	no	Might find method to increase the actual time Regions have to comment on regulatory development packages without increasing the current two weeks allowed.	
4. Have the RRC provide the names and telephone numbers of the Project Officers in HQ's various Lead Offices to State agencies and associations.	easy	easy	low	no	Would be a valuable aid to States which want to contact the appropriate staff member at HQ regarding a specific proposal.	
5. Prepare an annual report for the RA on the Region's participation in rulemaking. Include statistics regarding level and types of involvement. Assist the Divisions in identifying their successes and failures at influencing regulations.	easy	moderate	medium	no	Gives Region a summary of its rulemaking activities and allows identification of strong and weak points. The report's existence emphasizes the importance of involvement in rulemaking.	
6. Share newly-created weekly status forms with State agencies, but on a monthly basis.	easy	easy	low	no	Keeps States up-to-date on where proposals are in the rulemaking process.	



INDEX II: INCREASE RESPONSIBILITIES OF THE  
REGIONAL REGULATORY CONTACT/PLANNING AND  
EVALUATION BRANCH (continued).

	EASE OF MAKING THE CHANGE	EASE OF ADMINIS- TRATION	RESOURCE DEMAND OF ADMINIS- TRATION	USED IN OTHER REGION	ADVANTAGES	DISADVANTAGES
7. As an ongoing project, have the Planning and Evaluation Branch poll staff members, States, and other Regions for suggestions on improving existing regulations. Pass recommendations on to HQ for purposes of regulatory reform.	difficult	difficult	high	no	Would provide a new method for Regions to become involved in improving existing regulations based on their experiences at implementing and enforcing regulatory programs.	
8. Aid Division staff members by checking their non-technical written comments for clarity and consistency.	moderate	moderate	medium	yes	Ensures that written comments (dealing with policy issues) are expressed in such a way as to have maximum impact at HQ.	"Pride of authorship" and the opinion that this is unnecessary meddling may cause some conflict.

# INDEX III: MODIFY INTERNAL SYSTEMS.

	EASE OF MAKING THE CHANGE	EASE OF ADMINIS- TRATION	RESOURCE DEMAND OF ADMINIS- TRATION	USED IN OTHER REGION	ADVANTAGES	DISADVANTAGES
1. Change the RRC's file system from control numbers to official SAR numbers. Maintain the entire regulatory development history of each proposed regulation in a single file.	moderate	easy	low	yes	Would provide a logical and easily retrievable file of regulatory development histories. Would make it much easier to track the development of a regulation.	
2. Have the Divisions prepare pre-signed, no-comment concurrence memos which can be attached to regulatory development packages. (The DDs will have the responsibility for instructing the staff when these forms should be used.)	moderate	difficult	low	yes	Would speed up the flow of less-important regulatory development packages in and out of the Divisions, allowing the staff to spend more time considering the more important proposals.	
3. Require the staff member preparing comments for HQ to discuss the proposed regulation with HQ's Project Officer/Regulation Author via telephone before sending the written comments.	difficult	difficult	low	no	Would improve the quality of written comments sent to HQ, and assist in the development of a staff-level network of contacts with HQ counterparts. Would increase impact of comments sent.	
4. Require staff members to follow up the comments they send to HQ with a telephone call to reinforce the importance of those comments to the Project Officer. Have the RRC remind the staff members to make these follow up calls.	moderate	difficult	low	no	May increase the amount of consideration Region I's written comments receive at HQ.	
5. Require Division Directors to regularly inform the RA on the progress and status of all top-priority regulations.	easy	easy	low	yes	Will encourage the DDs and the RA to keep track of and discuss rulemaking activity, and to develop plans in this area.	
6. Create intra-Regional "work groups" to monitor the development and receive working drafts of "top-priority" regulations when the Region is unable to participate on the official Work Group formed by HQ's Lead Office.	difficult	difficult	high	no	The Region can offer better comments and can communicate with the HQ contacts of several Regional employees, instead of just one.	

INDEX III: MODIFY INTERNAL SYSTEMS  
(continued).

	EASE OF MAKING THE CHANGE	EASE OF ADMINIS- TRATION	RESOURCE DEMAND OF ADMINIS- TRATION	USED IN OTHER REGION	ADVANTAGES	DISADVANTAGES
7. Appoint promising lower staff members to Work Groups. Give these individuals access to superiors and needed workplan flexibility.	moderate	moderate	medium	yes(I)	Less resource burden to assign a lower staff member to a Work Group. Excellent opportunity for staff development.	HQ generally wants the Regional representatives to be senior staff members. Must assure HQ that person selected can speak for the Region.
8. Locate the RRC position in the RA's Office. Consider combining this position with the similar functions of the Intergovernmental Liaison Office.	difficult	easy	little change from present	yes, first part	Would elevate the importance of the RRC position, and Regional involvement in rule-making in general. May increase efficiency by combining with similar IGL functions.	
9. Have Division staff members keep records of its communications (including telephone calls) regarding rulemaking with Project Officers and Program Offices.	difficult	difficult	high	yes	Provides Divisions with a detailed record of their involvement in the development of a regulation. Can be helpful for determining why comments were or were not adopted by HQ's Lead Office.	
10. Have Divisions dedicate a specified amount of work year resources to formal rulemaking functions.	difficult	easy	depends on resources dedicated	no	Would increase Regional involvement in rulemaking. Would recognize rulemaking as a responsibility instead of an "extra" function for Regions.	
11. Include the resources needed for actively participating on Work Groups and Steering Committees when developing Regional workplans and workload models.	moderate to difficult	easy	medium to high	no	Would increase Regional participation in Work Groups and Steering Committees.	
12. Include participation in the Agency's formal rule-making process in performance standards.	difficult	moderate	moderate to high	yes	Would increase Region I's participation in the formal rule-making process.	
						Not all Divisions in Region I would be affected equally. Some have more opportunities for participating in rule-making. Also, the quality of participation would be difficult to measure.

INDEX IV: DEVELOP AND USE A PRIORITY  
REGULATION SYSTEM (PRS).

	EASE OF MAKING THE CHANGE	EASE OF ADMINIS- TRATION	RESOURCE DEMAND OF ADMINIS- TRATION	USED IN OTHER REGION	ADVANTAGES	DISADVANTAGES
<p>1. Have the DDS categorize all of the Agency's proposed regulations by the amount of Regional resources they want to devote to their development. Use the Regional Priority List created in response to OSR's annual survey as a starting point for recognizing "top priority" proposals. Develop lists of proposed regulations, by SAR number, title, and staff member assigned to the regulation, for each category. Direct the RRC to specially mark all incoming regulatory development packages which have SAR numbers that are in the "top priority" category. These regulatory development packages should then be given, in addition to the regularly assigned staff member, to the appropriate DDS. The RA's Office should also receive copies of the action memos ("executive summaries") of these proposals. Those regulatory development packages which are not in the "top priority" category will be sent only to the assigned staff member.</p>	moderate	moderate	medium	yes	Reduces the Division Director's regulatory review burden, allowing more time for priority items. Priority regulatory development packages are easily identifiable, and the Division knows that the RA has had an opportunity to see it.	Division Directors lose regular contact with regulatory proposals not on the PRS list.
<p>2. Keep the PRS category lists current by directing the RRC to deliver new SARs to the DDS upon receipt. Require the DDS to notify the RRC when they add any new, or delete any old SAR numbers to the list, or if they change staff assignments.</p>	moderate	easy	low	yes	Increases the Divisions' ability to shift old priorities and recognize new priorities.	
<p>3. Have the Division Directors designate a contact person for every proposed rule--even those not on the PRS list. These staff members will be responsible for monitoring the development of their assigned regulations. The RRC and assigned staff member should be in contact within 48 hours of receipt of the regulatory package to determine if a comment will be sent. If not, a no-comment concurrence memo will be automatically sent to OSR.</p>	difficult	moderate	medium	yes	Division improves its ability to monitor all media-related regulatory proposals in the Agency. Allows professional development among staff.	

NOTE: Several systems for categorizing proposed regulations are now being used by other Regions. Although they vary slightly, their advantages remain the same. By reducing the Division Director's regulatory review burden, more time can be spent by the DD considering those issues which are most important to the Region. However, even proposed regulations not on the PRS list receive increased attention because they will always be sent to the same staff member. The overall result is that efficiency is increased, accountability for participation in rulemaking is improved, the RA is regularly updated on developments in priority areas, there is an opportunity for staff development, and most importantly, the quality of EPA's regulations will be improved because of increased regional participation in rulemaking. For more detailed information on PRS systems, see Appendix B.

**INDEX V: EXPAND OUTREACH ACTIVITIES/MODIFY EXTERNAL SYSTEMS.**

	EASE OF MAKING THE CHANGE	EASE OF ADMINISTRATION	RESOURCE DEMAND OF ADMINISTRATION	USED IN OTHER REGION	ADVANTAGES	DISADVANTAGES
1. Provide copies of all action memos ("executive summaries" of regulatory development packages) to State environmental agencies with a memo telling them to contact the RRC or the appropriate Division if they want to receive complete copies of the related packages as they become available.	moderate to difficult	moderate to difficult	medium	no	Provides State environmental agencies the opportunity to begin monitoring proposed regulations relatively early in the rulemaking process.	The Regional Office, instead of HQ uses its resources to provide this service. State officials could, at times, ask for large quantities of materials.
2. Have Division Directors set up annual or biannual social/business gatherings of Regional and State staffs by media. Invite the RRC (and the Advisory Committees). Place proposed rules on the agenda.	moderate	moderate	medium	yes	Provides an opportunity for all Region I actors involved in rulemaking to discuss their concerns with the process, and to develop strategies for increasing their impact, among other matters.	
3. Encourage Divisions to invite both staff and policy level personnel to national meetings. Make sure that proposed rules in that Division's medium are placed on the agenda.	moderate	moderate	medium to high	no	Would allow "cross fertilization" of ideas, including methods of sharing and/or coordinating the rulemaking workload. Develops important networks of contacts; good for staff development.	
4. Encourage the new OReO to take the lead in developing inter-Regional cooperation at the policy level. Consider reviving the Lead Region concept.	moderate	moderate	medium	no	OReO could act as an informational clearinghouse for all ten Regions interested in coordinating rulemaking activities.	Could possibly duplicate current RMS/OSR functions and operations.
5. Require HQ's Program Offices, or OSR, to provide a list of who serves on each Work Group, their offices and telephone numbers, and their Work Group functions as soon as the Work Group is formed.	moderate	easy	medium	no	Would be a valuable aid to Regions which have special interests in a proposed regulation but cannot participate officially on the Work Group.	
6. Require HQ's Program Offices, or OSR, to provide special notice of rulemaking initiatives to Regions which would be particularly affected by the proposed rules. HQ should also help these Regions obtain working drafts of these regulations on an ongoing basis.	difficult	difficult	medium to high	no	Would give "particularly affected" Regions a better opportunity to participate and/or monitor the development of pertinent regulations.	In some cases, it may be difficult to define "particularly affected." Some issues are of special interest to a large number of regions.
7. End all of Region I's involvement in the Agency's formal rulemaking process, but continue using informal channels for participating in the review and development of regulations.	politically infeasible	easy	low	no	Would release resources now used for participating in rulemaking for other purposes. Would end rulemaking paperwork without necessarily giving up all of the Region's influence on regulation development.	

INDEX V: EXPAND OUTREACH ACTIVITIES/MODIFY EXTERNAL SYSTEMS (continued).

	EASE OF MAKING THE CHANGE	EASE OF ADMINISTRATION	RESOURCE DEMAND OF ADMINISTRATION	USED IN OTHER REGION	ADVANTAGES	DISADVANTAGES
8. Arrange annual local meetings between senior technical and policy staff members and leaders from State and local governments, business and industry, public interest groups, and the media, in several central locations throughout the Region. Use the feedback from these meetings when determining which proposed regulations should be labelled top priority, and, possibly, when emphasizing the importance of the comments sent to HQ. See Appendix I.	moderate	moderate	medium	yes	Would provide Region I with an opportunity to make sure that those proposed regulations which it deems "top priority" address the same issues which are important to the various publics in Region I. Provides a good base of support when presenting arguments to HQ.	Must make sure such meetings are scheduled in such a way that they are not considered to be official Advisory Committees which require a FACA charter.
9. Have DDS develop Advisory Committees, drawing membership from the academic community, State governments, environmental groups, and representatives from business and industry. Provide the divisions with the necessary legal and staff support for this function. Acquire a FACA charter. See Section F.	difficult	difficult	high	no	Would increase the expertise the Region could draw on when participating in rulemaking.	Must meet complex legal requirements and update FACA charter on a regular basis.
10. Increase the amount of travel resources allotted to Regions for participation in rulemaking activities.	moderate	moderate	medium to high	no	Would increase Regional participation in meetings and reviews held at HQ and other offices.	
11. Give Regions a third week (or in all cases a full two weeks from receipt) to review and comment on regulatory development packages prior to Steering Committee meetings.	difficult	easy	low	Region 3 made request	Would allow Region I to make more comments and better comments on regulatory development packages.	Would slow down the rule-making process slightly. Would result in severe protests by HQ program offices.
12. Require the HQ Lead Office to respond to Regional comments it does not incorporate into subsequent drafts of the regulatory development package.	difficult	difficult	high	no	Would lessen the frustration Regional staff members feel when their comments are not incorporated into subsequent drafts, without explanation.	Would be extremely resource-intensive for HQ; no readily apparent indications that such activity results in better regulations.
13. Try an experiment in which the Region takes responsibility for developing a regulation. Have the HQ staff members come and work in the Regional Office.	difficult	difficult	medium	no	Would give HQ staff an opportunity to gain an understanding of the Regional perspective of rulemaking.	HQ might protest this as an infringement on its responsibilities. HQ might not have enough extra staff.
14. Encourage Congress to revise the Federal Advisory Committee Act (FACA) to eliminate its applicability to State officials or the various associations of State officials while operating in their official capacities.	politically difficult	Not An EPA responsibility	none	no	Would allow States the ability to participate in the Agency's rulemaking process as "equal partners" instead of as public interest groups. Would allow Regions to confer with States without having to first obtain official sanctions.	

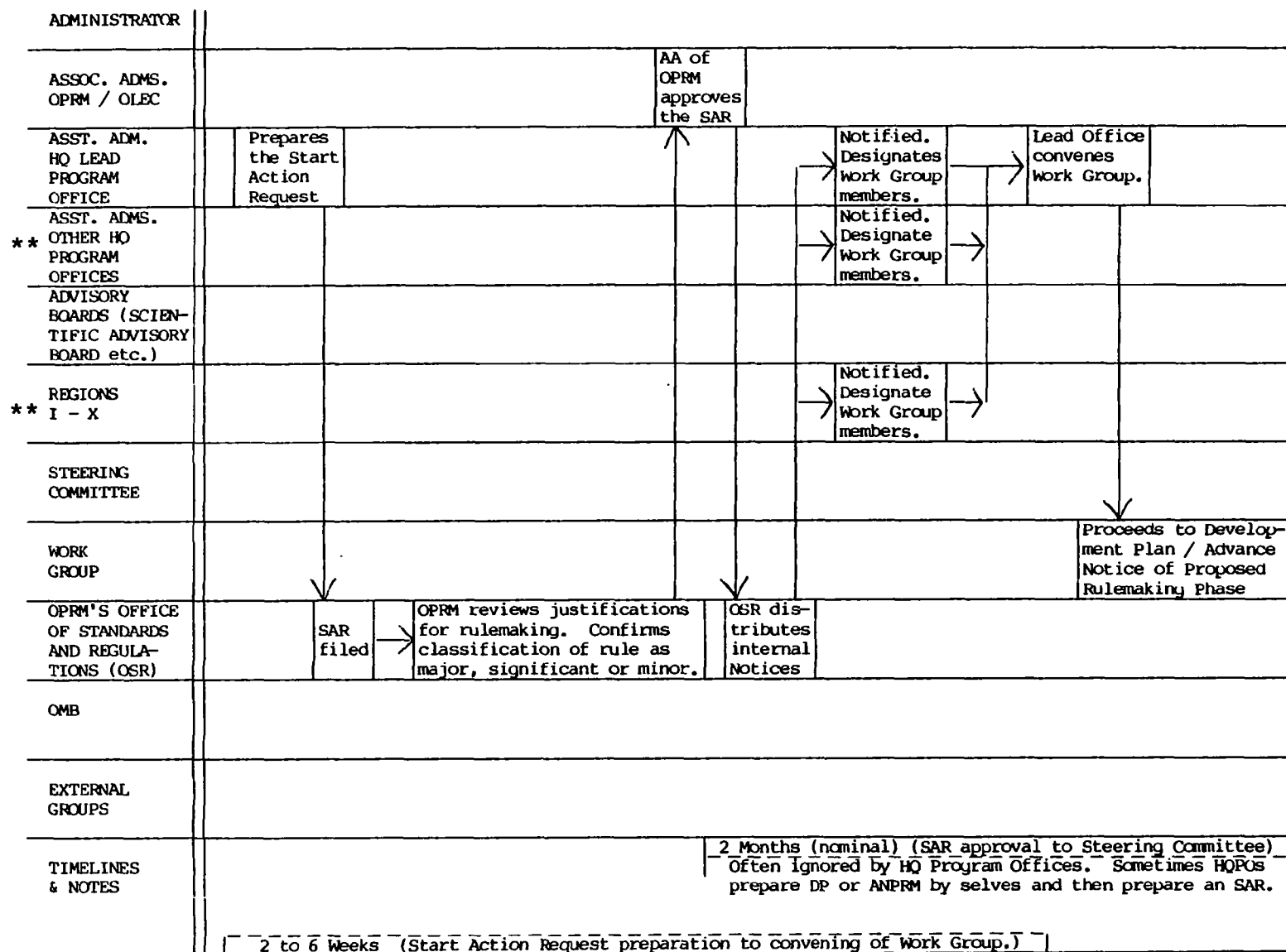
## EPA Rulemaking In 4 Phases

### INTRODUCTION

The following four charts show a more detailed version of the process by which a proposed EPA regulation becomes a rule. These four graphics are reductions of the flowchart in Appendix C, and have been designed to show each of the four discrete phases in the EPA rulemaking process (Internal Notification, Development Plan, Proposal, and Final Rule) on one page. This summary is meant to provide a detailed overview only. Full-size, more easily readable charts containing the same information are set out, as indicated, in Appendix C.

# EPA RULEMAKING IN 4 PHASES

(Source: P&E Branch, Region I)



## PHASE I: INTERNAL NOTIFICATION

- \*\* Have opportunities for informal input throughout the process in addition to points depicted above.



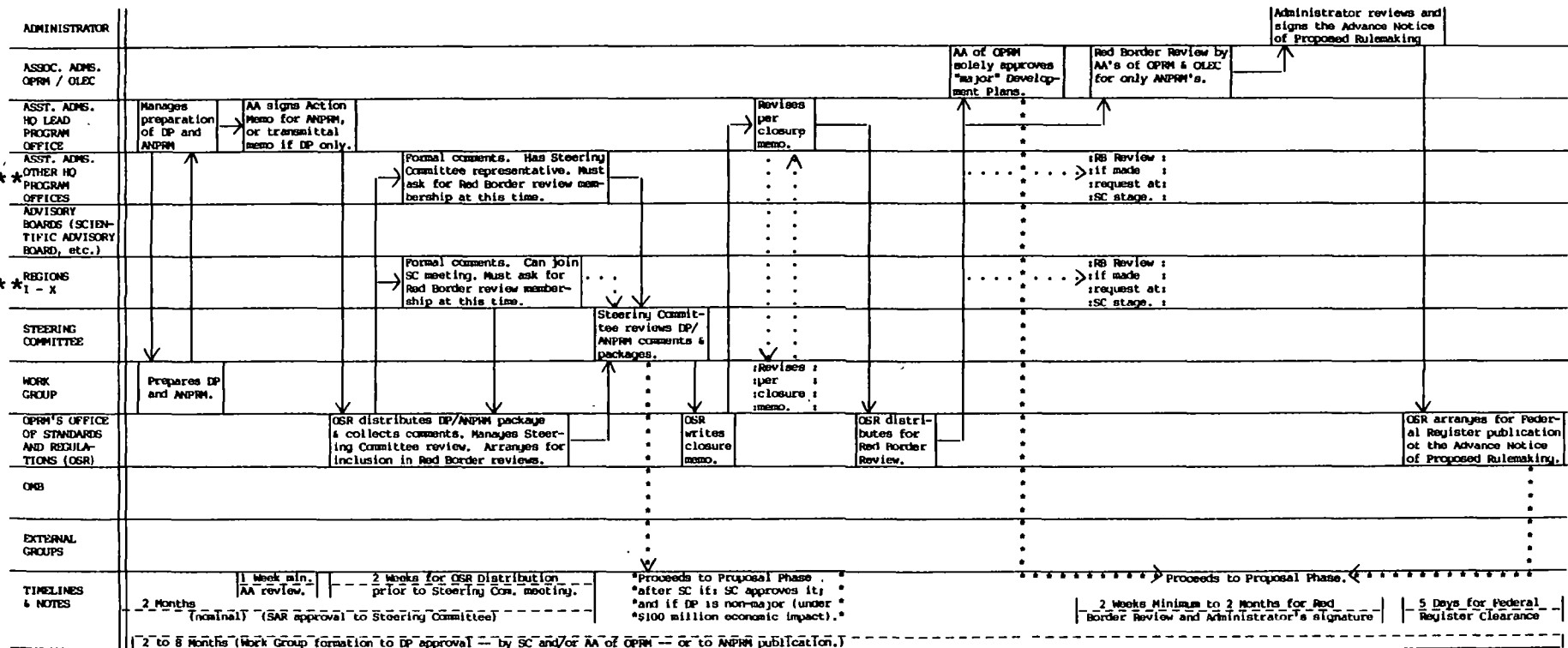
# EPA RULEMAKING IN 4 PHASES

(Source: P&E Branch, Region I)

\*\* Have opportunities for informal input throughout the process, in addition to points depicted above.

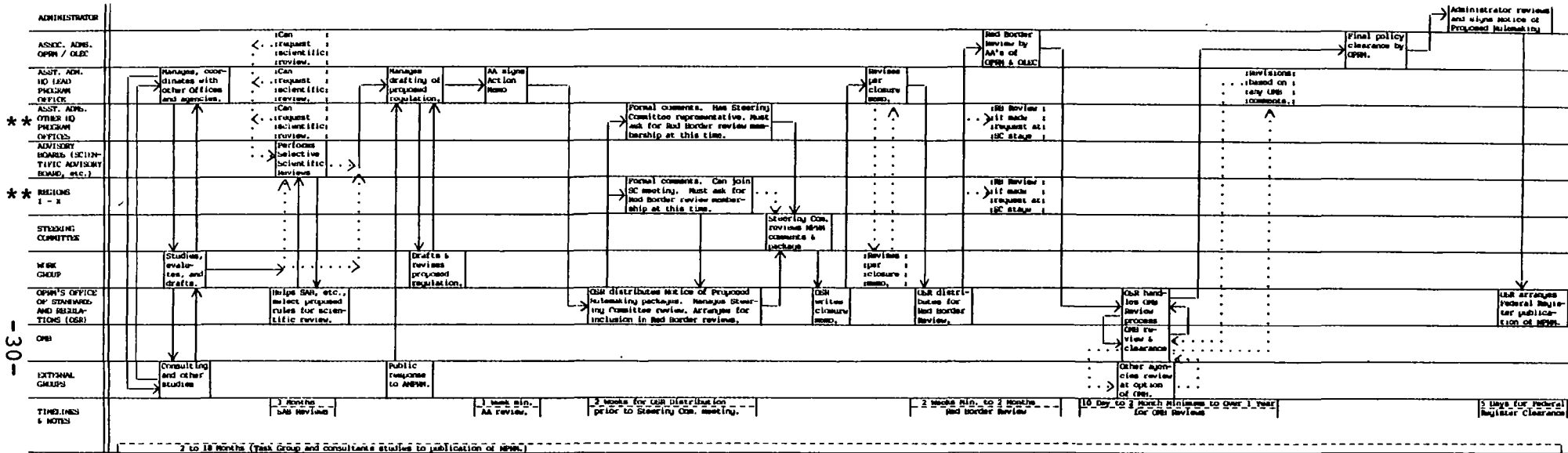
## PHASE II: DEVELOPMENT PLAN

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# EPA RULEMAKING IN 4 PHASES

(Source: P&E Branch, Region I)



## PHASE III: REGULATORY PROPOSAL

\*\* Have opportunities for informal input throughout the process, in addition to points depicted above.

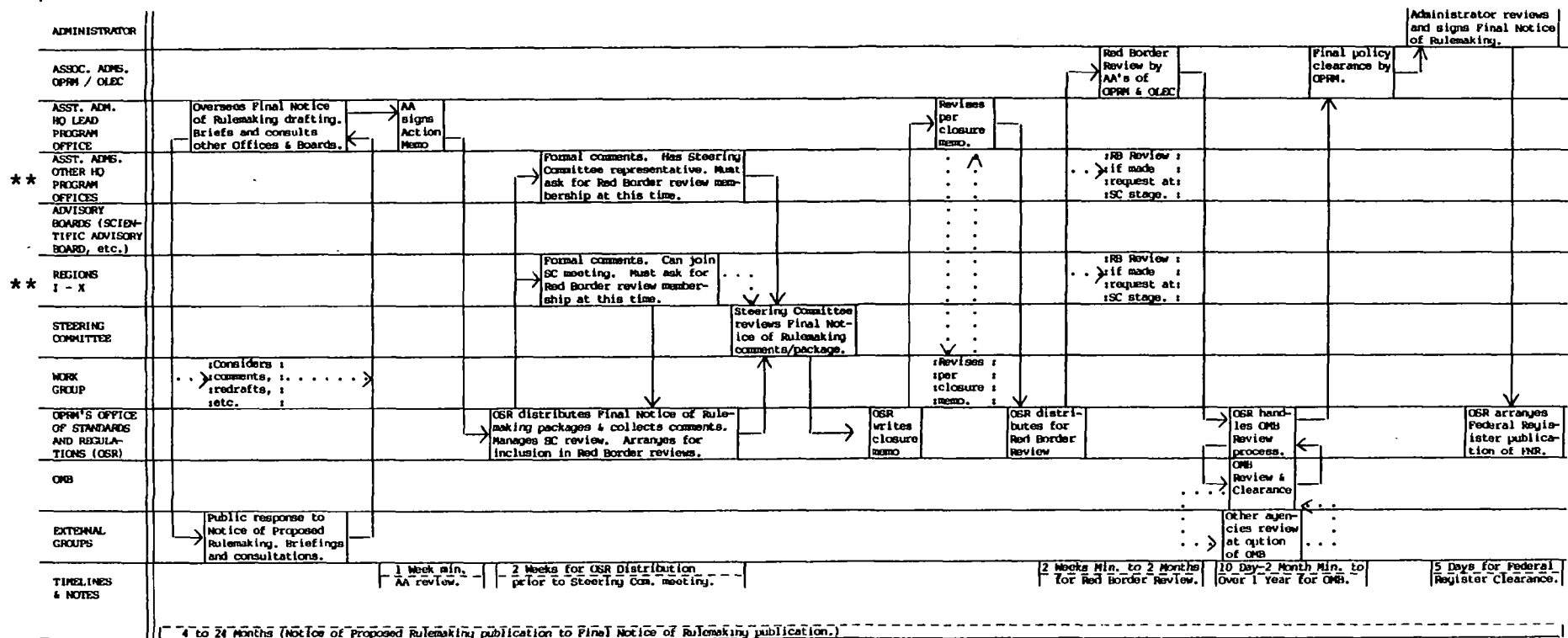
## EPA RULEMAKING IN 4 PHASES

(Source: P&E Branch, Region I)

**\*\* Have opportunities for informal input throughout the process, in addition to points depicted above.**

## PHASE IV: FINAL RULE

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## Summary Of State Viewpoints

Three people were interviewed to obtain the State perspective of the EPA rulemaking process for this report. They were Mr. David Fierra, now Director of Region I's Water Division and formerly Deputy Commissioner of Massachusetts' Department of Environmental Quality Engineering, Mr. Tony Cortese, Commissioner of Massachusetts' Department of Environmental Quality Engineering, and Mr. Reginald ("Tex") LaRosa, Director of the Environmental Engineering Division of Vermont's Agency for Environmental Conservation.

All three of these men held the following opinions in common:

- ° The State environmental agencies learn of EPA's rulemaking activity in a wide variety of ways, ranging from reading Notices of Proposed Rulemaking (NPRMs) in the "Federal Register" to being contacted by a Lead Program Office at HQ.
- ° The bulk of State knowledge of and involvement in EPA rulemaking, however, occurs through the various State associations or executive organizations such as AISWPCA, ASTWMPO, the National Conference of State Legislators, and the National Governor's Association.
- ° EPA Region I does not serve as a communicator of State views to EPA HQ, and it does not need to serve this function. It should, however, serve as a reference source for

the States on EPA's rulemaking activities.

- ° The main complaint of the State environmental agencies is not that they do not receive adequate information about rulemaking from the EPA, but that when they try to become involved in the process, they are not treated as equal partners.
- ° When the States do become involved in rulemaking, the personnel from the State environmental agencies are often not kept up-to-date as decisions are made. The State agencies may, for example, be reviewing the third draft of a regulation when the EPA HQ Lead Office is already working on the fifth or sixth version.
- ° State participation in rulemaking results in the development of better regulations because the States offer an important and experienced perspective on actual program management and enforcement.
- ° The State's environmental agencies should be given basic systemic information on how the EPA rulemaking process works.

According to Mr. Fierra, the States in Region I are not routinely notified by the Agency of the development of a new regulation in any routine way. He said the States may be notified by a Regional program officers "if relations are good," and that direct communications

between the States and EPA HQ are "the exception rather than the rule."

Mr. Fierra said that regular monitoring of the "Federal Register" to track the development of Federal regulations is very resource intensive. Consequently, Massachusetts' Department of Environmental Quality Engineering does not do this. Vermont's Agency of Environmental Conservation, however, does regularly monitor the "Federal Register" and the Environmental Reporter for proposed regulations according to Mr. LaRosa.

Mr. Cortese, Commissioner of Massachusetts' Department of Environmental Quality Engineering, had the opinion that it is relatively easy for a State to keep well informed of EPA's rulemaking activities. He said that EPA sends "top people" to the meetings of the various State associations to give the States an idea of what the EPA will be working on for the next year. All three men agreed on the importance of these associations and the informal networks their agencies have developed with the Regional Office and EPA HQ.

The real problem, Mr. Cortese said, is that States are treated as outside interest groups by the EPA instead of as equal partners. Mr. Cortese said this is not how the State-Federal decision-making process should work. He said the National Environmental Programs are managed by EPA, but are really made up of the sum total of Federal and State environmental activities. He estimated that 85 percent of direct national program implementation occurs at the State level.

Mr. LaRosa of Vermont said that even though the State's comments on developing regulations usually have no impact, the commenting

process is still worthwhile because it keeps open channels of communication. Mr. LaRosa said that if a State wants its comments to have any real impact, they have to be made prior to the formal review process--before the basic language is "set in concrete." He said Vermont's Agency for Environmental Conservation's successes at affecting regulations could be attributed to "being in the right place at the right time."

One hurdle to increased State participation in rulemaking, according to both Mr. Cortese and Mr. Fierra, is the Federal Advisory Committee Act (FACA). Mr. Cortese called FACA a "flag" that is used to "regulate" the States. Mr. Cortese said that HQ's Office of General Counsel is often responsible for this action, not the Lead Program Offices. He said that General Counsel has argued that States should not be allowed to participate on Work Groups.

All three men emphasized the importance of State participation on Work Groups. They say the State perspective should be given careful consideration when a regulation is being developed because it is the States which will eventually have to implement and enforce it. Mr. Cortese said that his agency participates on Work Groups as often as possible. He said that there are ways to participate on these groups without spending a lot of time in Washington. Mr. LaRosa emphasized that Vermont's Agency for Environmental Conservation has the time, money and interest to join in the drafting of key Federal regulations, and urged EPA to assist in opening the process.

Mr. Cortese said that States could coordinate their involvement

in rulemaking by having each State serve on different Work Groups and then exchanging information through the various State associations. He pointed out that Massachusetts currently does not get involved in the development of regulations where their views are already adequately represented. Mr. LaRosa agreed that the associations and informal communication networks could play a role in this area. Mr. LaRosa pointed out, however, that although collegial cooperation and consensus among the States could be a powerful force in rulemaking, it is often difficult to find unanimity among the States on environmental issues. He said that if such cooperation is impossible, then Vermont is "willing to go it alone."

None of the three men interviewed thought that the Regional Office should serve as a regular, or formal conduit for the States to use in expressing their thoughts and comments to EPA HQ. Mr. LaRosa noted that the Regional staff would not always have time or resources to serve this function. Also, there will inevitably be proposed regulations on which the States and Region do not agree. Mr. LaRosa said Vermont wants preserve its freedom to contact the various EPA HQ offices on its own. Mr. LaRosa and Mr. Cortese both thought the Regional Office should serve as an information source for the States on the Agency's rulemaking activities.

Mr. LaRosa, Mr. Cortese and Mr. Fierra all expressed an interest in learning more about EPA's formal rulemaking process. They thought EPA should make an effort to provide the States with basic systemic information regarding its rulemaking process.



## Summary Of Information And Opinions, Regions I - X

### INTRODUCTION

The following document summarizes information from the ten EPA Regions with respect to the rulemaking process. This information was obtained from interviews conducted as a part of this report. The reader should note that in every case the person interviewed was either the Regional Regulatory Contact (RRC) for that Region or someone who works closely with that individual.

In addition, the following points should also be kept in mind.

1. The reliability of the responses to the question concerning a given Region's participation on Work Groups, Steering Committee or "Red Border" reviews may vary from Region to Region.

2. The question concerning recent changes in Regional approaches to rulemaking refers to changes other than those stemming from the changes initiated by the April 30, 1982 memo of former Administrator Burford.

3. The responses to the question relating to the time given by EPA HQ to the Regions in which to comment are not based on statistical analyses. Rather, they are grounded in the personal knowledge and experience of the person(s) interviewed. Further, where the interviewee's response was a range of time periods, the median was chosen.

QUESTION	REGION I (Boston)	REGION II (New York)	REGION III (Philadelphia)	REGION IV (Atlanta)	REGION V (Chicago)	REGION VI (Dallas)	REGION VII (Kansas City)	REGION VIII (Denver)	REGION IX (San Francisco)	REGION X (Seattle)
Location of Regional Regulatory Contact (RRC).	Planning & Evaluation Branch, Administrative Services Division	Planning & Evaluation Branch, ARA for Policy & Management	Analysis & Services Section, ARA for Policy & Management	Policy & Program Evaluation Branch, ARA for Policy & Management	Records Management Section, Planning & Management Division	Resource Management Branch, ARA for Management	Administrative Services Branch, ARA for Policy & Management	Management Systems & Analysis Branch, ARA for Policy & Management	Mgmt. Sysms. & Evltn. Branch, Office of Policy & Resource Management	Resource Management Branch, Management Division
Does the Region use an internal priority system to direct regulatory resources and packages?	No.	No. Sees OSR's Regional Priority List (RPL) as just another form. Doesn't track SARs.	No.	No. Although ARA reviews RPL for rules needing special policy attention.	No.	Yes. 4-Tiered system. Division Directors (DDs) prepare from "Regulatory Agenda."	No.	Yes. 2-Tiered system. Still experimental.	Yes. 5-Tiered system. RPL responses based on this internal list.	Yes. 3-Tiered system. Based on SAR's.
Does the RRC "flag" priority rules?	No.	No.	No.	No.	No.	Yes.	No.	Yes.	Yes. "Flags" at all priority levels.	Yes.
What does the RRC do with regulatory packages on receipt from OSR and to whom are they routed?	Package logged in. Then sent to appropriate DD for further routing and review.	Package logged in. Then sent to appropriate DD for further routing and review.	Package logged in. Attaches standard cover memo. Sends to DD for routing and review.	Package logged in. Then sent to appropriate DD for further routing and review.	Package logged in. Attaches standard cover memo. Sends to DD for routing and review.	Package logged in. Then sent to appropriate DD for further routing and review.	Package logged in. Then sent to appropriate DD for further routing and review.	Package logged in. Then sent to appropriate DD for further routing and review.	Package logged in. Then sent to the staff contact listed by hand.	Package logged in. Then sent to appropriate DD for further routing and review.
Does the RRC circulate packages to others at the same time?	Usually not. Sometimes copy sent to Regional Counsel.	No.	Yes. To ARA for policy review. Also to media staff.	No.	No.	SARs only are so circulated. To Counsel & Cong. Liaison.	May be, depending on content and RRC's judgment.	Yes. Staff name appears on list for every rule.	Yes. Staff name appears on list for every rule.	Yes. Staff name appears on list for every rule.

