AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

a Notice of Hearing issued under §179.20 of this chapter. If some requests for a hearing are denied and others pertaining to the same order or regulation are granted, the denial order and the hearing notice may be combined into a single document and shall be issued at the same time unless the Administrator for good cause determines otherwise.

(b) A request for an evidentiary hearing will be granted if the Administrator determines that the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. An evidentiary hearing will not be granted on issues of policy or law.

(2) There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary. An evidentiary hearing will not be granted on the basis of mere allegations, denials, or general descriptions of positions and contentions, nor if the Administrator concludes that the data and information submitted, even if accurate, would be insufficient to justify the factual determination urged.

(3) Resolution of the factual issue(s) in the manner sought by the person requesting the hearing would be adequate to justify the action requested. An evidentiary hearing will not be granted on factual issues that are not determinative with respect to the action requested. For example, a hearing will not be granted if the Administrator concludes that the action would be the same even if the factual issue were resolved in the manner sought.

(c) Where appropriate, the Administrator will make rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted.

§ 178.35 Modification or revocation of regulation or prior order.

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation or prior order in question should be modified or revoked, the Administrator will publish an order setting forth any revision to the regulation or prior order that the Administrator has found to be warranted.

(b) The Administrator will provide an opportunity for objections and requests for hearing on such order to the extent required by law. Such objections to the modification or revocation of the regulation, and requests for a hearing on such objections, may be submitted under §§178.20 through 178.27.

(c) Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in accordance with this part.

[55 FR 50291, Dec. 5, 1990, as amended at 70 FR 33359, June 8, 2005]

§ 178.37 Order responding to objections on which a hearing was not requested or was denied.

(a) The Administrator will publish in the FEDERAL REGISTER an order under FFDCA section 408(g)(2)(B) or section 408(g)(2)(C) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under §178.20 on which:

(1) A hearing was not requested.

(2) A hearing was requested, but denied.

(b) Each order published under paragraph (a) of this section must state the reasons for the Administrator's determination. If the order denies a request for a hearing on the objection, the order also must state the reason for that denial (e.g., why the request for a hearing did not conform to §178.27, or why the request was denied under §178.32).

(c) Each order published under paragraph (a) of this section must state its effective date.

[55 FR 50291, Dec. 5, 1990, as amended at 70 FR 33359, June 8, 2005]

Subpart C [Reserved]

Subpart D—Judicial Review

§ 178.65 Judicial review.

An order issued under §178.37 is final agency action reviewable in the courts as provided by FFDCA section 408(h),

as of the date of publication of the order in the FEDERAL REGISTER. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the publication of the order constitutes a waiver under FFDCA section 408(h) of the right to judicial review of the order and of any regulation promulgated by the order.

[70 FR 33359, June 8, 2005]

§ 178.70 Administrative record.

(a) For purposes of judicial review, the record of an administrative proceeding that culminates in an order under § 178.37 consists of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 180.29(f) of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(4) Any comments submitted by members of the public in response to the Notice of Filing or Notice of Proposed Rulemaking, any data or information submitted as part of the comments, the Administrator's response to comments and the documents or information relied on by the Administrator in issuing the regulation or order.

(5) All other documents or information submitted to the docket for the rulemaking in question.

(6) The order issued under § 178.37.

(b) The record will be closed as of the date of the Administrator's decision unless another date for closing of the record is specified in the order issued under § 178.37.

[55 FR 50291, Dec. 5, 1990, as amended at 70 FR 33359, June 8, 2005]

PART 179—FORMAL EVIDENTIARY PUBLIC HEARING

Subpart A—General Provisions

Sec.
179.3 Definitions.
179.5 Other authority.

Subpart B—Initiation of Hearing

179.20 Notice of hearing.
179.24 Ex parte discussions; separation of functions.

Subpart C—Participation and Appearance; Conduct

179.42 Notice of participation.
179.45 Appearance.
179.50 Conduct at oral hearings or conferences.

Subpart D—Presiding Officer

179.60 Designation and qualifications of presiding officer.
179.70 Authority of presiding officer.
179.75 Disqualification of deciding officials.
179.78 Unavailability of presiding officer.

Subpart E—Hearing Procedures

179.80 Filing and service.
179.81 Availability of documents.
179.83 Disclosure of data and information.
179.85 Purpose of preliminary conference.
179.86 Time and place of preliminary conference.
179.87 Procedures for preliminary conference.
179.89 Motions.
179.90 Summary decisions.
179.91 Burden of going forward; burden of persuasion.
179.93 Testimony.
179.94 Transcripts.
179.95 Admission or exclusion of evidence; objections; offers of proof.
179.97 Conferences during hearing.
179.98 Briefs and arguments.

Subpart F—Decisions and Appeals

179.101 Interlocutory appeal from ruling of presiding officer.
179.105 Initial decision.
179.107 Appeal from or review of initial decision.
179.110 Determination by Administrator to review initial decision.
179.112 Decision by Administrator on appeal or review of initial decision.
179.115 Motion to reconsider a final order.
179.117 Designation and powers of judicial officer.