(2) When one or more manufacturers demonstrate to the hearing officer that it is necessary to include processors in order to provide fair and equitable reimbursement in a specific case.

(3) When one or more processors voluntarily agree to reimburse manufacturers for a portion of test costs. Only those processors who volunteer will incur the obligation.

(b) A hearing including processors shall be initiated in the same way as those including only manufacturers. Voluntary negotiations must be attempted in good faith first, and the request for a hearing must contain the names of the parties and a description of the unsuccessful negotiations.

(c) When processors as well as manufacturers are required to provide reimbursement, the hearing officer will decide for each case how the reimbursement should be allocated among the participating parties. When a test rule is applicable solely to processors, the hearing officer will apply the formula to the amount of the test chemical purchased or processed.

§ 791.48 Production volume.

(a) Production volume will be measured over a period that begins one calendar year before publication of the final test rule in the Federal Register and continues up to the latest data available upon resolution of a dispute.

(b) For the purpose of determining fair reimbursement shares, production volume shall include amounts of the test chemical imported in bulk form and mixtures, and the total domestic production of the chemical including that produced as a byproduct. Impurities will not be included unless the test rule specifically includes them.

(c) Amounts of the test chemical manufactured for export will not be included unless covered by a finding under TSCA section 12(a)(2).

(d) Chemicals excluded from the jurisdiction of TSCA by section 3(2)(B) need not be included in the computation of production volume. (Chemicals used as intermediates to produce pesticides are covered by TSCA.)

(e) The burden of establishing the fact that particular amounts of the test chemical are produced for exempt purposes lies with the party seeking to exclude those amounts from the calculation of his production volume.

§ 791.60 Review.

(a) The hearing officer’s proposed order shall become the final Agency order 30 days after issuance unless within the 30-day period one of the parties requests Agency review or the Administrator of his own initiative decides to review the proposed order.

(b) The proposed order may be reviewed upon the record of the hearing and the petitions for review. If