QUESTION	REGION I (Boston)	REGION II (New York)	REGION III (Philadelphia)	REGION IV (Atlanta)	REGION V (Chicago)	REGION VI (Dallas)	REGION VII (Kansas City)	REGION VIII (Denver)	REGION IX (San Francisco)	REGION X (Seattle)
Does the RA review comments?	Policy comments only.	Yes. Very regularly.	Policy comments only.	Yes.	Yes.	Multimedia comments only.	Policy comments only.	Yes. Very regularly.	ARA handles policy review.	Yes. Very regularly.
Who "spots" regulatory policy issues for the RA?	Division Directors	Division Directors	ARA	RRC	Division Directors	Division Directors	Division Directors or RRC	Division Directors	ARA	Division Directors
Does the RRC assist in editing or summarizing comments?	No.	No.	No.	Only with multimedia comments.	No.	Only with multimedia comments.	No.	Yes. DDs phone comments to RRC who writes and returns.	Yes. RRC helps to write over 90% of the comments.	No.
Who returns comments to OSR?	RRC	RRC	RRC	RRC	RRC	DDs; or RRC for multimedia.	RRC	RRC sends with in 48 hours.	RRC	Prior. 1: RA/DD. Others: RRC.
Does the Region maintain statistics on how often it comments?	Yes. The RRC develops a limited number of calculated statistics.	No. The RRC maintains raw log data only.	Yes. The RRC develops a limited number of calculated statistics.	No. The RRC maintains raw log data only.	No. The RRC maintains raw log data only.	No raw log data available as DDs (not RRC) return most packages.	No. The RRC maintains raw log data only.	No. The RRC maintains raw log data only.	Yes. The RRC develops a limited number of calculated statistics.	No. The RRC maintains raw log data only.
How often is the Region on Work Groups, Steering Committee, or Red Border reviews?	On several WGs now. On SC less than 6 months ago. Last RB review unknown.	RRC believes it has been 1-2 years since any such participation.	On 5-10 WGs a year. Follow several of them to SC. Last RB review unknown.	Region participates in each way several times a year.	RRC believes has been over 1 year since last on WG or SC. RB 5 times last year.	On 3-4 WGs a year. Region almost never participates in SC or RB reviews.	RRC unsure as to last occurrence of any such participation.	On WGs about 5% of the time. Last SC or RB participation over 2 years ago.	On 13 WGs now. On SC 5 times in the last year. Last RB participation unknown.	On 2 WGs now. Last SC or RB participation over 2 years ago.

QUESTION	REGION I (Boston)	REGION II (New York)	REGION III (Philadelphia)	REGION IV (Atlanta)	REGION V (Chicago)	REGION VI (Dallas)	REGION VII (Kansas City)	REGION VIII (Denver)	REGION IX (San Francisco)	REGION X (Seattle)
Through what mechanisms does the Region involve States in rulemaking?	Informal ties between Regional & State Program Offices.	Informal ties between Regional & State Program Offices.	Informal ties between Region & State Program Offices--esp. in Water.	Gets States on WGs via informal Regional & State Program Office ties.	Informal Program Office ties. Formal ties via State Coordinators in RA Office.	Informal Program Office ties. Formal Cong. Liaison Office ties to Governors.	Informal ties between Regional & State Program Offices.	Even informal Regional/State ties are rarely used.	Informal ties between Regional & State Program Offices.	Informal ties between Regional & State Program Offices.
Has your Region recently changed its approach to rulemaking? How?	Yes. This report ordered to present options for enhanced impact. Some additions to Performance Standards.	Yes. ARA now coordinates Region's role in rulemaking.	Attention to rulemaking added to Performance Standards. ARA now coordinates.	No.	No.	Coordination of rulemaking by RA's Office scrapped due to smaller budget.	No.	Yes. Experimental priority system developed.	Yes. Priority system developed. Ongoing review of Regional role by DDS and RRC.	Yes. Priority system developed. More planning by DDS; more control for RA.
What are the most serious problems the Region currently faces in its attempts to impact the rulemaking process?	Insufficient review time. Too much paper work. Commenting process perceived as ineffective in altering rule development.	Insufficient review time. Commenting process perceived as ineffective in altering rule development.	Insufficient review time & resources. Commenting process perceived as ineffective in altering rule development.	Insufficient review time.	Insufficient review time & resources. Commenting process perceived as ineffective in altering rule development.	Insufficient review time.	Insufficient review time.	Insufficient review time & tight Regional and State resources.	Insufficient review time.	Insufficient review time & resources. Commenting process perceived as ineffective in altering rule development.
How much time is your Region given by HQ to review & comment on regulations?	On average, 7 working days.	On average, 7 working days.	On average, 7 working days.	On average, 8 working days.	No data base.	On average, 5 working days.	On average, 5 working days.	On average, 5 working days.	On average, 5 working days.	On average, 5 working days.

## APPENDIX A

### Comparative Statistics On Regional Responses To The Regional Priority List And The Frequency Of Comments By Region I

#### INTRODUCTION

The following five tables provide the following information.

1. Tables 1 and 2 show Region I's responses to the Regional Priority List (RPL) with notes indicating for which of those regulations Region I received regulatory packages during that year, and, of those, which Region I commented on. Those regulations which did not come to the Region within a given year also have notes indicating their status during that time. Table 1 is for FY1982, Table 2 for FY1983.

2. Table 3 shows the number of regulations each EPA Region listed on the RPL for FY1983 and expresses those figures as a percentage of the total number of regulations then under development.

3. Tables 4 and 5 show the number of regulatory packages received by Region I and the number of those on which Region I returned comments for FY1982 and FY1983.

It should also be noted that Region I RPL responses for FY1982 were reconstructed from the RPL Survey Report of EPA HQ's Office of Standards and Regulations (OSR) for that year.

REGION I PRIORITY REGULATIONS -- FY1982

<u>Drinking Water</u>	SAR 1742 DEFINITION OF SMALL WATER SUPPLY TO DETERMINE THE NEED FOR A REGULATORY FLEXIBILITY ANALYSIS (RFA) Status in FY82: Came to Region for Review
<u>Waste</u>	SAR 1768 UNIFORM HAZARDOUS WASTE MANIFEST Status in FY82: Came to Region for Review
<u>Radiation</u>	SAR 1727 ENVIRONMENTAL PROTECTION STANDARDS FOR LOW-LEVEL RADIOACTIVE WASTE Status in FY82: In Work Group
<u>Water Quality</u>	SAR 1544 REMOVAL OF OIL AND HAZARDOUS SUBSTANCE DISCHARGES Status in FY82: In Work Group
<u>General</u>	SAR 1794 PUBLIC PARTICIPATION POLICY Status in FY82: Came to Region for Review  SAR 1785 FINANCIAL ASSISTANCE TO STATE AND LOCAL GOVERNMENTS Status in FY82: Part A FNR Published 10/82; Part B at OMB for long period  SAR 1610 REVISION OF PROCUREMENT UNDER ASSISTANCE AGREEMENTS Status in FY82: NPRM Published early FY82; In Work Group until early FY83  SAR 1729 SIMPLIFYING NEPA Status in FY82: NPRM Published early FY82; In Work Group since

NOTE: Of the above regulations, only those relating to Drinking Water (SAR 1742), Solid Wastes (SAR 1768), and Public Participation Policy (SAR 1794) had packages come through Region I as part of a formal commenting process. Of these, none were commented on by Region I.

REGION I PRIORITY REGULATIONS -- FY1983

Air

SAR 1974

COMPLIANCE WITH STATUTORY PROVISIONS OF PART D OF THE CLEAN AIR ACT - SANCTIONS FOR NONATTAINMENT OF OZONE AND CO STANDARDS

Status in FY83: CO Part Withdrawn; O3 Part In Revision

SAR 1845

NEW SOURCE REVIEW

Status in FY83: Regional Review Eliminated due to Deadline Constraints, and OMB and OPRM Delays

SAR 1605

EMISSION TRADING POLICY

Status in FY83: Remained in "Red Border"/OMB Reviews

Water

SAR 1722

SIMPLIFYING CONSTRUCTION GRANT REGULATIONS

Status in FY83: Still at OMB

SAR 1846

CONSTRUCTION GRANTS PROGRAM DELEGATION TO STATES

Status in FY83: At OMB for most of FY83

SAR 1657

AMENDMENT TO SECONDARY TREATMENT REGULATIONS

Status in FY83: In "Red Border"; Now Withdrawn

SAR 1900

REVISIONS TO GENERAL PRETREATMENT REGULATIONS

Status in FY83: Still In Work Group

SAR 1752

REVISION OF THE BEST CONVENTIONAL TECHNOLOGY (BCT) COST TEST AND BCT EFFLUENT GUIDELINES

Status in FY83: Still In Work Group

SAR 1649

EFFLUENT GUIDELINES FOR OFF-SHORE OIL AND GAS INDUSTRY

Status in FY83: Still In First Work Group

Drinking

SAR 1755

Water

REVISED PRIMARY DRINKING WATER REGULATIONS

Status in FY83: Different Parts In Various Work Group Stages

NOTE: Of the above regulations, none had regulatory packages come through Region I as a part of a formal commenting process.

# COMPARISON OF REGIONAL RESPONSES ON REGIONAL PRIORITY LIST

## REGIONS I - X

FY1983

<u>Region</u>	<u># of Regulations Listed as Regional Priorities</u>	<u>* Regulations Listed as a Percentage of Total</u>
Region I	10	3.8 %
Region II	59	22.5 %
Region III	73	27.9 %
Region IV	32	12.2 %
Region V	58	22.1 %
Region VI	10	3.8 %
Region VII	38	14.5 %
Region VIII	50	19.1 %
† Region IX	82	31.3 %
	49	18.7 %
Region X	21	8.0 %

NOTES: \* Total number of regulations under development at the time RPL was distributed to the Regions was 262.

† The first line represents all priorities listed by Region IX, the second line represents all priorities listed except for those in Region IX's "Priority E" category ("for information only").



REGULATORY PACKAGES RECEIVED AND BEING COMMENTED ON BY REGION I

FY1982

<u>Media</u>	<u># of Regulatory Packages Received</u>	<u># of Regulatory Pack- ages Commented On</u>
Air (including Toxic Subs.)	57	0
Water	15	6
Hazardous Waste	25	8
General	13	3
	<hr/>	<hr/>
Totals	110	17

REGULATORY PACKAGES RECEIVED AND BEING COMMENTED ON BY REGION I

FY1983 TO DATE

<u>Media</u>	<u># of Regulatory Packages Received</u>	<u># of Regulatory Pack- ages Commented On</u>
Air	24	2
Water	5	1
Drinking Water	3	0
Hazardous Waste	14	2
Toxic Substances	8	0
	<hr/>	<hr/>
Totals	54	5

## APPENDIX B

### Region I Priority Regulation System (PRS) Flowcharts

#### INTRODUCTION

The following four flowcharts illustrate a procedure to establish, maintain and operate a Priority Regulation System (PRS) in Region I.

Four EPA Regions currently classify regulations, although each employs a different method. Each has found a PRS an effective means of enhancing Regional impact while reducing regulatory review burdens, improving response time and controlling resource commitments to regulatory development and review.

A PRS begins with the assumption that Region I has neither the resources nor the interest to produce significant changes in the large majority of proposed regulations. But it further assumes Region I has a considerable degree of expertise and/or interest as regards a limited number of regulations each year, and that the Region should throw the bulk of its regulatory efforts into influencing these.

The content of a proposed regulation may be influenced in a number of ways. Region I can have the greatest impact by participating on a Work Group. Region I Divisions can exert influence by obtaining and commenting on working drafts through informal contacts with the Work Group or HQ Lead Program Office. Also, the RA's Office may informally "lobby" senior management at HQ Lead Program Offices or other Regions.

All such approaches can and should be utilized. But an ad hoc approach by the Region to the formal regulatory development and review processes hinders it in exercising informal as well as formal influence. A PRS is an attractive and non-resource-intensive means to focus the Region's formal participation in regulatory development and review, thereby improving the effectiveness of both formal and informal Regional participation in rulemaking.

The PRS outlined here is a hybrid which combines the most effective way to establish a PRS, the most efficient method for keeping the PRS current and the simplest, most flexible method for classifying regulations.

The following points and assumptions should also be kept in mind.

1. The reader should make a clear distinction between a Region I Priority Regulation System (PRS) and the current Regional Priority List (RPL). The RPL is a survey of the Regions undertaken annually by HQ's OSR. While the RPL is meant to provide the Regions with feedback on their priorities and, on occasion, to provide a given Region some advance notification of regulatory progress in areas of special interest indicated by that Region on the RPL, Region I personnel feel the RPL, as it now functions in reality, to be of little practical value to the Region.

2. A PRS on the other hand, is an internal Regional system, which is updated on a continuing basis. A PRS accepts the de facto

Regional regulatory review and development system, with its emphasis on Divisional control, informal participation in rulemaking, and the focusing of Regional efforts on selected regulations. But, at the same time, it "rationalizes" the Region's participation in rulemaking by unifying information on Regional efforts, by making this information broadly available to decision-makers, by following through to insure such efforts are made in consistent and effective ways, and by reducing paperwork burdens to an absolute minimum with respect to all other regulations.

3. While the establishment of a PRS may require a small short-term increase in resources devoted to rulemaking, it is extremely cheap to maintain.

4. The thorough review of the Regional Priority List (RPL) by Region I Division Directors (DDs) will only need to be done once. Thereafter the system will be maintained by DD reviews of Start Action Requests (SARs).

5. All future annual RPL responses will merely be the RRC's copy of the current Region I "top priority" regulations list (TPL). DDs and staff will no longer have to do RPL reviews. For any regulations missing from PRS lists, the RRC will obtain back SARs from OSR and have DDs classify these.

6. All responsibility for classifying regulations as either "top priority" or "nominal involvement" will rest with DDs and the RA.

7. SARs are one-page abstracts of a proposed regulations.

Between 50 and 75 SARs pass through Region I each year. Of these a large number relate to technical changes in Air regulations, which would clearly fall into the "nominal involvement" (NIL) category. While the Air DD will receive at most 40 SARs in a year, the large majority of these will be easily classified and the Water and Waste DDs will receive, on average, only 15 SARs each year. Consequently, a PRS should produce minimal demands on the time of DDs.

8. DDs will be free to change classifications and staff assignments for a proposed regulation at any time merely by notifying the RRC.

9. A Region I staff member will be assigned to each regulation regardless of its classification as "top priority" or "nominal involvement."

10. It is anticipated that there will be a maximum of approximately 20 "top priority" regulations for Region I.

11. All remaining regulations will be classified "nominal involvement". These packages will go directly to the appropriate staff level contact for that particular regulation (see #6, above), saving DDs the need to read or route such packages. Staff members may treat their assigned "nominal involvement" regulatory packages as "for information" copies or as candidates for intensive review (as they and their DDs see fit).

12. Nevertheless, it is anticipated that there will be few

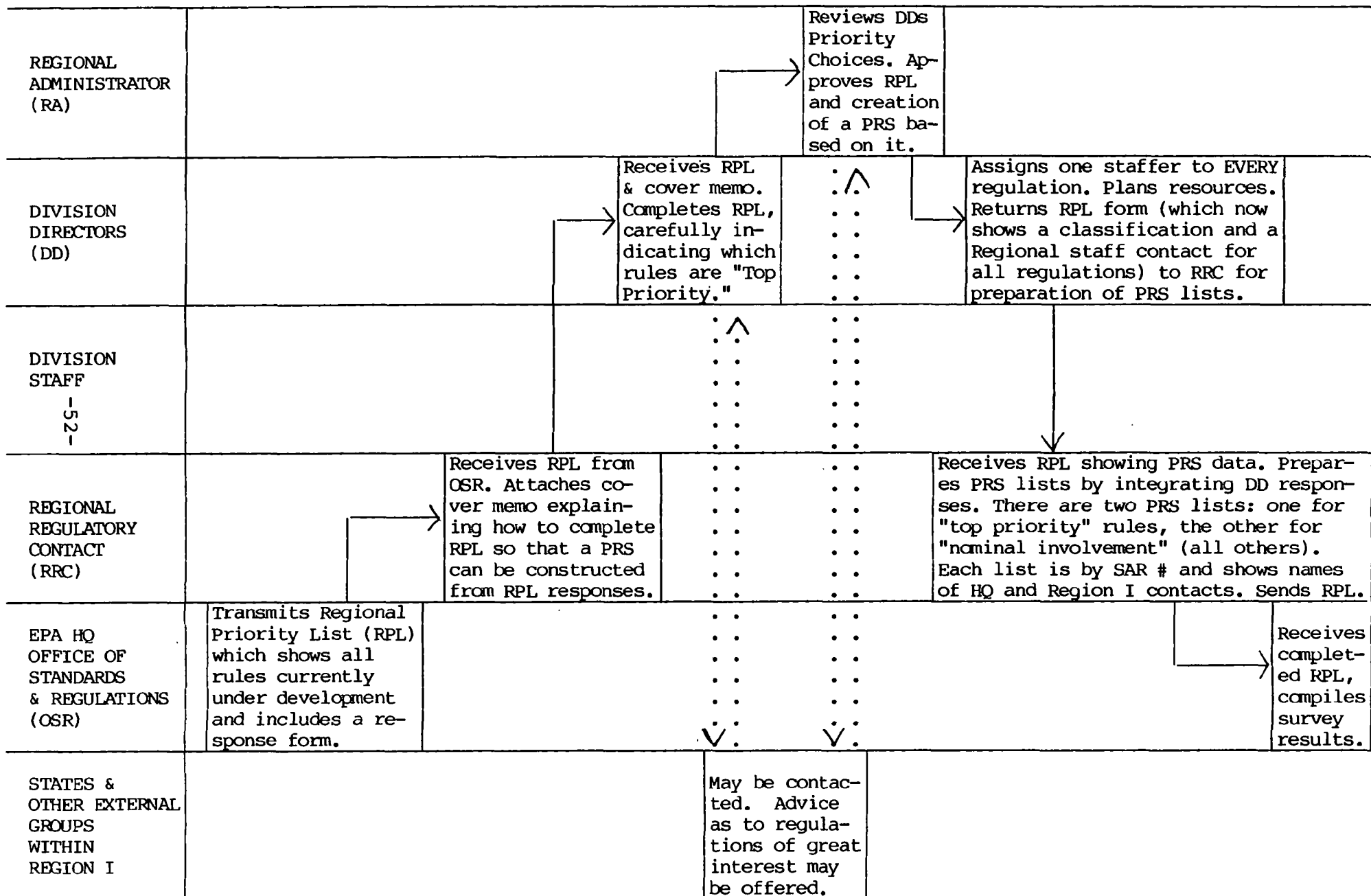
comments on "nominal involvement" regulations.

13. The RRC will have pre-signed "No Comment" sheets. The RRC will be in contact with the assigned staff person within 48 hours of transmitting a "nominal involvement" package to that person in order to determine if a comment will be sent. If not, the RRC will simply send a "No Comment" response to HQ OSR.

14. On the other hand, it is anticipated that every effort will be made to comment thoroughly on "top priority" packages and to mobilize Regional resources to gain the desired goal. The RA and the DDs may be utilized in this regard to lobby HQ and other Regions. The RRC may be utilized to obtain Steering Committee deadline extensions and Regional membership on Red Border Reviews. The Region may decide on additional ways to magnify its involvement, e.g. by asking for working drafts, joining Work Groups, creating an intra-Regional "work group," etc.

# ESTABLISHING A REGION I PRIORITY REGULATION SYSTEM (PRS)

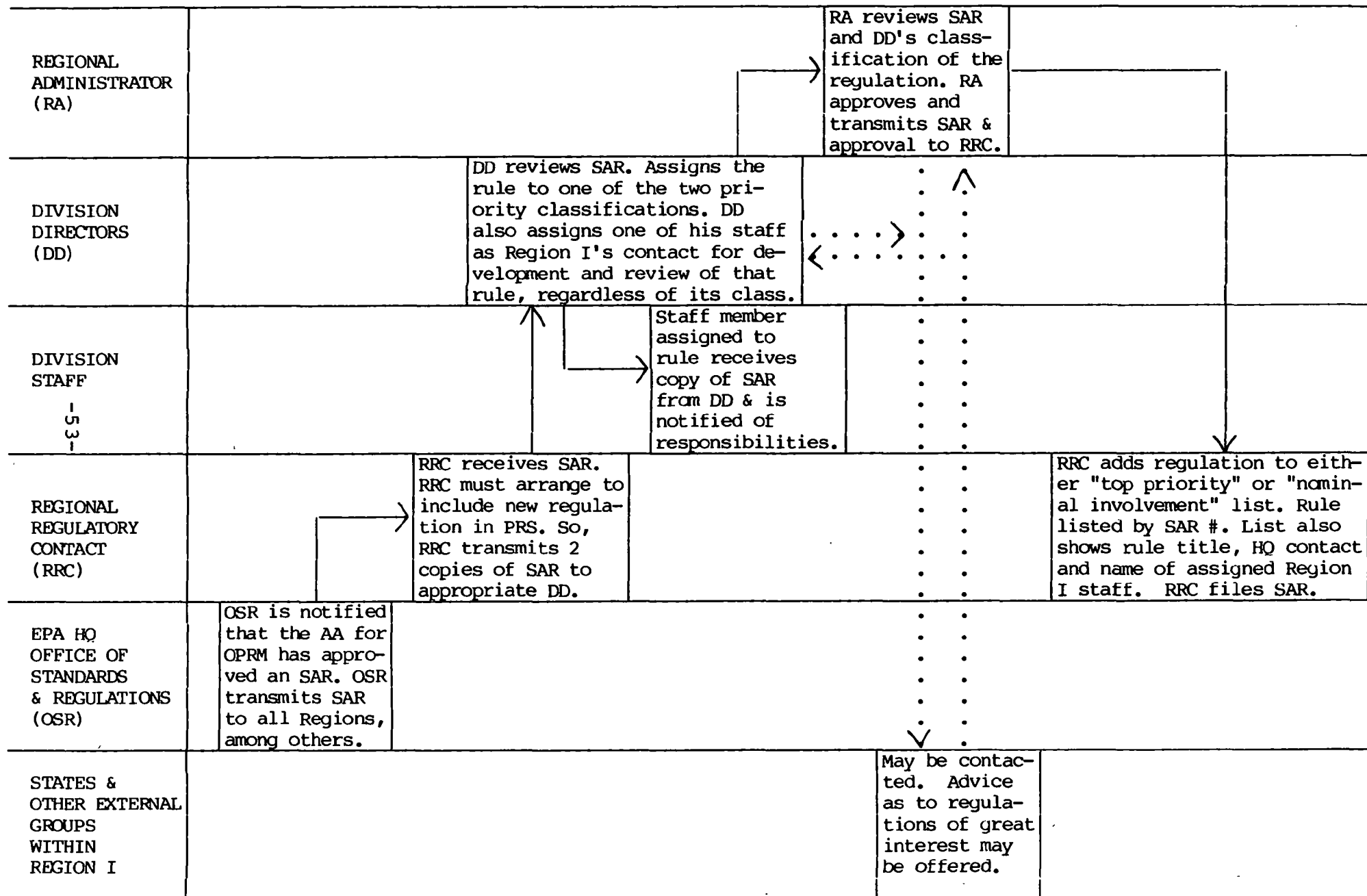
(Source: P&E Branch, Region I)





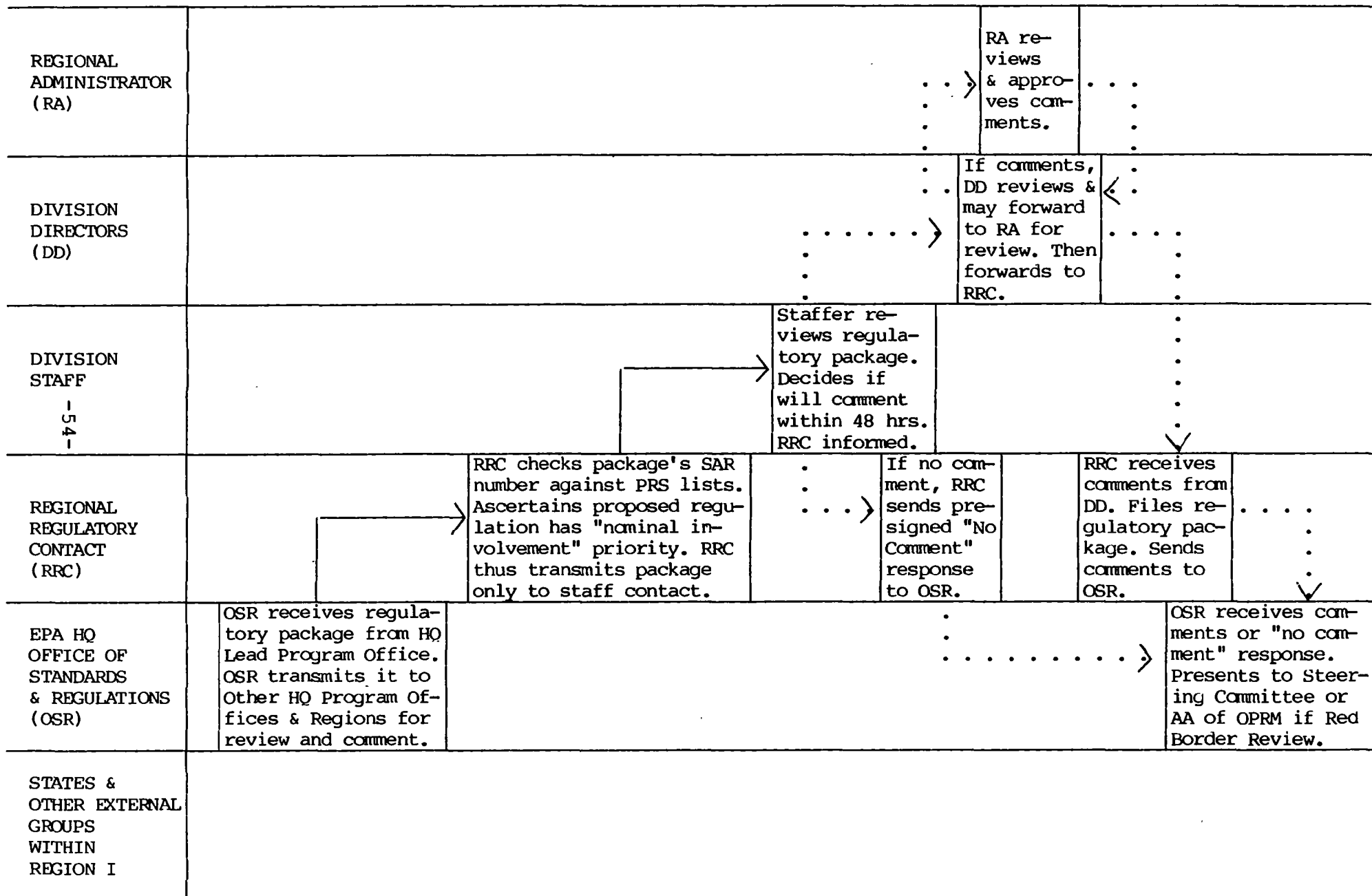
## MAINTAINING A REGION I PRIORITY REGULATION SYSTEM (PRS)

(Source: P&E Branch, Region I)



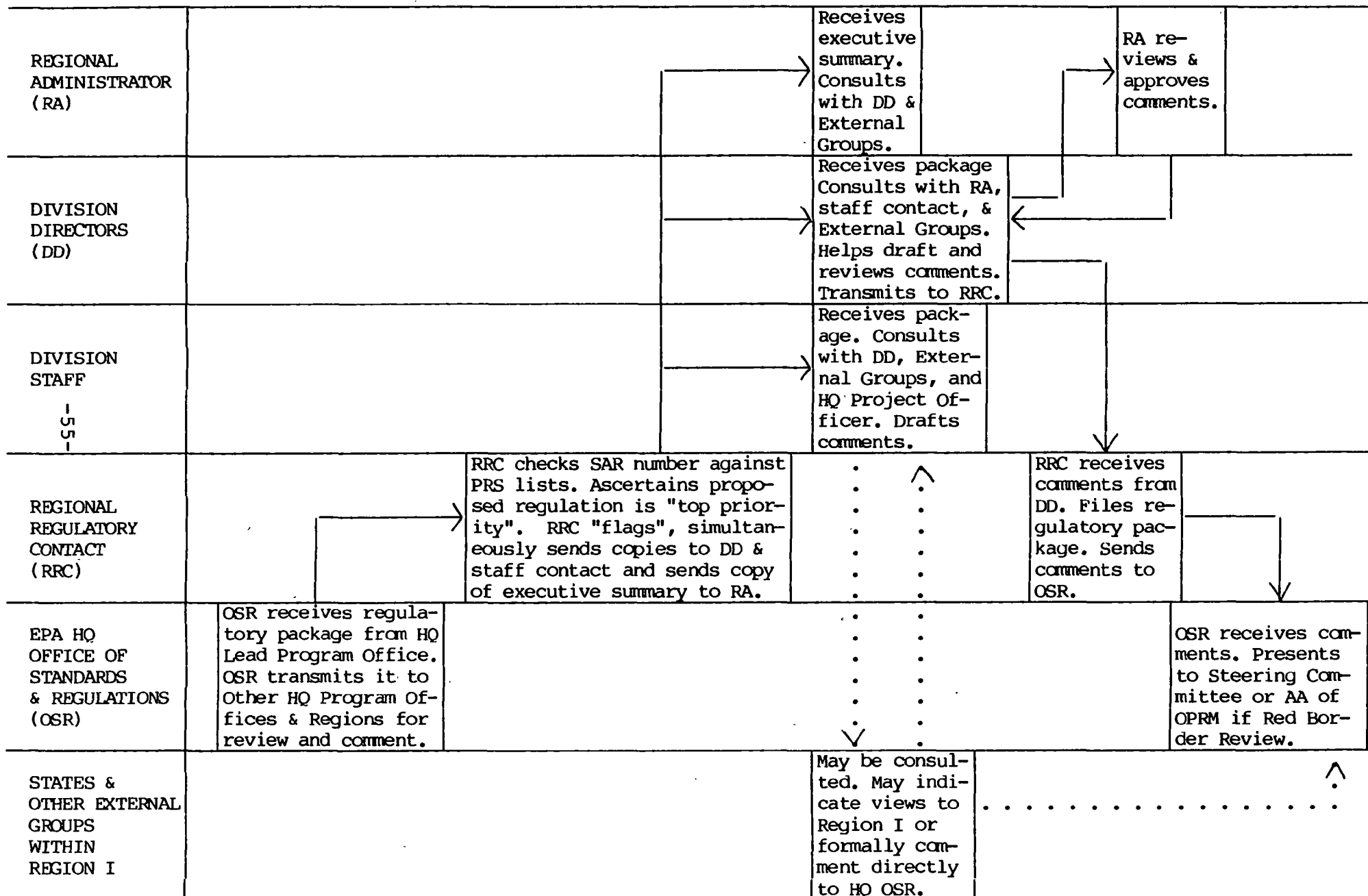
REVIEW PROCESS FOR REGULATIONS CLASSIFIED AS "NOMINAL INVOLVEMENT" USING A REGION I PRIORITY REGULATION SYSTEM (PRS).

(Source: P&E Branch, Region I)



REVIEW PROCESS FOR REGULATIONS CLASSIFIED AS "TOP PRIORITY" USING A REGION I PRIORITY REGULATION SYSTEM (PRS).

(Source: P&E Branch, Region I)



## APPENDIX C

### EPA Rulemaking Flowchart

#### INTRODUCTION

The following eight pages show the EPA rulemaking process from inception to rule promulgation in detail. Please refer to the Executive Summary for an important change which may be made in the process set out in these charts. In addition, the reader should note that the process shown here is that followed for "major" regulations, although some deviations for other types of regulations have been listed. Many proposed EPA regulations do not need a Start Action Request (SAR) or follow a considerably shortened version of the process shown here. Some matters, such as State Implementation Plans (SIPs) follow an entirely different course. These variations and exceptions are complex and are best understood by referring to the memoranda contained in Appendix H.

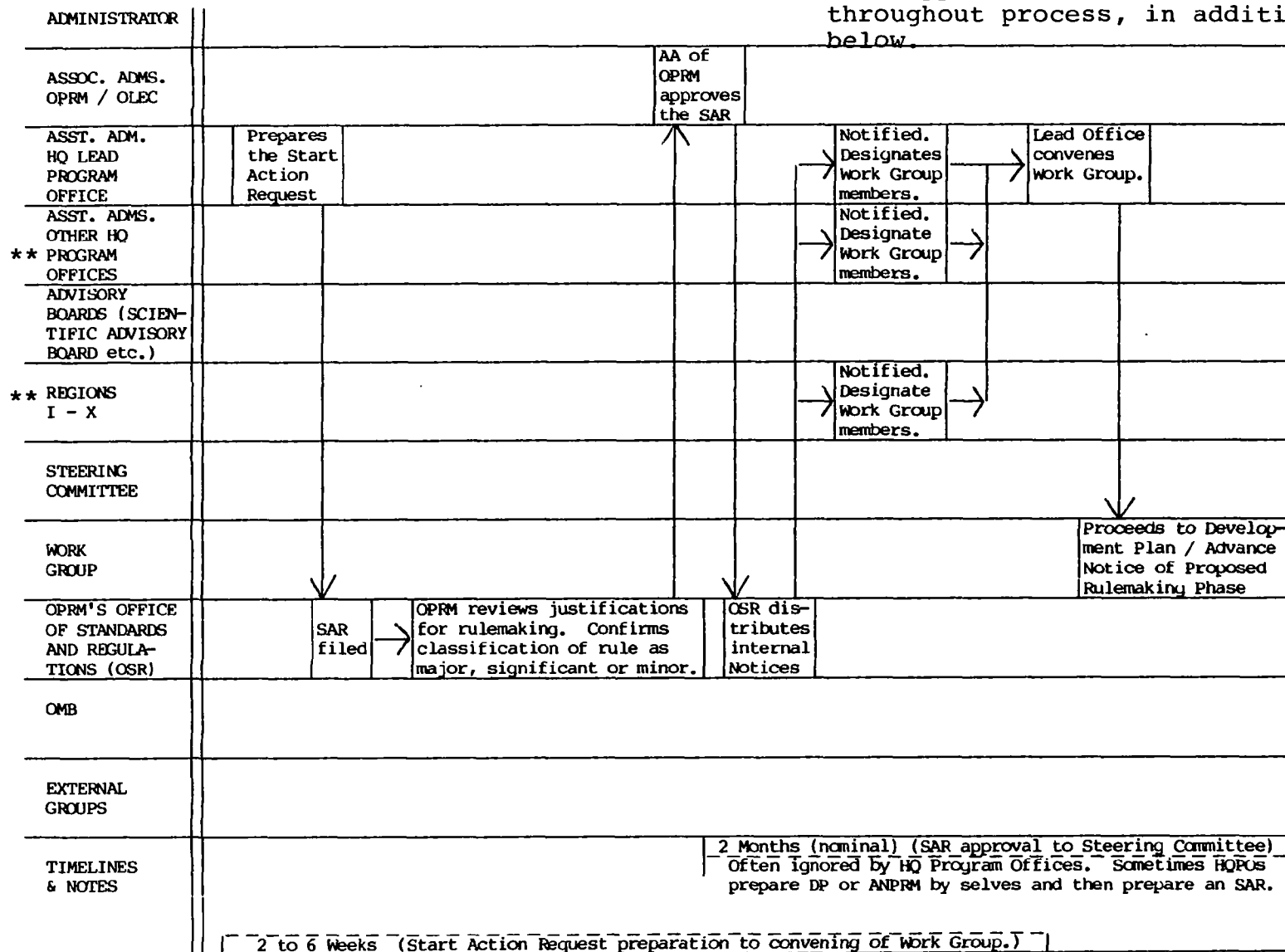
As noted in the Glossary at the entries for OLEC and "Red Border" Review, the Office of Legal and Enforcement Counsel has recently been reorganized into two separate Offices: General Counsel and "Enforcement Counsel," the latter of which has yet to be officially titled. As far as is known at present, both of these offices will assume the responsibilities of OLEC for reviewing and approving regulations during "Red Border" Review. This means that three approvals (AA of OPRM, General Counsel and "Enforcement Counsel") rather than two (AA of OPRM, and AA of OLEC) will now be required during "Red Border" Review.

The reader should substitute General Counsel and "Enforcement Counsel" wherever "OLEC" appears on a chart in the Executive Summary, "EPA Rule-making in 4 Phases" and Appendix C.

# EPA RULEMAKING FLOWCHART

(Source: P&E Branch, Region I)

\*\* Have opportunities for informal input throughout process, in addition to points below.

