

CHAPTER 14 - EPA RULEMAKING DOCKET POLICY

1. PURPOSE. This policy establishes the principles and defines the roles and responsibilities that govern the management of EPA rulemaking dockets.
2. SCOPE AND APPLICABILITY. This policy applies to all EPA organizations and their employees and to EPA contract personnel who are involved in the collection, processing, dissemination, use, storage and/or disposition of EPA rulemaking docket information. It applies to automated and manual rulemaking docket data in all subject areas, except data restricted by national security, Confidential Business Information privileges or Privacy Act considerations.
3. BACKGROUND.
 - a. EPA is an information intensive agency. The Agency's extensive reliance on data as a basis for decision making stems directly from its mission and the requirements of its regulatory and monitoring activities.
 - b. Under 44 U.S.C. 3101 the head of each Federal agency "shall make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the Agency..."
 - c. For substantive rulemaking, agencies are required to develop a "rulemaking record" or "administrative record" that reflects both public participation in the rulemaking procedures and support the factual conclusions upon which the rule is based (5 U.S.C. 553, Administrative Procedures Act and Executive Order 12,291 on Federal Regulation).
 - d. The information that supports a proposed or final rule must be made available to the public concurrently with the publication of that rule.
 - e. Several EPA programs are required to maintain a rulemaking record by statute, such as the Clean Air Act, or by regulation. Within EPA such a record is commonly called a rulemaking docket. Specific authorities for major dockets are provided in Access EPA Major EPA Dockets.

- f. EPA strives to provide the public with information necessary to make comments for consideration in the EPA rulemaking process. EPA programs involved in regulatory development may find that establishing a rulemaking docket is an effective way to fulfill requirements for developing an administrative record and providing public access, even if the creation of a rulemaking docket is not required by a specific statute or regulation.
- g. A rulemaking docket is a set of documents collected and maintained specifically to provide EPA regulations development staff and the public with ready access to copies of the Agency records that support the basis for EPA rulemaking actions. EPA Program and Regional offices contribute to the development and operation of EPA dockets.
- h. EPA has major docket facilities in Headquarters. In addition to these major dockets, there are a number of smaller dockets located in Headquarters and Regional offices.
- i. A well-managed system of dockets is essential to the success of the Agency's mission. Operation of the dockets should be consistent to the extent possible throughout the Docket Network to facilitate ease of access for the public.
- j. Dockets represent an important information repository, the integrity of which must be protected and maintained. File integrity is particularly important since incompleteness could cause delays in promulgating a final rule and possibly result in legal action against Agency.
- k. Each rulemaking docket generally includes, but is not limited to:
 - (1) A copy of each proposed rule, final rule or other rulemaking notice (e.g., Advance Notice of Proposed Rulemaking) for a regulatory action signed by the Administrator (or Assistant Administrator or his/her designee in the case of a supplemental notice).
 - (2) All documents cited in Federal Register notices of rulemaking activities.
 - (3) Information considered by the Agency in drafting a

proposed or final rule. This includes data, analyses, reports, and minutes; summaries and transcripts of public meetings and hearings; records of ex parte communications including telephone calls, memoranda and letters; and public statements made by EPA employees in their official capacities.

- (4) Public comments received by the Agency in response to Federal Register notices of proposed rulemaking in which the Agency has requested written comments.
- (5) Comments from government agencies.
- (6) Written comments received by the Office of Management and Budget (OMB) from outside parties on Agency rulemaking actions. Procedures have been established with OMB to ensure that such comments are provided to EPA through the Office of General Counsel and forwarded to the program office for inclusion in the rulemaking dockets.
- (7) Written summaries of communications between EPA staff and OMB or other persons outside EPA regarding significant new factual data or information affecting a rulemaking (including meetings with interest groups).

4. AUTHORITIES.

- a. Executive Order 12,291
- b. The Paperwork Reduction Act of 1980 (P.L. 96-511), as amended.
- c. 5 U.S.C. 552, Freedom of Information Act as amended.
- d. 5 U.S.C. 553, Rulemaking
- e. 44 U.S.C. 3101, Records management by agency heads; general duties
- f. 40 CFR 2, Public Information

5. POLICY. It is EPA policy that:

- a. Rulemaking dockets shall provide complete and accurate documentation of rulemaking activity. This is most important since the information in the docket is used

by the public to comment on proposed rules.

