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40 CFR Ch. I (7-1-03 Edition)

has received a written request satisfying the requirements of paragraph (a) of this section which presents genuine issues as to the effect on the smelter of the requirement for use of constant controls, or (2) the Administrator determines in his discretion that a hearing is necessary or appropriate the Administrator shall give written notice of his determination to each person requesting such hearing and the smelter owner, and shall provide public notice of his determination in accordance with § 57.803(b). If the Administrator determines that a request filed under paragraph (a) of this section does not comply with the requirements of paragraph (a) or does not present genuine issues, he shall be given written notice of his decision to deny a hearing to the person requesting the hearing.

(c) *Form of notice of hearing.* Each notice of hearing disseminated under paragraph (b) of this section shall contain:

(1) A statement of the time and place of the hearing;

(2) A statement identifying the place at which the official record on the application for waiver is located, the hours during which it will be open for public inspection, and the documents contained in the record as of the date of the notice of hearing;

(3) The due date for filing a written request to participate in the hearing under paragraph (d) of this section;

(4) The due date for making written submissions under 57.805; and

(5) The name, address, and office telephone number of the hearing Clerk for the hearing.

(d) *Request to participate in hearing.* Each person desiring to participate in any hearing granted under this section, including any person requesting such a hearing, shall file a written request to participate with the Hearing Clerk by the deadline set forth in the notice of hearing. The request shall include:

(1) A brief statement of the interest of the person in the proceeding;

(2) A brief outline of the points to be addressed;

(3) An estimate of the time required; and

(4) If the request is submitted by an organization, a nonbinding list of the persons to take part in the presen-

tation. As soon as practicable, but in no event later than two weeks before the scheduled date of the hearing, the Hearing Clerk shall make available to the public and shall mail to each person who asked to participate in the hearing a hearing schedule.

(e) *Effect of denial of or absence of request for hearing.* If no request for a hearing is made under this section, or if all such requests are denied under paragraph (b) of this section, the tentative determination issued under § 57.803 shall be treated procedurally as if it were a recommended decision issued under § 57.811(b)(2), except that for purposes of §§ 57.812 and 57.813 the term "hearing participant" shall be construed to mean the smelter owner and any person who submitted comments under § 57.803(e)(4).

§ 57.805 Submission of written comments on tentative determination.

(a) *Main comments.* Each person who has filed a request to participate in the hearing shall file with the Hearing Clerk no later than 30 days before the scheduled start of the hearing (or such other date as may be set forth in the notice of hearing) any comments which he has on the request for waiver and EPA's tentative determination, based on information which is or reasonably could have been available to that person at the time.

(b) *Reply comments.* Not later than two weeks after a full transcript of the hearing becomes available (or such other date as may be set forth in the notice of hearing), each person who has filed a request to participate in the hearing shall file with the Hearing Clerk any comments he may have on:

(1) Written comments submitted by other participants pursuant to paragraph (a) of this section;

(2) Written comments submitted in response to the notice of hearing;

(3) Material in the hearing record; and

(4) Material which was not and could not reasonably have been available prior to the deadline for submission of main comments under paragraph (a) of this section.

(c) *Form of comments.* All comments should be submitted in quadruplicate

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and shall include any affidavits, studies, tests or other materials relied upon for making any factual statements in the comments.

(d) *Use of comments.* (1) Written comments filed under this section shall constitute the bulk of the evidence submitted at the hearing. Oral statements at the hearing should be brief, and restricted either to points that could not have been made in written comments, or to emphasizing points which are made in the comments, but which the participant believes can be more forcefully urged in the hearing context.

(2) Notwithstanding the foregoing, within two weeks prior to either deadline specified by paragraph (a) of this section for the filing of main comments, any person who has filed a request to participate in the hearing may file a request with the Presiding Officer to submit all or part of his main comments orally at the hearing in lieu of submitting written comments. The Presiding Officer shall, within one week, grant such request if he finds that such person will be prejudiced if he is required to submit such comments in written form.

§ 57.806 Presiding Officer.

(a) *Assignment of Presiding Officer.* (1) The Administrator shall, as soon as practicable after the granting of a request for hearing under § 57.803, request that the Chief Administrative Law Judge assign an Administrative Law Judge as Presiding Officer. The Chief Administrative Law Judge shall thereupon make the assignment.

(2) If the parties to the hearing waive their right to have the Agency or an Administrative Law Judge preside at the hearing, the Administrator shall appoint an EPA employee who is an attorney to serve as presiding officer.

(b) *Powers and duties of Presiding Officer.* It shall be the duty of the Presiding Officer to conduct a fair and impartial hearing, assure that the facts are fully elicited, and avoid delay. The Presiding Officer shall have authority to:

(1) Chair and conduct administrative hearings held under this subpart;

(2) Administer oaths and affirmations;

(3) Receive relevant evidence: Provided, that the administrative record, as defined in § 57.814, shall be received in evidence;

(4) Consider and rule upon motions, dispose of procedural requests, and issue all necessary orders;

(5) Hold conferences for the settlement or simplification of the issues or the expediting of the proceedings; and

(6) Do all other acts and take all measures necessary for the maintenance of order and for the efficient, fair and impartial conduct of proceedings under this subpart.

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

§ 57.807 Hearing.

(a) *Composition of hearing panel.* The Presiding Officer shall preside at the hearing held under this subpart. An EPA panel shall also take part in the hearing. In general, the membership of the panel shall consist of EPA employees having special expertise in areas related to the issues to be addressed at the hearing, including economists and engineers. For this reason, the membership of the panel may change as different issues are presented for discussion.

(b) *Additional hearing participants.* Either before or during the hearing, the Presiding Officer, after consultation with the panel, may request that a person not then scheduled to participate in the hearing (including an EPA employee or a person identified by any scheduled hearing participant as having knowledge concerning the issues raised for discussion at the hearing) make a presentation or make himself available for cross-examination at the hearing.

(c) *Questioning of hearing participants.* The panel members may question any person participating in the hearing. Cross-examination by persons other than panel members shall not be permitted at this stage of the proceeding except where the Presiding Officer determines, after consultation with the panel, that circumstances compel such cross-examination. However, persons in the hearing audience, including other hearing participants, may submit written questions to the Presiding Officer