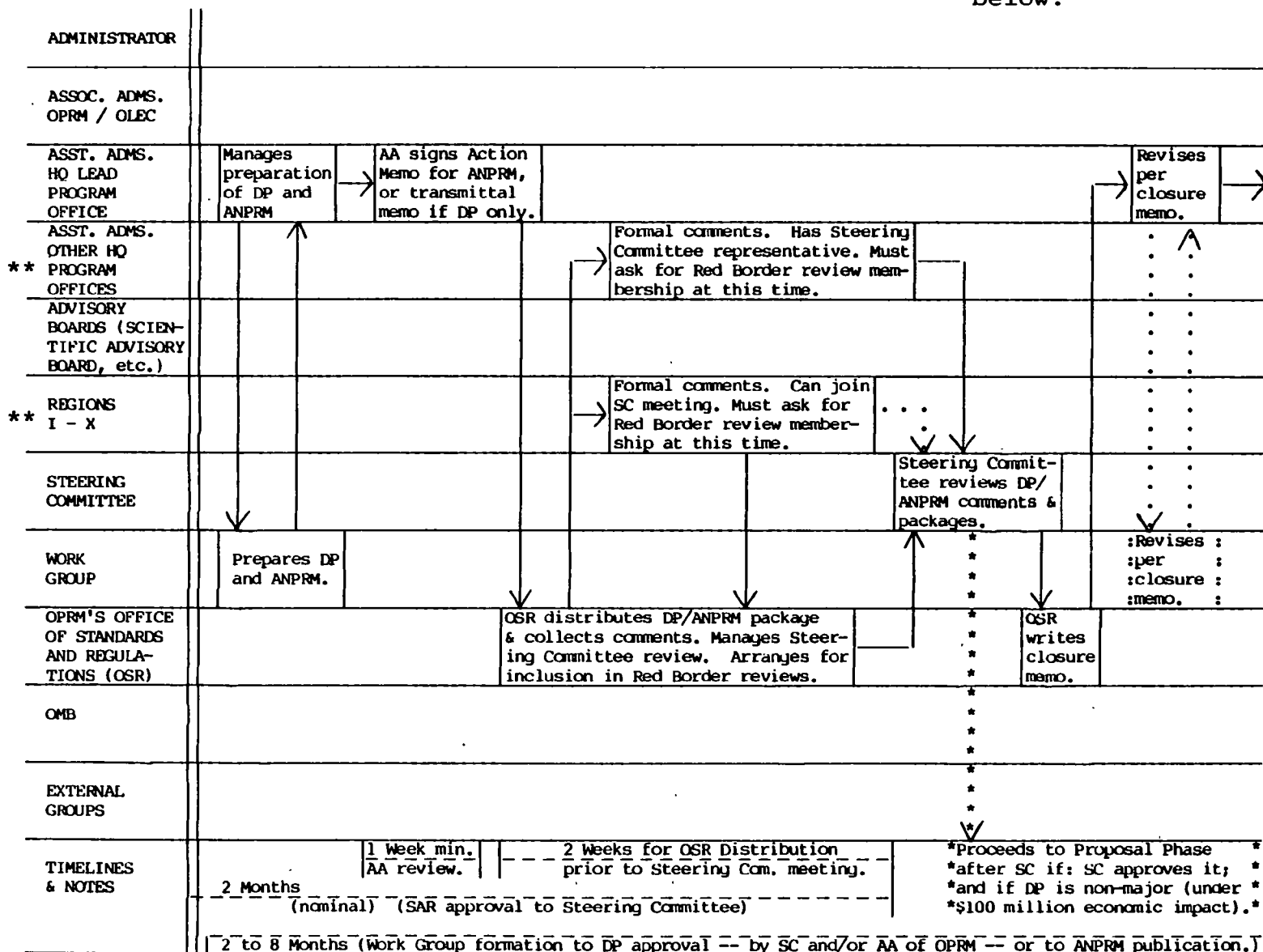


## INTERNAL NOTIFICATION PHASE

# EPA RULEMAKING FLOWCHART

(Source: P&E Branch, Region I)

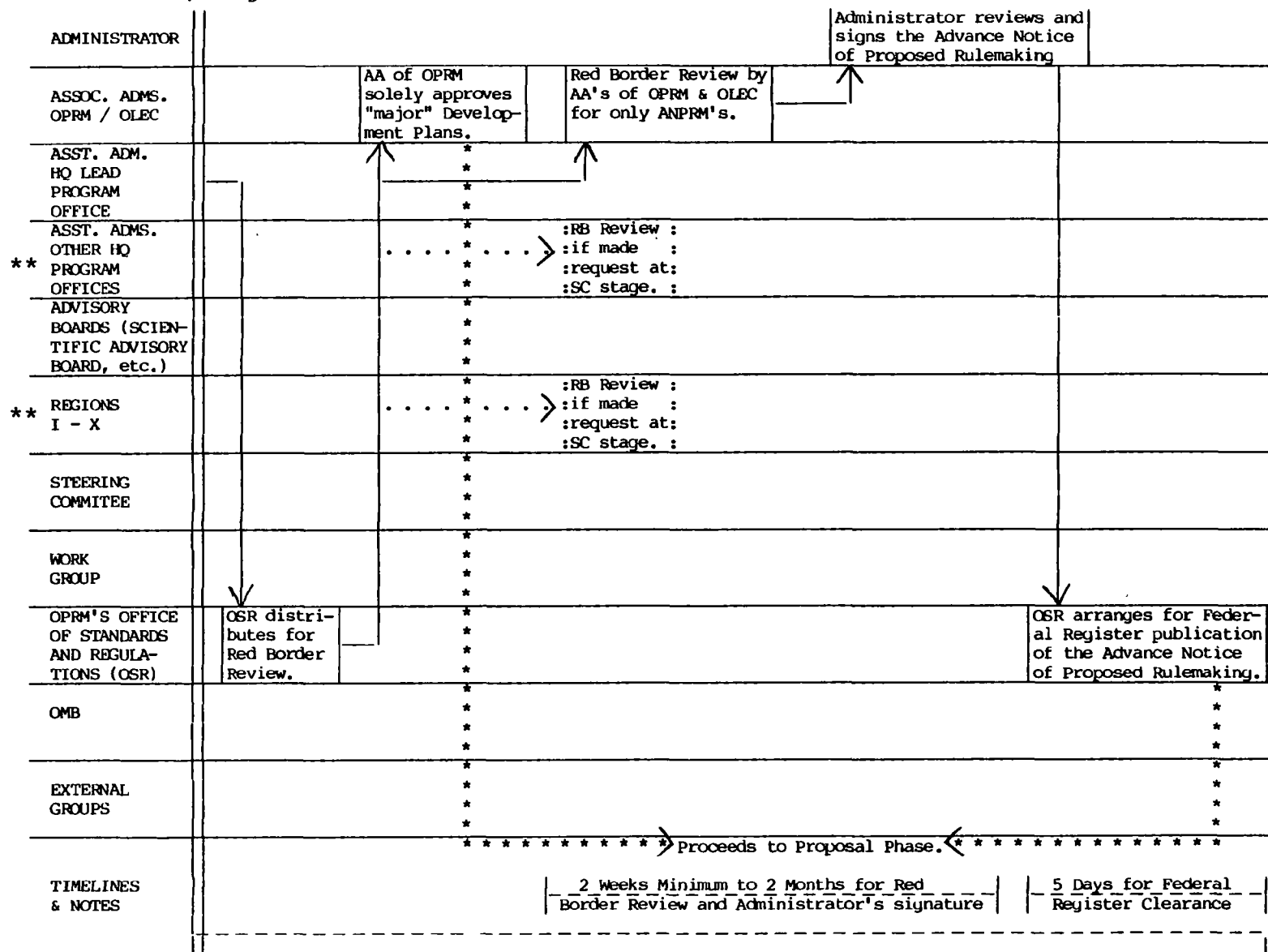
\*\* Have opportunities for informal input throughout the process, in addition to points depicted below.



## DEVELOPMENT PLAN PHASE

# EPA RULEMAKING FLOWCHART

(Source: P&E Branch, Region I)



DEVELOPMENT PLAN PHASE (cont.)

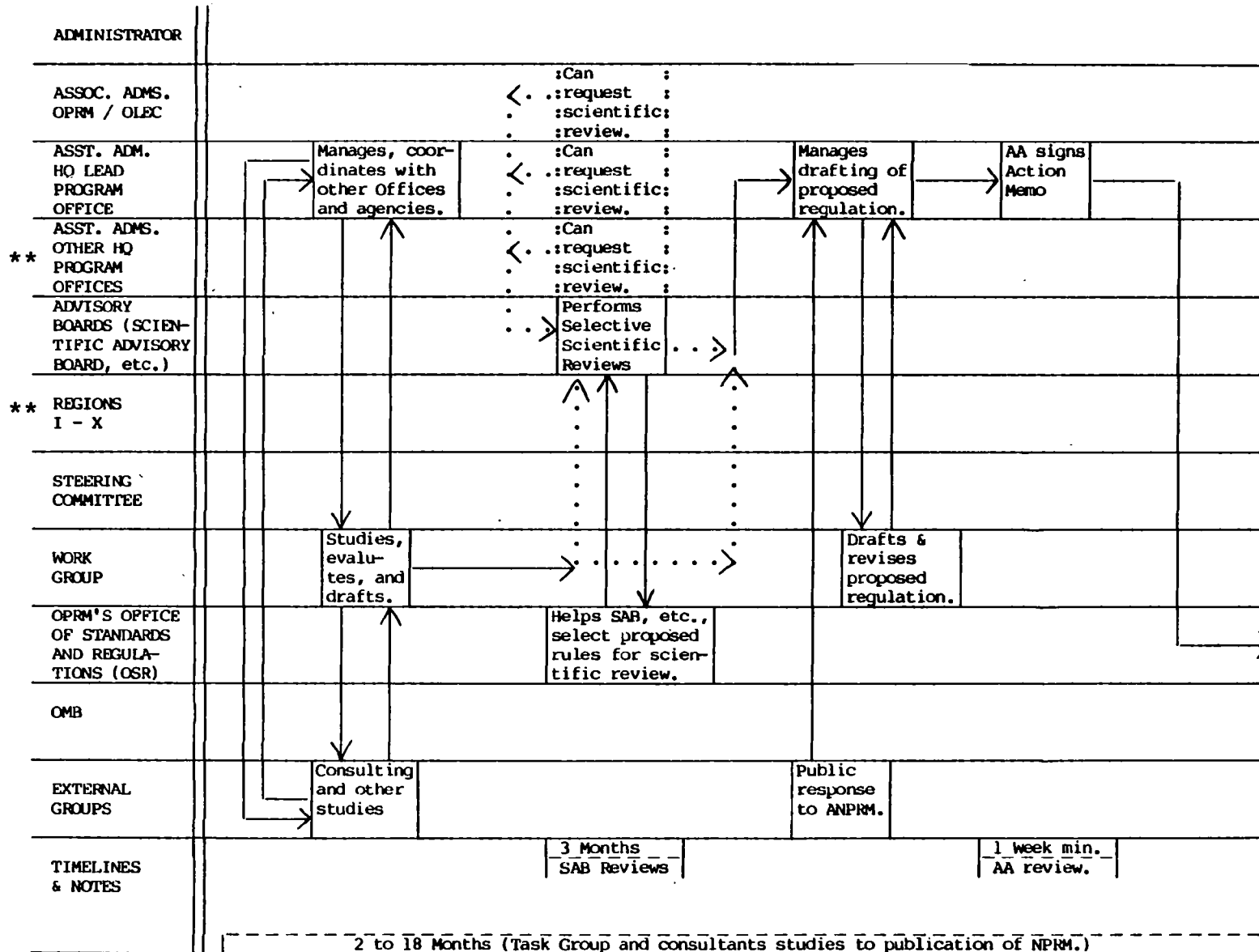
\*\* Have opportunities for informal input throughout the process, in addition to points depicted above.



# EPA RULEMAKING FLOWCHART

(Source: P&E Branch, Region I)

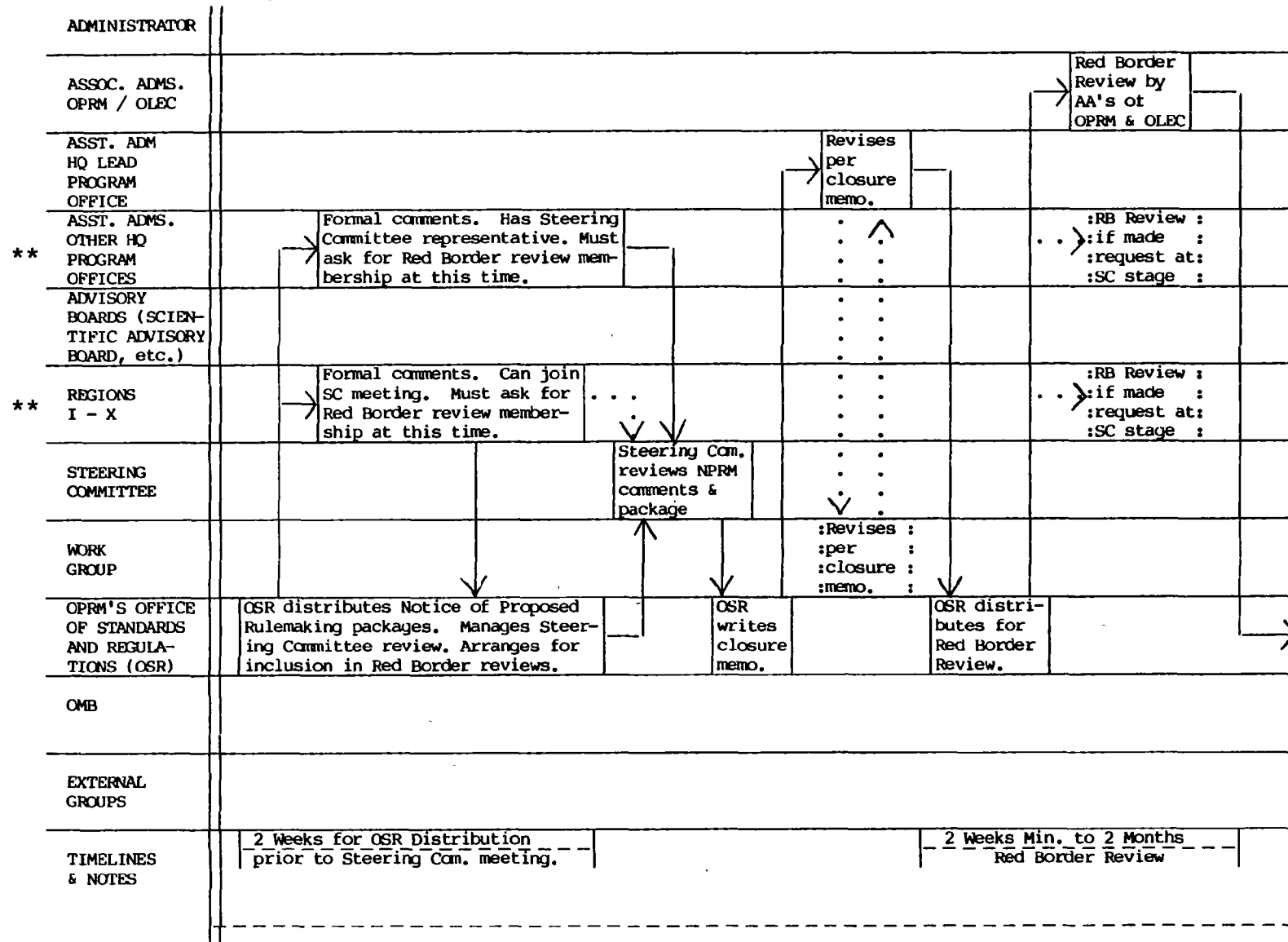
\*\* Have opportunities for informal input throughout the process, in addition to points depicted below.



PROPOSAL PHASE / DECISION PACKAGE

# EPA RULEMAKING FLOWCHART

(Source: P&E Branch, Region I)



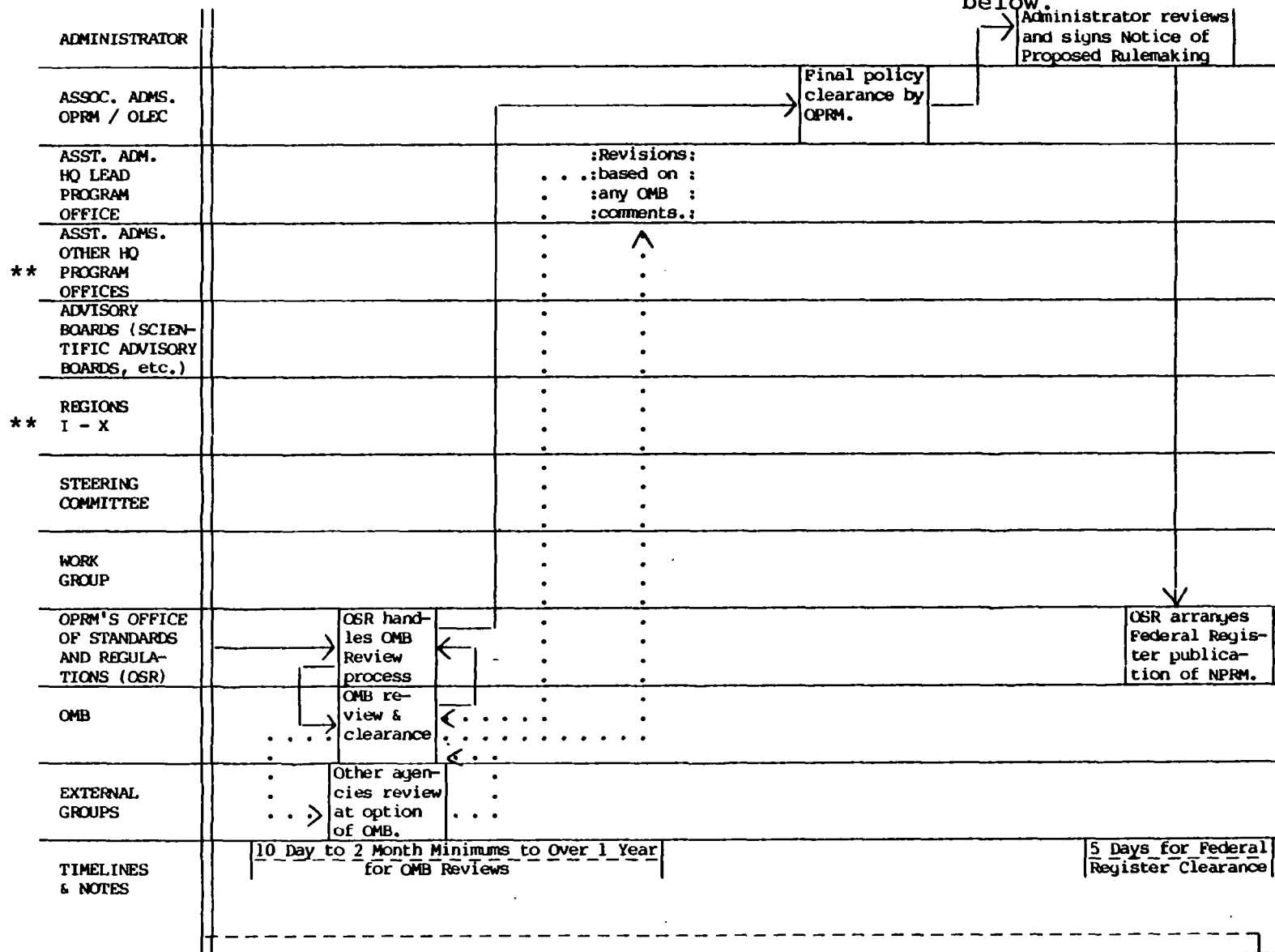
PROPOSAL PHASE / INTERNAL REVIEW

\*\* Have opportunities for informal input throughout the process, in addition to points depicted above.

## EPA RULEMAKING FLOWCHART

(Source: P&E Branch, Region I)

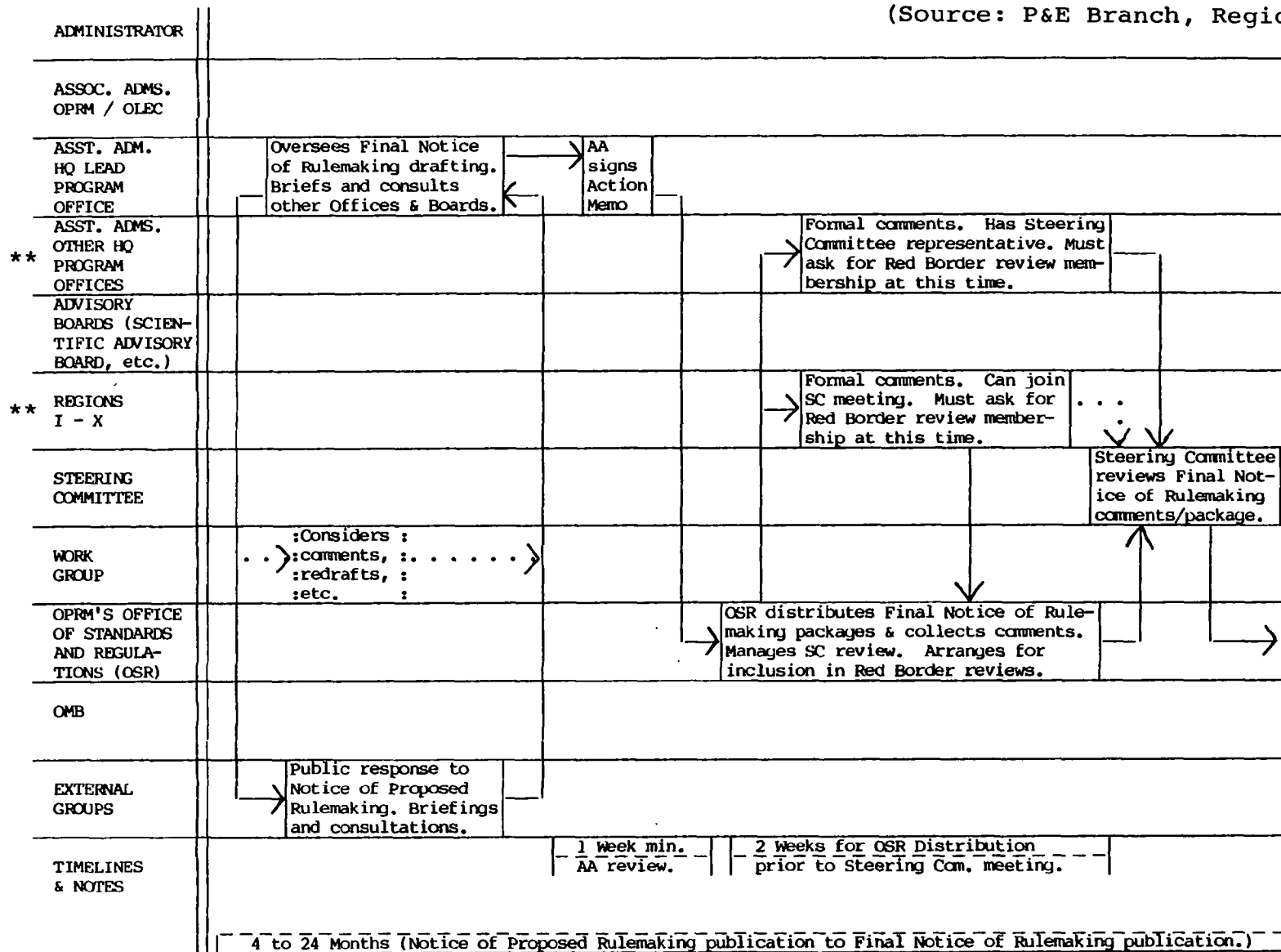
**\*\* Have opportunities for informal input throughout the process, in addition to points depicted below.**



PROPOSAL PHASE / INTERNAL REVIEW (cont.)

# EPA RULEMAKING FLOWCHART

(Source: P&E Branch, Region I)



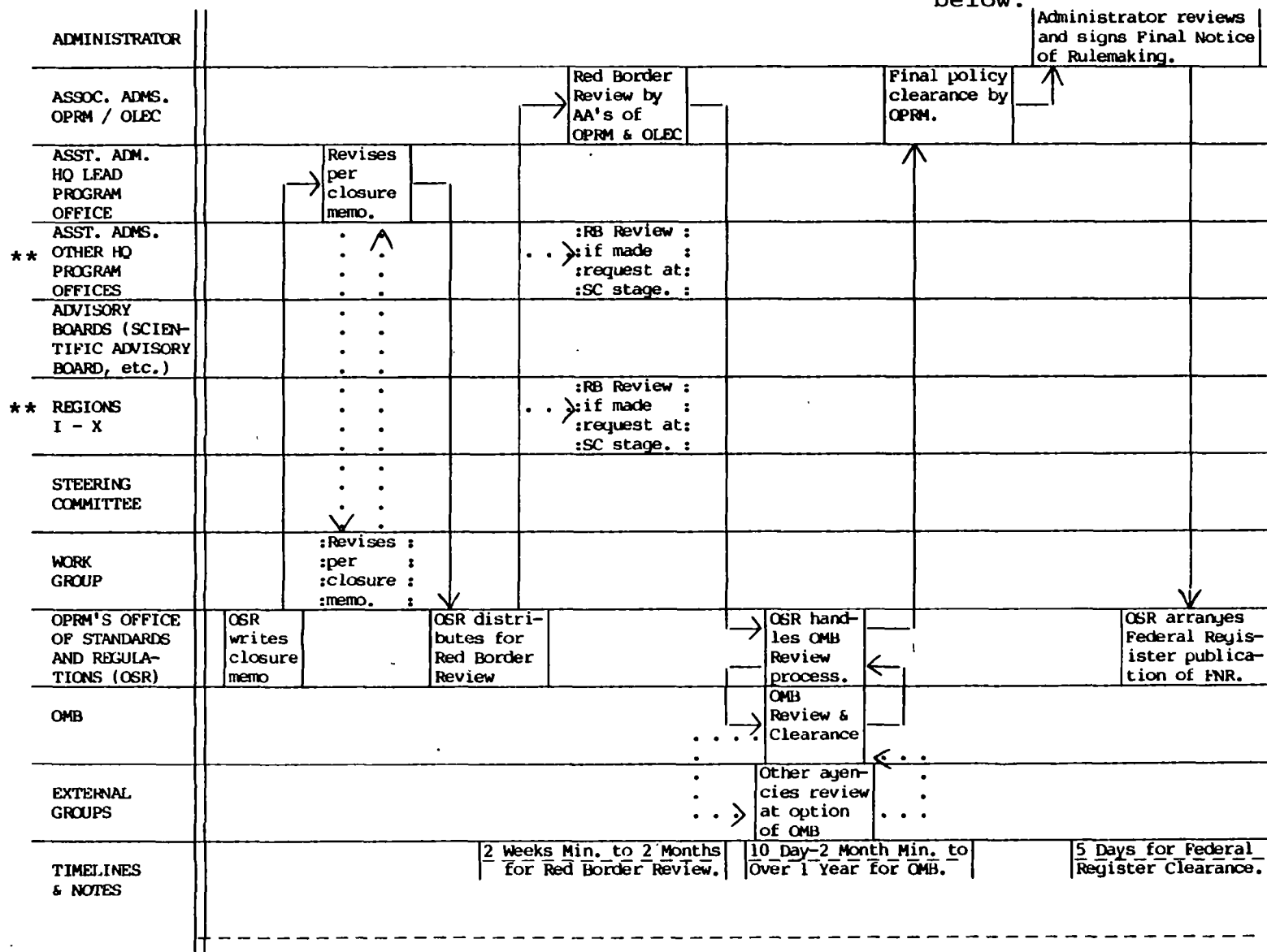
## FINAL RULE PHASE

\*\* Have opportunities for informal input throughout the process, in addition to points depicted above.

# EPA RULEMAKING FLOWCHART

(Source: P&E Branch, Region I)

\*\* Have opportunities for informal input throughout the process, in addition to points depicted below.



FINAL RULE PHASE (cont.)

## APPENDIX D

### Factors Which Can Help To Make Regional Comments More Effective & Well-Written Sample Comments Which Provide Examples Of These Factors

- Maintain a well-understood, smooth-running, Regional regulatory review process
- Adhere to commenting deadlines
- Keep comments detailed and specific
  - Focus on major concerns
  - Cite specific sections and provide examples
  - Return redrafted language for proposed regulation
  - Explain consequences (environmental, political, economic, administrative, etc.)
- Write clearly and simply
- Present the complete rationale
- Emphasize the importance of the views to the Region
- Speak to regulation's author before commenting
  - Determine positions and learn rationales of other participants
- Phone Project Officer after commenting
  - Reemphasize importance of views to the Region, answer questions
- Brief senior Regional managers on conversations with HQ personnel

- ° Regional Administrator can adopt comments as his/her own
- ° Have RRC contact HQ OSR if extension of commenting deadline necessary
- ° Request Regional participation on "Red Border" Review if regulation is of particular concern
- ° Obtain working drafts of regulation from Work Group; comment on these
- ° If an important issue at stake, have RA and Division Director contact other Regions, States, HQ Counsel and Program Offices, Region I Inter-governmental Liaison Office, Congressional Offices, etc.
- ° "Non-concur" if proposed regulation would have severe impact on Region
- ° Present Regional views in person before Steering Committee
- ° Join the Work Group and participate in deliberations and drafting sessions
- ° Establish a Regional "Work Group" to study proposals and draft responses to HQ
- ° Keep records of communications between Regional and HQ personnel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE MAY 18 1983

SUBJECT Red Border Review of Proposed Revisions to Visibility Regulations

FROM L. Edwin Coate  
Acting Regional Administrator



TO Kathleen Bennett, Assistant Administrator  
Air, Noise and Radiation

We have reviewed the proposed revisions to the visibility regulations and have decided to "nonconcur" with comments on the Notice of Proposed Rulemaking. While we agree that changes are needed in our current regulations, we do not agree with the revisions which are proposed in this package. The following summarizes our specific concerns with each of the five issues proposed for revision:

Role of the Federal Land Manager. We agree that our current regulation provides too much authority to the FLM and reduces the State responsibility to develop and implement a plan to protect visibility. As such, the proposed revisions, with one exception, are acceptable. The proposed revision to the §51.302(b) fails to provide clear guidance on the FLM consultation process. Also, it does not include the specific requirement of the Act that the State's notice of public hearing include a summary of the conclusions and recommendations of the FLM. Suggested language for §51.302(b) is attached.

Integral Vistas. We do not agree with the deletion of the requirements for protecting integral vistas associated with the mandatory Federal Class I areas. We are still in agreement with EPA's original rationale for promulgating the current approach and find no basis for changing it. The vistas associated with the mountainous Class I areas of the Western United States are extremely important to the visitor's experience and do not end at the artificially established boundaries of the areas. We do feel that the identification of integral vistas should be a State responsibility and as such revisions to the current regulation are needed. Suggested language for §51.304 and §51.307(b)(1) is attached.

BART for Reconstructed Sources. We do not agree with the deletion of the requirement for BART for reconstructed sources. The rationale for the current requirement is that sources constructed prior to 1962 do not have a long enough remaining useful life to warrant retrofit controls. However, a source which was reconstructed between 1962 and 1977 is likely to have a useful life into the next century and would therefore warrant BART in order to remedy existing significant impairment. Also, many sources which reconstructed between 1970 and 1977 were considered new sources under NSPS, NESHAPS, and NSR programs and, to avoid being inconsistent, should be considered similarly under the visibility protection program. The existing provisions in the current regulations should be retained intact.



BART Reanalysis. We agree that the current requirement for an ongoing SIP program of BART reanalysis is not appropriate and we agree with the proposal to delete this section of the regulation. However, the regulation needs to clearly indicate that one element of the long-term strategy to remedy existing visibility impairment must be the implementation of new control technology as it becomes available. Although the BART analysis may be a one-time event, the current unavailability of control technology cannot be allowed to preclude the eventual control of sources which are causing or contributing to impairment. Suggested language for §51.302(c)(2)(i) is attached.

Analysis of Control Measures. We agree that the current requirement for the SIP to address a specific list of potential control measures is inappropriate. It is the States' responsibility to assess the existing impairment, identify the causes thereof, and to adopt all of the measures necessary to achieve the national goal of remedying any existing manmade impairment. However, we do not agree with the proposed changes of the word "must" to "may". Sections 51.306 (e) and (f) should be deleted in their entirety. Rather, the regulation needs to clearly indicate that one requirement of the long-term strategy to remedy existing visibility impairment is the adoption of all measures necessary to control sources of existing impairment, and should list certain of these measures as examples. Suggested language for §51.302(c)(2)(i) is attached.

We have also attached our specific comments on each of the eighteen proposed changes to the regulations.

I hope that our suggestions will be of use to you in resolving the concerns with this proposed revision. If you have any questions, or wish to discuss changes to the proposal, please contact Mr. David Bray of my staff at 8-399-1980.

Attachments

cc: Bruce Polkowsky

Suggested Regulatory Language for Visibility Regulations

1. In Section 51.302, paragraph (b) is revised to read as follows:

§51.302 Implementation control strategies.

\* \* \* \* \*

(b) State and Federal Land Manager Coordination.

(1) The State, prior to holding the public hearing(s) on the plan required by this Subpart, must consult in person with the appropriate Federal Land Manager(s).

(i) Such consultation shall provide opportunity for the Federal Land Manager to discuss their:

- (A) assessment of impairment of visibility in any mandatory Class I Federal Area;
- (B) recommendations for integral vistas;
- (C) recommendations for visibility monitoring; and
- (D) recommendations for the long-term strategy.

(2) The notice(s) to the public of the public hearing(s) shall include a summary of the conclusions and recommendations of the Federal Land Manager.

2. In Section 52.302, paragraph (c)(2)(i) is revised to read as follows:

§51.302 Implementation control strategies.

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) A long-term (10 - 15 years) strategy, as specified in §51.305 and §51.306, including such emission limitations, schedules of compliance, and such other measures including schedules for the implementation of the elements of the long-term strategy as may be necessary to make reasonable progress toward the national goal specified in §51.300(a). Such measures shall include, but are not limited to, additional emission limitations and schedules of compliance as new technology becomes available, measures to mitigate the impacts of construction activities, and smoke management techniques for agricultural and forestry management, where such are necessary to remedy existing impairment.

\* \* \* \* \*

3. Section 52.304 is revised to read as follows:

§51.304 Identification of integral vistas.

(a) The State shall develop criteria and identify integral vistas associated with any mandatory Class I Federal area.

(b) These criteria must include, but are not limited to, whether the integral vista is important to the visitor's visual experience of the mandatory Class I Federal area. Adoption of criteria must be preceded by reasonable notice and opportunity for public comment on the proposed criteria.

(c) The State must list any integral vista in its implementation plan at the earliest opportunity, and in no case later than at the time of periodic review of the SIP required by §51.306(c).

4. In Section 51.307, paragraph (b)(1) is revised to read as follows:

§51.307 New source review.

(b)

(1) That may have an impact on any integral vista of a mandatory Class I Federal area which has been listed in the SIP, or

Specific Comments on Proposed Rule Revisions

Nos. 1, 2, 3 and 4 - do not change existing definitions.

No. 5 - Must provide further guidance on the FLM consultation process.  
(See our suggested language.)

Nos. 6, 7, 8, 9 and 10 - Acceptable.

No. 11 - Retain the requirement for integral vistas but change to a State responsibility. (See our suggested language.)

Nos. 12, 13, 14 and 15 - Acceptable.

No. 16 - Delete paragraph (e) entirely.

No. 17 - Delete paragraph (f) entirely.

No. 18 - Retain the requirement for integral vistas by change to recognize State responsibility. (See our suggested language.)

DATE: JUN 4 1982 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: 40 CFR Part 261 and 266 of RCRA Regarding the Definition of Solid Waste and Management Standards for Hazardous Wastes which are Recycled.

FROM: Dick Whittington, R.E. *[Signature]*  
Regional Administrator, Region 6

*[Signature]*  
Rita M. Lavelle  
Assistant Administrator for Solid Waste and Emergency Response

We have reviewed and concurred on the Red Border Package of proposed and interim final rules to amend Parts 261 and 266; however, we feel it is necessary to make the following comments:

1. In defining five specific types of recycling activities of immediate regulatory concern, EPA proposes to regulate materials which accumulate for recycling for over one year without sufficient amounts be recycled. Specifically, EPA has chosen to require a 75% annual turnover (recycling) of accumulated materials to guard against over-accumulation. While this rate of turnover would indicate legitimate recycling activities, the verification by the Region of annual turnover rates of less than 75% would be difficult and resource intensive. We would prefer that EPA require all accumulators for recycling to report annually and document turnover rates to the respective Regional office. This would not be a burden on the industry, since legitimate recyclers always maintain records concerning the amount of materials bought or available for recycling or resale. The responsibility for documenting annual turnover rates should be placed on the recyclers, especially if they may seek one-year waivers from the Regions.
2. EPA is considering the requirement for batch tolling agreements between the generator and reclaimer. Based on our experience with reclamation processes, this requirement could result in significant problems and reduce the economic incentives for recycling. Many generators produce small amounts of reclaimable wastes. These wastes are accumulated and stored until there is a sufficient amount to economically justify shipment to a reclamation facility. Many reclaimers have a minimum bulk quantity which they will pick up or accept. It may be unreasonable to require that the reclaimers return the recycled materials to the original generator within 180 days. Also, it would be very difficult, if not impossible, for the reclamation facility to segregate the waste to be reclaimed and the reclaimed materials for each individual generator. This point is particularly important in the organic solvents reclamation industry where processing is accomplished by bulk distillation. It is our recommendation that reclaimers take title to the waste to be recycled when first under their control; i.e., picked up at the generator's facility or delivered by the generator.

3. Finally, we suggest that when EPA proposes to modify RCRA regulations, the direct effect on delegated States should be carefully evaluated. Since EPA first published the RCRA regulations in May 1980, Region 6 has worked closely with our State agencies which, in many cases, had to seek legislative changes in order to be eligible for RCRA delegation. The Agency should always consider whether proposed or modified regulations would pose statutory problems for the delegated States. Although we understand that many of the amendments made to the RCRA regulations have resulted from court directives, industry suits, and petitions, Region 6 and our State agencies support a limit on the frequency of these amendments. We would prefer to have RCRA amendments published only annually or even semi-annually, so that State programs can plan ahead and undertake major regulatory revisions following the expected regular EPA action.

