

directed to the Administrator, rather than the Environmental Appeals Board, will not be considered. This delegation of authority to the Environmental Appeals Board does not preclude the Environmental Appeals Board from referring an appeal or motion filed under this part to the Administrator for decision when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all parties shall be so notified and the rules in this part referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator. If a case or motion is referred to the Administrator by the Environmental Appeals Board, the Administrator may consult with any EPA employee concerning the matter, provided such consultation does not violate the *ex parte* contacts restrictions set forth in §§ 27.14 and 27.15 of this part.

[57 FR 5328, Feb. 13, 1992]

## **PART 29—INTERGOVERNMENTAL REVIEW OF ENVIRONMENTAL PROTECTION AGENCY PROGRAMS AND ACTIVITIES**

### **Sec.**

- 29.1 What is the purpose of these regulations?
- 29.2 What definitions apply to these regulations?
- 29.3 What programs and activities of the Environmental Protection Agency are subject to these regulations?
- 29.4 What are the Administrator's general responsibilities under the Order?
- 29.5 What is the Administrator's obligation with respect to Federal interagency coordination?
- 29.6 What procedures apply to the selection of programs and activities under these regulations?
- 29.7 How does the Administrator communicate with State and local officials concerning EPA programs and activities?
- 29.8 How does the Administrator provide States an opportunity to comment on proposed Federal financial assistance and direct Federal development?
- 29.9 How does the Administrator receive and respond to comments?
- 29.10 How does the Administrator make efforts to accommodate intergovernmental concerns?
- 29.11 What are the Administrator's obligations in interstate situations?

29.12 How may a State simplify, consolidate, or substitute federally required State plans?

29.13 May the Administrator waive any provision of these regulations?

**AUTHORITY:** E.O. 12372, July 14, 1982 (47 FR 30959), as amended Apr. 8, 1983 (48 FR 15887); sec. 401 of the Intergovernmental Cooperation Act of 1968 as amended (31 U.S.C. 6506); sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

**SOURCE:** 48 FR 29300, June 24, 1983, unless otherwise noted.

### **§ 29.1 What is the purpose of these regulations?**

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982, and amended, on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, as amended and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened federalism by relying on State processes and on State, areawide, regional and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to aid the internal management of the Environmental Protection Agency (EPA) and are not intended to create any right or benefit enforceable at law by a party against EPA or its officers.

### **§ 29.2 What definitions apply to these regulations?**

*Administrator* means the Administrator of the U.S. Environmental Protection Agency or an official or employee of the Agency acting for the Administrator under a delegation of authority.

*Agency* means the U.S. Environmental Protection Agency (EPA). *Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

## Environmental Protection Agency

## § 29.6

*States* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

### § 29.3 What programs and activities of the Environmental Protection Agency are subject to these regulations?

The Administrator publishes in the FEDERAL REGISTER a list of the EPA programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

### § 29.4 What are the Administrator's general responsibilities under the Order?

(a) The Administrator provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, the EPA.

(b) If a State adopts a process under the Order to review and coordinate proposed Federal financial assistance and direct Federal development, the Administrator to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Allows the States to simplify and consolidate existing federally required State plan submissions;

(5) Where State planning and budgeting systems are sufficient and where permitted by law, encourages the substitution of State plans for federally required State plans;

(6) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(7) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

### § 29.5 What is the Administrator's obligation with respect to Federal interagency coordination?

The Administrator, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and EPA regarding programs and activities covered under these regulations.

### § 29.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 29.3 of this part for intergovernmental review under these regulations. Each State, before selecting programs and activities, shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Administrator of EPA programs and activities selected for that process.

(c) A State may notify the Administrator of changes in its selections at any time. For each change, the State shall submit an assurance to the Administrator that the State has consulted with local elected officials regarding the change. EPA may establish deadlines by which States are required to inform the Administrator of changes in their program selections.

(d) The Administrator uses a State's process as soon as feasible, depending on individual programs and activities, after the Administrator is notified of its selections.

