

Environmental Protection Agency

§ 179.81

(c) A deciding official who is aware of grounds for disqualification shall withdraw from the proceeding.

§ 179.78 Unavailability of presiding officer.

If the presiding officer is unable to act for any reason, his or her powers with respect to the hearing will be assigned by the Chief Administrative Law Judge to another presiding officer. The substitution will not affect the hearing, *i.e.*, the testimony of the witnesses will not be taken anew except as the new presiding officer may order upon the request of a party where the credibility of a witness is of particular importance.

Subpart E—Hearing Procedures

§ 179.80 Filing and service.

(a) All documents required or authorized to be filed by a party to a hearing under this part regarding any matter to be decided by the presiding officer, the judicial officer, or the Administrator shall be filed in triplicate with the hearing clerk, in the manner specified by § 178.25(b) of this chapter. Each filing shall prominently note the docket number. To determine compliance with deadlines in a hearing, a document is considered filed on the date it is actually received by the hearing clerk. When this part allows a response by a party to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) Each notice, order, decision, or other document issued under this part by the presiding officer, the judicial officer, or the Administrator shall be filed with the hearing clerk. The hearing clerk shall immediately serve all parties with a copy of such order, decision, or other document.

(c) At the same time that a party files any document with the hearing clerk, the party shall serve a copy thereof on each other party, unless the presiding officer specifies otherwise. Each filing shall be accompanied by a certificate of service, or a statement that service is not required. Service on a party is accomplished by mailing a submission to the address shown in the

Notice of Participation or by personal delivery.

(d) The presiding officer may grant an extension of time for the filing of any pleading, document, or motion (1) Upon timely motion by a party, for good cause shown, and after consideration of prejudice to other parties, or (2) upon the presiding officer's own motion.

(e) A motion by a party for an extension may only be made after serving a copy of the motion on all other parties, unless the movant can show good cause why doing so is impracticable. The motion shall be filed in advance of the date on which the pleading, document, or motion is due to be filed, unless the failure of the party to make a timely motion for an extension was the result of excusable neglect.

§ 179.81 Availability of documents.

(a) All orders, decisions, pleadings, transcripts, exhibits, and other docket entries shall become part of the official docket and shall be retained by the hearing clerk. Except as otherwise provided by paragraph (b) of this section or part 2 of this chapter, all documents that are a part of the official docket shall be made available to the public for reasonable inspection during Agency business hours. Copies of such documents may be obtained by members of the public as provided in part 2 of this chapter.

(b) Whenever any information or data are required to be produced or examined in a hearing and any party makes a business confidentiality claim regarding such information under part 2 of this chapter, the availability of such information to the other parties or to the public shall be determined by EPA in accordance with part 2 of this chapter, including specifically the procedures and principles set forth in § 2.301(g)(3) and (g)(4) of this chapter. The presiding officer shall make the determinations with respect to the matters referred to in § 2.301(g)(3) and (g)(4) to the extent provided, and shall take such steps as are necessary for the protection of information entitled to confidential treatment or otherwise exempt from public disclosure, including issuance of protective orders to parties

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or taking testimony in a closed hearing.

§ 179.83 Disclosure of data and information.

(a) Within 60 days of the publication of the Notice of Hearing under §179.20, or, if no party will be prejudiced, within another period set by the presiding officer, the Assistant Administrator shall file with the hearing clerk, in accordance with §179.80, the following documents numbered and organized in the manner prescribed by the presiding officer:

(1) The portions of the administrative record of the proceeding developed under part 178 of this chapter, and under part 180 of this chapter, that are relevant to the issues in the hearing.

(2) All documents in the files of OCSPP containing factual information or expert opinion, whether favorable or unfavorable to the position of OCSPP, which relate to the issues involved in the hearing. For purposes of this paragraph, "files" means the principal files in OCSPP in which documents relating to each of the issues in the hearing are ordinarily kept. Documents that are internal memoranda reflecting the deliberative process, or are attorney work product, or were prepared specifically for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information upon which OCSPP plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the Notice of Hearing and the nature of the supporting evidence that OCSPP intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the Assistant Administrator, the submission complies with this section.

(b) Within 70 days of the publication of the Notice of Hearing or, if no party will be prejudiced, within another period of time set by the presiding officer, each party other than OCSPP shall submit to the hearing clerk in accordance with §179.80 the following documents, numbered and organized in the manner prescribed by the presiding officer:

(1) Any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete.

(2) All documents (other than those filed under paragraph (a) of this section) in the party's files containing factual information or expert opinion, whether favorable or unfavorable to the party's position, that relates to the issues involved in the hearing. For purposes of this paragraph, "files" means the party's principal files in which documents relating to each of the issues in the hearing are ordinarily kept. Documents that are attorney work product, or were prepared specifically for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information the party plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the Notice of Hearing and the nature of the supporting evidence the party intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the party, the submission complies with this section.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material contained in the supplement was not reasonably known by or available to the party when the submission was made or that the relevance of the material contained in the supplement could not reasonably have been foreseen.

(d) If a party fails to comply substantially and in good faith with this section, the presiding officer may infer that such failure was for the purpose of withholding information that is unfavorable to the party's position, and may make such further adverse inferences and findings with respect to such failure as are warranted.

(e) Parties may reference each other's submissions. To reduce duplicative submissions, parties are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the