If you have any questions, please contact me.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION V

DATE: JUN 25 1982

SUBJECT: Red Border Review - 40 CFR Part 261 and 266 of RCRA Regarding the Definition of Solid Waste and Management Standards for Hazardous Waste which are Recycled

FROM: Valdas V. Adamkus  
Regional Administrator

TO: Dan Fiorino, Chief  
Regulation Management Staff  
Standards and Regulations

Thank you for requesting our comments on the proposal to amend the recycling regulations and the definition of solid waste. I apologize for the delay in submitting our response. The Region V Waste Management Division has reviewed the proposed amendments. Region V is concerned with the potential adverse impact on the States, the ability of the Agency to implement a regulatory program based on the proposal and the ability of the Agency to enforce the proposed regulatory program. I believe that amending these regulations to the extent proposed would be unwise at this time. Based on our analysis, which is detailed below, I non-concur with the proposed amendments.

I have the following comments on the proposed rule changes:

1. The proposed definition (§ 26.2) of Solid Waste limits the definition to those materials the Agency intends to regulate. This limitation increases the probability that additional amendments to the definition will be needed at a later date. This approach may pose a problem for States seeking interim or final authorization in that States are required to have definitions substantially equivalent (interim) or equivalent (final) to Federal definitions. Also, the proposed definition of solid waste does not include hazardous wastes which are reclaimed for use by the generator. Therefore, if a hazardous waste, being reclaimed by a generator, is stored in an unsafe manner, the USEPA cannot take enforcement action against the generator without the Regional Administrator (RA) first declaring such recyclable hazardous wastes as solid waste and providing an opportunity for an appeal through the hearing process. This delay could threaten the environment. An alternative to redefining solid waste in 40 CFR §261.2 is to amend 40 CFR §261.6 to allow specific exemptions for certain hazardous wastes which are used, reused, recycled or reclaimed.
2. In order to reduce the adverse environmental or health impacts which may result from the mixing or blending of hazardous materials, we recommend that the following requirements be included in the Federal regulations:
  - a. Any mixture of hazardous wastes or fuel graded hazardous waste which contains Appendix VIII compounds shall remain hazardous waste unless it can be shown that:



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- i. With adequate air feed, the burning of the resulting mixture or blended hazardous waste fuel is self-sustaining; and
    - ii. The fuel mixture does not contain more than 0.1% (1,000ppm) by volume of chlorinated hydrocarbon.
  - b. If a blended hazardous waste for fuel does not meet the above requirements, its burning constitutes hazardous waste incinerations, and the facility burning such waste must be subject to certain permit requirements; such requirements include:
    - i. The facility (incinerator, boiler, or other thermal recovery units) must have a waste feed monitoring and control system tied to the combustion zone;
    - ii. There must be automatic waste feed cut-off system for proper flame management; i.e., flame-out, power failure, loss of prime mover, etc.; and
    - iii. The facility must be operating under steady state at a minimum of 75% of its design capacity while burning hazardous waste. Waste feed shall not be fed into the unit during start-up or shut-down.
3. The preamble should include a discussion explaining and supporting the Agency's decision to exempt certain materials under 261.2(a)(3)(ii).
4. If the alternative suggested in Comment 1 above is not adopted, the following concerns should be addressed in any proposed amendments published by the Agency.
  - a. Proposed §261.2(f) defines the circumstances under which materials are considered to be overaccumulated. Under this provision, materials with known recycling potential can be accumulated for a year before they are designated as solid wastes. Given the adverse impact these spent materials, sludges, and by-products could have on the environment, this provision is too lenient. Furthermore, it is possible under this provision for the aforementioned materials to remain outside of the Federal definition of solid waste for up to 3 years, provided certain requirements are met. For example, one of these requirements stipulates that 75 percent of the wastes must be recycled at the end of the first year. The requirements become increasingly complex for the second and third year.

In addition, monitoring individual recycling facilities by reviewing the facilities' submittal or by inspections as required by the regulation could result in an excessive administrative burden. The determination must be made by allowing exemptions under §261.6 to those facilities which do not pose significant health risk or damage to the environment. USEPA resources can be utilized more efficiently in controlling or permitting those non-exempted hazardous waste recycling/reclamation facilities.

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- b. Proposed §261.2(g) allows the RA to find that materials being accumulated or stored at particular operations prior to reclamation or blending to form fuels under circumstances not included in the definition are, in fact, solid wastes and subject to §262.34 and storage permit requirements. Proposed §262.2(g)(2) sets forth appeal procedures for the facility if the RA determines that accumulated materials are solid wastes. The facility can challenge the determination (that it is storing a hazardous waste) in a public hearing on the draft permit or the decision to deny application, or, if the RA agrees, in a separate public hearing on this issue. This provision should include steps the public may take to challenge the RA's decision.
  - c. Proposed §266.20-.24 requires a facility to obtain a permit to use regulated recyclable materials in a manner that constitutes disposal. The amendments should clearly state if the required permit is essentially a Part B permit or if Parts 122 and 124 will be amended to incorporate new requirements for these facilities.
  - d. Proposed §266.24 basically requires the applicant to demonstrate that a facility's activities will not result in degradation of groundwater, surface water, or air, and also will not result in subsurface migration of waste constituents. Specific standards or options the applicant could use to demonstrate compliance with this permit requirement should be included in the regulations, in a note, or in the preamble. For example, the regulations should specify what information the applicant should submit to demonstrate that wastes will not leach into the groundwater. Also, the regulations should require that the applicant specify any timeframes connected with submitted data (i.e., "over x years, tests have shown").
5. The proposed regulations generally place a significant burden on the RA and Regional staff since several of these provisions give the RA discretionary authority. If an RA will have the authority to decide these issues on a case-by-case basis, the Agency should develop and issue a guidance package incorporating coordination procedures to ensure national consistency.
6. In addition I offer the following specific comments on the proposed regulation:
- a. On page 25, Section (IV)(B): The sentence, "In some cases, sludges and by products must be listed specifically before they can be wastes." is unclear. Does it mean that when the sludges and by-products do not exhibit hazardous characteristics, the only way they can become solid wastes is by listing?
  - b. Figure 2, the Wastes Types Matrix, is confusing. FR 45, p. 78540, Nov. 25, 1980, states that recyclable by-products are not wastes

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because they have not been discarded. Proposed 261.2(a)(2) classifies as a waste any material destined for reuse when that reuse constitutes land disposal. These can be interpreted to be contradictory statements and should be clarified.

- c. Page 39, Section (V)(D). As it now reads, proposed 261.2(a)(3)(i) does not regard material solid waste when it is reclaimed by a generator and used by someone else. Please confirm this in the list of examples on pp. 46-47.
- d. Page 46, Section (V)(D)(3): Example 1 should detail the fate of residue from a spent solvent reclamation facility R. Essentially, the residue should remain hazardous waste, unless it is delisted.
- e. Page 47, Section (V)(D)(3): the implications of this example need to be clarified. Specifically, what legal responsibility does a generator have to ensure that the fuel blended by an individual blender is for its own use?

Note that the spent solvent will be a waste and must be managed as hazardous waste if such assurance cannot be obtained by the generator.

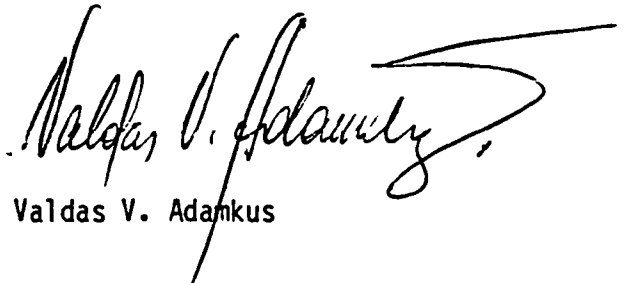
- f. Page 47, Section (V)(D)(4): the term "process minimally" should be clarified and/or defined.
- g. Page 37, Section (V)(C): the term "appreciable chemical change" needs to be clarified and/or defined.
- h. Page 3, 2nd paragraph, 40/CFR 261.2(a)(3)(ii) and 262.2 (a)(3)(iii): The regulations specify that recyclable materials removed from disposal surface impoundments are not solid waste. Similarly, speculative accumulation of recyclable materials is exempted from the definition of solid waste once the material is taken out of accumulation. This implies that the materials can be reclaimed by a 3rd party reclaimer, thereby violating 261.2(a)(3)(i). See also discussion on pages 50 and 51 of the Preamble.
- i. Page 60, Section (V)(G): The preamble should address the need for a RCRA permit or the way to achieve interim status for this situation. When a facility first fails to recycle 75% of the wastes accumulated at the beginning of a year, it must file a Part A within 30 days after losing such exemption and comply with interim status standards (assuming that it treated, stored, or disposed of the recyclable material on or before Nov. 19, 1980). See 40 CFR 122.22(a).

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In another year when the 75% turnover criterion is met, the facility need not comply with I.S. standards. The questions

- (1) Can Interim Status be intermittently conferred by RCRA; and
  - (2) How could EPA effectively oversee this kind of operation?
- j. Page 68 Section (V)(I): The time allowed for a person to apply for a RCRA permit is 60 days after the RA's notice declaring that the recyclable material is a "waste" (assuming that there is no administrative review). Region V suggests that the time be limited to 30 days for filing a Part A and 6 months for filing a Part B, if necessary. See comment above.
- k. Page 86, Section (II)(C), Part III - Proposed 261.6(c), (d) and (e). The introductory paragraph in Section (C) is missing.

Thank you for requesting our comments.



Valdas V. Adamkus



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
POLICY AND RESOURCE MANAGEMENT

Steering Committee - CONSENT CALENDAR  
Clearance Sheet

Date: Thursday, March 24, 1983

SUBJECT: Final Rulemaking Under TSCA Section 8(c) to Require  
Recordkeeping and Reports of Allegations that Chemical  
Substances Cause Significant Adverse Reactions to Health  
or the Environment SAR 1138


Originating Office: Office of Pesticides and Toxic Substances

Contact: Sam Sanett 382-3843

Deadline for Response: Thursday, April 7, 1983

Office Symbol	No Comments	Comments Attached	Signature
OLEC			
OANR			
ORD			
OPTS			
OW		✓	Rebecca W. Hammer
OSWER			
OA			
OPRM			
REGIONS I-X			

Please return your written comments to Caroline Previ by COB April 7, 1983 (PM223). If you have no comments and wish to respond by telephone please call Caroline Previ at 382-7205. If we do not hear from you by COB on April 7, 1983 we will assume that you concur without comment.

  
C. Ronald Smith, Director  
Office of Standards and Regulations



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
WATER

APR 26 1983

MEMORANDUM

SUBJECT: Consent Calendar Review: TSCA Section 8(c) Recordkeeping  
FROM: *Rebecca Hammer*  
Rebecca Hammer, Deputy Assistant Administrator  
Office of Water  
TO: C. Ronald Smith, Director  
Office of Standards and Regulations

Attached are the Office of Water's comments on OTS's TSCA Section 8(c) Recordkeeping final regulation. I apologize for being late in commenting but the delay was due to our misunderstanding that this particular regulation had been withdrawn. I offer the following comments for consideration and would appreciate your bringing these comments to the program's attention.

1. The current definition of significant adverse reactions in Section 717(i) appears to have gone too far in the opposite direction from proposal. It appears very restrictive and the word substantial is not defined. I would recommend deleting the word substantial from the definition so that it reads: "Significant adverse reactions are reactions that may indicate an impairment of normal activities..."

2. The significant reactions that can be reported in Section 717.12(a-d) should be modified so that if even one person is exposed to a chemical or mixture and suffers some adverse reaction a company would be required to keep that allegation on file.

3. To the extent that worker exposure and reactions as a result of that exposure to a chemical substance or mixture is being reported under this regulation, it seems also important to include known effects, if those effects are occurring. This would allow adverse effects such as chloracne and other dermal problems like this to be reported.

4. It seems appropriate that since retailer and sole distributors currently forward allegations of adverse reactions to manufacturers, that you would impose no additional burden on that community by formally requiring them to continue forwarding adverse effects communications under this regulation. The same reasons that you claim for exempting them seem to also support including these areas for

reporting, namely, low rate of allegations any applications received are forwarded already, and that distributor's can submit allegations in behalf of their employees (pages 34-35 of preamble). We would suggest that these areas not be exempted as in Section 717.7(c) and (d).

I would appreciate consideration of these comments and inclusion on the Red Border review of this package.

cc: Don Clay  
Sam Sasnett

## APPENDIX E

### The Federal Advisory Committee Act And Materials

#### INTRODUCTION

The four documents set out in this Section deal with the Federal Advisory Committee Act, 5 U.S.C. App. I, ("FACA"). These documents are, respectively: the full text of FACA; the full text of and the background for the interim rule of the General Services Administration implementing FACA, as these materials appeared in the "Federal Register" on April 28, 1983; a memorandum from Robert M. Perry, then General Counsel of EPA, relating to EPA Policy on Informal Contacts and Meetings with Outside Groups, dated March 1, 1982; and, finally, a list of the major judicial cases interpreting FACA.

FACA is a 1972 Act of Congress. It has been amended twice, in 1976 and 1980. Briefly stated, FACA requires that the various committees, boards, councils, commissions and similar groups which meet with or advise Federal Agencies or Officials (and are composed wholly or in part of non-Federal employees) be formally chartered, keep records, and operate in a manner open to the general public, including prior public notice of such meetings in the "Federal Register."

While a number of questions concerning the purpose and applicability of various sections of FACA remain open for discussion, judicial and otherwise, it is now clear that it applies to practically every group which is formally constituted, is not wholly composed of Federal employ-



ees, and meets with Federal Agencies or Federal Officials in order to offer advice or recommendations. The breadth of FACA's applicability has posed special problems in two areas. The first involved "political" meetings. The U.S. District Court for the District of Columbia decided in the case of Nader v. Baroody, 396 F.Supp. 1231 (1975) that FACA did not apply to such meetings which are: by invitation only to named individuals; unstructured by the Federal Agency or Official; informally organized in the sense that the membership of the group meeting with the Agency or Official is constantly changing; and "not conducted for the purpose of obtaining advice on specific subjects indicated in advance." Id. at 1235. While the court warned that it would not allow an Agency or Official to deliberately structure meetings with "outside" groups so as to avoid FACA, it is apparent that such evasion is regularly practiced with innocent intent. The striking similarity between Judge Gesell's description of the White House meetings upheld in Nader (Id. at 1232) and the description of the public forums organized by EPA Region III in Section L of this report is but one example.

The second area of difficulty involves the judicial determination that FACA provisions apply to State authorities in their relations with Federal Agencies and Officials. While Federal environmental statutes, as well as others, make the States co-regulators with the Federal Agencies and not "special interests" whose dealings Congress sought to open to public view through FACA, none of the language in FACA exempts State agencies or officials or their national organizations. Thus, the Federal Courts have consistently held that many meetings between Federal

Agencies or Officials and States, their officials, agencies and associations, are subject to the provisions of FACA. During interviews conducted as part of this report with State officials, these officials indicated that from their standpoint it was difficult to formally participate in policy decisions and discussions and in EPA rulemaking due to FACA.

In light of these difficulties, the National Governors' Association sought to amend FACA. Governor Jay Rockefeller, Chairman of the the NGA's Energy and Environment Committee, spoke to Senator David Durenberger (R-Minnesota) concerning an amendment which would allow the States to deal directly and privately with with EPA prior to the public comment period for proposed regulations. No specific language or amendment form was suggested. Similar approaches were made to members of the House but no one there was willing to sponsor such an amendment. Senator Durenberger was of the opinion that the specific statutory mandates of environmental statutes, which require State participation, overrode the application of FACA. Nevertheless, Senator Durenberger was willing to offer an amendment. In late 1981, he offered an amendment to the Regulatory Reform Bill (S.1080) to amend §3 (2)(C)(iii) of FACA to read as follows: "The term 'advisory committee' ... excludes ... 'any committee which is composed wholly of full-time officers or employees of the Federal Government, or State or local elected officials or their representatives, or representatives of their national organizations acting in their official capacities.'" The amendment was passed out of the Governmental Affairs Committee. The Bill, as amended, was passed by the Senate, but did not pass the House.

EXECUTIVE ORDER NO. 1

Dec. 1, 1977, 42 F.R. 61445

TRANSFER OF CERTAIN ADVISORY COMMITTEE FUNCTIONS

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App. 1) [this Appendix], Section 301 of Title 3 of the United States Code [section 301 of Title 3, The President], Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [section 581c of Title 31, Money and Finance], and Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in Appendix II of this title], and as President of the United States of America, in accord with the transfer of advisory committee functions from the Office of Management and Budget to the General Services Administration provided by Reorganization Plan No. 1 of 1977 [set out in Appendix II of this title], it is hereby ordered as follows:

Section 1. The transfer, provided by Section 5F of Reorganization Plan No. 1 of 1977 (42 FR 56101) [set out in Appendix II of this title], of certain functions under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 1) [this Appendix], from the Office of Management and Budget and its Director to the Administrator of General Services is hereby effective.

Sec. 2. There is hereby delegated to the Administrator of General Services all the functions vested in the President by the Federal Advisory Committee Act, as amended, except that, the annual report to the Congress required by Section 6 (c) of that Act [section 6(c) of this Appendix] shall be prepared by the Administrator for the President's consideration and transmittal to the Congress.

Sec. 3. The Director of the Office of Management and Budget shall take all actions necessary or appropriate to effectuate the transfer of functions provided in this Order, including the transfer of funds, personnel and positions, assets, liabilities, contracts, property, records, and other items related to the functions transferred.

Sec. 4. Executive Order No. 11769 of February 21, 1974 is hereby revoked.

Sec. 5. Any rules, regulations, orders, directives, circulars, or other actions taken pursuant to the functions transferred or reassigned as provided in this Order from the Office of Management and Budget to the Administrator of General Services, shall remain in effect as if issued by the Administrator until amended, modified, or revoked.

Sec. 6. This Order shall be effective November 20, 1977.

JIMMY CARTER

§ 3. Definitions.

For the purpose of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

- (A) established by statute or reorganization plan, or
- (B) established or utilized by the President, or
- (C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551 (1) of Title 5.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

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Purpose of this Appendix is to eliminate useless advisory committees, strengthen independence of remaining advisory committees, and prevent advisory groups from becoming self-serving. Consumers Union of U. S., Inc. v. Department of Health, Ed. and Welfare, D.C.D. C.1976, 409 F.Supp. 473, affirmed 551 F.2d 468, 179 U.S.App.D.C. 280.

This Appendix was not intended to apply to all amorphous, ad hoc group meetings; only groups having some sort of established structure and defined purpose constitute "advisory committees" within meaning of this Appendix. Nader v. Baroody, D.C.D.C.1975, 536 F.Supp. 1231.

In enacting this Appendix, Congress was concerned with formally organized advisory committees which President or

FEDERAL ADVISORY COMMITTEE ACT

Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended Pub.L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247; Pub.L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040.

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| <p>Sec. 1. Short title.</p> <p>2. Findings and purpose.</p> <p>3. Definitions.</p> <p>4. Applicability; restrictions.</p> <p>5. Responsibilities of Congressional committees; review; guidelines.</p> <p>6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion.</p> <p>7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat; establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations.</p> <p>8. Responsibilities of agency heads; Advisory Committee Management Officer; designation.</p> | <p>Sec. 9. Establishment and purpose of advisory committees; publication in Federal Register; charter; filing; contents, copy.</p> <p>10. Advisory committee procedures; meetings; notice; publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance.</p> <p>11. Availability of transcripts; "agency proceeding".</p> <p>12. Fiscal and administrative provisions; recordkeeping; audit; agency support services.</p> <p>13. Responsibilities of Library of Congress; reports and background papers; depository.</p> <p>14. Termination of advisory committees; renewal; continuation.</p> <p>15. Effective date.</p> |
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§ 1. Short title

This Act may be cited as the "Federal Advisory Committee Act".

§ 2. Findings and purpose

(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

- (1) the need for many existing advisory committees has not been adequately reviewed;
- (2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;
- (3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;
- (4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;
- (5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and
- (6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

EXECUTIVE ORDER NO. 11693

Ex.Ord.No.11693, Oct. 7, 1972, 37 F.R. 21421, set out as a note under this section, which related to committee management, was superseded by Ex.Ord.No.11769, Feb. 21, 1974, 39 F.R. 7123, set out as a note under this section.

EXECUTIVE ORDER NO. 11769

Ex.Ord.No.11769, Feb. 21, 1974, 39 F.R. 7123, formerly set out as a note under this section, which related to committee management, was revoked by Ex.Ord.No.12024, Dec. 1, 1977, 42 F.R. 61445, set out as a note under this section.

an executive department or official directed to make recommendations on identified governmental policy for which specific advice was sought. *Id.*

### 2. Advisory committee

Determination that the American Association of State Highway and Transportation Officials is an advisory committee within the meaning of Federal Advisory Committee Act, this Appendix, when it provides input to the Federal Highway Administration with respect to proposals to require that state highway construction plans provide for minimum safety standards did not impermissibly impair the organization's freedoms of speech and association under U.S.C.A. Const. Amend. 1. Center for Auto Safety v. Cox, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

Although Nuclear Regulatory Commission's Advisory Committee on Reactor Safeguards is an "advisory committee" subject to provisions of this appendix the Commission's Atomic Safety and Licensing Board is not an "advisory committee." Hunt v. Nuclear Regulatory Commission, D.C. Okl. 1979, 468 F.Supp. 817, affirmed 811 F.2d 332, certiorari denied 100 S.Ct. 1084, 445 U.S. 908, 63 L.Ed.2d 322.

Organization consisting of representatives of state highway and transportation departments and officials of United States Department of Transportation was "utilized" by Federal Highway Administration when adopting regulations relating to certification acceptance of state safety standards pursuant to the Federal Highway Act, section 101 et seq. of Title 23, so that discussions between the Federal Highway Administration and the organization were covered by this Appendix. Center for Auto Safety v. Tiemann, D.C. 1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

Fact that Food and Drug Administration may have lacked statutory authority to require cosmetics industry to test ingredients in products would not preclude Administration from appointing appropriate advisory committee on such subject, which committee would be subject to this Appendix. Consumers Union of U.S., Inc. v. Department of Health, Ed. and Welfare, D.C.D.C. 1978, 409 F.Supp. 473, affirmed 551 F.2d 468, 179 U.S.App.D.C. 290.

Where organization representing cosmetics industry presented industry-sponsored proposal to Food and Drug Administration, seeking its advice and comments regarding voluntary cosmetics testing program, and Administration was unable either to develop or require cosmetics testing program, such presentation by organization did not give rise to "advisory" relationship within meaning of this Appendix. *Id.*

"Established," within provision of this section defining advisory committee as one established by statute, does not include committees which merely can be said to owe their existence to legislation. Lombardo v. Handler, D.C.D.C. 1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 53 L.Ed.2d 248.

Bi-weekly White House meetings with selected groups, including major business organizations and private sector groups, do not create "advisory committees" within meaning of this Appendix, such meetings are unstructured, informal and not conducted for purpose of obtaining advice on specific subjects indicated in advance. Nader v. Baroody, D.C.D.C. 1975, 396 F.Supp. 1231.

### 3. Standing to sue

Neither private citizen nor United States Senator, either as consumers or by virtue of Senator's position as such, had standing to complain that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fairly balanced in membership and were improperly influenced by petroleum industry special interests, contrary to requirements of this appendix and Federal Energy Administration Act, section 701 et seq. of Title 15. Metcalf v. National Petroleum Council, 1977, 553 F.2d 176, 180 U.S.App.D.C. 31.

Consumer representative, who asked to attend certain bi-weekly meetings with selected groups held at White House and who was denied admission, had standing to seek declaration that such meetings created "advisory committees" within meaning of this Appendix. Nader v. Baroody, D.C.D.C. 1975, 393 F.Supp. 1231.

### 4. Agency

National Academy of Sciences is not an "agency" within this appendix, requiring certain publicity of committee meetings, and its committee on motor vehicle emissions is not an "advisory committee" either as a committee established by statute or one established or utilized by the Environmental Protection Agency. Lombardo v. Handler, D.C.D.C. 1975, 397 F.Supp. 792, affirmed 546 F.2d 1043, 178 U.S.App.D.C. 277, certiorari denied 97 S.Ct. 2639, 431 U.S. 932, 53 L.Ed.2d 248.

### 5. Exemptions

In order to be exempt from requirements of the Federal Advisory Committee Act, this Appendix, as a state or local committee, a group must show that it is a state or local committee and that it was established to advise or make recommendations to state or local agencies. Center for Auto Safety v. Cox, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

By creating exception to the Federal Advisory Committee Act, this Appendix, for state and local committees Congress intended to include state and local committees under this Appendix only when they function at the federal level. *Id.*

American Association of State Highway and Transportation Officials, an organization which is national in scope, whose purpose is to foster the development of a nationwide, integrated transportation system, whose bylaws charge its policy committee with preparing official presentation on legislative proposals, and whose representatives regularly testify before Congress, is not exempt from requirements of the Federal Advisory Committee Act, this Appendix on the theory that it is a state or local committee. *Id.*

Exemption from requirements of this Appendix where committee is composed wholly of full-time officers or employees of the federal government did not apply to committee of state and federal employees. Center for Auto Safety v. Tiemann, D.C.D.C. 1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

Exclusion from requirements of this Appendix provided for the Advisory Commission on Intergovernmental Relations was not available to shade organization consisting of representatives of state highway and transportation departments and officials of the United States Department of Transportation from requirements of this Appendix. *Id.*

### § 4. Applicability; restrictions

(a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

- (1) the Central Intelligence Agency; or
- (2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

### § 5. Responsibilities of Congressional committees; review; guidelines

(a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

- (1) contain a clearly defined purpose for the advisory committee;
- (2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;
- (3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;
- (4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and
- (5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

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15 U.S.C. § 1—A

1. Standing to sue  
In action for declaratory and injunctive relief alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees be-

cause they were not fairly balanced in membership and were improperly influenced by certain petroleum industry special interests contrary to requirements of this section and Federal Energy Administration Act provision, section 776 of Title 15, plaintiffs' allegations of injury to themselves as consumers; anticipated higher costs for petroleum products; potential environmental damage and threats to health and safety; and anticipated denial of benefits from development of alternative sources of energy, did not confer standing to sue upon plaintiffs, particularly in light of fact that there was no nexus between plaintiffs' alleged injuries and defendants' challenged action. *Metcalf v. National Petroleum Council*, D.C. D.C.1976, 407 F.Supp. 257, affirmed 553 F.2d 176.

In action by United States Senator alleging that National Petroleum Council and its subgroups were unlawfully functioning as advisory committees because they were not fully balanced in membership and were improperly influenced by certain petroleum industry special interests, Senator did not have standing to sue on theory that defendants' actions had affected effectiveness of his votes for this Appendix and Federal Energy Administration Act, section 761 et seq. of Title 15, and had hindered him in carrying out his legislative duties through his inability to get unbiased advice and accurate information from Department of Interior and Federal Energy Administration because of Council's input into that process, particularly in view of fact that

Senator showed no nexus between his alleged injuries and defendants' challenged action. *Id.*

## 2. Orders

Where dispute as to whether particular organization was covered by the Federal Advisory Committee Act, this Appendix, arose out of the consultation by a federal agency with the organization over certain proposed regulations, and where there was no allegation or proof that all contacts between the agency and the organization constituted a utilization of the organization as advisory committee, order that any future meeting between the representatives of the federal government and the organization be subject to the Federal Advisory Committee Act was overbroad; the order should apply only to consultation for advice or recommendations on proposed regulations. *Center for Auto Safety v. Cox*, 1978, 580 F.2d 689, 188 U.S.App.D.C. 426.

## 3. Balanced point of view

Failure of the defendant commission to appoint more than one individual in outspoken opposition to ratification of the Equal Rights Amendment (ERA) to the United States Constitution when setting up the state committee to coordinate lobbying activities for the amendment in state legislature was not such as to establish a violation of this Appendix in that this Appendix did not, by its terms or otherwise, require balancing of points of view on the Equal Rights Amendment issue in the state coordinating committee. *Hall v. Siegel*, D.C.Ill.1977, 467 F. Supp. 750.

## § 6. Responsibilities of the President; report to Congress; annual report to Congress; exclusion

(a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

§ 7. Responsibilities of the Director, Office of Management and Budget; Committee Management Secretariat, establishment; review; recommendations to President and Congress; agency cooperation; performance guidelines; uniform pay guidelines; travel expenses; expense recommendations

(a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director shall, immediately after October 6, 1972, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

- (1) whether such committee is carrying out its purpose;
- (2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;
- (3) whether it should be merged with other advisory committees; or
- (4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d)(1) The Director, after study and consultation with the Civil Service Commission, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS-18 of the General Schedule under section 5332 of Title 5;

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of Title 5, for persons employed intermittently in the Government service; and

(C) such members—

(i) who are blind or deaf or who otherwise qualify as handicapped individuals (within the meaning of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794)), and

(ii) who do not otherwise qualify for assistance under section 3102 of Title 5, by reason of being an employee of an agency (within the meaning of section 3102(a)(1) of such Title 5), may be provided services pursuant to section 3102 of such Title 5 while in performance of their advisory committee duties.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

As amended Pub.L. 96-523, § 2, Dec. 12, 1980, 94 Stat. 3040.

References in Text. Section 501 of the Rehabilitation Act of 1973, referred to in subsec. (d)(1)(C)(i), is classified to section 701 of Title 29, Labor, rather than to section 794 of Title 29 as shown in text.

1980 Amendment. Subsec. (d)(1). Pub. L. 96-523 added subpar. (C).

Effective Date of 1980 Amendment. Amendment by Pub.L. 96-523 effective

sixty days after Dec. 12, 1980, see section 3 of Pub.L. 96-523, set out as a note under section 3102 of this title.

Legislative History. For legislative history and purpose of Pub.L. 96-523, see 1980 U.S. Code Cong. and Adm. News, p. 6530.

### § 8. Responsibilities of agency heads; Advisory Committee Management Officer, designation

(a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of Title 5, with respect to such reports, records, and other papers.

### § 9. Establishment and purpose of advisory committees; publication in Federal Register; charter: filing, contents, copy

(a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director, in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

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#### Compliance, necessity of 3 Purpose 1

#### 1. Purpose

Purpose of this Appendix is to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals. Food Chemical News, Inc. v. Davis, D.C.D.C.1974, 378 F.Supp. 1048.

#### 2. Compliance, necessity of

Where a federal agency utilizes an advisory committee for the purpose of obtaining advice, the agency must charter and establish the committee in compliance with all the terms of this Appendix; and failure to comply with such requirements cannot be employed as a subterfuge for avoiding the public access requirements of this Appendix. Food Chemical News, Inc. v. Davis, D.C.D.C.1974, 378 F.Supp. 1048.

### § 10. Advisory committee procedures; meetings; notice, publication in Federal Register; regulations; minutes; certification; annual report; Federal officer or employee, attendance

(a) (1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of Title 5, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any portion of an advisory committee meeting where the President, or the head of the agency to which the advisory committee reports, determines that such portion of such meeting may be closed to the public in accordance with subsection (c) of section 552b of Title 5. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of Title 5.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

As amended Pub.L. 94-409, § 5(c), Sept. 13, 1976, 90 Stat. 1247.

1976 Amendment. Pub.L. 94-409 added "portion of an" following "to any" and substituted provisions relating to determinations for closing to the public such portion of the meeting in accordance with section 552(b)(c) of Title 5, for provisions relating to determinations of matters listed in section 552(b) of Title 5.

Effective Date of 1976 Amendment. Amendment by Pub.L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub.L. 94-409, set out as a note under section 552b of this title.

Legislative History. For legislative history and purpose of Pub.L. 94-409, see 1976 U.S. Code Cong. and Adm. News, p. 2183.

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#### 1. Construction with other laws

Freedom of Information Act provisions, section 552 of this title, dealing with intra-agency and interagency memoranda are applicable, under this section to advisory committee meetings. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273. Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in Freedom of Information Act, section 552 of this title, did not apply so as to permit exclusion of public from all meetings of advisory committees serving cost of living council. *Nader v. Dunlop*, D.C. 1973, 370 F.Supp. 177.

#### 2. Purpose

Two separate "informal" meetings with consumer and distilled spirits industry representatives relative to drafting proposed regulations of the Bureau of Alcohol, Tobacco and Firearms of the Treasury Department on ingredient labeling of distilled spirits were meetings of "advisory committees" utilized by the Bureau Director to obtain advice within the meaning of this Appendix, and said meetings were therefore open to the public. *Food Chemical News, Inc. v. Davis*, D.C.D.C. 1974, 378 F.Supp. 1048.

Subsection (d) of this section, providing that a meeting may be closed when it is determined by agency head that such meeting will involve matters listed in section 552 of this title, was not intended to include all deliberative conversations of committee meetings. *Nader v. Dunlop*, D.C.D.C. 1973, 370 F.Supp. 177.

#### 3. Meetings within section

Where meeting between Food and Drug Administration and organization representing cosmetics industry was for purpose of presenting organization's voluntary ingredient testing program, and no matters of Administration policy or regulation were at issue, parties were not bound by provisions of this Appendix, and thus neither public access to such meetings, nor chartering of such organization, would be required. *Consumers Union of U. S., Inc. v. Department of Health, Ed. and Welfare*, D.C.D.C. 1976, 409 F.Supp. 473, affirmed 551 F.2d 468, 179 U.S.App.D.C. 280.

At a minimum a relatively detailed analysis of bases for closing various portions of meetings of advisory committees serving cost of living council must be provided. *Nader v. Dunlop*, D.C.D.C. 1973, 370 F.Supp. 177.

Where Defense Advisory Committee on Women in the Services was group of outsiders called on because of their expertise to offer views and comments unavailable within agency, meeting of such committee did not involve "inter-agency" nor "intra-agency" affairs and meeting was required to be open. *Gates v. Schlesinger*, D.C.D.C. 1973, 366 F.Supp. 797.

#### 4. Public participation

While plaintiffs were entitled to have meeting of Defense Advisory Committee on Women in the Services conducted so as to be open to public, there was no right of public participation in advisory committee. *Gates v. Schlesinger*, D.C.D.C. 1973, 366 F.Supp. 797.

#### 5. Exchange of information

For purposes of this Appendix, exchange of information does not make advisory committee "part of" its government agency. *Gates v. Schlesinger*, D.C.D.C. 1973, 366 F.Supp. 797.

#### 6. Burden of proof

This section does not contain same express provision as Freedom of Information Act, section 552 of this title, which places burden of proof on agency to sustain its action, but underlying policy considerations are identical and burden of proof should be comparable. *Nader v. Dunlop*, D.C.D.C. 1973, 370 F.Supp. 177.

#### 7. Injunction

Where pleadings were limited to actions of Travel Advisory Board in holding closed meeting and did not refer to any other advisory committees in the Department of Commerce, and where all evidence was directed towards the TAB, injunction which purported to require timely advance public notice of each meeting of the TAB or any other advisory committee in the Department was overbroad. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Exemption relating to interagency or intra-agency memorandum or letters did not apply so as to permit meeting of Defense Advisory Committee on Women in the Services to be closed, and court would issue preliminary injunction requiring such meeting to be open to the public. *Gates v. Schlesinger*, D.C.D.C. 1973, 366 F.Supp. 797.

#### 8. Public access

The press has a statutory right under this Appendix as well as a privilege under U.S.C.A. Const. Amend. 1 to report on the manner in which government affairs are conducted. *Food Chemical News, Inc. v. Davis*, D.C.D.C. 1974, 378 F.Supp. 1048.

#### 9. Interagency or intra-agency memoranda

Evidence that there had been more than 20 meetings of the Travel Advisory Board and that on only three occasions had portions of the meeting been closed to the public demonstrated that the Board was not abusing exemption provided to it under subsec. (d) of this section from requirement of holding open meetings when interagency and intra-agency memoranda were being discussed. *Aviation Consumer Action Project v. Washburn*, 1976, 535 F.2d 101, 175 U.S.App.D.C. 273.

Provisions of this section dealing with open meetings do not apply to any advisory committee meeting which the head of an agency determines is concerned with interagency or intra-agency memoranda. *Id.*

Even after interagency or intra-agency memorandum has been disclosed to member of an advisory committee, the memorandum may still be considered an interagency or intra-agency memorandum so that fact that such disclosure is made to a member of an advisory committee does not preclude advisory committee from holding a closed meeting in accordance with the exemption provided for in subsec. (d) of this section and section 552 of this title. *Id.*

#### 10. Regulations

Where regulations which were challenged had been revised through procedure in which the revised regulations were published in draft form and public comment was invited and where the new regulations were temporary, court would not overturn original regulations despite failure of Federal Highway Administration to comply with requirements of this Appendix in adopting the initial regulations. *Center for Auto Safety v. Tiemann*, D.C.D.C. 1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

### § 11. Availability of transcripts; "agency proceeding"

(a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of Title 5.

References in Text. Effective date of this Act, referred to in subsec. (a), as meaning effective upon expiration of ninety days following enactment of Pub. L. 92-463 on Oct. 6, 1972, see section 15 of Pub.L. 92-463.

#### 1. Standing to sue

Any person whose request for information under this appendix had been denied

### § 12. Fiscal and administrative provisions; recordkeeping; audit; agency support services

(a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purpose of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

mandated on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

#### 11. Standing to sue

Persons active in opposing enactment of Equal Rights Amendment to United States Constitution were without standing to bring suit against National Commission on the Observance of International Women's Year, 1975, to enjoin it from supporting enactment of ERA, engaging in lobbying activities, and other pursuits. *Mulqueeney v. National Commission on the Observance of Intern. Women's Year*, 1975, C.A.III.1977, 549 F.2d 1115.

