

Environmental Protection Agency

§ 179.24

(4) A statement of the issues of fact on which a hearing has been found to be justified.

(5) A statement of the objections whose resolution depends on the resolution of those issues of fact.

(6) A statement that the presiding officer will be designated by the Chief Administrative Law Judge.

(7) The time within which notices of participation should be filed under § 179.42.

(8) The date, time, and place of the preliminary conference, or a statement that the date, time, and place will be announced in a later notice, and the place of the hearing.

(9) The time within which parties must submit written information and views under § 179.83.

(10) Designations with respect to separation of functions published under § 179.24(b)(2).

(b) The statement of the issues of fact on which a hearing has been justified determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A party may obtain interlocutory review by the Administrator of a decision by the presiding officer to revise the issues to include an issue on which the Administrator has not granted a request for a hearing or to eliminate an issue on which a request for a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the Notice of Hearing.

[55 FR 50293, Dec. 5, 1990, as amended at 70 FR 33359, June 8, 2005]

§ 179.24 Ex parte discussions; separation of functions.

(a) Any person may meet or correspond with any officer or employee of the Agency concerning a matter under parts 178 or 180 of this chapter prior to publication of a Notice of Hearing under § 179.20.

(b) Upon publication of a Notice of Hearing, the following separation of function rules apply:

(1) OPPTS, as a party to the hearing, is responsible for presentation of its position at the hearing and in any pleading or oral argument before the Administrator. The Pesticides and

Toxic Substances Division of the Office of General Counsel shall advise and represent OPPTS with respect to the hearing and in any pleading or oral argument before the Administrator. An employee or other representatives of OPPTS may not participate in or advise the Administrator or any of his representatives on any decision under this part, other than as witness or counsel in public proceedings, except as provided by paragraph (b)(2) of this section. There is to be no other communication between representatives of OPPTS and the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing until after issuance of the decision of the Administrator.

(2) The Administrator may designate persons who otherwise would be regarded as representatives of OPPTS, to serve as representatives of the Office of the Administrator on matters pertaining to the hearing, and may also designate persons who otherwise would be regarded as representatives of the Office of the Administrator to serve as representatives of OPPTS. Such designations will be included in the Notice of Hearing published under § 179.20.

(3) The Office of the Administrator is responsible for the final decision of the matter, with the advice and participation of anyone in the Agency other than representatives of OPPTS.

(c) Between the date of publication of the Notice of Hearing and the date of the Administrator's final decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(1) No person outside the Agency may have an ex parte communication with the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing. Neither the presiding officer nor any representative of the Office of the Administrator may have any ex parte communication with a person outside the Agency concerning the merits of the hearing.

(2) A written communication contrary to this section must be immediately served on all other participants and filed with the hearing clerk by the presiding officer at the hearing, or by the Administrator, depending on who

§ 179.42

40 CFR Ch. I (7-1-07 Edition)

received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other parties and filed with the hearing clerk. A person, including a representative of a party in the hearing, who is involved in an oral communication contrary to this section, must, to the extent necessary to determine the substance of the communication, be made available for cross-examination during the hearing with respect to the substance of that communication. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted.

(d) The prohibitions specified in paragraph (c) of this section also apply to a person who, in advance of the publication of a Notice of Hearing, knows that the notice has been signed. The prohibitions become applicable to such a person as of the time the knowledge is acquired.

(e) The making of a communication contrary to this section may, consistent with the interests of justice and the policies underlying the FFDC, result in a decision adverse to the person knowingly making or causing the making of the communication.

[55 FR 50293, Dec. 5, 1990, as amended at 57 FR 28087, June 24, 1992; 70 FR 33359, June 8, 2005]

Subpart C—Participation and Appearance; Conduct

§ 179.42 Notice of participation.

(a) OPPTS shall be a party to a hearing under this part. Any other person may participate as a party in such a hearing to the extent specified by this section.

(b) A person desiring to participate in a hearing must file with the hearing clerk within 30 days after publication of the Notice of Hearing under § 179.20, a Notice of Participation in the following form:

NOTICE OF PARTICIPATION

Docket No. _____
Under 40 CFR part 179, please enter the participation of: _____
(Name) _____
(Street address) _____

(City and State) _____
(Telephone number) _____
Service on the above will be accepted by:

(Name) _____
(Street address) _____
(City and State) _____
(Telephone number) _____
Signed: _____
Date: _____

(c) An amendment to a Notice of Participation must be filed with the hearing clerk and served on all parties.

(d) No person may participate in a hearing who has not filed a written Notice of Participation or whose participation has been stricken under paragraph (f) of this section.

(e) The presiding officer may permit the late filing of a Notice of Participation upon a showing of good cause. Arrangements and agreements previously made in the proceeding shall apply to any party admitted late.

(f) The presiding officer may strike the participation of a person for failure to comply with any requirement of this subpart. Any person whose participation is stricken may obtain interlocutory review thereof by the Administrator.

[55 FR 50293, Dec. 5, 1990, as amended at 57 FR 28087, June 24, 1992]

§ 179.45 Appearance.

(a) A party to a hearing may appear in person or by counsel or other representative in the hearing.

(b) The presiding officer may strike a person's right to appear in the hearing for violation of the rules of conduct in § 179.50.

§ 179.50 Conduct at oral hearings or conferences.

The parties and their representatives must conduct themselves with dignity and observe the same standards of practice and ethics that would be required of parties in a judicial proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing constitute grounds for immediate exclusion from the proceeding by the presiding officer.