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presiding at the stage of the hearing then in progress may, to the extent consistent with justice and the policy of the Clean Air Act, require the party to show cause why its claim or interest in the proceedings should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Agency trial staff* means those Agency employees, whether temporary or permanent, who have been designated by the Agency as available to investigate, litigate, and present the evidence arguments and position of the Agency in the evidentiary hearing or non-adversary panel hearing. Appearance as a witness does not necessarily require a person to be designated as a member of the Agency trial staff;

(2) *Decisional body* means any Agency employee who is or may be reasonably expected to be involved in the decisional process of the proceeding including the Administrator, Presiding Officer, the Regional Administrator (if he does not designate himself as a member of the Agency trial staff), and any of their staff participating in the decisional process. In the case of a non-adversary panel hearing, the decisional body shall also include the panel members whether or not permanently employed by the Agency;

(3) *Ex parte communication* means any communication, written or oral, relating to the merits of the proceeding between the decisional body and an interested person outside the Agency or the Agency trial staff which was not originally filed or stated in the administrative record or in the hearing. *Ex parte* communications do not include:

(i) Communications between Agency employees other than between the Agency trial staff and the member of the decisional body;

(ii) Discussions between the decisional body and either:

(A) Interested persons outside the Agency, or;

(B) The Agency trial staff if all parties have received prior written notice of such proposed communications and have been given the opportunity to be present and participate therein.

(4) *Interested person outside the Agency* includes the smelter owner, any person who filed written comments in the proceeding, any person who requested the hearing, any person who requested to participate or intervene in the hearing, any participant or party in the hearing and any other interested person not employed by the Agency at the time of the communications, and the attorney of record for such persons.

[50 FR 6448, Feb. 15, 1985, as amended at 57 FR 5328, Feb. 13, 1992]

§ 57.810 Filing of briefs, proposed findings, and proposed recommendations.

Unless otherwise ordered by the Presiding Officer, each hearing participant may, within 20 days after reply comments are submitted under § 57.805(b), or if a supplementary hearing for the purpose of cross-examination has been held under § 57.808(c), within 20 days after the transcript of such supplemental hearing becomes available or if alternative methods of clarifying the record have been used under § 57.808(d), within 20 days after the alternative methods have been employed, file with the Hearing Clerk and serve upon all other hearing participants proposed findings and proposed recommendations to replace in whole or in part the findings and recommendations contained in the tentative determination. Any such person may also file, at the same time, a brief in support of his proposals, together with references to relevant pages of transcript and to relevant exhibits. Within 10 days thereafter each participant may file a reply brief concerning alternative proposals. Oral argument may be held at the discretion of the Presiding Officer on motion of any hearing participant or sua sponte.

§ 57.811 Recommended decision.

As soon as practicable after the conclusion of the hearing, one or more responsible employees of the Agency shall evaluate the record for preparation of a recommended decision and shall prepare and file a recommended decision with the Hearing Clerk. The employee(s) preparing the decision will generally be members of the hearing panel and may include the Presiding