

**EPN Comments on Implementation of Section 2e of Executive Order
“Affirmative Promotion of Inclusive Regulatory Policy and Public Participation”**

Docket No.: OMB-2022-0011

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Founded in 2017, the [Environmental Protection Network](https://www.epn.org/) (EPN) harnesses the expertise of more than 550 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise.

EPN is pleased that OMB recognizes the importance of proactively facilitating public participation in rulemaking. In the past the burden has largely been on those seeking to comment, which benefits well-established players and is challenging for less experienced groups such as smaller organizations and communities.

OMB’s proposal makes many valuable recommendations, which EPN endorses. The proposal does a good job of identifying the main elements of public participation needed to improve public engagement. The Implementation Memo covers key elements of any effective public participation plan: early engagement (actually required for tribal communities under tribal consultation policies); recognition that communities experience different and varied barriers to engagement, including language, lack of familiarity with technical and legal language, geographic accessibility, challenging work schedules that make it difficult to attend meetings, and the need for multi-pronged approaches to engage stakeholders. The steps recommended in the memo can do much to make participation more inclusive and democratic, improving the final results.

However, EPN emphasizes that it is important not only to adopt good policies, but to support agencies—on whom most of the burden of implementation will fall—in carrying out those policies. Agencies will require staff and resources to do this work; without those resources, the good intentions of the proposal will not be achieved. the agencies. To our knowledge, EPA has no field staff assigned to do regulatory public engagement outside of headquarters. Even at headquarters, resources are limited. The Office of Public Engagement is small and has historically engaged primarily with major national stakeholder groups. For major regulations, headquarters will schedule public hearings generally in about four locations. These formal opportunities do not provide opportunities for impacted communities to have a dialogue with EPA or engage in any discussions. Communities in the rest of the country are left out of the process except through written comments.

In the regions, which is where much engagement needs to take place, there are very few staff trained to do this work. The Superfund Community Involvement Coordinators are assigned to Superfund sites and most have limited training on and experience with the regulatory process. There is only one Tribal Coordinator per region, which presents a huge challenge especially in geographically large regions. In addition, there are limited funds available to translate materials and if EPA staff do not have translating (written or verbal) in their job descriptions they may be prohibited from doing translation work even if they are bilingual.

Agencies will need not only funding for staff, but the ability to hire people with the skills required to carry out effective public participation. This proposal highlights the importance of actively managing public

participation as a distinct skill both at headquarters and in the regions. It overlaps with, but is different from, policy development on environmental justice, or technical assistance for communities. It is necessary to recognize and seek out staff with those skills, not simply treat it as an additional job for technical rule writers or communications staff.

Aside from the critical issue of resources, this should be used as an opportunity to explore the use of innovative and creative ways of engaging the public. Some of these are already suggested in the Implementation Memo. While the formal notice-and-comments structure remains in place, agencies can find ways to supplement it with more meaningful and active dialogue, especially using new online tools. Particularly in the early stages of rule development and prior to formal proposal, agencies can create an efficient and productive engagement process — for example, focusing on the key issues that will shape the rule and facilitating an exchange of views among commenters rather than simply accepting dueling policy positions.