Nonprofit corporation whose activities centered broadly upon transportation safety issues and whose functions included monitoring activities of Federal Highway Administration had standing to challenge alleged failure of the Federal Highway Administration to comply with rule-making provisions of sections 551 et seq. and 701 et seq. of this title when providing for alternative procedure for approving state highway safety plans and failure of the Federal Highway Administration to open meetings with a particular organization to the public pursuant to this Appendix. *Center for Auto Safety v. Tiemann*, D.C.D.C. 1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.

Nonprofit corporation whose activities centered broadly upon transportation safety issues was, with respect to its challenges to failure of Federal Highway Administration to utilize proper rule-making procedures in connection with approval of safety standards of state pursuant to Federal-Aid Highway Act, section 101 et seq. of Title 23, and within the zone of interest protected by the Administrative Procedure Act, sections 551 et seq. and 701 et seq. of this title, and this Appendix. *Id.*

has standing to sue for the information. *Center for Auto Safety v. Tiemann*, D.C.D.C. 1976, 414 F.Supp. 215, remanded on other grounds 580 F.2d 689, 188 U.S.App.D.C. 426.



### § 13. Responsibilities of Library of Congress; reports and background papers; depository

Subject to section 552 of Title 5, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

### § 14. Termination of advisory committees; renewal; continuation

(a) (1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b) (1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

References in Text. Effective date of ninety days following enactment of Pub. L. 92-463 on Oct. 6, 1972, see section 15 of meaning effective upon expiration of Pub.L. 92-463.

#### EXECUTIVE ORDER NO. 11827

Ex.Ord.No.11827, Jan. 4, 1975, 40 F.R. 1217, as amended, formerly set out as a note under this section, which provided for the continuance of certain federal advisory committees, was superseded by Ex.Ord.No.11948, Dec. 20, 1978, 41 F.R. 55705, set out as a note under this section.

#### EXECUTIVE ORDER NO. 11948

Ex.Ord.No.11948, Dec. 20, 1978, 41 F.R. 55705, as amended by Ex.Ord.No.12007, Aug. 22, 1977, 42 F.R. 42838; Ex.Ord.No.12029, Dec. 14, 1977, 42 F.R. 63631, formerly set out as a note under this section, which provided for the continuance of certain federal advisory committees, was superseded by Ex.Ord.No.12110, Dec. 28, 1978, 44 F.R. 10639, set out as a note under this section.

#### EXECUTIVE ORDER NO. 12007

Aug. 22, 1977, 42 F.R. 42838

#### TERMINATION OF CERTAIN PRESIDENTIAL ADVISORY COMMITTEES

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate certain advisory committees in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

(a) The Citizens' Advisory Council on the Status of Women is terminated.

(b) Executive Order No. 11128 of November 1, 1963, as amended by Executive

## FEDERAL ADVISORY COMMITTEE ACT

Order No. 11221 of May 6, 1965 [set out as a note under Section 2000a of Title 42, The Public Health and Welfare], is further amended as follows:

(1) Subsection (5) of Section 102 is revoked.

(2) Section 103, in order to delete a reference to the Council, is amended to read as follows:

"Annually the Committee shall transmit a report to the President concerning the status of women."

(3) Part II is revoked.

(4) The second sentence of Section 301, in order to delete references to the Council, is amended to read as follows:

"To the extent practical and to the extent permitted by law (1) all Executive agencies shall cooperate with the Committee and furnish it such information and assistance as may be necessary for the performance of its functions, and (2) the Secretary of Labor shall furnish staff, office space, office facilities and supplies, and other necessary assistance, facilities, and services for the Committee."

Sec. 2. (a) The Citizens' Advisory Committee on Environmental Quality is terminated.

(b) Part II of Executive Order No. 11472 of May 29, 1969, as amended by paragraphs (7) and (8) of section 4 of Executive Order No. 11514 of March 5, 1970 [set out as a note under section 4321

of Title 42, The Public Health and Welfare], is revoked.

Sec. 3. (a) The Advisory Council for Minority Enterprise is terminated.

(b) Section 2 of Executive Order No. 11625 of October 13, 1971 [set out as a note under section 631 of Title 15, Commerce and Trade], is revoked.

Sec. 4. (a) The Consumer Advisory Council is terminated.

(b) Executive Order No. 11583 of February 24, 1971 [set out as a note under section 887d of Title 20, Education], is amended as follows:

(1) The second sentence of subsection (b)(1) of section 2 is amended by deleting "(including the Consumer Advisory Council established in section 5 of this order)".

(2) Section 5 is revoked.

Sec. 5. (a) The President's Advisory Board on International Investment is terminated.

(b) Executive Order No. 11962 of January 19, 1977 [set out as a note under section 3107 of Title 22, Foreign Relations and Intercourse], is revoked.

Sec. 6. Subsections (a), (g), (i), and (j) of Section 1 of Executive Order No. 11848 of December 20, 1976 [set out as a note under this section], which extended the above advisory committees until December 31, 1978, is superseded.

JIMMY CARTER

#### EXECUTIVE ORDER NO. 12029

Dec. 14, 1977, 42 F.R. 63631

#### TERMINATION OF A PRESIDENTIAL ADVISORY COMMITTEE

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to terminate an advisory committee in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

Section 1. (a) The Quetico-Superior Committee is terminated.

(b) Executive Order No. 11842, as amended, is revoked.

Sec. 2. Subsection (e) of Section 1 of Executive Order No. 11948 of December 20, 1976, which extended the above advisory committee until December 31, 1978, is superseded.

JIMMY CARTER

#### EXECUTIVE ORDER NO. 12110

Ex.Ord.No.12110, Dec. 28, 1978, 44 F.R. 10639, formerly set out as a note under this section, which provided for the continuance of certain federal advisory com-

mittees, was superseded by Ex.Ord.No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under this section.

#### EXECUTIVE ORDER NO. 12258

Dec. 31, 1980, 46 F.R. 1251, as amended by Ex.Ord.No.12271, Jan. 15, 1981, 46 F.R. 4677; Ex.Ord.No.12299, Mar. 17, 1981, 46 F.R. 17751; Ex.Ord.No.12305, May 5, 1981, 46 F.R. 25421; Ex.Ord.No.12336, Dec. 21, 1981, 46 F.R. 62239

#### CONTINUANCE OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C.App. I), it is hereby ordered as follows:

1-101. Each advisory committee listed below is continued until December 31, 1982.

(a) Committee for the Preservation of the White House; Executive Order No. 11145, as amended (Department of the Interior) [set out as a note under section 110 of Title 3, The President].

(b) President's Commission on White House Fellowships; Executive Order No. 11183, as amended (Office of Personnel Management).

(c) President's Committee on the National Medal of Science; Executive Order No. 11287, as amended (National Science Foundation) [set out as a note under section 1881 of Title 42, The Public Health and Welfare].

11562, as amended (Department of Health and Human Services).

(e) President's Committee on Mental Retardation; Executive Order No. 11776 (Department of Health and Human Services) [set out as a note preceding section 6001 of Title 42, The Public Health and Welfare].

(f) [Revoked by Ex.Ord.No.12299, Mar. 17, 1981, 46 F.R. 17751.]

(g) [Revoked by Ex.Ord.No.12305, May 5, 1981, 46 F.R. 25421.]

(h) [Revoked by Ex.Ord.No.12336, Dec. 21, 1981, 46 F.R. 62239.]

(i) to (k) [Revoked by Ex.Ord.No. 12305, May 5, 1981, 46 F.R. 25421.]

(l) President's Export Council; Executive Order No. 12131 (Department of Commerce) [set out as a note under section 2401 of Title 50, Appendix, War and National Defense].

(m) Peace Corps Advisory Council; Executive Order No. 12137 (Peace Corps) [set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse].



Order No. 12190 (Small Business Administration) [set out as a note under section 636 of Title 15, Commerce and Trade].

(o) Federal Advisory Council on Occupational Safety and Health; Executive Order No. 12196 (Department of Labor).

(p) President's Committee on the International Labor Organization; Executive Order No. 12216 (Department of Labor) [set out as a note under section 271 of Title 22, Foreign Relations and Intercourse].

1-102. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act which are applicable to the committees listed in Section 1-101 of this Order, except that of reporting annually to Congress, shall be performed by the head of the department or agency designated after each committee, in accordance with guidelines and procedures established by the Administrator of General Services.

1-103. The following Executive Orders, that established committees which have terminated or whose work is completed, are revoked:

(a) Executive Order No. 12022, as amended, establishing the National Commission for the Review of Antitrust Laws and Procedures.

(b) Executive Order No. 12054, as amended, establishing the President's Commission on Foreign Language and International Studies.

(c) Executive Order No. 12061, as amended, establishing the Small Business Conference Commission.

(d) Executive Order No. 12063, establishing the United States Court of Military Appeals Nominating Commission.

(e) Executive Order No. 12078, as amended, establishing the President's Commission on World Hunger.

(f) Executive Order No. 12093, as amended, establishing the President's Commission on the Holocaust.

(g) Executive Order No. 12103, as amended, establishing the President's Commission on the Coal Industry.

(h) Executive Order No. 12130, establishing the President's Commission on the Accident at Three Mile Island.

(i) Executive Order No. 12157, establishing the President's Management Improvement Council.

(j) Executive Order No. 12195, establishing the President's Commission on United States-Libyan Relations.

1-104. Executive Order No. 12110 is superseded.

1-105. This Order shall be effective December 31, 1980.

JIMMY CARTER

#### EXECUTIVE ORDER NO. 12305

May 5, 1981, 46 F.R. 25421

#### TERMINATION OF CERTAIN FEDERAL ADVISORY COMMITTEES

By the authority vested in me as President by the Constitution of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), the following Executive Orders, establishing advisory committees, are hereby revoked and the committees terminated:

(a) Executive Order No. 12059 of May 11, 1978, as amended, [set out as a note under section 44 of Title 28, Judiciary and Judicial Procedure], establishing the United States Circuit Judge Nominating Commission;

(b) Executive Order No. 11992 of May 24, 1977 [set out as a note preceding chapter 1 of Title 28], establishing the Committee on Selection of Federal Judicial Officers;

#### Notes of Decisions

Powers and duties 3  
Prospective effect 1  
Remedies available 2

#### 1. Prospective effect

Federal Advisory Committee Act was intended to have both immediate effect through this section providing for termination of advisory committees and prospective effect through sections 5, 6 and 7 providing procedures which contemplate studied decision on whether particular advisory committee is necessary. *Carpenter v. Morton*, D.C.Nev.1976, 424 F.Supp. 603.

#### 2. Remedies available

Congress in enacting Federal Advisory Committee Act was concerned about pro-

liferation of advisory committees which had outlived their usefulness; to remedy situation, Congress chose to terminate all advisory committees. *Carpenter v. Morton*, D.C.Nev.1976, 424 F.Supp. 603.

#### 3. Powers and duties

Congress contemplated that Federal Advisory Committee Act would affect existing substantive law and that if it was later decided advisory committees were necessary, Congress would enact legislation to recharter them; Secretary of Interior had no obligation or authority to recharter advisory boards of which plaintiffs were members. *Carpenter v. Morton*, D.C.Nev.1976, 424 F.Supp. 603.

#### § 15. Effective date

Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following October 6, 1972.

## APPENDIX II

# REORGANIZATION PLANS

## REORGANIZATION PLAN NO. II OF 1939

Eff. July 1, 1939, 4 F.R. 2731, 53 Stat. 1431, by Act June 7, 1939, c. 193, 53 Stat. 813.

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 9, 1939, pursuant to the provisions of the Reorganization Act of 1939, approved April 3, 1939.

### PART 1. DEPARTMENTS

Section 1. State Department. Transfers and consolidations relating to the Department of State are hereby effected as follows:

(a)-(c). [Repealed Aug. 13, 1946, c. 957, Title XI, § 1131(65), 60 Stat. 1040. This repealing Act Aug. 13, 1946, c. 957, was itself repealed by Pub.L. 96-465, Title II, § 2205(1), Oct. 17, 1980, 94 Stat. 2159.]

[See main volume for text of (d) and (e); 2 to 404]

## REORGANIZATION PLAN NO. 7 OF 1949

Eff. Aug. 20, 1949, 14 F.R. 5228, 63 Stat. 1070

Transfer of Functions. All functions, No. 7 of 1949 were transferred to and powers, and duties of the Secretary of vested in the Secretary of Transportation Commerce and other officers and offices by Pub.L. 89-670, Oct. 15, 1966, 80 Stat. 931. See section 1655(a) (1) (M) of Title generally to highways under Reorg. Plan 48, Transportation.

## REORGANIZATION PLAN NO. 3 OF 1950

Eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, as amended June 1, 1971, Pub.L. 92-22, § 3, 85 Stat. 76.

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see section 901 et seq. of this title].

### DEPARTMENT OF THE INTERIOR

[See main volume for text of sections 1 to 3]

Sec. 4. [Repealed. Pub.L. 92-22, § 3, June 1, 1971, 85 Stat. 76. Section authorized appointment of Administrative Assistant Secretary of Interior, and is now covered by section 1453a of Title 43 and section 5315(18) of Title 5. Section 3 provided that such repeal be effective upon Senate confirmation of Presidential appointment of Assistant Secretary of Interior under successor provisions.]

[See main volume for text of section 5]

## REORGANIZATION PLAN NO. 14 OF 1950

Eff. May 24, 1950, 15 F.R. 3176, 64 Stat. 1267.

### LABOR STANDARDS ENFORCEMENT

In order to assure coordination of administration and consistency of enforcement of the labor standards provisions of each of the following Acts by the Federal agencies responsible for the administration thereof, the Secretary of Labor shall prescribe appropriate standards, regulations, and procedures, which shall be observed by these agencies,

## GENERAL SERVICES ADMINISTRATION

### National Archives and Records Service

#### 41 CFR Part 101-6

### Federal Advisory Committee Management

**AGENCY:** National Archives and Records Service, General Services Administration.

**ACTION:** Interim rule, with comments invited prior to final rulemaking.

**SUMMARY:** This interim rule provides administrative and interpretive guidelines and management controls for Federal agencies concerning the implementation of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I) (hereinafter "the Act"). In a previous issue of the *Federal Register*, GSA published a proposed rule on the management of Federal advisory committees and requested comments. The proposed rule was intended to provide Federal agencies with guidance and instructions for implementing the Act. Comments received have been considered in formulating this interim rule, which also has been reorganized to include new policy guidance to Federal agencies. Comments are invited on this interim rule prior to its publication as a final rule.

**DATES:** Effective date: April 28, 1983. Comments must be received by: July 27, 1983.

**ADDRESS:** Comments should be submitted to the Special Assistant to the Archivist (NX), National Archives and Records Service, Washington, DC 20408, Attention: FPMR Comments.

Comments will be available for examination at the Committee Management Secretariat, Room G-5, 9th Street and Pennsylvania Ave., NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ron Martinson, Special Assistant to the Archivist, Committee Management Secretariat, (202) 523-4884.

#### SUPPLEMENTARY INFORMATION:

##### Background

GSA's authority for administering the Act is contained in section 7 of the Act and Executive Order 12024, (42 FR 61445, 3 CFR, 1977 Comp., p. 158). Under Executive Order 12024, the President delegated to the Administrator of General Services all the functions vested in the President by the Act, as amended, except that of reporting annually to the Congress, and redelegated to the Administrator the

responsibility for the preparation of the annual report required by section 6(c) of the Act.

Originally, the responsibility for all matters relating to advisory committees was placed in the Office of Management and Budget (OMB), which issued Circular A-63 (March 27, 1974) and A-63 Transmittal Memoranda 1, 4, and 5.

In light of GSA's experience in administering the Act, GSA is issuing this interim rule, which consolidates many features of these OMB Circulars with existing GSA reporting requirements. The rule also provides additional procedures and guidance for Federal agencies.

#### Prior Comments

GSA issued an advance notice of proposed rulemaking (44 FR 66852, November 21, 1979) and a notice of proposed rulemaking (45 FR 55769; August 21, 1980). As a result of the proposed rule, 23 comments were received, and all have been carefully considered in developing this interim rule.

One of the major issues raised by commenters was the extent of applicability of the Act. Some commenters believe, as a matter of general policy, that advisory groups which are not formally structured, which do not have a continuing existence, which meet to deal with specific issues, and whose meetings do not constitute an established pattern of conduct should not be covered under the Act. One commenter asserted that the case law does not preclude administrative interpretation of the Act in limiting the definition of "Advisory committee" and also limiting coverage of "ad hoc groups." Another commenter favored a specific exemption for "ad hoc groups," based on *Marblestone*, (The Coverage of the Federal Advisory Committee Act, 35 Federal Bar Journal, 119). These comments were received before the decision in *National Resources Defense Council v. Edwards*, 2 GDS ¶ 82,070 (D.D.C., 1981). This rule reflects our judgment that the exclusion of certain non-recurring meetings from the Act's coverage is fully consistent with the statute, its legislative history, and judicial interpretation. The need for this flexibility was recently recognized in *National Anti-Hunger Coalition, et al. v. Executive Committee of the President's Private Sector Survey on Cost Control, et al.*, Civil Action No. 82-3592 (D.D.C., Feb. 24, 1983). In wrestling with FACA's imprecise language, the court stated, "The Court's task in the absence of clear indications in the statute or its legislative history to the contrary, must be to achieve a common-sense

interpretation. Congressional concerns must be accommodated in a manner that produces a constitutional result, in this instance to leave the President with substantial freedom to formulate policy recommendations free from excessive intrusion." The interim rule provides guidance on those meetings between Federal officials and non-Federal individuals which do not fall within the scope of the Act, and for which a charter and consultation with GSA is not required.

Another issue raised was whether the Act applies to committees "utilized" by agencies. One commenter contended that the proposed rule failed to distinguish committees "established" by agencies from those "utilized" by agencies. That commenter also believed that the *Cox* decision (*Center for Auto Safety v. Cox*, 580 F.2d 889 (D.C. Cir., 1978)) would make the Act inapplicable to "utilized" committees. GSA has reviewed the *Cox* decision and does not agree with that interpretation. Subsequent judicial precedent supports GSA's position. The interim rule does define a "utilized" committee.

In providing guidance on those groups and meetings not subject to FACA, and on utilization, GSA is in general agreement with the following recommendation of the Administrative Conference of the United States.

The most serious problems regarding the coverage of FACA have involved the applicability of the Act (a) to groups convened by agencies, on an ad hoc basis, without formal organization or structure or continuing existence, to obtain views on particular matters of immediate concern to the agency, and (b) to privately established groups whose advice is "utilized" by an agency.

a. Uncertainty as to the applicability of FACA to one-time or occasional meetings between ad hoc groups and government officials has tended to discourage useful contacts with the private sector. It is impractical to require such meetings to conform with the Act's requirements regarding chartering, advance notice, and structure of the committee. The Administrative Conference believes that the Act is not applicable to ad hoc, unstructured, noncontinuing groups and that GSA's guidelines should make this clear. Coverage of such groups would not further the purposes of the Act.

b. The conference believes that the definition of "advisory committee" is limited to committees either established by government action or affirmatively supported and "utilized" by the government through institutional arrangements which amount to the adoption of the groups as a preferred source of advice. GSA's guidelines should make this clear.

Thus, under the interim rule, the President or Federal official would "utilize" a committee when that individual recognizes, uses, or intends to use the committee as a preferred source of advice on specific, identified government policy within that individual's scope of responsibility. Such committees, although they may be informal, have an organizational structure, a stable membership and, generally, a continuing existence. They meet to present recommendations developed by that committee, as distinguished from meetings whose attendees respond as individuals.

While this interim rule provides guidance and examples of meetings with groups of individuals which are not subject to the Act, agencies are cautioned that the group can become subject to the Act if a pattern or "track record" develops whereby an agency seeks advice from the group in such a way that it becomes a preferred source of advice.

Questions were raised as to when all the requirements of the Act apply to subcommittees. One commenter suggested a clarification of the definition of subcommittee, so that the establishment of subcommittees is not used to circumvent the principles of the Act.

Another commenter, however, suggested that a subcommittee is not required to consult and charter separately if it has functions related to the functions of the parent committee, and reports to the parent committee. The Court's reasoning in *National Anti-Hunger Coalition v. Executive Committee* supports the latter recommendation by emphasizing that the Act's requirements apply to committees which provide advice and recommendations directly to the President or Federal official, and as opposed to the parent committee. Therefore, the requirements for consultation and chartering of subcommittees which appear in § 101-6.1007(a)(3) apply when a subcommittee functions independently of the parent committee such as reporting directly to the President or agency official rather than to the parent committee.

Another commenter, on behalf of a consortium of State and local interest groups, requested an administrative exemption from FACA coverage for State and local officials and their representatives. Although this comment has merit, GSA has concluded this exemption would require amendment of the Act.

One commenter suggests that there be a definition of "meeting" so it would be clear when an agency must comply with

procedures under the Act. It is GSA's position that informal meetings or gatherings of advisory committee members in which substantive committee business is discussed are subject to the provisions of the Act. GSA recognizes the administrative difficulty in this area and has concluded that the sponsoring agency can best determine whether a specific gathering of advisory committee members constitutes an advisory committee meeting. GSA believes, however, that meetings of two or more advisory committee members convened to gather information or conduct research for the committee to analyze relevant issues and facts, or to draft option papers for consideration by the advisory committee do not constitute a meeting of the advisory committee subject to the requirements of the Act, *National Anti-Hunger Coalition v. Executive Committee*, supra.

Several commenters raised questions as to GSA's role in the establishment of advisory committees. Some commenters objected to the requirement for GSA concurrence before an agency head can establish, use, or renew an advisory committee under general agency authority.

We recognize the sensitive nature of this particular issue, that is, the role to be played by GSA in the establishment of an advisory committee. GSA is fully aware that an agency head, not GSA, "determines as a matter of formal record" (after consultation with the Administrator) that the establishment of an advisory committee is "in the public interest in connection with the performance of duties imposed on that agency by law."

However, GSA is responsible for "all matters relating to advisory committees" (5 U.S.C. App. I) and a meaningful rather than a *pro forma* consultation role is necessary to fulfill this responsibility. This conclusion is reinforced by the language in sec. 9(a)(2) of FACA, which provides that an advisory committee cannot be established until the consultation process has taken place. In the absence of specific direction in either FACA or its legislative history as to what precisely is meant by the word "consultation," it is incumbent on GSA to determine the parameters of this process.

We have concluded to follow the consultative process as it has been performed, in the beginning by OMB and then by GSA. GSA will, therefore, continue the practice of giving notification of "concurrence/nonconcurrence" in consultations received from agencies.

We do not view or interpret the words "concur/nonconcur" as implying a veto power by GSA over a determination which properly rests in the head of another agency. Rather, we interpret the word "concur" as meaning that GSA agrees the establishment of a particular committee is in accord with the terms and spirit of FACA. Conversely, a nonconcurrence would indicate GSA's opinion that the establishment of a committee is not in accord with FACA.

GSA also believes that its notification of "concurrence/nonconcurrence" to an agency head is a logical way to complete the consultation process. Such notification is GSA's means of letting the agency head know that the consultation process has been fulfilled.

In the final analysis, a nonconcurrence by GSA would not legally prevent an agency from establishing a particular committee. However, GSA in discharging its oversight function of advisory committees intends to prepare and submit periodic reports to the President, OMB, and the Congress. Our nonconcurrence in any advisory committee, therefore, would be included in these reports.

GSA also intends to watch for situations in which agencies might redefine or restructure advisory committees in such a way as to exclude them from the Act's coverage and requirements. GSA will analyze these situations to determine if an agency is elevating form over substance to disguise an advisory committee which should comply with the Act. If this is the case, GSA will recommend that such groups are chartered and operate in accordance with the Act. In situations where GSA and the sponsoring agency cannot resolve the matter, GSA will identify in future reports the groups for which a charter has been recommended and no action has been taken.

Other commenters suggest that if GSA had not replied to an agency consultation letter by the end of a specific review period, GSA concurrence would be implied. We have not included this suggestion in this rule on the grounds that it is not practical. When GSA receives an agency consultation letter, it gathers pertinent information to assess the need for the committee. Occasionally, certain information is not available or provided within a specified time period. To allow a committee to come into being without that information would not be in the public interest. This interim rule provides that GSA will respond to an agency consultation letter within 15 days, if possible.

Another commenter raised the question of the role of the OMB budget examiner in the consultation process. The budget examiner's role has been integral to the consultation process since it began. When the function was transferred to GSA, OMB continued to make available the assistance of budget examiners in the consultation process.

Several commenters objected to language requiring that agencies maintain complete documentation on their advisory committees in a single location on the basis that such a requirement was administratively excessive and unreasonable. Most of the commenters on this issue suggest that GSA's language follow the language in the Act. GSA agrees and has eased this requirement.

One commenter asked that the regulation prohibit dual and multiple committee memberships in which one person serves on more than one committee in one of more agencies. That commenter believed that such multiple memberships should be discouraged in the interest of providing access by a broader number of citizens to membership on advisory committees. GSA believes that, if necessary, agencies should deal with this issue in their own regulations and procedures.

Some commenters suggested that a definition of "Independent Presidential Advisory Committee" be included in order to make clear which Presidential advisory committees receive administrative support from the Administrator of General Services. GSA agrees with this suggestion and has included a definition of an independent PAC. The duties of the Chairperson of an independent PAC are set out separately.

Several comments were made on the organization of the proposed rule and the clarity of certain terms. For example, some suggestions were offered on alternative language to describe "balanced membership." GSA has attempted to clarify in this interim rule the guidelines for balanced membership. The rule describes balance in terms of specific function to be performed by a particular committee. This is consistent with the language of *National Anti-hunger Coalition v. Executive Committee*, *supra*.

#### Additional Instructions

Pursuant to section 7(d) of the Act, the Administrator after study and consultation with the Director, Office of Personnel Management, is to establish guidelines with respect to uniform fair rates of pay for comparable services for members, staffs, and consultants of

advisory committees. The consultation process with OPM has taken place.

Consistent with the intent of Congress and the President to control the costs of administering advisory committees, the interim rule contains a provision which states that unless otherwise required by law, or when necessary to obtain balanced membership or a particular level of technical expertise, no member of an advisory committee shall receive compensation for his or her services. In other words, unless an exception applies, compensation shall be set at zero.

GSA believes that a sufficient number of citizens of all backgrounds and qualifications can be found to provide advice and recommendations to the Federal Government through voluntary service on advisory committees.

The interim rule does provide for the reimbursement of necessary travel expenses and per diem, as well as a mechanism where agencies may engage consultants to serve as members of advisory committees when this is necessary to acquire certain technical expertise or balanced membership that cannot be satisfied solely through the appointment of noncompensated members. However, it is the responsibility of each agency to make a good faith effort to meet its membership requirements on a noncompensated basis. GSA in its oversight responsibility will include membership information in program reports and recommendations which it prepares on Federal advisory committees. The interim regulation contains no changes to present methods used by agencies regarding compensation of consultants or staff under OPM and OMB procedures.

The rules have also been amended to reflect the change in the annual agency reporting requirements from a calendar year to a fiscal year cycle brought about by Pub. L. 97-375.

#### Executive Order 12291

The General Services Administration has determined that this proposed rule is not a major rule for purposes of Executive Order 12291 of February 17, 1981, because it will not result in an annual effect on the economy of \$100 million or more, will not cause a major increase in costs to consumers or others, and will not have significant adverse effects. The General Services Administration has based all administrative decisions on this proposed rule on adequate information concerning the need for and consequences of this proposed rule. GSA has also determined that the potential benefits to society from this proposed rule far outweigh the potential

costs, has maximized the net benefits, and has chosen the alternative involving the least net cost to society.

#### Regulatory Flexibility Act

These regulations are not subject to the regulatory flexibility analysis or other requirements of 5 U.S.C. 603 and 604.

#### Effect on Other Directives

This rule replaces OMB Circular A-63 (March 27, 1974) and A-63 Transmittal Memoranda 1, 4, and 5 which have been rescinded by OMB.

#### List of Subjects in 41 CFR Part 101-6

Civil rights, Government property management, Grant programs, Intergovernmental relations, Surplus Government property, Relocation assistance, Real property acquisition, Federal advisory committees.

Dated: March 21, 1983.

Ray Kline,

Acting Administrator of General Services.

Accordingly, 41 CFR Part 101-6 is amended as set forth below:

#### PART 101-6—[AMENDED]

Subpart 101-6.10 is added to Part 101-6 to read as follows:

#### Subpart 101-6.10—Federal Advisory Committee Management

##### Sec.

- 101-6.1001 Scope.
- 101-6.1002 Policy.
- 101-6.1003 Definitions.
- 101-6.1004 What are examples of advisory meetings or groups not covered by the Act of this regulation?
- 101-6.1005 By what authority may an advisory committee be established?
- 101-6.1007 How does an agency head establish an advisory committee?
- 101-6.1009 What responsibilities does an agency head have for an established advisory committee or subcommittee as specified in §101-6.1007?
- 101-6.1011 What are the responsibilities of the chairperson of an independent Presidential advisory committee?
- 101-6.1013 What are the charter filing requirements?
- 101-6.1015 What advisory committee information must be published in the Federal Register?
- 101-6.1017 What are the duties of the agency Committee Management Officer?
- 101-6.1019 What are the duties of the Designated Federal Official?
- 101-6.1021 How may the public participate in advisory committee meetings?
- 101-6.1023 What is the procedure for closing an advisory committee meeting?
- 101-6.1025 Are minutes required at advisory committee meetings?
- 101-6.1027 How are advisory committees terminated?

## Sec.

- 101-6.1029 How are advisory committees renewed?
- 101-6.1031 When should an advisory committee charter be amended?
- 101-6.1033 When should advisory committee members and staff receive compensation and expense reimbursements for committee activities?
- 101-6.1035 What reports are required for advisory committees?

Authority: Sec. 205(c) 63 Stat. 390; 40 U.S.C. 486(c); sec. 7, 5 U.S.C. App. 1; and E.O. 12024, 3 CFR 1977 Comp. p. 158.

#### Subpart 101-6.10—Federal Advisory Committee Management

##### § 101-6.1001 Scope.

(a) The following regulations define the policies, establish minimum requirements, and provide guidance to agency management for the establishment, operation, administration, and duration of advisory committees subject to the Federal Advisory Committee Act, as amended. Reporting requirements which keep the Congress and the public informed of the number, purpose, membership, activities, and cost of these advisory committees are also included.

(b) The Act and these regulations do not apply to advisory meetings or groups listed in § 101-6.1004.

##### § 101-6.1002 Policy.

The policy to be followed by Federal departments, agencies, and commissions, consistent with the Federal Advisory Committee Act, as amended, is that an advisory committee shall be:

(a) Established only when it is essential to the conduct of agency business. Decision criteria would include whether committee deliberations will result in the creation, elimination, or change in regulations, guidelines, or rules affecting agency business; whether the information to be obtained is already available through another advisory committee or source within the Federal Government; whether the committee will make recommendations resulting in significant improvements in service or reductions in cost; or whether the committee recommendations will provide an important additional perspective or viewpoint impacting on agency operations;

(b) Terminated whenever the stated objectives of the committee have been accomplished; the subject matter or work of the committee has become obsolete by the passing of time or the assumption of the committee's main functions by another entity within the Federal Government; or the agency determines that the cost of operation is

excessive in relation to the benefits accruing to the Federal Government;

(c) Balanced in its membership in terms of the points of view represented and the functions to be performed; and

(d) Open to the public in its meetings except in those circumstances where a closed meeting shall be determined proper and consistent with the Act.

##### § 101-6.1003 Definitions.

"Act" means the Federal Advisory Committee Act, as amended, 5 U.S.C. App. I.

"Administrator" means the Administrator of General Services.

"Advisory Committee" subject to the Act means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, established by statute, or established or utilized by the President or any agency official for the purpose of obtaining advice or recommendations on issues or policies which are within the scope of his or her responsibilities.

"Agency" has the same meaning as in section 551(1) of Title 5 of the United States Code.

"Committee member" means an individual who serves by appointment on an advisory committee and has the full right and obligation to participate in the activities of the committee, including voting on committee recommendations.

"Independent Presidential advisory committee" means any Presidential advisory committee not assigned by the President, or the President's delegate, or by the Congress in law, to an agency for administrative and other support and for which the Administrator of General Services may provide administrative and other support on a reimbursable basis.

"Presidential advisory committee" means any advisory committee which advised the President. It may be established by the President or by the Congress, or used by the President in the interest of obtaining advice or recommendation for the President.

"Secretariat" means the General Services Administration's Committee Management Secretariat.

"Staff member" means any individual who serves in a support capacity to an advisory committee.

"Utilized" (or used), as referenced in the definition of "Advisory Committee" of this section, means a committee or other group composed in whole or in part of other than full-time officers or employees of the Federal Government with an established existence outside the Federal Government which the President or agency official(s) adopts, such as through institutional

arrangements, as a preferred source from which to obtain advice or recommendations on a specific issue or policy within the scope of his or her responsibilities in the same manner as that individual would obtain advice or recommendations from an established advisory committee.

##### § 101-6.1004 What are examples of advisory meetings or groups not covered by the Act or this regulation?

(a) Any committee composed wholly of full-time officers or employees of the Federal Government;

(b) Any advisory committee specifically exempted by an Act of Congress;

(c) Any advisory committee established or utilized by the Central Intelligence Agency;

(d) Any advisory committee established or utilized by the Federal Reserve System;

(e) The Advisory Committee on Intergovernmental Relations;

(f) Any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies;

(g) Any meeting initiated by the President or one or more Federal official for the purpose of obtaining advice or recommendations from one individual;

(h) Except with respect to established advisory committees:

(1) Any meeting with a group initiated by the President or one or more Federal official(s) for the purpose of exchanging facts or information; or

(2) Any meeting initiated by a group with the President or one or more Federal official(s) for the purpose of expressing the group's view, provided that the President or Federal official(s) does not use the group as a preferred source of advice or recommendations;

(i) Any committee which is established to perform primarily operational as opposed to advisory functions, except that such committee may be covered by the Act if it becomes primarily advisory in nature. It is the responsibility of the administering agency to determine whether such a committee is primarily operational. If so, it would not fall under the requirements of the Act and this regulation, but would continue to be regulated under relevant laws, subject to the direction of the President and the review of the appropriate legislative committees; or

(j) Any meeting initiated by a Federal official(s) with more than one individual

for the purpose of obtaining the advice of individual attendees and not for the purpose of utilizing the group to obtain consensus advice or recommendations.

**§ 101-6.1005 By what authority may an advisory committee be established?**

An advisory committee may be established in one of four ways:

(a) By the President by Executive Order;

(b) By law where the Congress specifically directs the President or an agency to establish it;

(c) By law where the Congress authorizes but does not direct the President or an agency to establish it. In this instance, an agency head shall follow the procedures provided in § 101-6.1007; or

(d) By an agency under general agency authority in Title 5 of the United States Code or under other general agency-authorizing law. In this instance, an agency head shall follow the procedures provided § 101-6.1007.

**§ 101-6.1007 How does an agency head establish an advisory committee?**

(a) In establishing or using an advisory committee, the head of an agency shall comply with the Act and this subpart, and shall—

(1) Prepare a proposed charter for the committee which includes the information listed in section 9(c) of the Act; and

(2) Submit an original and one copy of a letter to the Administrator proposing to establish or use, reestablish, or renew an advisory committee. The letter shall include the following information:

(i) An explanation of why the committee is essential to the conduct of agency business and in the public interest;

(ii) An explanation of why the committee's functions cannot be performed by the agency, another existing advisory committee, or other means such as a public hearing; and

(iii) A description of the agency's plan to attain balanced membership. For purposes of obtaining balance, agencies shall consider for membership a cross-section of interested persons and groups with demonstrated professional or personal qualifications or experience to contribute to the functions and tasks to be performed. This shall not be construed to limit the participation of any individual where such participation is necessary to obtain divergent points of view that are relevant to the business of the advisory committee. The letter shall be accompanied by two copies of the proposed charter.

(3) The requirements of paragraphs (a)(1) and (a)(2) of this section shall

apply for any subcommittee of a chartered advisory committee, whether its members are drawn in whole or in part from the parent advisory committee, which functions independently of the parent advisory committee such as by making recommendations directly to the agency rather than for consideration by the chartered advisory committee.

(b) The Administrator will review the proposal and notify the agency head of concurrence or nonconcurrence within 15 days of receipt, if possible.

(c) Upon receipt of the Administrator's notification, the agency head shall notify the Administrator in writing that either:

(1) The advisory committee is being established. The filing of the advisory committee charter as specified in § 101-6.1013 shall be considered appropriate written notification in this instance. The agency head shall then comply with the provisions of § 101-6.1009 for an established advisory committee; or

(2) The advisory committee is not being established. In this instance, the agency head shall also advise the Administrator if the agency head intends to take any further action with respect to the proposed advisory committee.

**§ 101-6.1009 What responsibilities does an agency head have for an established advisory committee or subcommittee as specified in § 101-6.1007?**

(a) The agency head shall:

(1) File the charter as specified in § 101-6.1013;

(2) Issue agency regulations or guidelines as may be necessary to operate and oversee the advisory committee;

(3) File required documents;

(4) Publish required notices in the Federal Register;

(5) Designate a Committee Management Officer for the agency;

(6) Appoint a Designated Federal Official for each advisory committee;

(7) Ensure the opportunity for public participation as required;

(8) Ensure that detailed minutes are kept of each advisory committee meeting;

(9) Ensure that certain rates of pay are justified;

(10) Submit required reports; and

(11) Terminate the advisory committee when appropriate.