- b. Rulemaking dockets shall contain duplicate copies of the original files. The original files are retained and managed by the responsible Program Office.
- c. Docket materials shall be safeguarded and adequately protected to ensure file integrity.
- d. Information contained in EPA dockets shall be organized and indexed in a manner that facilitates ready access and retrieval.
- e. Information protected by Confidential Business Information (CBI) considerations, national security or the Privacy Act cannot be physically placed in the rulemaking docket but should be incorporated by reference within the docket files.
- f. Docket records shall be managed in the most efficient and cost-effective manner, utilizing sound records management principles and practices.
- g. Requests for information shall be handled in a responsive, timely manner.
- h. The docket should not be made available to the public earlier than on the date the Administrator signs the proposed rule.
- i. Agency docket facilities shall operate during normal business hours and shall be situated in locations that are easily accessible to the public.
- j. Agency docket facilities shall follow a uniform fee schedule as is prescribed in 40 CFR Part 2.120, Fees; Payment; Waiver.

6. RESPONSIBILITIES.

- a. The Office of Information Resources Management shall:
 - (1) Provide effective leadership in developing and promoting docket management policies and coordinating activities of the EPA Docket Network, ("Access EPA Major EPA Dockets).
 - (2) Develop standards and provide advice, guidance and technical assistance for managing the Agency's rulemaking dockets.

- (3) Evaluate the effectiveness of the Agency's dockets by conducting periodic surveys and studies as needed.
 - (4) Issue records management policy, directives and instructional materials governing the organization, maintenance and disposition of all records in Agency dockets.
 - (5) Develop standards and provide technical assistance for conversion of manual, paper-based docket systems to microform or electronic media.
 - (6) Provide advice in developing a uniform indexing system for Agency dockets and maintaining docket integrity.
 - (7) Coordinate issues relating to the location of Agency rulemaking dockets.
 - (8) Establish uniform procedures to guide the operation of Agency rulemaking dockets.
- b. The Office of General Counsel shall provide legal guidance for all Agency regulatory activities and ensure that the legal requirements for Agency rulemaking dockets are met.
- c. Assistant, Associate and Regional Administrators; the General Counsel; the Inspector General; and Heads of Staff Offices reporting to the Administrator shall:
- (1) Ensure that the rulemaking dockets within their organizations conform to Agency standards and policy.
 - (2) Furnish the docket program managed by their organizations with complete and accurate rulemaking information on a timely basis.
 - (3) Ensure that each docket program within their organization has a Rulemaking Docket Manager who has overall responsibility for:
 - (a) Ensuring the information in their docket is organized in accordance with EPA's Uniform Rulemaking Docket Manual.
 - (b) Ensuring that the information in their dockets is complete, legible, well-organized and readily available for access and

dissemination.

- (c) Ensuring that docket materials are stored in a secure manner and that adequate measures are taken to maintain and verify the integrity and completeness of the file.
- (d) Coordinating with Program or Regional staff to ensure the docket is current, accurate, and complete and that all inactive material is removed in accordance with the Agency's records management disposition schedules.
- (e) Ensuring that clients are able to obtain copies of materials.

7. DEFINITIONS.

- a. The "Rulemaking Docket" is a collection of documents that is the basis for EPA rulemaking actions. Some statutes refer to a "rulemaking "record." Those same terms are often used to describe the collection of documents available to the public which reflect the Agency's consideration and promulgation of a rule, or "public docket." Since an "administrative record" is not usually formally identified until a challenge to an Agency rule, the "public docket" and the "record" will not necessarily be the same.
- b. The "Administrative Record" is a set of documents that is the basis for any Federal agency administrative action, including, but not limited to, rulemaking.

Under the Administrative Procedures Act (APA), any judicial review of a final agency action is based on the administrative record. Administrative actions that are not rules may include denials of citizens' petitions, individual permit decisions, and exemption decisions. These actions are typically based in an administrative record.

8. PROCEDURES AND GUIDELINES.

- a. Guidelines for docket management are found in EPA's "Uniform Rulemaking Docket Manual." Copies are available from the EPA Distribution Center, PM-215.
- b. Procedures for processing Freedom of Information Act (FOIA) requests are found in the EPA's "Freedom of

Information Manual." Copies are available through the EPA Distribution Center, PM-215.

- c. Procedures governing records management are found in the "EPA Records Management Manual." Copies of this manual are available from the Agency's Distribution Center, PM-215. Agency Record Control Schedules are available from the Office of Information Resources Management's Information Management and Services Division, PM-211D.
- d. Procedures for informal and formal rulemaking can be found in the "Administrative Procedures Act".

