

§ 25.3

40 CFR Ch. I (7-1-04 Edition)

(Public Participation in Water Pollution Control) and 249 (Public Participation in Solid Waste Management) will no longer appear in the Code of Federal Regulations; however, they will remain applicable, in uncodified form, to grants awarded prior to the effective date of this part and to all other ongoing activities.

§ 25.3 Policy and objectives.

(a) EPA, State, interstate, and substate agencies carrying out activities described in § 25.2(a) shall provide for, encourage, and assist the participation of the public. The term, “the public” in the broadest sense means the people as a whole, the general populace. There are a number of identifiable “segments of the public” which may have a particular interest in a given program or decision. Interested and affected segments of the public may be affected directly by a decision, either beneficially or adversely; they may be affected indirectly; or they may have some other concern about the decision. In addition to private citizens, the public may include, among others, representatives of consumer, environmental, and minority associations; trade, industrial, agricultural, and labor organizations; public health, scientific, and professional societies; civic associations; public officials; and governmental and educational associations.

(b) Public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views. Public participation includes providing access to the decision-making process, seeking input from and conducting dialogue with the public, assimilating public viewpoints and preferences, and demonstrating that those viewpoints and preferences have been considered by the decision-making official. Disagreement on significant issues is to be expected among government agencies and the diverse groups interested in and affected by public policy decisions. Public agencies should encourage full presentation of issues at an early stage so that they can be resolved and timely decisions can be made. In the course of this proc-

ess, responsible officials should make special efforts to encourage and assist participation by citizens representing themselves and by others whose resources and access to decision-making may be relatively limited.

(c) The following are the objectives of EPA, State, interstate, and substate agencies in carrying out activities covered by this part:

(1) To assure that the public has the opportunity to understand official programs and proposed actions, and that the government fully considers the public’s concerns;

(2) To assure that the government does not make any significant decision on any activity covered by this part without consulting interested and affected segments of the public;

(3) To assure that government action is as responsive as possible to public concerns;

(4) To encourage public involvement in implementing environmental laws;

(5) To keep the public informed about significant issues and proposed project or program changes as they arise;

(6) To foster a spirit of openness and mutual trust among EPA, States, substate agencies and the public; and

(7) To use all feasible means to create opportunities for public participation, and to stimulate and support participation.

§ 25.4 Information, notification, and consultation responsibilities.

(a) *General.* EPA, State, interstate, and substate agencies shall conduct a continuing program for public information and participation in the development and implementation of activities covered by this part. This program shall meet the following requirements:

(b) *Information and assistance requirements.* (1) Providing information to the public is a necessary prerequisite to meaningful, active public involvement. Agencies shall design informational activities to encourage and facilitate the public’s participation in all significant decisions covered by § 25.2(a), particularly where alternative courses of action are proposed.

(2) Each agency shall provide the public with continuing policy, program, and technical information and assistance beginning at the earliest

practicable time. Informational materials shall highlight significant issues that will be the subject of decision-making. Whenever possible, consistent with applicable statutory requirements, the social, economic, and environmental consequences of proposed decisions shall be clearly stated in such material. Each agency shall identify segments of the public likely to be affected by agency decisions and should consider targeting informational materials toward them (in addition to the materials directed toward the general public). Lengthy documents and complex technical materials that relate to significant decisions should be summarized for public and media uses. Fact sheets, news releases, newsletters, and other similar publications may be used to provide notice that materials are available and to facilitate public understanding of more complex documents, but shall not be a substitute for public access to the full documents.

(3) Each agency shall provide one or more central collections of reports, studies, plans, and other documents relating to controversial issues or significant decisions in a convenient location or locations, for example, in public libraries. Examples of such documents are catalogs of documents available from the agency, grant applications, fact sheets on permits and permit applications, permits, effluent discharge information, and compliance schedule reports. Copying facilities at reasonable cost should be available at the depositories.

(4) Whenever possible, agencies shall provide copies of documents of interest to the public free of charge. Charges for copies should not exceed prevailing commercial copying costs. EPA requirements governing charges for information and documents provided to the public in response to requests made under the Freedom of Information Act are set forth in part 2 of this chapter. Consistent with the objectives of § 25.3(b), agencies may reserve their supply of free copies for private citizens and others whose resources are limited.