(b) The agency head should:

(1) Not later than the initial meeting of an advisory committee, submit to committee members, committee staff, consultants, and appropriate agency management personnel a written statement of the purpose, objectives and

expected accomplishments for the committee.

(2) Solicit in writing or in a formal meeting at least annually the views of the committee members on the effectiveness, activities, and management of the committee, including recommendations for improvement. Comments received should be reviewed by the agency head or senior policy official responsible for the committee to determine whether improvements or corrective action is warranted. Copies of such recommendations should be retained until the committee is terminated or renewed.

(3) Involve key management personnel of the agency whose interests are affected by the committee in committee meetings, including reviewing reports and establishing agendas.

(4) Limit membership on advisory committees to 25 members for committees with an agency-wide mission and 12 members for committees with a more narrowly defined function or specialized area of interest. An agency head may authorize additional members for a committee when the agency head determines that such additional members are necessary to the function of the committee or to achieve balanced membership.

(5) Periodically but not less than annually review the level of agency staff support dedicated to advisory committees to ensure that expenditures are justified in consideration of committee activity and the benefits accruing to the Government.

(6) Monitor the attendance and participation of advisory committee members and consider replacing any member who has missed a substantial number of scheduled committee meetings.

(7) Establish meeting dates and distribute agendas and other meeting materials well in advance.

**§ 101-6.1011 What are the responsibilities of the chairperson of an independent Presidential advisory committee?**

The Chairperson shall comply with the Act and this regulation and shall—

(a) Determine with the Administrator or his or her delegate the role of the designated Federal Official;

(b) Designate a Committee Management Officer for the committee; and

(c) Fulfill the responsibilities of an agency head as specified in paragraphs (a)(1), (3), (4), (7), (8), and (10) of § 101-6.1009.



**§ 101-6.1013 What are the charter filing requirements?**

No advisory committee may operate, meet, or take any action until its charter has been filed as follows:

(a) *Advisory committee established, used, reestablished, or renewed by an agency.* The agency head shall file—

- (1) The charter with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of the agency;
- (2) A copy with the Secretariat; and
- (3) A copy with the Library of Congress, Exchange and Gift Division, Federal Documents Section, Federal Advisory Committee Desk, Washington, DC 20540.

(b) *Advisory committee specifically directed by law or authorized by law.* Procedures are the same as in paragraph (a) of this section.

(c) *Presidential advisory committee.*

When either the President or the Congress establishes an advisory committee which advises the President, the responsible agency head or, in the case of an independent Presidential advisory committee, the President's designee, shall file—

- (1) The charter with the Secretariat;
- (2) A copy with the Library of Congress; and
- (3) If specifically directed by law, a copy with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of the agency or of the independent Presidential advisory committee.

**§ 101-6.1015 What advisory committee information must be published in the Federal Register?**

(a) *Committee establishment, reestablishment, or renewal.*—(1) A notice in the Federal Register is required when any advisory committee, except a committee directed by law or established by the President, is established, reestablished, or renewed. Upon receiving notification of the completed review and concurrence in the committee from the Administrator, the agency head shall publish a notice in the Federal Register that the committee is being established, reestablished, or renewed, and for a new committee such notice shall also include a statement describing the nature and purpose of the committee and an affirmation that it is necessary and in the public interest.

(2) Establishment and reestablishment notices shall appear at least 15 days before the committee charter is filed, except that the Administrator may approve less than 15 days when requested for good cause by the agency

head. The 15-day notice requirement does not apply to committee renewals.

(b) *Committee meetings.*—(1) The agency head or the chairperson of an independent Presidential advisory committee shall publish at least 15 days prior to an advisory committee meeting a notice in the Federal Register which includes:

- (i) The exact name of the advisory committee as chartered;
- (ii) The time, date, place, and purpose of the meeting;
- (iii) A summary of the agenda; and
- (iv) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552b) as the basis for closure.

(2) In exceptional circumstances, the agency head or chairperson of an independent Presidential advisory committee may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the Federal Register.

**§ 101-6.1017 What are the duties of the agency Committee Management Officer?**

(a) The Committee Management Officer is designated by the agency head or by the chairperson of an independent Presidential advisory committee and his or her name, agency address, and phone number given to the Secretariat.

(b) The Committee Management Officer shall—

- (1) Discharge the responsibilities enumerated in section 8(b) of the Act;
- (2) Maintain in a single location a complete set for the charters and membership lists of each of the agency's advisory committees;
- (3) Maintain information on the nature, functions, and operations of each of the agency's advisory committees; and
- (4) Provide information on how to obtain copies of minutes of meetings and reports of each of the agency's advisory committees.

**§ 101-6.1019 What are the duties of the Designated Federal Official?**

The agency head, or in the case of an independent Presidential advisory committee, the Administrator, shall designate a full-time Federal employee to be the Designated Federal Official for the advisory committee, who shall—

- (a) Attend the meetings;
- (b) Adjourn the meetings when he or she determines that adjournment is in the public interest; and
- (c) For agency-established advisory committees:

(1) Approve or call the meeting of the advisory committee;

(2) Approve the agenda; and

(3) Chair the meeting when so determined by the agency head.

**§ 101-6.1021 How may the public participate in advisory committee meetings?**

The agency head, or the chairperson of an independent Presidential advisory committee, shall ensure that—

(a) Each advisory committee meeting is held at a reasonable time and in a place reasonably accessible to the public;

(b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public;

(c) Any member of the public is permitted to file a written statement with the advisory committee; and

(d) Any member of the public may speak at the advisory committee meeting if the agency's regulations or guidelines so permit.

**§ 101-6.1023 What is the procedure for closing an advisory committee meeting?**

(a) To close all or part of a meeting, a duly authorized official acting on behalf of the committee shall submit a request to the agency head, or, in the case of an independent Presidential advisory committee, the Administrator or his delegate, at least 30 days prior to the scheduled meeting date, citing the specific provisions of the Government in the Sunshine Act (5 U.S.C. 552b) which justify the closure. The agency head, or, in the case of an independent Presidential advisory committee, the Administrator, may waive the 30-day requirement when a lesser period of time is requested and justified by the duly authorized official or chairperson.

(b) As required by the Government in the Sunshine Act, the general counsel of the agency, or in the case of an independent Presidential advisory committee, the General Services Administration Counsel, shall review all requests to close meetings.

(c) If the agency head, or in the case of an independent Presidential advisory committee, the Administrator or the person to whom such authority is delegated by the agency head or Administrator, determines that the request is consistent with the Government in the Sunshine Act and the Federal Advisory Committee Act, he or she shall issue a determination that all or part of the meeting may be closed.

(d) The agency head, or the chairperson of an independent Presidential advisory committee, shall:

(1) Make a copy of the determination available to the public upon request; and

(2) Publish the meeting notice in the Federal Register, including the reasons why all or part of the meeting is closed, citing the specified exemptions used from the Government in the Sunshine Act.

**§ 101-6.1025 Are minutes required at advisory committee meetings?**

The agency head or, in the case of an independent Presidential advisory committee, the chairperson, shall ensure that detailed minutes of each advisory committee are kept. The minutes must include—

(a) Time, date, and place;

(b) A list of the following persons who were present:

(1) Advisory committee members and staff;

(2) Agency employees; and

(3) Members of the public who present oral or written statements;

(c) An estimated number of other members of the public present;

(d) An accurate description of each matter discussed and the resolution, if any, made by the committee of such matter; and

(e) Copies of each report or other document received or issued by the Committee.

**§ 101-6.1027 How are advisory committees terminated?**

Any advisory committee shall automatically terminate not later than 2 years after it is established, reestablished, or renewed, unless—

(a) Its duration is otherwise provided in law;

(b) It is renewed; or

(c) The President or agency head terminates it before that time.

**§ 101-6.1029 How are advisory committees renewed?**

(a) Advisory committees established by the President may be renewed by appropriate action of the President and the filing of a new charter.

(b) Advisory committees specifically directed by law:

(1) Which terminate under the provisions of section 14 of the Act may be reestablished by an agency head, provided that the agency head complies with the provisions of § 101-6.1007; or

(2) Whose duration extends beyond 2 years shall require a new charter to be filed every 2 years after the date of enactment of the law establishing the committee. If a new charter is not filed, the committee is not terminated, but may not meet or take any action.

(c) Advisory committees authorized by law or established or used by an agency: At least 30 but not more than 60

days before the committee terminates, an agency head who intends to renew a committee shall comply with the provisions of § 101-6.1007.

**§ 101-6.1031 When should an advisory committee charter be amended?**

(a) *Committees established by the President or specifically directed by law.* When the President by Executive order or the Congress by law changes the authorizing language which has been the basis for establishing an advisory committee, the agency head or chairperson of an independent Presidential advisory committee shall—

(1) Amend those sections of the current charter affected by the new Executive order or law; and

(2) File the amended charter as specified in § 101-6.1013.

(b) *Agency-authorized committees.* The charter of an agency-authorized advisory committee may be amended when an agency head determines that the existing charter no longer accurately reflects the goals or procedures of the committee. Changes may be minor, such as revising the name of the advisory committee, or may be major dealing with the basic objectives or composition of the committee.

(1) To make a minor amendment to a committee charter, an agency head shall:

(i) Amend the charter language as necessary, and

(ii) File the amended charter as specified in § 101-6.1013.

(2) To make a major amendment to a committee charter, an agency head shall:

(i) Amend the charter language as necessary,

(ii) Submit the proposed amended charter with a letter to the Administrator requesting concurrence in the amended language and an explanation of why the changes are essential and in the public interest. The Administrator or his or her delegate will give notice to the agency head of concurrence or nonconcurrence in the request within 15 days of receipt of the request, if possible; and

(iii) File the amended charter as specified in § 101-6.1013.

(c) *Renewals.* Amending any existing advisory committee charter does not constitute renewal of the committee under § 101-6.1029.

**§ 101-6.1033 When should advisory committee members and staff receive compensation and expense reimbursements for committee activities?**

(a) *Committee members.* Unless specifically required by law, agencies shall not compensate advisory

committee members for their service on an advisory committee. In the exceptional case where an agency head is unable to meet the need for technical expertise or the requirement for balanced membership solely through the appointment of noncompensated members, the agency head may contract for the services of a specific consultant who may be appointed as a member of the advisory committee. In such a case, the agency head shall follow the procedures set forth in paragraph (b) of this section. This paragraph (a) shall apply to any committee member appointed after May 15, 1983. No committee member shall be compensated other than as allowed in paragraph (b) of this section after September 30, 1983.

(b) *Consultants.* Prior to hiring a consultant to an advisory committee, the agency head must determine that the expertise or viewpoint to be offered by the consultant is not otherwise available without cost to the agency. When an agency head hires a consultant, the compensation may not exceed the maximum rate of pay authorized by 5 U.S.C. 3109. Hiring of consultants shall be in accordance with OMB Circular A-120 and applicable statutes, regulations, and Executive Orders.

(c) *Staff members.* An agency may fix the pay of each advisory committee staff member at a rate of the General Schedule, General Management Schedule, or Senior Executive Service in which the Staff member's position would appropriately be placed (5 U.S.C. Chapter 51). An agency may not fix the pay of a staff member at a rate higher than the daily equivalent of the maximum rate for GS-15, unless the agency head has determined that under the General Schedule, General Management Schedule, or Senior Executive Service classification system, the staff member's position would appropriately be placed at a grade higher than GS-15. This determination must be reviewed annually by the agency head.

(1) In establishing rates of compensation, the agency head shall comply with applicable statutes, regulations, and Executive Orders.

(2) A staff member who is a Federal employee shall serve with the knowledge of the Designated Federal Official and the approval of the employee's direct supervisor. If a non-Federal employee, the staff member shall be appointed in accordance with applicable agency procedures, following consultation with the advisory committee.



(d) *Travel expenses.* Advisory committee members and staff members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(e) *Special services.* While performing advisory committee duties, an advisory committee member who is blind or deaf or who qualifies as a handicapped individual may be provided services by a personal assistant for handicapped employees if the member—

(1) Qualifies as a handicapped individual as defined by section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and

(2) Does not otherwise qualify for assistance under 5 U.S.C. 3102 by reason of being an employee of an agency.

(f) *Noncompensated services.* Nothing in this section prevents an agency from accepting the noncompensated or reimbursed services of a member, consultant, or staff member of an advisory committee.

(g) *Exclusions.*—(1) Nothing in this section prevents any person who (without regard to his or her service with an advisory committee) is a full-time Federal employee from receiving compensation at the rate at which he or she otherwise would be compensated as a full-time Federal employee.

(2) Nothing in this section prevents any person who immediately before his or her service with an advisory committee was a full-time Federal employee from receiving compensation at the rate at which he or she was compensated as a full-time Federal employee.

(3) Nothing in this section affects a rate of pay or a limitation on a rate of pay that is specifically established by law or a rate of pay established under

the General Schedule classification and pay system in chapter 51 and chapter 53 of title 5, United States Code.

**§ 101-6.1035 What reports are required for advisory committees?**

GSA will periodically issue instructions to agencies regarding reporting requirements and procedures. Included in those requirements, each agency shall file a report on a fiscal year basis providing requested program, financial, and membership information to GSA. This information shall be used by GSA for preparing program recommendations and status reports on advisory committee matters, and for assisting the President in preparing and submitting a fiscal year report to the Congress. The membership list for each advisory committee shall be updated quarterly with notification furnished to GSA of all new vacancies and appointments during the period.

[FR Doc. 83-11357 Filed 4-27-83; 8:45 am]  
BILLING CODE 6820-26-M



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D. C. 20460

MAR 1 1982

OFFICE OF  
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Policy on Informal Contacts  
and Meetings with Outside Groups

FROM: Robert M. Perry *Robert M. Perry*  
General Counsel

TO: The Administrator  
The Deputy Administrator  
All Assistant Administrators  
All Office Directors

I. General Principles

The Administrator has repeatedly emphasized that her touchstone in dealing with the public is that all of EPA's constituent groups should enjoy "most favored nation" treatment. In other words, all of us should remain open and accessible to all points of view, without granting preferential access to any one of them. For government to listen to the public in this manner is not just good law, but good public policy as well.

II. "Ex Parte" Requirements

In the context of either formal or informal rule making proceedings, conducted pursuant to the Administrative Procedure Act be certain 1) that all written comments received are entered in the rule making docket, and 2) that a memorandum summarizing any significant new factual information likely to affect the final decision received during a meeting or other conversations is placed in the rule making docket.

### III. Formally Designated Advisory Committees

If you are meeting with a group that has previously been designated as an Advisory Committee under the Federal Advisory Committee Act ("FACA"), you must comply with all FACA's provisions. The meeting must be noticed in the Federal Register, and the public must be permitted to attend. The Committee membership must meet the balanced viewpoint requirements of the Act, and it must have been registered with the General Services Administration.

### IV. Groups Not Chartered Under FACA

A. The Federal Advisory Committee Act does not forbid meetings between EPA and members of the public, even when they are held with clearly defined groups (for example, the American Petroleum Institute or the Natural Resources Defense Council), and even when the meetings are repeated. However, it is possible that failure to observe proper guidelines in conducting these meetings could cause a court to hold the Federal Advisory Committee Act had been violated. In our opinion, the key to whether a series of meetings with a group violates the Federal Advisory Committee Act is whether they amount to adoption by the Agency through institutional arrangements of that group as a preferred source of advice. This is a test that can prove difficult to apply in practice. However, there are a number of guidelines that will ease (but not eliminate) that problem.

1. EPA should not take the initiative in asking for and scheduling the meetings. Instead, the meeting should be held at the private group's request.

2. EPA should make clear that it is willing to meet with groups of all persuasions to discuss regulatory issues at their request.

3. All meetings with outside groups should have a common degree of organizational structure and support. If a given set of meetings has a permanent EPA coordinator, while others don't, or if a given interest group is placed on EPA work groups, while others aren't, this could be taken as indicating institutional adoption of the favored group as a preferred source of advice.

4. One characteristic of an "advisory committee" may be that agencies can place special reliance on what it says. Conversely, when EPA meets with a group that is not an advisory committee, it should be prepared to show, if challenged, that it did not accept that group's suggestions automatically, but subjected them to critical scrutiny.

B. The Federal Advisory Committee Act is only aimed at procedures that favor one group over another. If EPA observes proper procedures, it will be free to adopt any policy position that it wishes consistent with the underlying statutes. It does

not matter whether these views happen or don't happen to coincide with the views of a given outside group, as long as EPA has not in effect adopted that group as an advisory committee.

B. The Federal Advisory Committee Act applies to all meetings in connection with any subject. Assertions that no regulatory action was pending, or that only technical subjects were discussed, have some weight, but are not nearly sufficient in themselves to eliminate legal concerns.

V. Questions

If you have any questions concerning this Policy, please feel free to contact the Office of General Counsel.

PRINCIPAL JUDICIAL CASES INTERPRETING THE FEDERAL ADVISORY COMMITTEE ACT

Food Chemical News, Inc. v. Davis, 378 F.Supp. 1048, D.C.D.C. 1974

Nader v. Baroody, 396 F.Supp. 1231, D.C.D.C. 1975

Center for Auto Safety v. Tiemann, 414 F.Supp. 215, D.C.D.C. 1976

Aviation Consumer Action Project v. Washburn, 535 F.2d 101, U.S. App. D.C. 1976

Center for Auto Safety v. Cox, 580 F.2d 689, U.S. App. D.C. 1978

## APPENDIX F

### Priority Regulation Systems

In Region IX (San Francisco) and Region X (Seattle).

#### INTRODUCTION

The first two documents in this Appendix were provided by the Management Systems and Evaluation Branch of the Office of Policy, Technical and Resources Management, Regional Administrator's Office, EPA Region IX (San Francisco). They detail the 5-tiered Priority Regulation System (PRS) recently introduced in Region IX.

The third document in this Appendix was provided by the Resource Management Branch of the Management Division, EPA Region X (Seattle). It details the 3-tiered, SAR-based Priority Regulation System (PRS) recently introduced in Region X.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE: April 7, 1983

SUBJECT: Regional Priority Regulations - 2nd Quarter Report

FROM: Charles W. Murray, Jr., Assistant Regional Administrator for  
Policy, Technical and Resources Management

TO: Sonia F. Crow, Regional Administrator  
John C. Wise, Deputy Regional Administrator  
Division/Office Directors

The purpose of this memo is to provide you with the mid-year status report on the Regional Priority Regulations. The following is a brief review of the steps we have taken in managing the Regional Regulatory Review process:

- December, 1982 - Requested that Divisions identify a list of Priority Regulations.
- February, 1983 - Divisions determined level of participation for individual regulations.
- March, 1983 - Collected information on status of the regional priority regulations.

Attachment A includes the five levels of participation we have established and the roles both the divisions and my office intend to take in working with HQ on regulation development and review.

You will find in Attachment B a comprehensive listing of regional priority regulations. Those regulations that have been promulgated have been removed from the listing.

This mid-year status report on the remaining significant regulations (Level A & B) is included as Attachment C.

The Office of Standards and Regulations has requested a listing of regional priority regulations. I intend to submit the Level A and B regulations already identified in Attachment A. However, we need to assess the level of regional participation on those which have entered the regulation development process since October, 1982. These are contained in Attachment D. If you wish to add any of these to your list of priority regulations, please select the appropriate level of participation and designate staff contacts. Forward this information directly to Joyce Gamble, Regulation Review Coordinator, by April 12.

JUN 27 1983



I appreciate your assistance and cooperation in this endeavor. I hope that you find the information in the attachments useful. If you have have any further comments or other questions please contact me (x8024).

Attachments: A - Participation Levels and Roles  
B - Listing of Region 9 Priority Regulations  
C - Status Report on Priority Regulations  
D - Proposed Regulations Since September 1982

cc: Division Analysts

ATTACHMENT A

LEVELS OF PARTICIPATION

- A. Participate as member of a Working Group.
- B. Receive and review drafts and support documentation from Working Group, for comments.
- C. Receive and review drafts and support documentation for information only.
- D. Receive and review rules at interim stages of development, for comment.
- E. Receive and review rules at interim stages of development for information only.

ROLES: REGIONAL REGULATORY STRATEGY

DIVISION	MSEB
LEVEL A	
Participate in Working Group Provide timely review Provide status reports to MSEB	Assist in establishing information system (work group membership, schedule, etc.)  Ensure that regional concerns are transmitted to the appropriate parties
LEVEL B	
Provide timely review	Establish information system (working group membership, schedule, etc.)  Obtain interim products from working groups
LEVEL C/E	
No review for comments	Route documents to Division FYI
LEVEL D	
Provide timely review Alert MSEB to emerging issues/problems	Route documents to Divisions for comment  May re-assess level of participation

ENVIRONMENTAL PROTECTION AGENCY  
REGION 9  
REGULATION CONTROL

ATTACHMENT B

WATER DIVISION

APRIL 7, 1983

ACTION REGULATIONS

Category	SAR #	Title	Reg Contact	
			Region 9	HQ
A	1441	Water Quality Standards Regulations	Woods	Sabock
A	1846	Constr. Grants Prog. Delegation to States	Anderson	Reeverts
B	1657	Amendment to Sec. Treatment Regulations	Anderson	Mooar
B	1900	Rev. to Gen. Pre-Treatment Reg. Reforms	Powell	Diamond
B	1866	Rev. to Gen. Pre-Treatment Reg. Removal Credit	Powell	Diamond
B	1868	Rev. to NPDES Regs.: Regulatory Reform	Kremer	Callahan
B	1604	Revision of Ocean Dumping Criteria	Yunker	Wastler
B	1802	Revisions to Water Quality Management Regulations	Kuhlman	Myers
C	1426	Effluent Guidelines for Pesticides	Wong	Jett
C	1906	Effluent Guidelines for Inorg. Chem. (Phase II)	Wong	Fielding
C	1751	Revision to BAT for Inorganic Chemicals	Wong	Fielding
C	1585	Revisions to 404 Regulations	Baker	Schwartz
C	1567	Max. Cont. Lev. for Vol Org. Chem. Drnk. Wtr. Reg.	Thurston	Cotruvo
C	1755	Revised Primary Drinking Water Regulations	Thurston	Cotruvo
C	1756	Revised Primary Drinking Water Regs.: Fluoride	Thurston	Cotruvo
D	1634	Waivers from BAT for Nonconv. Pollut. 301 (g)	Kremer	Cantillino
D	1649	Effluent Guidelines for Offshore Oil & Gas Industry	Bramley	Kirby
D	1901	Consolidated Permits NPDES Issues	Kremer	Young

ENVIRONMENTAL PROTECTION AGENCY  
REGION 9  
REGULATION CONTROL

WATER DIVISION

E = FYI ONLY

APRIL 7, 1983

Category	SAR #	Title	Reg Contact	
			Region 9	HQ
E	1608	Compliance Extension for Innova. Tech. Inds. Discharge	Kremer	Goode
E	1752	Revision of the Best Conv. Techn. (BCT) Cost Test and BCT Effluent Guidelines	Kremer	Rico
E	1584	Oil Pollution Prevention Regulation	Kremer	Rico
E	1579	Discharge of Oil	Kremer	Kooyoomian
E	1428	Effluent Guidelines for Metal Finishing	Wong	Kinch
E	1415	for Organic Chemicals	Wong	Kinch
E	1406	for Petroleum Refining	Wong	Ruddy
E	1410	for Nonferrous Metal Manufacturing (Phase I)	Wong	Berlow
E	1408	for Steam Electric Power Plants	Wong	Telliard
E	1409	for Leather, Tanning and Finishing	Wong	Anderson
E	1419	for Pulp, Paper and Paperboard	Wong	Dellinger
E	1414	for Coal Mining	Wong	Phillips
E	1427	for Pharmaceuticals	Wong	Kirby
E	1413	for Ore Mining and Dressing Pt. Srce. Category	Wong	Jarrett
E	1411	for Paint Formulation	Wong	Dellinger
E	1411A	for Ink Formulation	Wong	Vitalis
E	1425	for Gum and Wood	Wong	Dellinger
E	1434	for Battery Manufacturing	Wong	Belefski
E	1432	for Metal Moulding and Casting (Foundries)	Wong	Dulaney
E	1435	for Coil Coating	Wong	Belefski
E	1437	for Porcelain Enameling	Wong	Honaker
E	1438	for Aluminium Forming	Wong	Goodwin
E	1433	for Copper Forming	Wong	Pepson
E	1431	Electric and Electronic	Wong	Pepson
E	1907	Electric and Electronic Components (Phase II)	Wong	Newbrough
E	1911	Nonferrous Metals	Wong	Berlow
E	1420	Rubber Processing	Wong	Vitalis

W O R K S H O P

on

R E G I O N 9 P R I O R I T Y R E G U L A T I O N S Y S T E M

Conducted by

Susan Sakaki, Chief, Management Systems and Evaluation Branch,

of the

Office of Policy, Technical and Resources Management

JUNE 16, 1983

RA Strategy Room

2:30-3:00 p.m.

---

- I. Region 9 Priority Regulation System
- II. Role of MSEB in Priority Reg System
- III. Role of the Division Reviewers
- IV. Next Actions

JUN 23 1983

## I. Region 9 Priority Regulation System

A. April 1982 HQ made several changes in the procedure for reviewing regulations. Those that were of significance to Region 9 were:

1. Regions would no longer participate in the formal Red Border Review process - this would only be conducted at the AA level
2. Regional involvement in the process would only occur when interest was specifically expressed

B. MSEB re-assessed the situation and process

1. Reviewed the reg development process HO\*
  - impact reg early
  - decision to participate, to what extent
2. June 1982 memo to DDs to inform them of the new procedures and significance - get them thinking about the changes

C. MSEB devised strategy - MAXIMIZE impact, MINIMIZE resource drain

1. Established the five participation level categories CHART
2. November 1982 - senior staff agreed that we should work toward impacting HQ policy and reg development
3. December 1982 - DD reviewed reg agenda of October and determined level of participation
4. February 1983 - had DD review list and name contacts
5. March 1983 - collected information and produced report to senior staff

\* HO : SAR  
Major significant goes through SC  
SC - primary agency-wide forum for resolving policy issues  
Red Border - 2 weeks

I.

**ROLES: REGIONAL REGULATORY STRATEGY**

**DIVISION**

**I  
LEVEL A**

**MSES**

**Participate In Working Group**

**Assist In Establishing Information  
System**

**Provide Timely Review**

**Ensure That Regional Concerns**

**Provide Status Reports to MSES**

**Are Transmitted to the**

**Appropriate Parties**

**I  
LEVEL B**

**Provide Timely Review**

**Establish Information System**

**Obtain Interim Products**

**I  
LEVEL C & E**

**FYI ONLY**

**DOCUMENTS TO DIVISION**

**FYI**

**I  
LEVEL D**

**EMERGING ISSUES**

**RE-ASSESS & REVIEW**

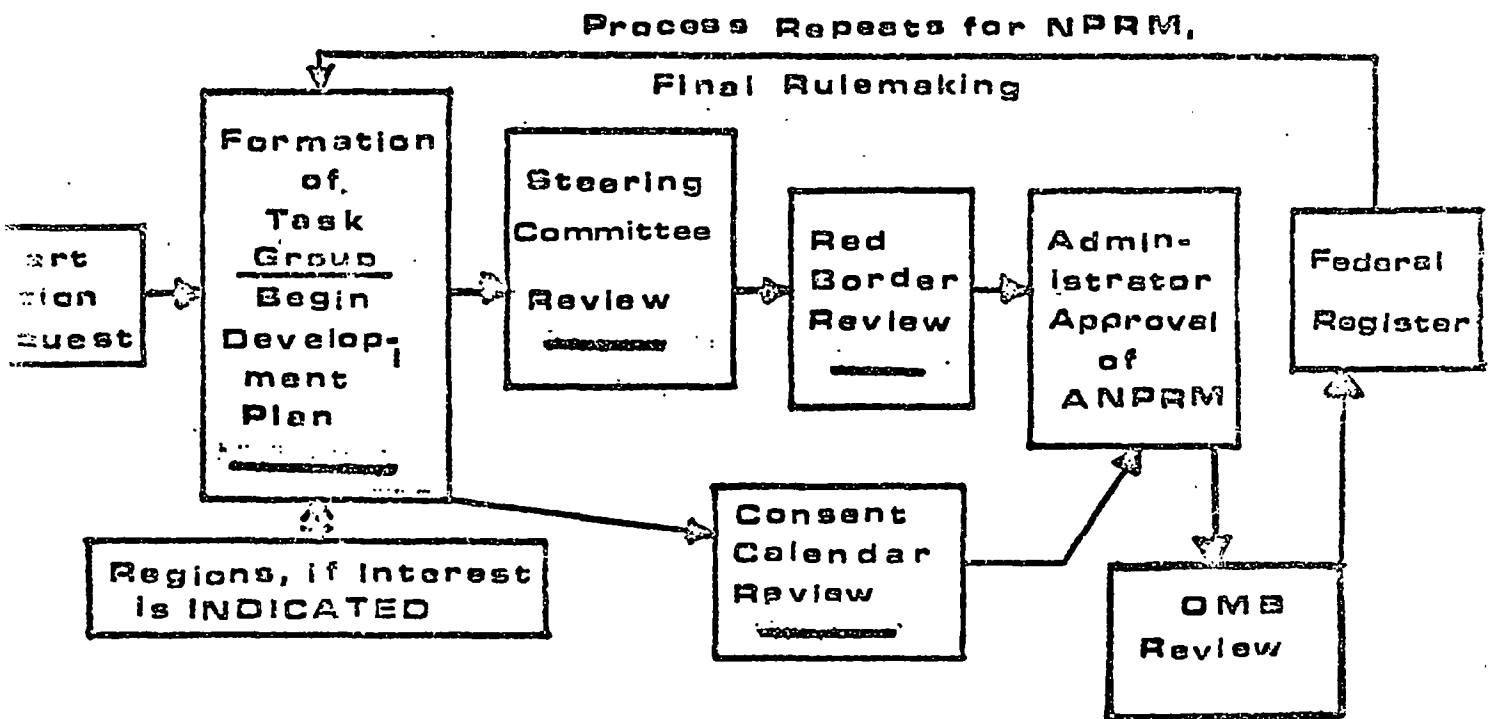
**ROUTE DOCUMENTS FOR COMMENTS**

**RE-ASSESS LEVEL of**

**PARTICIPATION**

# PROCEDURES FOR REGULATORY DEVELOPMENT AND REVIEW

AGENCY-WIDE, EFFECTIVE APRIL 30.





Date: \_\_\_\_\_

Subject: PRIORITY REGULATION REVIEW - REGION 9

From: Susan Sakaki, Chief, MSEB

To: \_\_\_\_\_

Attached is the Start Action Request (SAR) # \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Please indicate the level of participation:

- (A) Participate as member of a Working Group
- (B) Receive and review drafts and support documentation from Working Group, for comments.
- (C) Receive and review drafts and support documentation for information only.
- (D) Receive and review rules at interim stages of development for comment.
- (E) Receive and review rules at interim stages of development for information only.

Please designate a contact person for this regulation.

Participation Level     ( )    

Contact Person \_\_\_\_\_

Upon completion, return this form to Joyce Gamble, MSEB (P-2) x8193  
by \_\_\_\_\_.

## I. Outline Region 9's Priority Regulation Tracking System

### LEVELS of PRIORITY and CODE LETTERS

- A. Participate as member of a Working Group.
- B. Receive and review drafts and support documentation for Working Group, for comments.
- C. Receive and review drafts and support documentation for information only.
- D. Receive and review rules at interim stages of development, for comment.
- E. Receive and Review rules at interim stages of development for information only.

---

#### General Information:

As of this date June 16, 1983 - 13 Priority "A" Regulations and 19 Priority "B" Regulations are identified for Region 9.

## II. Role of MSEB

- A. Coordinate - OSR liaison
  - link to front office
  - information collection & dissemination
  - assistance on problems
  - document control + tracking
- B. OSR - regional priority regulation list
  - Steering Committee representation
  - link to program offices

### III. Role of Divisions

A.. Coordination - link to MSEB  
link to HQ staff and task group  
inform DD

B. Documentation of comments

#### Verbal Comments

In a number of cases, rather than preparing written comments on regs and guidelines, staff will make phone contact with their program (HQ) contacts to convey their comments verbally. This is efficient (quicker, at any rate) and in some cases an effective one-on-one contact with the HQ staff person. However, the policy overview loop (OPTRM and RA) is by-passed. The problem is not critical. In most cases the verbal comments are procedural, technical as opposed to policy level.

Action - There should be some record of regional comments. Telephone contact can be recorded on the Record of Communications form or note pad facilitating a copy to be sent to OPTRM. Staff should exercise some judgment about the nature of comments phones. Comments of policy nature should be cleared by Branch Chiefs at a minimum.

#### Written Comments

All written comments, either sent by the Division Director to HQ or sent through the Division Director to ARA for OPTRM should have a copy sent to MSEB, Joyce Gamble (P-2).

Policy changes to the comments submitted by staff through ARA will copy the staff person, for purposes of close communication.

C. Elevation of critical issues - signature protocol

Technical - DD  
Policy - RA/DRA

## REG POLICY

Region 10 has for several years had a policy to participate in the development of regulations and significant actions by Assistant Administrators' offices at Headquarters.

This policy worked well for a time, but now needs refinement. New procedures set out in this memorandum will accommodate changes in Headquarters' processes and ensure that reduced Region 10 resources are used efficiently and effectively to improve the quality of EPA regulations.

The challenges to Region 10 are unchanged from the past: Tardy involvement in the decision process, limited regional staff, the distraction of short-term operating priorities, the lack of action-forcing mechanisms, a tendency to focus on narrow, technical issues to the exclusion of a policy and management perspective, and a perception that the Region's work has little effect in the deliberations.

This revision is to help ensure that our work on regulatory development focuses on issues that concern the Regional Office and the programs we administer--the impact of proposed regulations on the public, States and local government.

The revision also provides an action-forcing mechanism in the Regional Office to ensure early, well informed and consistent representation of "real-world" concerns in the development of EPA regulations. This mechanism is designed to highlight proposed regulations of concern to us, track our participation and evaluate our effectiveness in influencing the content of the regulations.

Effective immediately, these are the procedures we will follow:

1. The Office of Legislation and Regulatory Analysis (OLRA) is the focal point for receiving and tracking all Headquarters proposals for new and revised regulations. Most regulatory proposals are sent to OLRA; however other offices receiving such proposals are to route them directly to OLRA.

OLRA will confer with appropriate Division Directors to determine the regional significance of each proposal, and then with the Regional Administrator and the Deputy Regional Administrator.

2. The Regional Administrator or the Deputy Regional Administrator will make the judgment as to which proposed regulatory actions warrant designation as Priority 1, Priority 2, or Not Significant.

JUN 21 1973

Priority 1 designates only those proposals so significant as to warrant special research or analytical activity and/or full participation by Region 10 in an EPA task group. Priority 2, is a proposal that has a significant impact on the Region and on which the Region will receive all written materials, but only occasional, informal regional expertise or other input is to be provided, or only the development of comments during the final internal review. Not Regionally

Significant designates a proposal of little or no critical interest to citizens, governments, or program managers in the four states of Region 10. Technical comments may be provided during internal review.

It is anticipated that no more than three or four proposals will be designated Priority 1 in any year.

3. OLRA will notify the appropriate ("lead") division, Headquarters, and regional senior managers of the Regional Administrator's determination of high priority issues.

OLRA will track Priority 1 [and Priority 2] actions to inform the Regional Administrator, senior management, and others as appropriate, of the status of each action. [Information on Priority 2 actions will be forwarded to the appropriate divisions.] For proposals designated as Not Significant, OLRA will notify the designated Headquarters contact person.

4. The Director of the lead Division will prepare a plan to assign adequate resources to ensure effective regional analysis and/or participation in the development process. [This plan is to be submitted to the Regional Administrator and the Deputy Regional Administrator.] [Resources committed to this effort will be reported to and tracked by OLRA.]

The lead Division is responsible to inform the designated Headquarters lead-office project manager of Region 10's interest and the degree to which the Region will take part in the development process.

For proposals designated Priority 1, the lead Division Director will identify the consequences of the proposals for specific publics, State and local government entities and Regional Office management. The Division Director will supervise Regional Office work to adequately research and document these issues and raise them in the Headquarters task group. Support will be provided by other Divisions as appropriate.

5. The lead Division will prepare all important Region 10 comments on a regulatory proposal for the signature of the Regional Administrator. (Additional technical comments may be offered in an appendix.) Such comments are to be addressed to the appropriate Assistant Administrator.

A copy of the comments is to be provided to the Chief, Regulations Management Staff in the EPA Office of Standards and Regulations (PM 223), who is responsible for ensuring that regional concerns are considered.

6. If the Region's important comments do not result in satisfactory response, the Regional Administrator or the Deputy Regional Administrator will participate in Steering Committee Review of the regulation under consideration. This determination will be made with the advice of the lead Division Director and OLRA.

OLRA will inform the Regional Administrator and Deputy Regional Administrator at least two weeks prior to Steering Committee meetings on Priority 1 actions, and will tell the Regulations Management Staff of the Region's plan to attend.

7. OLRA will prepare, with the advice of the lead Division, a mailing list of persons and interests that may be affected by Priority 1 [or Priority 2] proposals. OLRA will notify such entities that EPA is beginning to work on the regulation, and shall identify a Regional Office contact to receive input from such persons and interests.
8. On the basis of input from the lead Division, OLRA will [provide an accounting of resources used for regulatory development work and] help each lead Division Director assess the effectiveness of the Region's work to improve the final regulation.