## § 29.7

### **§ 29.7 How does the Administrator communicate with State and local officials concerning the EPA programs and activities?**

(a) For those programs and activities covered by a State process under § 29.6, the Administrator, to the extent permitted by law:

(1) Uses the State process to determine views of State and local elected officials; and

(2) Communicates with State and local elected officials, through the State process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The Administrator provides notice of proposed Federal financial assistance or direct Federal development to directly affected State, areawide, regional, and local entities in a State if:

(1) The State has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the State process.

This notice may be published in the FEDERAL REGISTER or issued by other means which EPA, in its discretion deems appropriate.

### **§ 29.8 How does the Administrator provide States an opportunity to comment on proposed Federal financial assistance and direct Federal development?**

(a) Except in unusual circumstances, the Administrator gives State processes or directly affected State, areawide, regional and local officials and entities:

(1) At least 30 days from the date established by the Administrator to comment on proposed Federal financial assistance in the form of noncompeting continuation awards; and

(2) At least 60 days from the date established by the Administrator to comment on proposed direct Federal development or Federal financial assistance, other than noncompeting continuation awards.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Environmental Protection Agency have been delegated.

(c) Applicants for programs and activities subject to section 204 of the

## 40 CFR Ch. I (7–1–23 Edition)

Demonstration Cities and Metropolitan Development Act shall allow areawide agencies a 60-day opportunity for review and comment.

### **§ 29.9 How does the Administrator receive and respond to comments?**

(a) The Administrator follows the procedures in § 29.10 if:

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies, and

(2) That office or official transmits a State process recommendation for a program selected under § 29.6.

(b) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation. However, if a State process recommendation is transmitted by a single point of contact, all comments from State, area-wide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, the State, areawide, regional and local officials and entities may submit comments directly either to the applicant or to EPA.

(d) If a program or activity is not selected for a State process, the State, areawide, regional and local officials and entities may submit comments either directly to the applicant or to EPA. In addition, if a State process recommendation for a nonselected program or activity is transmitted to EPA by the single point of contact, the Administrator follows the procedures of § 29.10 of this part.

(e) The Administrator *considers* comments which do not constitute a State process recommendation submitted under these regulations and for which the Administrator is not required to apply the procedures of § 29.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the Agency by a commenting party.

**§ 29.10 How does the Administrator make efforts to accommodate inter-governmental concerns?**

(a) If a State process provides a State process recommendation to the Agency through the State's single point of contact, the Administrator either:

- (1) Accepts the recommendation;
- (2) reaches a mutually agreeable solution with the State process; or
- (3) Provides the single point of contact with such written explanation of the decision, as the Administrator, in his or her discretion, deems appropriate. The Administrator may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Administrator informs the single point of contact that:

- (1) EPA will not implement its decision for at least ten days after the single point of contact receives the explanation; or
- (2) The Administrator has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.
- (c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

**§ 29.11 What are the Administrator's obligations in interstate situations?**

(a) The Administrator is responsible for:

- (1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;
- (2) Notifying appropriate officials and entities in States which have adopted a process and selected an EPA program or activity.
- (3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities

in those States that do not adopt a process under the Order or do not select an EPA program or activity;

(4) Responding in accordance with § 29.10 of this part to a recommendation received from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with EPA were delegated.

(b) The Administrator uses the procedures in § 29.10 if a State process provides a State process recommendation to the Agency through a single point of contact.

**§ 29.12 How may a State simplify, consolidate, or substitute federally required State plans?**

(a) As used in this section:

- (1) *Simplify* means that a State may develop its own format, choose its own submission date, and select the planning period for a State plan.
- (2) *Consolidate* means that a State may meet statutory and regulatory requirements by combining two or more plans into one document and that the State can select the format, submission date, and planning period for the consolidated plan.
- (3) *Substitute* means that a State may use a plan or other document that it has developed for its own purposes to meet Federal requirements.

(b) If not inconsistent with law, a State may decide to try to simplify, consolidate, or substitute federally required State plans without prior approval by the Administrator.

(c) The Administrator reviews each State plan that a State has simplified, consolidated, or substituted and accepts the plan only if its contents meet Federal requirements.

**§ 29.13 May the Administrator waive any provision of these regulations?**

In an emergency, the Administrator may waive any provision of these regulations.

**PARTS 30-31 [RESERVED]**