(5) Each agency shall develop and maintain a list of persons and organizations who have expressed an interest in or may, by the nature of their pur-

poses, activities or members, be affected by or have an interest in any covered activity. Generally, this list will be most useful where subdivided by area of interest or geographic area. Whenever possible, the list should include representatives of the several categories of interests listed under § 25.3(a). Those on the list, or relevant portions if the list is subdivided, shall receive timely and periodic notification of the availability of materials under § 25.4(b)(2).

(c) *Public notification.* Each agency shall notify interested and affected parties, including appropriate portions of the list required by paragraph (b)(5) of this section, and the media in advance of times at which major decisions not covered by notice requirements for public meetings or public hearings are being considered. Generally, notices should include the timetable in which a decision will be reached, the issues under consideration, any alternative courses of action or tentative determinations which the agency has made, a brief listing of the applicable laws or regulations, the location where relevant documents may be reviewed or obtained, identification of any associated public participation opportunities such as workshops or meetings, the name of an individual to contact for additional information, and any other appropriate information. All advance notifications under this paragraph must be provided far enough in advance of agency action to permit time for public response; generally this should not be less than 30 days.

(d) *Public consultation.* For the purposes of this part, "public consultation" means an exchange of views between governmental agencies and interested or affected persons and organizations in order to meet the objectives set forth in § 25.3. Requirements for three common forms of public consultation (public hearings, public meetings, and advisory groups) are set forth in §§ 25.5, 25.6, and 25.7. Other less formal consultation mechanisms may include but are not limited to review groups, ad hoc committees, task forces, workshops, seminars and informal personal communications with individuals and groups. Public consultation must be

preceded by timely distribution of information and must occur sufficiently in advance of decision-making to allow the agency to assimilate public views into agency action. EPA, State, interstate, and substate agencies shall provide for early and continuing public consultation in any significant action covered by this part. Merely conferring with the public after an agency decision does not meet this requirement. In addition to holding hearings and meetings as specifically required in this chapter, a hearing or meeting shall be held if EPA, the State, interstate, or substate agency determines that there is significant public interest or that a hearing or meeting would be useful.

(e) *Public information concerning legal proceedings.* EPA, State, interstate, and substate agencies shall provide full and open information on legal proceedings to the extent not inconsistent with court requirements, and where such disclosure would not prejudice the conduct of the litigation. EPA actions with regard to affording opportunities for public comment before the Department of Justice consents to a proposed judgment in an action to enjoin discharges of pollutants into the environment shall be consistent with the Statement of Policy issued by the Department of Justice (see title 28, CFR, chapter 1, § 50.7).

§ 25.5 Public hearings.

(a) *Applicability.* Any non-adjudicatory public hearing, whether mandatory or discretionary, under the three Acts shall meet the following minimum requirements. These requirements are subordinate to any more stringent requirements found elsewhere in this chapter or otherwise imposed by EPA, State, interstate, or substate agencies. Procedures developed for adjudicatory hearings required by this chapter shall be consistent with the public participation objectives of this part, to the extent practicable.

(b) *Notice.* A notice of each hearing shall be well publicized, and shall also be mailed to the appropriate portions of the list of interested and affected parties required by § 25.4(b)(5). Except as otherwise specifically provided elsewhere in this chapter, these actions must occur at least 45 days prior to the

date of the hearing. However, where EPA determines that there are no substantial documents which must be reviewed for effective hearing participation and that there are no complex or controversial matters to be addressed by the hearing, the notice requirement may be reduced to no less than 30 days. EPA may further reduce or waive the hearing notice requirement in emergency situations where EPA determines that there is an imminent danger to public health. To the extent not duplicative, the agency holding the hearing shall also provide informal notice to all interested persons or organizations that request it. The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency's tentative determination on major issues (if any), information on the availability of a bibliography of relevant materials (if deemed appropriate), and procedures for obtaining further information. Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least 30 days before the hearing. Earlier availability of materials relevant to the hearing will further assist public participation and is encouraged where possible.

(c) *Locations and time.* Hearings must be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. Accessibility of public transportation, and use of evening and weekend hearings, should be considered. In the case of actions with Statewide interest, holding more than one hearing should be considered.

(d) *Scheduling presentations.* The agency holding the hearing shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers. However, the agency shall reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.

(e) *Conduct of hearing.* The agency holding the hearing shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if