Attached to this memorandum is the most recent status report and ranking of regulations designated by Region 10 as significant enough to warrant Regional participation in development. Please review this list by February 18 to ensure that it reflects the redesignated priorities, and notify OLRA of any changes you propose.

Attachment

## APPENDIX B

### BACKGROUND ON THE REVISED REGION 10 POLICY

The following paragraphs are excerpted from memorandums from C. Ronald Smith, new director of the EPA Office of Standards and Regulations:

"After the Associate Administrator for Policy and Resource Management has approved the development of a new or revised regulation that could affect your office, you will be invited to have a representative on the task group. If you do want to have an impact on the regulation it is important that you get involved at this point in the process."

"You or your Deputy should participate in Steering Committee reviews of regulations, particularly of those that are of high priority for your office or for the States in your Region."

"If you have major concerns about a package at Steering Committee, you should ask to be included in the Red Border Review."

The following perspective on Region 10 efforts to participate in regulation development was provided by Chuck Shenk, who formerly maintained the regional tracking system:

"Normally, we receive a regulatory package for comment about a week before the comments are due....That due date is commonly set one day prior to the next scheduled meeting of the task group...the task group leader had real heartburn at the thought of having to coordinate meetings with, and input from, an out-of-towner, and expressed his displeasure. When I offered to provide my input in absentia, the offer was gratefully accepted and I was quickly forgotten in the process. I do not believe this to be an isolated case."



Start Action Request #

David Dougherty, Director  
Office of Legislation and Regulatory Analysis

John R. Spencer  
Regional Administrator

Title of Proposed :  
Regulation of Action:

My staff has discussed the implications of the attached Headquarters action proposal with the Division Director(s) whose program is most immediately affected.

The Division Director evaluated the proposal for its effect on the public, States and local government, and EPA management in Region 10, and recommended that it be designated as follows for involvement by Region 10.

Priority 1 \_\_\_\_\_  
Priority 2 \_\_\_\_\_  
Not Significant \_\_\_\_\_

The Division Director understands that designation as Priority 1 means the proposed action is of high significance and the Region's participation may be resource-intensive; designation as Priority 2 means the proposed action is less significant or that our participation may be only moderately resource-consumptive. A Not Significant determination means that technical comments may be provided during final review.

Concurrence:

Division Director: \_\_\_\_\_  
(Handwritten comments, if any:)

## APPENDIX G

### Summary Portion Of 1982 Report On EPA Rulemaking Process

#### Prepared For The Office Of Standards And Regulations

### INTRODUCTION

During the course of the interviews conducted as a part of this report, several Regional Regulatory Contacts (RRCs) indicated that they had been contacted in the summer and fall of 1982 in connection with a report on EPA rulemaking which had been ordered by the Office of Standards and Regulations (OSR) at EPA HQ.

The following document was written and has been provided by the Regulations Management Staff of OSR. It is only a summary of the report mentioned above. It has been included in this report first, because so many individuals expressed an interest in reviewing its contents, and second, because it provides a different and valuable perspective on the EPA rulemaking process.

## Part I: Expectations from the New Process

### 1. EFFICIENCY GOALS

- o All mandated deadlines met
- o Schedules set for production, review and approval by all offices involved
- o Items handled on schedule
- o Findings or information at each step of the process transmitted in clear, useable fashion to the next

### 2. EFFECTIVENESS GOALS

- o Regulatory packages meet Administrator's expectations
- o Enforceable rules result from the process
- o Process is not disruptive to Agency operations

## Part II: Current Problems with the System

### 1. EFFICIENCY PROBLEMS

- o Administrative:
  - Items delayed or 'lost,' which affects staff morale and causes actions to be late, deadlines missed
  - Excessive paperwork
  - Inconsistent positions develop within OPRM, causing confusion and multiple rounds of changes
  - Work loads unevenly allocated, which affects quality of products and reviews, and causes delays
  - Flexibility in the process (some complained of too much, others of too little)
- o Guidance:
  - Too review-oriented (rather than production-oriented)
  - Lacking in key areas of the process
  - Ambiguous on some important matters

- o Consistency:

- Role of Red Border as compared to Steering Committee unclear; roles vary over time
- Fixed point in the process (R.B. and S.C.) for OPRM comments should be set; [particular concern was expressed about reopening or adding issues in the background materials for the R.B. transmittal memo from OPRM staff to their Associate, which is closed to program office influence or comment]

Result of these Efficiency Problems:

- o Reduces cooperation
- o Generates mutual oversight between/among offices
- o Slows process, with no real benefits

2. EFFECTIVENESS PROBLEMS

- o Review stage is too late for significant changes, because of time and cost pressures; original researchers/writers may not be available
- o Work group does not function properly; issues are not raised early (or at all) and remain unresolved; dual role of participants, as producers of a rule as well as reviewers of it, is not working
- o Agreements reached during the process (on all levels) sometimes do not hold
- o Insufficient oversight of work group participation and lack of earlier involvement by policy makers
- o Regional and ORD roles not assured
- o No clear understanding of what a work group should do: new process does not focus on development/work stage

Result of these Effectiveness Problems:

- o Content of regulations not sufficiently addressed
- o Cohesiveness of Agency interaction reduced

- o Significant changes in regulations as a result of review not evident
- o Rather than effective changes, non-productive "solutions" to the weaknesses of the regulation development process are pursued; e.g., genuine improvement of the work group process is unlikely

### 3. AUTHORITY V. RESPONSIBILITY PROBLEM

- o AA's have responsibility for regulations, but they:
  - Are tied up by contracts as well as statutory requirements
  - Have no control over many critical actors in the process
  - Have no mechanism for resolving differences along the way, or means to bring staff positions in other offices to their senior managers' attention for early decisions
- o OPRM and OLEC have authority, but:
  - No responsibility or incentive to see rules promulgated
  - Staff and managers have different concerns/audiences
  - There's often lack of communication between staff and policymakers; sometimes they say conflicting things, and moving a package is difficult
  - AA's are always limited by OPRM comments and decisions, but the quality of OPRM staff participation varies

Part III: Suggestions for Improving Effectiveness  
and Efficiency of the System

Guidance/Procedures

-130-

<ul style="list-style-type: none"><li>o OPRM should give clear guidance on the process, and all in <u>one</u> document</li></ul>	<p>There is a central document ("Managing the Process"), as well as several other documents that give general information or clarification. A single, comprehensive document is difficult because the process changes constantly; also, unforeseen questions arise. In addition, there are documents covering specific information. Some audiences need specialized guidance, which should not encumber general documents.</p>
<ul style="list-style-type: none"><li>o Paperwork clearance procedures, and how they fit into the regulatory development process and program budget planning, should be better defined</li></ul>	<p>There probably is a need for better guidance here. We will discuss with Phil Ross.</p>
<ul style="list-style-type: none"><li>o Agency procedures for independent scientific/technical review and/or statutorily required, non-Agency review should be better integrated into the process; one example: relationship and timing of SAB and SAP reviews should be clarified</li></ul>	<p>I am reluctant to establish general, uniform procedures for these reviews, because different documents should perhaps be handled in different ways.</p>
<ul style="list-style-type: none"><li>o Procedures for changing packages after R.B. should be defined</li></ul>	<p>There is so much variation in what needs to be done, who must clear, and on what schedule, that I think this should be done case-by-case.</p>
<ul style="list-style-type: none"><li>o Clarify clearance/approval procedures for both ANPRMs and Development Plans (At what point does OPRM sign Dev. Plans? Must ANPRMs go to R.B. after S.C.?)</li></ul>	<p>There is a need for better guidance on Development Plans and Advance Notices.</p>
<ul style="list-style-type: none"><li>o Establish a format for action memos -- particularly needed by offices rarely writing rules</li></ul>	<p>The April 30th memo outlines a format for action memos. I do not think we should be more specific.</p>

## Policy/Reviews

- o Avoid duplication of effort and multiple voices speaking for OPRM and OLEC; OMB also should speak with a single voice

There admittedly is sometimes a problem within OPRM, because different people are involved in the same regulations, but from different perspectives.

- o Have AX send inquiries/changes directly to program offices instead of going through OPRM

OPRM must manage the flow of documents to and from the 12th floor, for information and control purposes.

- o RA should have concurrence authority for all packages dealing with regulation identified as priority items by the Region

We prefer that RAs concur on behalf of their Regions, but time does not always permit it. OPRM should clarify what significance is attached to RA concurrence on issues the Region identifies as important. For such issues, it may at times be necessary to allow a few extra days for mailing the packages. However, we cannot guarantee that we will hold an action until RAs concur, because missing a deadline could cause unreasonable delay.

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- o OPRM determines if packages are ready for next stage: Put packages into review instead of holding them because of something OPRM staff does not like: i.e., force a formal comment. OPRM should put comments in writing; also, managers should be copied on memos to their program office staff, so that managers can check revised packages for requested changes

Agreed. Even if issues are unresolved, OPRM should end the formal comment in writing. We now do it for all Red Borders when for some policy problem, our concurrence will be delayed past the deadline. We are also putting greater emphasis on a formal closure to Consent Calendar reviews.

- o Set up a system to deal with OMB on packages returned to EPA, on resubmittals, and/or on page changes made after OMB submittal

There is a system, although not a very formal one. Keeping it less formal allows for more flexibility. We should ask for more specific suggestions in this area.

### Timeliness

- o OPRM should live up to its own deadlines for SAR, Steering Committee and Red Border reviews

Agreed. The record is better than it used to be, but there is still room for improvement.

- o OPRM should make a greater effort to resolve issues quickly and not simply let packages sit on analysts' desks

Agreed. OSR and OPA management must deal with this.

- o OPRM should meet some deadline for S.C. closure memos

RMS completes these within a week to ten days (usually less than a week) after the end of a review. When it is later, it is because the briefing is delayed.



## APPENDIX H

### EPA HQ Memoranda Relating To The EPA Rulemaking Process

#### INTRODUCTION

The following documents are memoranda from EPA HQ. Most of these detail the changes in the EPA rulemaking process which were initiated by former Administrator Burford with her memo of April 30, 1982, which is set forth in this Appendix. As indicated in the introduction to Appendix C, the reader will find these memoranda useful in understanding the many complexities of the EPA rulemaking process which cannot be reduced to graphic form.

The "open process" memo of Administrator Ruckelshaus is also included in this Appendix.

These memoranda appear in reverse chronological order, the latest memoranda first.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

MEMORANDUM

**SUBJECT:** Contacts with Persons Outside the Agency

**TO:** All EPA Employees

When I recently appeared before the Senate Committee on Environment and Public Works, I promised that EPA would operate "in a fishbowl." I said, "We will attempt to communicate with everyone from the environmentalists to those we regulate and we will do so as openly as possible." Therefore, I believe it is important to set out for the guidance of all EPA employees a set of basic principles to guide our communications with the public.

In formulating these principles I considered more stringent restrictions on contacts with those outside the Agency than those described below. At my request, my staff met with staff members of the Administrative Conference of the United States to discuss these issues. This organization is an independent agency that develops improvements to the legal procedures by which Federal agencies administer their programs. Based on the recommendations of the staff members of the Administrative Conference and those of the Office of General Counsel, I am convinced that restrictions beyond those set out below would unnecessarily inhibit the free flow of information and views. In adopting these flexible procedures I am relying on EPA employees to use their common sense and good judgment to conduct themselves with the openness and integrity which alone can ensure public trust in the Agency.

General Principles

EPA will provide, in all its programs, for the fullest possible public participation in decision-making. This requires not only that EPA employees remain open and accessible to those representing all points of view, but also that EPA employees responsible for decisions take affirmative steps to seek out the views of those who will be affected by the decisions. EPA will not accord privileged status to any special interest group, nor will it accept any recommendation without careful critical examination.

## Appointment Calendars

In order to make the public fully aware of my contacts with interested persons, I have directed that a copy of my appointment calendar for each week be placed in the Office of Public Affairs and made available to the public at the end of the week. The Deputy Administrator, and all Assistant Administrators, Associate Administrators, Regional Administrators, and Staff Office Directors shall make their appointment calendars available in a similar manner.

## Litigation and Formal Adjudication

EPA is engaged in a wide range of litigation, both enforcement and defensive in nature. All communication with parties in litigation must be through the attorneys assigned to the case. Program personnel who receive inquiries from parties in matters under litigation should immediately notify the assigned attorney, and should refer the caller to that attorney.

Formal adjudications, such as pesticide cancellation proceedings, are governed by specific requirements concerning ex parte communications, which appear in the various EPA rules governing those proceedings. These rules are collected and available in the Office of General Counsel, Room 545, West Tower. I will conduct myself in accordance with these rules, and I expect all EPA employees to do the same.

## Rulemaking Proceedings

In either formal or informal rulemaking proceedings under the Administrative Procedure Act, EPA employees must ensure that the basis for the Agency's decision appears in the record. Therefore, be certain (1) that all written comments received from persons outside the Agency (whether during or after the comment period) are entered in the rulemaking docket, and (2) that a memorandum summarizing any significant new factual information or argument likely to affect the final decision received during a meeting or other conversations is placed in the rulemaking docket.

You are encouraged to reach out as broadly as possible for views to assist you in arriving at final rules. However, you should do so in a manner that ensures, as far as practicable, that final decisions are not taken on the basis of information or arguments which have not been disclosed to members of the public in a timely manner. This does not mean that you may not meet with one special interest group without inviting all other interest groups to the same meeting, although all such groups should have an equal opportunity to meet with EPA. It does mean, however, that any oral communication regarding significant new factual information or argument affecting a rule, including a meeting with an interest group, should be summarized in writing and placed in the rulemaking docket for the information of all members of the public.

1 From: OSR (EPA2151) Posted: Fri 1-July-83 15:47 Sys 63 (207)  
Subject: UPDATE ON REGIONAL PRIORITY REGULATIONS--Signed June 30, 1983

MEMO: Update on Regional Priority List, 6/16

SUBJECT: Update on Regional Priority Regulations

FROM: Daniel J. Fiorino, Chief  
Regulation Management Staff

TO: Regional Regulatory Contacts

Early in March I invited each region to review our material on each significant regulation that the Agency was developing and to choose those regulations which they wished to participate in developing. I now want to give you a progress report on what we have done with your responses so far. I also want to let you know what we can do with them in the future.

#### WHAT HAVE WE DONE WITH YOUR RESPONSES?

We have now completed tabulating your responses.

- You chose to participate in developing 171 of the 262 different regulations that EPA is developing.
- The number of regulations chosen by each region varied from 10 to 76.
- You designated the 171 regulations a total of 373 times--many regulations were designated by more than one region.

#### HOW WILL WE BE USING THIS DATA?

1. Request that program offices commit to full regional participation in the work group process.

We will ask program offices to use regional expertise in preparing regulations. For each regulation which you have said you would like to participate in developing, we will let the head of the lead program office know what your objective is and who is representing you. I will send you a draft of this package in a few weeks to make sure that I am accurately reflecting your priorities.

2. Provide you with information which supports your participation in the work group and Steering Committee processes.

For each regulation that you are interested in we will provide you with the names and phone numbers of the regional contacts, the work group chairman, the RMS process manager and the OPRM lead analyst. We will also provide you with information on issues and on status for a limited number of regulations. To determine whether I would send you a short

report covering contacts or a longer report covering issues, status, and contacts, I am making a distinction between "consensus (or general) priority regulations" and "specific priority regulations" as follows:

A. Regulations designated by four or more regions are consensus priority regulations except in either of the following circumstances:

1) Development of the regulation is nearly complete

2) The lead office is apparently not committed to developing the regulation at this time.

B. In one case, a regulation was designated by three regions although there have been clear signs of strong interest by other regions. I think we should add this regulation, Revisions to NPDES Regulations: Regulatory Reforms (SAR #1868), as a consensus priority regulation.

I have enclosed for your information a list of the consensus (or general) priority regulations. You will be receiving the issues and status information on these regulations in about two months.

\* \* \* \* \*

Thank you for your commitment to quality regulations. Please feel free to call on me (FTS 382-5480) at any time if there is any way that we can support you in contributing to our regulations.

Enclosure

P.SCHWARTZ/pmp/Disk #Perf. Stnds./6-16-83/retype-6/29/83

# CONSENSUS (GENERAL) PRIORITY REGULATION LIST

## Drinking Water

MCL for Volatile Organics Found in Drinking Water	1567
Revised Primary Drinking Water Regulations	1755

## Air

NAAQS for Particulates	1003
New Source Review	1845
Emissions Trading Policy	1605

## Water

Waivers for Nonconventional Pollutants	1634
Compliance Extension for Innovative Technology for Industrial Discharges	1608
Effluent Guidelines for Offshore Oil and Gas	1649
Water Quality Standards Regulations	1441
Amendment to Secondary Treatment Regulations	1657
Revision of BCT Cost Test and BCT Effluent Guidelines	1752b
Revisions to General Pretreatment Regulations:	
Reforms	1900
Removal Credits	1866
Revisions to NPDES Regulations: Regulatory Reform	1868
Revisions to 404 Regulations	1585
Sewage Sludge Disposal Guidelines	1914
Revision of Ocean Dumping Criteria	1604

CONSENSUS (GENERAL) PRIORITY REGULATION LIST

Superfund

Designation of Hazardous Substances	1642a
Notification of Release of Hazardous Substances and Determination of Reportable Quantities	1642b
Notification of Continuous Release of Hazardous Substances	1642c

RCRA

Identification and Listing of Solid Waste	1191
Identification and Listing of Hazardous Wastes: Restriction of Land Disposal of Certain Hazardous Wastes	1878
Standards of Owner/Operators of Waste Facilities Boilers	1877
Class Permits	1844

cc: D/O Directors

S. Ells      D. Fierra      M. Hohman  
R. Martin    E. Fitzpatrick   H. Laing  
D. Pickman   L. Gitto

SAMUEL A. SCHULHOF press release

FOR RELEASE: TUESDAY, JUNE 14, 1983

(202) 382-4355

SCHULHOF NAMED  
HEAD OF  
REGIONAL  
OPERATIONS

William D. Ruckelshaus, U. S. Environmental  
Protection Agency Administrator, today named  
Samuel A. Schulhof to serve in the new position  
of Associate Administrator for Regional Operations.

Schulhof had been serving as Deputy EPA Assistant  
Administrator for Administration. "Sam will act as an  
'honest broker' between the field and headquarters in  
planning and operational matters," Ruckelshaus said.

"His function will be critical in giving EPA's  
regional administrators greater autonomy to carry out  
their mission of enforcing and upholding environmental  
laws and regulations," he added.

Schulhof also will work with the agency's assistant  
administrators in coordinating activities originating  
in headquarters with those developed in the regions.

Ruckelshaus wants the regional administrators to be  
more active in the setting of environmental objectives  
than they have been in the past. This move toward  
decentralization will also provide for increased  
participation by states and local governments in  
planning and executing programs affecting them.  
Schulhof and his staff will coordinate and facilitate  
this process with the regions.

Schulhof, before joining EPA in December 1981,  
served as an assistant director of recruitment  
and communications at ACTION, where he managed the  
nationwide volunteer placement program for foreign and  
domestic ACTION/Peace Corps operations. He was also  
responsible for the agency's communications program.

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From March of 1979 to January 1981, he was president and chief operating officer of Wander Sales in West Elizabeth, Pa., a nine-store retail enterprise in the Pittsburgh area. From 1975 to 1979, Schulhof was a principal member of the Hay Group, a Washington, D.C., human resources consulting firm.

Schulhof served as a deputy special assistant in the White House from April 1974 to 1975, where he directed Presidential and Executive-level appointment recruitment activities, and served as liaison with the federal departments and agencies and constituency groups. From May 1973 to April 1974, he was staff assistant to the President, responsible for management analysis of senior federal assignments.

Schulhof also served as a Deputy Director of Special Projects and Assistant to the Secretary of the then Department of Health, Education and Welfare from 1971 to 1973.

He received his bachelor of science degree in business administration from C.W. Post College, Long Island University, in 1964.

Schulhof, 41, is a native of Pennsylvania and currently resides in Pittsburgh, Pa., with his wife Katrina, the Executive Assistant to the Chancellor of the University of Pittsburgh.

Symbols "●" = review and approval required  
 \*\*\* = see attached list for exemptions

DOCUMENTS	Steering Committee 2 weeks min.	Associate Administrator for OPRM 2 weeks max.	Science Advisory Board 90 days max.	Associate Administrators for OPRM & OLEC ("red border") 2-3 weeks max.	OMB <sup>1),2)</sup> 10-50 days	OPRM clearance <sup>3)</sup>	Chief/Deputy Chief of Staff	Administrator
I. Start Action Request (SAR)* [Required for all rule-makings and policy documents subject to OMB review under Executive Order 12291]		●						
II. Development Plan (DP) [Required for (a) all major rules, (b) all significant rules not specifically exempted by the Associate Administrator for OPRM, and (c) some policy documents]	● [approval of chairman required]	● [required for major rules]						
III. Advance Notice of Proposed Rulemaking	●			●			●	●
IV. Proposed Rulemaking Packages and Policy Documents	● [all major and significant rules]		● [if selected for this review]	●*	●*	●	● [except delegated actions]	● [except delegated actions]
V. Final Rulemaking Packages and Policy Documents	● [all major and significant rules]			●*	●*	●	● [except delegated actions]	● [except delegated actions]

- 1) In some cases OPRM will send documents for OMB review before red border review formally ends.
- 2) Time periods for OMB review are: proposed major: 60 days; proposed non-major: 10 days; final major: 30 days; final non-major: 10 days.
- 3) After OMB review, there is a final policy clearance by the Associate Administrator for OPRM before documents go to Chief/Deputy Chief of Staff.

#### Actions Exempt from SAR Requirement

- o All actions that the Administrator has delegated to other Agency officials, except for amendments to PCB regulations under TSCA 6
- o All actions initiated by the Regions, including EPA approval of state programs, sole source aquifer petitions, and general permits
- o Denials of petitions
- o Technical regulations amending monitoring and testing methods which do not increase requirements for the public
- o Agency policy documents that are subject to Executive Order 12291 review but are not published in the Federal Register
- o All actions that have been exempted from OMB review under Executive Order 12291

#### Actions Exempt from Associate Administrator Review

- o Actions relating to State Implementation Plans under the Clean Air Act.
- o Most routine actions that the Administrator has delegated to other Agency officials.
- o Certain other actions relating to state plans or programs under statutes other than the Clean Air Act.

#### Actions Exempt from OMB Review under Executive Order 12291

##### Office of Air, Noise, and Radiation

- o Area Designations or Redesignations for Air Quality Planning Purposes
- o Unconditional Approvals of Equivalent Methods for Ambient Air Quality Monitoring
- o Unconditional Approvals of State Implementation Plan (SIP) revisions

- o Unconditional Approvals of NSPS and NESHAPS Authority or PSD Delegations to States
- o Deletions from the NSPS Source Categories List
- o Approvals of Carbon Monoxide or NOx Waivers and Interim Standards Under Title II of the Clean Air Act
- o Approvals of Extensions of NOx Standards for Qualifying Small Volume Manufacturers

#### Office of Water

- o Unconditional Approval of State Programs and Delegations of State Primacy for Underground Injection Control
- o Deletions from the 307(a) List of Toxic Pollutants
- o Suspensions of Toxics Testing Requirement Under NPDES
- o Unconditional Approvals of Delegation of NPDES Authority to States--including Memoranda of Agreement, Modifications to State Programs, Regulation of Federal Facilities, and Pretreatment Programs
- o Unconditional Approvals of State Water Quality Standards

#### Office of Solid Waste and Emergency Response

- o Unconditional Approvals of State Authorization Under RCRA and Approvals of State Solid Waste Management Plans
- o Approvals of Hazardous Waste Delisting Petitions Under RCRA

#### Office of Pesticides and Toxic Substances

- o Unconditional approvals of TSCA Section 5 Test Marketing Exemptions
- o Unconditional Approvals of Experimental Use Permits under FIFRA
- o Pesticide Tolerances, Temporary Tolerances, Tolerance Exemptions, and Food Additive Regulations (except those that make an existing tolerance more stringent)

## HOW TO USE EPA'S INTERNAL REVIEW PROCESS

This fact sheet gives instructions for implementing the Agency's regulation development procedures set out in the Administrator's April 30 memorandum on "Procedures for Regulations Development and Review". It also lists people to contact for further information.

Section A sketches the roles of different groups of OPRM staff in the Agency's internal review process. Section B gives instructions specific to particular topics covered in the Administrator's memo, and lists contacts by reference to the sketch of OPRM in Section A.

### A. OPRM ORGANIZATION FOR REGULATION REVIEW

#### 1. OPRM Analysts

OPRM analysts participate in Task Groups and represent the Associate Administrator for Policy and Resource Management on policy matters. When they serve as lead OPRM analysts for specific regulations, they are responsible for making recommendations to OPRM management on the rules when they are submitted for Steering Committee and Red Border review. Lead analysts typically are either part of the Program Analysis Staff in the Office of Standards and Regulations, or part of the Office of Policy Analysis, although staff from other OPRM offices sometimes fill this role.

An OPRM lead analyst should have participated in the development and review of any regulation that enters Agency-wide review. If you are unsure who is or should be the lead analyst for a regulation, contact the appropriate Regulation Management Staff (RMS) analyst listed under number 3 below. (RMS is in the Office of Standards and Regulations.)

#### 2. Regulation Management Staff (RMS) Review Coordinators

The RMS Review Coordinators manage the Red Border and OMB reviews. They are also responsible for EPA's liaison with the Federal Register. By program area, they are:

- o Thea McManus (382-2731) — OSWER, OW
- o Nancy Smagin (382-2732) — OANR
- o Caroline Previ (382-2733) — OPTS and others

#### 3. RMS Analysts

Others in the Regulation Management Staff handle clearance for Steering Committee, Red Border and OMB review. Their primary functions are to develop and explain procedures for regulation development; coordinate the Agency's implementation of Executive Order 12291 and the Regulatory Flexibility Act; and provide staff support for the Steering Committee Chairman. By program area, they are:

- o Odelia Funke (382-2736) — all OANR except mobile source regulations
- o Phil Schwartz (382-2725) — OANR (mobile source), OPP, OA, OFA, and other programs
- o Angela Tyler (382-2729) — OTS
- o Jane Kelly (382-2734) — OW
- o David Sahr (382-2730) — OSWER

#### 4. Information Management Staff (IMS) Desk Officers

IMS desk officers review information requirements and submit regulatory packages to OMB for review under the Paperwork Reduction Act. By program area, they are:

- o Oscar Morales (382-2744) — OSWER, OPTS
- o Jim Daley (382-2743) — OANR, ORD
- o Chris Scoby (382-2745) — OW, OA, Administrator's Office

### B. INSTRUCTION FOR EPA REGULATION DEVELOPMENT PROCEDURES

#### 1. Requests to Initiate Rulemaking

##### Instructions

- o Obtain blank Start Action Requests (SARs) from Angela Tyler (382-2729) in 3318 Mall.
- o Type information onto the SAR and obtain program AA signature.
- o Submit to OPRM for approval (deliver to Angela Tyler).

##### For Further Information

- o For questions on filling out the SAR or to determine if a SAR must be done, contact the RMS analyst for your program area.

#### 2. Development Plans

##### Instructions

- o To submit the Development Plan for Agency review, follow the steps below under "Steering Committee".

##### For Further Information

- o To determine whether a Development Plan is necessary, or to obtain guidance on its contents, contact the RMS analyst for your program area.

### 3. Task Groups

#### Instructions

- o To set up a task group, use the Task Group Invitation Form, available from Angela Tyler (382-2729). OPRM will distribute this form with the SAR.

### 4. Regional Participation

#### Instructions

- o For items on the Regional Priority List (or others that are of major interest to Regional Offices), you should solicit Regional comments on draft documents well in advance of Steering Committee or Red Border review.

#### For Further Information

- o To obtain copies of the Regional Priority List, or to suggest ways to improve Regional participation, contact Phil Schwartz (382-2725).

### 5. Steering Committee (S.C.)

#### Instructions

- o Arrange and clear all requests for Steering Committee review through S.C. representative in the office of your Assistant Administrator.
- o Submit 25 copies of the package to Angela Tyler (382-2729), 3318 Mall, by COB two weeks before you want the meeting. (Steering Committee meets only on Tuesdays and Fridays.)
- o Include in your package:
  - 1) AA signed action memo to the Associate Administrator for Policy and Resource Management
  - 2) Copy of preamble and rule
  - 3) Copy of any important background documents

- o Stamp all materials "Draft".

#### For Further Information:

- o To determine whether S.C. review is necessary, or whether that review should be through S.C. meeting or Consent Calendar procedures, contact the RMS analyst for your program area.

### 6. Associate Administrator (Red Border) Review

#### Instructions

- o Arrange a Red Border review through your office's Steering Committee representative.
- o Call the appropriate RMS Review Coordinator at least one day before you plan to submit a package for Red Border review.

- o If a regulation went through a S.C. review, and it is on the Regional Priority List, submit 25 copies and the original of the package to the RMS Review Coordinator for your program area, in room 3318M.
- o If S.C. reviewed the regulation but it is not on the Regional Priority List, submit 16 copies and the original to RMS (3318M).
- o If no S.C. review occurred because the regulation is "minor", submit 11 copies and the original to RMS (3318M).
- o In all cases, include a Typesetting Request form (EPA form #2340-15) with your package. Make sure it is signed by the AA's administrative officer to authorize payment for Federal Register printing costs.
- o For all regulations subject to OMB review under Executive Order 12291 include 3 copies of an SF 83 form. The AA or S.C. representative should sign as the "Approving Official."

#### For Further Information

- o To obtain more information on the SF 83, and the status of an RB package, contact the RMS Review Coordinator for your program area.
- o To obtain information on OPRM concerns with the substance of the package, contact your lead OPRM Analyst, or the RMS analyst for your program area.

### 7. Clearance for OMB Review

#### Instructions

- o For Executive Order 12291 review, submit an SF 83 form, as explained above under "Associate Administrator Review", at the time the package enters Red Border review.
- o For Paperwork Reduction Act review, submit an SF 83 and the supporting statement to the IMS Desk Officer for your program area. Contact the desk officer to determine the appropriate time to submit the package.

Note: The two OMB reviews--required under Executive Order 12291 and the Paperwork Reduction Act--are separate reviews. Each requires its own SF 83 form.

#### For Further Information

- o For information on the status of an OMB review under Executive Order 12291 (e.g. scheduled release date, actual release date), contact the RMS Review Coordinator for your program area.
- o For questions concerning OMB review under the Paperwork Reduction Act, contact the IMS desk officers for your program area.
- o For information on what OPRM considers in recommending that a regulation is ready for OMB review, contact the RMS analyst for your program area.



## 8. Arranging Federal Register Publication

### Instruction

- o All regulations, notices, etc., to be published in the Federal Register must include the EPA Typesetting Request form (described above under "Associate Administrator Review").
- o When appropriate, notices must comply with the Federal Register's Thesaurus and incorporation by reference requirements.

### For Further Information

- o For further information on Federal Register requirements, contact the RMS Review Coordinator for your program area.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 6 1982

OFFICE OF  
POLICY AND RESOURCE MANAGEMENT

MEMORANDUM

SUBJECT: Additional Guidance on the Administrator's April 30th  
Memorandum on Regulation Development and Review

FROM: Joseph A. Cannon *Joseph A. Cannon*  
Associate Administrator  
for Policy and Resource Management

TO: Steering Committee Members

This memorandum provides background and interpretation of certain aspects of the revised regulation review procedures. Please distribute this to appropriate staff within your offices. It gives additional details on four topics:

- o Criteria for classifying a regulation as Major, Significant or Minor
- o Steering Committee review
- o Development Plans
- o OPRM's quarterly reports on implementing the procedures.

Classifying Regulatory Actions

The Administrator's memo establishes a three-part classification scheme--Major, Significant and Minor. The main purpose of this scheme is to set priorities for internal review and analysis. Classification has the following effects:

- o Major regulations have a Development Plan and go through Steering Committee review before Red Border. Major regulations are required by Executive Order 12291 to have a Regulatory Impact Analysis and are also subject to a longer OMB review.

- o Significant regulations normally require a Development Plan and go through Steering Committee review before Red Border.
- o Minor regulations -- Development Plans and Steering Committee review are unnecessary.

The definition of Major in Executive Order 12291 is relatively clear and the Agency has experience interpreting it. The distinction between Significant and Minor is not as clear. The key concept to remember is that this distinction determines whether or not a regulation is subject to Agency-wide review through the Steering Committee. We should use the following rules of thumb in making the distinction:

- o Does the regulation raise issues that fall within the scientific or technical competence of another office in the Agency? For example, ORD should have an opportunity to review any regulations that present substantial scientific or technical issues.
- o Does the regulation affect the regulations or program administration of any other program or Region?
- o Does the regulation make policy choices that have national environmental, economic or resource implications?

If the answer to any of the above questions is yes, the regulation would be Significant and Steering Committee review would be appropriate. Steering Committee review may be waived on a case-by-case basis for regulatory relief items specifically designated for revision by the President's Task Force.

The following kinds of regulations will typically be Minor:

- o Technical modifications to existing regulations that have negligible policy implications.
- o Procedural actions of no interest to Regions or other program offices.

OPRM will classify new regulatory actions when the lead office prepares a Start Action Request (SAR). OPRM will also review existing regulatory actions in the Regulatory Agenda in order to classify them. All new regulatory actions that did not appear in the April 1982 Regulatory Agenda should have a SAR. Regulatory packages may enter internal review if (1) the regulation appeared in the April Agenda or (2) the program has prepared a SAR. I may also request SARs and Development Plans for a few of the regulations that appeared in the April Agenda.

### Steering Committee Review

Steering Committee review will consist of an actual meeting or a Consent Calendar review. The Chairman of the Steering Committee will resolve any disagreements concerning which kind of review is appropriate. Steering Committee will be a forum to discuss not only policy choices but also the general quality of EPA rulemaking packages. We may also discuss specific concerns of any offices, e.g., regulations that have been subject to undue delays in the review process.

Consent Calendar is the alternative to a Steering Committee meeting. It consists of a two-week review period during which programs should submit comments and written concurrences directly to the Office of Standards and Regulations.

Consent Calendar is appropriate when the following conditions are met:

- o The regulation is not classified as Major;
- o The task group has reviewed the most recent draft of the regulatory package (through a meeting if possible); and
- o None of the task group members have any issues they think would benefit from a Steering Committee discussion..

If any Steering Committee representative requests a meeting after a regulation enters Consent Calendar review, OSR will schedule a meeting.

In many cases, a program office may wish to request a meeting rather than Consent Calendar review because a meeting may be more expeditious. The time required for a meeting is normally two weeks (like Consent Calendar), but a meeting also has the following advantages:

- o The Chairman of the Steering Committee will become familiar with the package before it enters Red Border review. If the Steering Committee approves the package, Red Border review will go more smoothly.
- o The Chairman of the Steering Committee may authorize concurrent Red Border/OMB review at the meeting. No such authorization will be made during Consent Calendar.
- o If a package enters Consent Calendar, and then a Steering Committee member requests a meeting, the time may extend beyond two weeks.
- o Programs may request extensions to the Consent Calendar deadline whereas a meeting is the end of Steering Committee review and is unlikely to be postponed.

### Development Plans

If a regulation is classified as Major or Significant, the lead program office should submit a Development Plan (unless waived) to the Steering Committee within 60 days of the date the Start Action Request is approved. The Chairman of the Steering Committee, after hearing the recommendations of the other Steering Committee representatives, will approve the plan or recommend additional work at the meeting. Development Plans for Major regulations must also be approved by the Associate Administrator for Policy and Resource Management through a two-week Red Border review.

A brief description of the contents of a Development Plan is attached to this memo.

### OPRM Quarterly Reports

OPRM will prepare quarterly reports to the Administrator, with copies to the Assistant Administrators, on how the procedures are working. These reports will:

- o Track OPRM and OLEC performance in meeting internal review deadlines.
- o Identify new SARs or Development Plans that have been submitted to OPRM.
- o Track program performance in meeting their schedules set in SARs, Development Plans, or elsewhere.

OPRM will prepare these reports as part of the quarterly accountability reports. These reports should identify any problems in implementing the procedures, either in the programs or in OPRM and OLEC.

\* \* \* \* \*

I hope this guidance will be useful for you and your program staffs. I expect we may want to modify it as we gain experience under the new procedures.

cc: Chief and Deputy Chief of Staff  
Regional Regulatory Contacts

Attachment

## DEVELOPMENT PLANS

The development plan should be brief—5 to 10 pages—and should set forth the basic policy and management framework for developing the regulation. The following information should be included in the development plan:

- o PURPOSE

This states the need for the regulation (i.e. statutory requirement, court order, program requirement, regulatory relief) and identifies its goals and objectives.

- o ISSUES

This gives a brief discussion of the legal, technical, economic, social and political issues the Agency will consider in developing the regulation.

- o ALTERNATIVES

This lists the alternative standards or strategies the Agency will examine to fulfill the goals and objectives of the rulemaking.

- o CLASSIFICATION AND ANALYSIS

This states whether the regulation is major or significant and briefly explains why. It also considers whether any supporting analyses should be performed. The following analyses should be discussed in this section: Regulatory Flexibility Analysis, Economic Impact Analysis, Regulatory Impact Analysis (for major regulations only), Environmental Impact Statement or Information Impact Analysis.

