

Environmental Protection Agency

§ 78.17

§ 78.15 Motions in evidentiary hearings.

(a) Any party may make a motion to the Presiding Officer on any matter relating to the evidentiary hearing in accordance with the scheduling orders issued under § 78.13 of this part. All motions shall be in writing and served as provided in § 78.4 of this part, except those made on the record during an oral hearing before the Presiding Officer.

(b) Any party may make a motion for a summary disposition in its favor on any factual issue on the basis that there is no genuine issue of material fact. When a motion for summary disposition is made and supported, any party opposing the motion may not rest upon mere allegations or denials, but must show, by affidavit or by other materials subject to consideration by the Presiding Officer, that there is a genuine issue of material fact.

(c) Within 10 days (or other shorter, reasonable period established by the Presiding Officer) after a motion made on the record or service of any written motion, any party may file a response to the motion.

(d) The Presiding Officer may schedule an oral argument and call for the filing of briefs on any motion. The Presiding Officer will rule on the motion within a reasonable time after the date that responses to the motion may be filed under paragraph (c) of this section and that any oral argument or filing of briefs is completed.

(e) If all factual issues are decided by summary disposition prior to the hearing, no hearing will be held and the Presiding Officer will issue a proposed decision under § 78.18 of this part. If a summary disposition is denied or if partial summary disposition is granted, the hearing shall proceed on the remaining issues.

[58 FR 3760, Jan. 11, 1993, as amended at 62 FR 55488, Oct. 24, 1997]

§ 78.16 Record of appeal proceeding.

(a) The proposed decision issued by the Presiding Officer, transcripts of oral hearings or oral arguments, written direct and rebuttal testimony, and any other written materials of any kind filed in the proceeding will be

part of the record and will be available to the public in the office of the Hearing Clerk, subject to the requirements of part 2 of this chapter.

(b) Hearings and oral arguments shall be recorded as specified by the Presiding Officer, and thereupon transcribed. After the hearing or oral argument, the reporter will certify and file with the Hearing Clerk.

(1) The original transcript; and

(2) Any exhibits received or offered into evidence at the hearing.

(c) The Hearing Clerk will promptly give written notice to the parties when any transcript is available. Any party that desires a copy of the transcript may obtain a copy upon payment of costs.

(d) The Presiding Officer will allow witnesses, parties, and their counsel or representatives:

(1) Up to 7 days (or other shorter, reasonable period established by the Presiding Officer) from issuance of the notice under paragraph (c) of this section in order to file written proposed corrections of the transcript necessary to correct errors made in the transcribing; and

(2) Up to 7 days (or other shorter, reasonable period established by the Presiding Officer) from the submission of the corrections in order to file objections to the proposed corrections.

(e) The Presiding Officer will determine which, if any, corrections should be made to the transcript and incorporate them into the record.

[58 FR 3760, Jan. 11, 1993, as amended at 62 FR 55488, Oct. 24, 1997]

§ 78.17 Proposed findings and conclusions and supporting brief.

Within 45 days (or other shorter, reasonable period established by the Presiding Officer) after issuance of a notice under § 78.16(c) of this part that the complete transcript of the evidentiary hearing is available, any party may file with the Hearing Clerk proposed findings and conclusions on the issues referred to the Presiding Officer and a brief in support thereof. Briefs shall contain appropriate references to the record. The Presiding Officer may allow reply briefs.

[58 FR 3760, Jan. 11, 1993, as amended at 62 FR 55488, Oct. 24, 1997]