- o SCHEDULE

This identifies the tasks that will be performed—from the first work group meeting to the final promulgation of the regulation—and milestones from each task.

- o INTERNAL AND EXTERNAL PARTICIPATION

This lists the Agency offices—including EPA Regional Offices—that will participate in developing the rule and identifies the work group chairperson. It also lists other agencies, States, and others that will be involved in developing the regulation and briefly describes their involvement. A list of the work group members should be attached to the plan.

- o RESOURCES

This estimates the resources that will be necessary to develop the regulation. Both Agency personnel and contract resources should be included.

- o EXPECTED REACTION OF OUTSIDE GROUPS

This briefly discusses the anticipated public reaction to the regulation (i.e. Congress, OMB, industry, environmental groups, and others).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

May 25, 1982

OFFICE OF  
POLICY AND RESOURCE MANAGEMENT

MEMORANDUM

SUBJECT: Steering Committee Consent Calendar Reviews

FROM: Angela Tyler *Angela Tyler*  
Regulation Management Staff

TO: Regional Regulatory Contacts

We are now using Clearance Sheets for Steering Committee Consent Calendar reviews. Please have your Regional Administrator or Deputy Regional Administrator sign the sheet if possible. The review will last two weeks and hopefully you will have ample time to comment. However, if you find that you will have comments but will not have them ready before the deadline please contact me at 8-382-2729.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 25 1982

OFFICE OF  
POLICY AND RESOURCE MANAGEMENT

MEMORANDUM

SUBJECT: Notice of Steering Committee Consent Calendar  
Review

FROM: Lewis S.W. Crampton, Acting Director  
Office of Standards and Regulations

A handwritten signature in black ink, appearing to read "L. S. W. Crampton", is written over the typed name and title.

TO: Steering Committee Members  
Regional Regulatory Contacts

I am circulating the attached regulation package on the Proposed Amendments to the Freedom of Information Act Regulations for a Consent Calendar review by the Steering Committee. Under a Consent Calendar review, the Steering Committee does not meet formally, but has the opportunity to review the regulation package and submit written comments to the Office of Standards and Regulations.

Under the new procedures prescribed in the Administrator's April 30th memorandum on "Procedures for Regulation Development and Review," the Steering Committee will normally be the only opportunity for all offices to review and comment on regulation packages, because the Red Border review will usually include only the two Associate Administrators. If, however, your Assistant or Regional Administrator has major concerns with a regulation package, you may request that he or she take part in the formal Red Border review. Even if your office does not participate formally in a Red Border review, OSR will distribute information copies of regulation packages that have gone through a Steering Committee review at the time that package enters Red Border review.



To ensure that the Consent Calendar provides an effective mechanism for review, we are requesting a response -- with or without comments -- from each Steering Committee member on each package distributed for review. Please respond in one of the following ways:

- o If you have written comments, please submit them to Angela Tyler, Regulation Management Staff, in OSR (room 3318) by the deadline on the "Consent Calendar Clearance Sheet."
- o If you have no written comments please, either sign the Clearance Sheet and return it to Angela or notify her at 382-2729 that you have no comments.

The Clearance Sheet will list a contact from the originating office. You or your staff should contact this person with questions or to communicate minor comments or suggestions.

OSR will forward copies of all written comments to the originating office and to the lead OPRM analyst working on the regulation. We will require the originating office to respond to any comments before the regulation enters Red Border review.

Attachment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
POLICY AND RESOURCE MANAGEMENT

Steering Committee - CONSENT CALENDAR  
Clearance Sheet

Date: May 25, 1982

SUBJECT: Proposed Amendments to the Freedom of Information  
Act Regulations

SAR #: 1737

Originating Office: Office of General Counsel  
Contact: Charles Breece, 426-9450

Deadline for Response: Wednesday, June 9, 1982

Office Symbol	No Comments	Comments Attached	Signature
OGC			
OANR			
OEC			
ORD			
OPTS			
OW			
OSWER			
OA			
REGIONS I-X			

Please return to Angela Tyler (Rm. 3318) by the deadline. If you have no comments and wish to respond by telephone please contact Angela at 382-2729. If your office has major issues or concerns and you would like OPRM to include your Assistant Administrator in the Red Border review, please request that in your written comments.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

APR 30 1982

THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Procedures for Regulation Development and Review

TO: Associate Administrator  
Assistant Administrators  
Regional Administrators  
Staff Office Directors  
Special Assistants

This memorandum revises a number of the Agency's current rulemaking procedures. These revisions are designed to: (1) improve senior management oversight of policy development, (2) better integrate our regulatory programs, and (3) make more efficient use of the Agency's resources.

Consistent and predictable procedures are crucial to a well-managed rulemaking process. The development and review of regulations is a responsibility shared by many Agency offices. Assistant Administrators have lead responsibility for developing and implementing regulations within their own program areas. The Office of Policy and Resource Management (OPRM) and Office of Legal and Enforcement Counsel (OLEC) are responsible for reviewing the rules for policy and legal issues and seeing that they meet Agency and external requirements. We must have procedures to coordinate all of these contributions if we are to produce effective, efficient, and well-reasoned regulations.

In presenting the revised procedures, this memorandum will cover the following topics:

1. Approval of requests to initiate rulemaking
2. Development plans
3. Task groups for developing or reviewing regulations

4. Regional participation
5. Composition and role of the Steering Committee
6. Review by the Associate Administrators
7. SAB Review
8. Clearance for OMB review
9. The form and content of action memoranda
10. Review by the Administrator's Office
11. Accountability for meeting deadlines

The revised procedures outlined here will apply to all regulations and related policy documents to be published in the Federal Register or submitted to OMB for review under Executive Order 12291.

1. Approvals of Requests to Initiate Rulemaking

In the past, lead offices have prepared a Start Action Notice when they initiated work on a regulation. Its purpose was to notify senior management and others that an office was beginning to develop or amend a regulation and to invite participation on a work group.

I now want to make this notification an approval document, rather than just an information notice. Before starting work on a regulation, the lead office will file a Start Action Request (SAR) form with the Office of Standards and Regulations, which will then submit the SAR to the Associate Administrator for Policy and Resource Management for approval. OPRM normally will respond to Start Action Requests within two weeks.

A program office must have the approval of the OPRM Associate Administrator before it can begin working on a regulation. No action can enter internal Agency review without a Start Action Request. A number of regulatory actions are already underway, but not yet ready for proposal. I will consider each of these through the regulatory program reviews that I will conduct with each Assistant Administrator.

OPRM is designing a SAR form. The form will provide information on the purpose and need for the action, statutory authority, classification, and a statement of the consequences of not taking action, as well as certain other categories of information.

I want us to follow these new start action procedures for all rulemaking subject to OMB review under Executive Order 12291, except for State Implementation Plans, pesticide tolerances, and other routine, high-volume categories of actions, such as approvals of State plans in the various programs. This will ensure that resources devoted to developing new regulations and revising existing ones will adequately reflect my policy and budgeting priorities. If you are not sure whether a SAR is necessary for a particular action or class of actions, check with the Director of the Standards and Regulations Division.

## 2. Development Plans

When OPRM approves a Start Action Request, it will assign, in consultation with the lead program office, a priority classification to the regulation. OPRM will assign one of three classifications to the regulation:

- o "Major"--if it is likely to meet the definition in Section One of Executive Order 12291; or
- o "Significant"--if there are important economic consequences for the public, important public health issues, inter-media issues, effects on the administration or operation of other offices or broad geographic effects; or
- o "Minor"--if it meets none of the above conditions.

If a regulation is classed as major or significant, the lead program office will have to submit a development plan to the Steering Committee within 60 days of the approval of the Start Action Request. This plan should discuss issues, alternatives, scheduling, internal and outside participation, analytical needs, and expected reactions of outside groups. OPRM will issue more detailed guidelines on the appropriate contents and organization of development plans.

A development plan may not be necessary for all significant regulations (e.g. regulatory relief items designated for expedited action or regulations with inter-program or inter-media issues). OPRM may waive the development plan requirement at the SAR approval stage where appropriate. Minor regulations do not require a development plan.

The Chairman of the Steering Committee must approve all development plans for significant regulations. In addition, development plans for major regulations must have the approval of the Associate Administrator for Policy and Resource Management.

### 3. Task Groups for Developing and Revising Regulations

The Agency will continue to rely on staff-level working groups for developing regulations. Especially for regulations that involve the expertise or interest of other offices, the lead office should obtain broad participation from throughout the Agency. However, all regulations, even the most minor, should have representatives from OPRM and OLEC on the task group.

Lead offices will chair these work groups. OPRM members of task groups will not only represent that office but will also give status reports on the task group's progress and performance to the Associate Administrator for Policy and Resource Management. They will report on whether the rulemaking is on schedule, causes of delays, whether important issues are raised and identified by the task group, and on unresolved issues that remain as the rule approaches Steering Committee or Associate Administrator review.

All members of the task group must have the opportunity to review and comment on drafts of regulations and policy actions before they are scheduled for a Steering Committee review.

### 4. Regional Participation

Recently several Regional Administrators have expressed concern about the lack of effective Regional involvement in regulation development and review. In particular, they are concerned that regulations with a direct effect on their offices or State agencies reach me without their review and recommendations.

To improve Regional participation, I want to take the following steps:

- o OPRM will consider use of a lead Region system for regulation development and review that is similar to the lead region system used in the Agency's budget process. This system would enable one Regional Office to represent the common interests of the others. OSR and the lead office will designate the lead region at the time of the Start Action Request.
- o The Office of Standards and Regulations will update its April 1981 "Regional Priority List" that identifies regulations of major interest and importance to the

Regions generally and to specific Regional Offices. OSR should use this to determine which regulations require the recommendations of the Regional Administrators. Lead offices should make special efforts to solicit Regional involvement and comments for these regulations.

- o The Director of the Office of Standards and Regulations will make sure that Regional and State issues and concerns are addressed in Steering Committee reviews of regulations.

#### 5. Composition and Role of the Steering Committee

The Steering Committee will serve as the primary Agency-wide forum for identifying issues, recommending their resolution, and integrating Agency policies and resources regarding regulations.

The Steering Committee will serve as an advisory body for the Director of the Office of Standards and Regulations -- who will chair it -- and the Associate Administrator for OPRM. It will serve as the place where all Agency offices can review and make recommendations on regulatory actions. The Steering Committee typically will review development plans as well as proposed and final significant and major rules. The Steering Committee will also advise the Director of OSR on procedural matters affecting Agency rulemaking.

To improve its effectiveness, I want to elevate the level of representation on the Steering Committee to make it directly representative of and accountable to the Assistant and Associate Administrators. The Steering Committee's core membership will consist of the Deputy Assistant Administrator (or other designee of equivalent status) from each of the four program offices, ORD, OA, the Deputy General Counsel, and the Deputy Associate Administrator for Enforcement Policy or his representative. Regional or Deputy Regional Administrators also will participate in Steering Committee review of regulations of high priority for Regional Offices or State environmental officials. When you designate a Steering Committee representative, bear in mind that this person will be speaking for your office on key policy and resource issues arising from regulatory actions.

To help the Steering Committee meet its expanded responsibilities, I would like us to observe the following rules:

- o We will allow a minimum of two weeks review time (rather than the current one week) for Steering Committee packages. This applies to reviews

conducted through both formal meetings and the Consent Calendar.

- o The Assistant Administrator from the initiating office must approve regulation packages submitted for Steering Committee review.
- o The Chairman of the Steering Committee may refuse to schedule a Steering Committee review for any package that does not meet established minimum standards of quality or reflect an adequate consideration of key issues or alternatives.
- o The package must include an action memorandum signed by the Assistant Administrator (contents are described below) and any important support documents. The action memo should be addressed to the Associate Administrator for Policy and Resource Management.
- o OSR will prepare a summary of important issues and comments arising from the Steering Committee review. This will provide a record of comments and expected revisions, and it will accompany the package through the Associates' review.

The Steering Committee should resolve as many issues as possible and clearly identify remaining issues before the regulation goes to the Associate Administrators for their review.

#### 6. Review by the Associate Administrators

Elevating the status and representation of the Steering Committee will allow us to eliminate the current practice of conducting full Red Border reviews. Formal senior management review will be limited to the two Associate Administrators. In those cases where a program office has major problems with another program's Steering Committee package, that program office's Assistant Administrator will also take part in Red Border review. Other offices will receive a "for information" copy of the package as well as the program memo summarizing changes since Steering Committee. The shorter time period required for these reviews will compensate for the longer period for Steering Committee reviews.

I will ask for the review and recommendations of the two Associate Administrators on all actions covered by this memorandum. OPRM will determine whether or not such documents are suitable for my final review and/or signature. To the extent possible,



review by the Associate Administrators should not exceed two weeks and response time will be tracked in the Agency's Accountability System. OANR will continue to manage the special review of SIP revisions.

#### 7. Science Advisory Board Review

The Science Advisory Board (SAB) will have a greater role in reviewing the scientific data and analysis used to support regulatory decisions than in the past. The Science Advisor and the Director of the Office of Standards and Regulation will be responsible for identifying significant regulatory actions for SAB review. Based on these recommendations, or requests from Assistant or Associate Administrators, the Deputy Administrator will select 15-25 proposed rules for review each year. To avoid delays, reviews will occur as early in the process as possible -- as soon as the scientific evidence is assembled and evaluated -- and should be completed within 90 days.

In addition to the scientific data and analysis they have developed, the work group will prepare and present a scientific issues staff paper. The SAB will critique these documents and put its findings and suggestions in writing. The work group will make appropriate revisions before Steering Committee review. A second SAB review may occur before promulgation if significant new scientific data become available after the initial review. As in the past, the SAB's concern will not be to approve or disapprove any standard. Its review will focus on the scientific bases for the standard, and its conclusions will be advisory.

#### 8. Clearance for OMB Review

The approval of the Associate Administrator for Policy and Resource Management is required for all Agency documents (except SIPs) before they are sent to OMB for review under the Executive Order. OPRM will not approve a document for transmittal to OMB unless it has completed the internal concurrence process. OPRM will continue to have complete responsibility for managing the OMB reviews, including SIP actions.

After the OMB review is complete, OPRM will send the document to me for my signature. If OMB has commented on the rule, or released it as "inconsistent with the Executive Order," the revised action memo must clearly explain the problem and how you have dealt with it. If all issues are not fully resolved, the action memo should explain why you think I should sign the document before the differences are fully resolved.

## 9. The Form and Content of Action Memoranda

Each decision document must have an action memorandum from the principal of the originating office. The action memorandum submitted to the Steering Committee should be addressed to the Associate Administrator for Policy and Resource Management. It should then be revised as necessary (to reflect Red Border and OMB comments) and addressed to me. The action memorandum should cover the following subjects:

- Statement of purpose and background for the action;
- Definition and discussion of key policy, legal, technical or other issues;
- Discussion of alternative courses of action considered and available to the Agency;
- Description of the recommended alternative and a justification;
- Brief summary of important environmental, economic, energy, reporting and other effects of the action (including effects on small entities);
- Description of the expected reactions of outside groups;
- Summary of OMB comments (if any) and your resolution or response; and
- Recommended course of action.

Action memoranda should be clear and succinct. OPRM will have authority to return action memoranda and policy documents that are not of acceptable quality.

## 10. Review by the Administrator's Office

The Chief of Staff and Deputy Chief of Staff in the Office of the Administrator are my key staff aides for regulation review and coordination. They have final responsibility for reviewing all documents covered by this memorandum before they reach me for my action. Working closely with OPRM and OLEC, they will provide me with assessments of these documents based on my direction and objectives. Either of them has authority to return documents to the Associate Administrators or to the lead program office for changes or additional information.

## 11. Accountability for Meeting Deadlines

Your schedule should allow enough time for Steering Committee and Associate Administrators' reviews. It should also allow time for the OMB review and, after that is complete, at least a full week for my review and signature. The review process is important and it will not be shortened unreasonably or eliminated because a program office has fallen behind schedule. OPRM, OLCE, and AX also have an obligation to respond to program office submissions in a timely manner.

OPRM will prepare quarterly reports on each program office's success in meeting scheduling commitments, completing the necessary analytical work, and raising key issues to senior management for resolution. When an unresolved issue threatens an office's ability to submit a document for review on schedule, the lead office should call on the Chairman of the Steering Committee to help resolve it, either through a Steering Committee meeting or through a decision memorandum submitted to senior management.

\* \* \* \* \*

I would like all of these new procedures to take effect immediately. They will allow us to combine effective central oversight of policy development and still produce regulatory documents within reasonable time periods.



Anne M. Gorsuch



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 7 1982

OFFICE OF  
POLICY AND RESOURCE MANAGEMENT

MEMORANDUM

SUBJECT: Clarification of Procedure for Regional Participation  
on Regulatory Red Borders

FROM: Daniel J. Fiorino, Chief *Daniel J. Fiorino*  
Regulation Management Staff (PM-223)

TO: Regulatory Development Contacts

The purpose of this memorandum is to clarify the procedure for regional participation on regulatory Red Border packages now that the Office of Regional Liaison has been abolished. The Agency typically conducts two kinds of Red Border reviews -- regulations and related actions and delegations and reorganizations. Until recently, the Office of Regional Liaison coordinated regional participation on both Red Border reviews. Now, however, two separate offices are managing these reviews.

I want to clarify the sources of the Red Borders generated at headquarters.

- Regulatory and related Red Borders are coordinated by the Office of Standards and Regulations. Please call Nancy Smagin, Thea McManus or Angela Tyler of my staff to coordinate receipt of verbal or written comments. They can be reached by phone at FTS/382-2731 or 382-2732, and by mail at PM-223.

Delegations and reorganization Red Borders are coordinated by the Office of Management and Organization Systems, and you should send your comments and concurrences on these packages directly to that office. Robert Callens is the contact person in that office. You can reach him by phone at FTS/755-0855, or by mail at PM-213. Any comments or concurrence memos should be sent to him.

We will try to provide the regions with realistic deadlines to respond to regulatory Red Borders that are of concern to you. Some times there are pressures on deadlines forcing shorter review periods than we would want, but we will make as many regional reviews as close to three weeks in length as possible.

I have one suggestion in the interest of efficiency. If you are simply concurring without comment, no formal response is necessary. Once we are past the deadline, and we have not received a response, we will assume your office's concurrence with comment. If, however, you are concurring with comment, nonconcurring, or if you need additional time to respond, please let my staff know as early in the review period as possible and we will make every effort to allow additional time.

Because of the poor quality of magnafax copies, please send a copy of any comments through pouch mail, as well, to serve as the official copy. Please let any concerned parties in your office know of these new handling instructions.

cc: Robert Callem, Office of Management and Organization Systems  
Lewis Crampton  
Allen Jennings



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC 21 1981

OFFICE OF  
POLICY AND RESOURCE MANAGEMENT

MEMORANDUM

SUBJECT: Transfer of Steering Committee and Red Border Activities

FROM: Daniel J. Fiorino, Chief *Daniel J. Fiorino*  
Regulation Management Staff

TO: Regional Regulatory Development Contacts

As you probably know, the Office of Regional Liaison at EPA headquarters has been dissolved. It will be necessary for the Regulation Management Staff in the Office of Standards and Regulations to take responsibility for Steering Committee and Red Border reviews formerly provided by ORL. For now we will perform these functions as the Office of Regional Liaison did.

When we receive regulations for review, we will notify the lead regions to let them know that the package is coming, what the due date will be, and who the contact is. All packages will continue to be mailed to you on the same day we receive them for processing. You should continue to magnafax and then mail your comments on packages. Mail them directly to Angela Tyler, who can be reached at 382-2729. She and I will ensure that your comments are given to the lead program office for consideration. If you have certain problems with a package or need an extension, please contact Angela or me directly.

cc: Allen Jennings  
Lewis Crampton - *DIR - STDS & REGS OFFICE*  
Steering Committee Core Members

## APPENDIX I

### An Approach To Public Participation

#### INTRODUCTION

The following document is a summary of an interview conducted as part of this report with Robert Gunther, Intergovernmental Liaison Office, EPA Region III (Philadelphia). It concerns an experimental public outreach program developed by Region III with assistance from the Regulations Management Staff at OSR. The reader may wish to compare Mr. Gunther's description of the program with the case cited in the introduction to Appendix E in order to better understand both the provisions of the Federal Advisory Committee Act (FACA) and how those requirements were met in designing this public outreach program. These materials are meant to provide a broader explanation for Index V-8.

## An Approach to Public Participation

### SUMMARY OF INTERVIEW OF ROBERT GUNTHER, OIL, EPA REGION III (PHILADELPHIA)

This is a summary of an interview of Mr. Robert Gunther, of the Office of Intergovernmental Liaison in the Regional Administrator's Office of Region III. This interview relates to the work Mr. Gunther and others at Region III have done on an experimental program called "Regional Outreach," which was begun under (and at the request of) Mr. Peter Bibko, the former Regional Administrator of Region III.

"Regional Outreach" while considered a vehicle for "regulatory reform" is in fact is much more closely related to the concept of increasing public participation and feedback in EPA operations.

The program is essentially structured as follows. First, the IGL office has set up a series of informal meetings which are held at various locations in the Region, and not always in State capitals. These meetings last 3-4 hours each and a compact group of meetings are held one after another during the course of two days. Attendance at a meeting is by invitation from the Regional Office. Invitations are sent out to recognized local leaders in the following areas: local government, environmental groups, industry, and media. These individuals are usually given a week to ten days in which to respond to the invitation and submit written forms outlining their recommendations, inquiries and concerns on EPA regulations, guidelines and procedures. Each group is met with separately



and each group meeting is normally limited to 15-20 people. In short, these meetings are both open and controlled. They are open in the sense that members of the public can sit in and observe and that local media is encouraged to cover the meetings. They are controlled in the sense that EPA is meeting with only the leadership of the various groups and the agenda (while largely determined by the interests of the local invitees) is established beforehand and is strictly adhered to. An important element in setting up such meetings has been the use of Congressional Offices to make arrangements and issue invitations.

As noted, invitees' comments are usually of two types: recommendations and requests for information. Requests for information are forwarded to the appropriate office and a commitment is made to get an almost immediate response. Recommendations are of course already written down, but may be expanded on during the course of meetings. The Regional staff collects these, reviews them, and sends copies to Regional and HQ offices. Recommendations are to be considered within a certain period of time and written responses answering the concern and stating what EPA intends to do, and why, are sent back to the original maker of the recommendation. Such feedback is of undoubted importance because it brings matters to the attention of EPA offices and results in favorable publicity and increased Congressional support.

The "Regional Outreach" program also provides Regional program managers with personal exposure to public environmental concerns, which can heighten sensitivity to regulatory issues, as well as others. Normally, the meetings are chaired by the ARA or DRA. An effort is made to

have the DDs or Branch Chiefs from Air, Waste, Water and Emergency Services present during the meetings. A representative from HQ OSR is also present at each meeting. In Mr. Gunther's opinion, this exposure to local public opinion leaders has already had significant positive impact at least as far down in the organization as the Branch Chief level, on the attention given to local and State concerns, the willingness to make changes in the operation of programs, and general responsiveness. These changes may be reinforced by the desire of environmental groups and industry, following such meetings, to establish a dialog on specific issues with EPA offices.

The public response to this initiative has also been positive. Media coverage, both print and electronic, has been excellent and the publicity favorable. Most local leaders have expressed an interest in scheduling repeat meetings, perhaps on an annual basis. In terms of the type of information received, Mr. Gunther noted that industry was normally the group most interested in specific regulatory matters (and usually in already-existing regulations). Generally, State Implementation Plans, the EPA's oversight role, time constraints on the public comment period following publication of "Federal Register" notices, lack of EPA response to serious local inquiries, and similar concerns received the most attention from all three basic groups.

## APPENDIX J

### List Of Persons Interviewed For Report On EPA Rulemaking

#### STATE VIEWPOINTS

Anthony D. Cortese, Commissioner, State of Massachusetts Department of Environmental Quality & Engineering

Reginald LaRosa, Director, Water Division, State of Vermont Agency for Environmental Conservation

David Fierra, Former Deputy Commissioner, State of Massachusetts Department of Environmental Quality & Engineering, now Acting Division Director for Water, Region I

#### EPA HQ OFFICE OF STANDARDS & REGULATIONS

C. Ronald Smith, Director, OSR

Phil Schwartz, Regulations Management Staff, OSR

Odelia Funke, Regulations Management Staff, OSR

Thea McManus, Regulations Management Staff, OSR

Angela Tyler, Regulations Management Staff, OSR

#### EPA REGIONS II THROUGH X

Barbara Pastalove, Planning & Evaluation Branch under the ARA for Policy & Management, Region II (New York)

Eileen Burroughs, Analysis & Services Section under the ARA for Policy & Management, Region III (Philadelphia)

Robert Gunther, Intergovernmental Liaison Office, Region III (Philadelphia)

Tom Niesmith, Policy & Program Evaluation Branch under the ARA for Policy & Management, Region IV (Atlanta)

Michele Rocawich, Records Management Section of the Planning & Management Division, Region V (Chicago)

Melvin Warnock, Resource Management Branch under the ARA for Management,  
Region VI (Dallas)

Angela Romano, Administrative Services Branch under the ARA for Policy  
& Management, Region VII (Kansas City)

Terry Anderson, Management Systems & Analysis Branch under the ARA for  
Policy & Management, Region VIII (Denver)

Joyce Gamble, Management Systems & Evaluation Branch of the Office of  
Policy, Technical and Resource Management, Region IX  
(San Francisco)

Martha Burke, Resource Management Branch of the Management Division,  
Region X (Seattle)

Lori Cohen, Resource Management Branch of the Management Division,  
Region X (Seattle)

#### REGION I

Paul Keough, Former Acting Regional Administrator, Acting Deputy Regional  
Administrator

Louis Gitto, Director, Administrative Services Division

Robert Martin, Regional Counsel

David Fierra, Acting Director, Water Division

Merrill Hohman, Director, Waste Management Division

Harley Laing, Director, Air Division

Lester Sutton, Former Regional Administrator

Elizabeth Higgins, Specialist, Intergovernmental Liaison Office

Pamela Hill, Attorney, Region Counsel's Office

Ira Leighton, Section Chief for RCRA: NH, VT, MA, Hazardous Waste Division

Nancy Lewis, Regional Regulatory Contact, Planning & Evaluation Branch  
of the Administrative Services Division

Kevin McSweeney, Branch Chief, Water Quality, Water Division

Linda Murphy, Branch Chief, State Air Programs, Air Division

Marcia Spink, Environmental Protection Specialist, Air Division

## GLOSSARY OF TERMS

ADVANCE NOTICE OF PROPOSED RULEMAKING (ANPRM):	The ANPRM is the first public notice in the "Federal Register" which EPA gives after initiating development of a regulation. An ANPRM is usually, but not necessarily, prepared and published. It is short and conceptual and usually appears within 10 months of the start of rulemaking, i.e. the SAR.
ADVISORY BOARDS (SCIENTIFIC ADVISORY BOARD, etc.):	Several review panels composed of scientists from outside EPA who selectively review proposed regulations and studies supporting them for scientific accuracy and validity.
CLOSURE MEMO:	A memorandum prepared by OPRM's Office of Standards and Regulations which summarizes the results of the Steering Committee meeting, any comments of non-attending Regions, the Steering Committee's disposition of these and any special requests for participation on "Red Border" Review.
DECISION PACKAGE:	The draft of a development plan, proposed or final rule, and support documents, which are prepared by the Work Group and the HQ Lead Program Office for internal EPA review.
DEVELOPMENT PLAN (DP):	A document which must be prepared by the Lead Program Office within 60 days of the approval of the SAR. The plan briefly sets out the objectives, analytic framework, resource needs, budget, and schedule for the rule to be developed.
DEVELOPMENT PLAN PHASE:	The second phase in the development of an EPA regulation. It is preceded by the Internal Notification Phase and followed by the Proposal Phase. During the Development Plan Phase the Work Group and HQ Lead Program Office outline the concept and scope of the regulatory proposal and budget its development.
DIVISIONS:	Those Offices within a Region which administer and implement the programs of a given media area. Divisions may also occasionally be referred to as Regional Media Offices or Regional Program Offices.
EXTERNAL GROUPS:	Those organizations and/or individuals outside of EPA, such as: Congressional Committees, other Federal Agencies and Offices, the States, State Officials, Associations of State Officials, industry or business associations and representatives, environmental groups, local government, the media, members of the public, etc.
FEDERAL ADVISORY COMMITTEE ACT (FACA):	5 U.S.C. App. I. A 1972 Act of Congress, as amended in 1976 and 1980, requiring that various committees, boards, councils, commissions and similar groups which meet with or advise Federal Agencies or Officials (and are composed

wholly or in part of non-Federal employees) be formally chartered, keep records, and operate in a manner open to the general public.

FINAL NOTICE OF  
RULEMAKING  
(FNR):

The FNR must be published in the "Federal Register" when EPA completes the development of a regulation. It sets out the full text of the final version of the regulation. It normally appears within 52 months of the start of rulemaking, i.e. the SAR. The effective date is specified in the FNR.

FINAL RULE PHASE:

The fourth and final phase in the development of an EPA regulation. It follows the Internal Notification, Development Plan and Proposal Phases. During the Final Rule Phase, public comment is considered, the regulation is revised and is then published in the "Federal Register" as a final rule and promulgated.

"FORMAL" INPUT,  
CONTACT, REVIEW  
OR PROCESS:

Those Regional regulatory activities and relations with EPA HQ, especially the Office of Standards and Regulations within OPRM, which occur within the established system of and standard operating procedures for Regional participation in the development and review of EPA regulations. In particular, those Regional regulatory activities related to membership on a Work Group, and the commenting process of Steering Committee or "Red Border" Reviews.

HQ LEAD PROGRAM  
OFFICE:

That Program Office at EPA HQ which undertakes to develop or change a regulation. The work of planning, drafting, budgeting and releasing a proposed regulation is done by, managed by, or contracted for by the HQ Lead Program Office. The Lead Office may also convene and manage a Work Group, which helps prepare the regulatory package.

HQ PROGRAM OFFICES:

The Office for Water (OW), the Office for Solid Waste and Emergency Response (OSWER), the Office for Air, Noise and Radiation (OANR), and the Office for Pesticides and Toxic Substances (OPTS) constitute the four Program Offices at EPA HQ. The phrase "Other HQ Program Offices" refers to those Program Offices which do not serve as the Lead Office for the development of a given regulation.

"INFORMAL" INPUT,  
CONTACT, REVIEW OR  
PROCESS:

Those Regional regulatory activities and relations with EPA HQ or other Regions or the States which occur outside of the "formal" processes and may take place at any time during the development and review of a proposed regulation. In particular, those direct staff-level Regional regulatory relations between HQ Program Offices and Regional Divisions or between the Divisions of two or more Regions, or between Regional Divisions and State Environmental Agencies.

INTERNAL NOTIFICA-  
TION PHASE:

The first phase in the development of an EPA regulation. It is followed by the Development Plan, Proposal and Final

Rule Phases. During the Internal Notification Phase the Start Action Request (SAR) is filed and approved and a Work Group is formed.

- "LEAD REGION": A phrase describing several loosely-defined concepts, all of which involve a Region which is particularly interested in or affected by a proposed regulation taking part in the development of that regulation and representing other Regions' viewpoints with respect to that regulation.
- "MAJOR" REGULATION: The standard definition of this term derives from Executive Order #12291. It refers to a rule which will have an economic impact of \$100 million or more.
- "MINOR" REGULATION: This is a term which originated in EPA and is used only with respect to EPA regulations. The standard definition is a regulation which is neither "major" nor "significant". Typically, such regulations will involve technical modifications to existing regulations that have negligible policy implications; or procedural actions of no interest to the Regions or Other HQ Program Offices.
- "NOMINAL INVOLVE-MENT" REGULATIONS LIST (NIL): A list of those EPA regulations which are of less than considerable interest to Region I. The Region will make no special efforts to influence the development of these regulations. This term originates with this report.
- "NON-MAJOR" REGULATION: The standard definition of this term derives from Executive Order #12291. It refers to a rule which will have less than \$100 million in economic impact.
- NOTICE OF PROPOSED RULEMAKING (NPRM): The NPRM is mandatory and either the first or second public notice EPA gives of a developing regulations (depending whether or not an ANPRM was published). The NPRM is usually quite detailed, set out the full text of the proposed rule and its background and solicits public comment. It must be published in the "Federal Register" and usually appears there within 28 months of the start of rulemaking, i.e. the Start Action Request (SAR).
- OLEC: Office of Legal and Enforcement Counsel. Formerly one of the two Associate Administratorships at EPA HQ. The reorganization currently underway has eliminated OLEC and replaced it with two offices: General Counsel and "Enforcement Counsel". The latter of these two has yet to be officially titled, though the distinction is clear. Current information indicates that both Counsel will assume the duties of the AA of OLEC with respect to "Red Border" Review, so that three approvals, (AA of OPRM, General Counsel, and "Enforcement Counsel") rather than two, (AA of OPRM and AA of OLEC) will be required.
- OMB: Office of Management and Budget. A Cabinet-level office within the Executive Office of the President.

OPRM: Office for Policy and Resource Management. One of the two Associate Administratorships at EPA HQ. The parent office of the Office of Standards and Regulations (OSR).

OSR: Office of Standards and Regulations. An office within OPRM. OSR coordinates the regulatory development and review processes at EPA and handles the OMB review process for EPA regulations.

PROJECT OFFICER: The staff member from a HQ Lead Program Office who is in charge of the development of a given regulation.

PROPOSAL PHASE: The third phase in the development of an EPA regulation. It is preceded by the Internal Notification and Development Plan Phases and is followed by the Final Rule Phase. During the Proposal Phase data is gathered and studied, the regulation is drafted and reviewed and is then published in the "Federal Register" as a proposed regulation.

PRS: "Priority Regulation System." This term originates with this report. As used herein, it refers to a method by which a Region selects certain regulations for special attention.

"RED BORDER" REVIEW: A policy review of a proposed regulation by senior-level management. Only the AA's of OPRM and OLEC must give their approval to a proposed regulation during "Red Border" Review. Typically, they are the only senior managers who participate, but others may be part of the deliberations. All other Offices and the Regions must have requested participation during the course of Steering Committee deliberations. As indicated above with the Glossary entry for "OLEC", that Office has now been abolished. It will probably be replaced with two offices: General Counsel and "Enforcement Counsel," though the latter has yet to be officially titled. Current information indicates that both Counsel will assume the "Red Border" Review duties of the former AA of OLEC. Thus, three approvals, (AA of OPRM, General Counsel and "Enforcement Counsel") rather than two, (AA of OPRM and AA of OLEC) will now be required during "Red Border" Review.

REGIONAL PRIORITY LIST (RPL): The RPL is an annual survey of the Regions undertaken by the EPA HQ Office of Standards & Regulations (OSR) in OPRM. OSR sends a complete list of all EPA regulations currently under development and requests that the Regions complete and return a form indicating which regulations are of priority interest to each of them. OSR compiles the results and informs the Regions as to which Regions are interested in which regulations. The RPL may also be used by OSR to provide a Region with advance notice of Start Action Requests (SARs) SARs for those for those regulations in an area of Regional interest.



REGIONAL REGULATORY CONTACT (RRC): The individual in each of the ten EPA Regions who is assigned to receive regulatory packages from OSR and who coordinates both formal Regional reviews of a proposed regulation and formal Regional regulatory communications with EPA HQ, especially the Office of Standards and Regulations (OSR) in OPRM.

REGULATORY PACKAGES: The interim drafts of a regulation (together with supporting studies and documentation) which the HQ Lead Program Office submits for Steering Committee, "Red Border" and other reviews. Broadly defined, this term includes a Development Plan and its attachments.

RMS: Regulations Management Staff. Those individuals within OSR who coordinate regulatory development and review, OMB reviews, and Regional participation in the processes.

START ACTION REQUEST (SAR): The document a HQ Lead Program Office must file with the Office of Standards and Regulations (OSR) in OPRM and which must be approved by the AA of OPRM in order to begin the development of most EPA regulations.

"SIGNIFICANT" REGULATION: This is a term which originated in EPA and is used only with respect to EPA regulations. A proposed regulation which raises issues that fall under the scientific or technical expertise of two or more Offices in EPA; or affects the regulations or program administration of another Program Office or Region; or makes policy choices that have national environmental, economic or resource implications.

STEERING COMMITTEE (SC): The Steering Committee meeting is THE point at which comments by all EPA Offices and Regions are considered. The SC is composed of one representative each from: HQ Program, Administrative, and R&D Offices; OPRM; OLEC; and any Regions which wish to participate.

STEERING COMMITTEE "CONSENT CALENDAR": An alternative method of obtaining SC approval. The "Consent Calendar" may be used only if: the rule is non-major; there are no controversial issues; and the entire Work Group agrees to this review option. "Consent Calendar" regulatory packages are distributed and approval is obtained by the mere passage of time (typically two weeks) without objection.

"TOP PRIORITY" REGULATIONS LIST (TPL): A list of those EPA regulations which are of great interest to Region I and the development of which the Region will attempt to influence through formal and informal input. This term originates with this report.

WORK GROUP: An ongoing group formed by the HQ Lead Program Office shortly after approval of the Start Action Request (SAR), whose members may be drawn from the staffs of the HQ Lead Program Office, Other HQ Program Offices, EPA Regional

Offices and State Environmental Agencies. A Work Group is responsible for drafting and developing a given regulation.