

Subpart B—Procedures for Filing Objections and Requests for Hearing

§ 178.20 Right to submit objections and requests for a hearing.

(a) On or before the 30th day after the date of publication in the FEDERAL REGISTER of an order under part 177 or part 180 of this chapter establishing, modifying, or revoking a regulation, or an order under part 177 of this chapter denying all or any portion of a petition, a person adversely affected by such order or petition denial may submit, in accordance with § 178.25, one or more written objections to the order (or to the action that is the subject of the order).

(b) A person may include with any such objection a written request for an evidentiary hearing on such objection in accordance with § 178.27

(c) A person who submits objections need not request a hearing. For instance, if the person's objections are of a purely legal or policy nature, a hearing request would be inappropriate; the purpose of an evidentiary hearing is to resolve factual disputes. The Administrator will rule on the objections, whether or not a hearing is requested.

(d) As a matter of discretion, the Administrator may order a hearing on an objection even though no person has requested a hearing.

§ 178.25 Form and manner of submission of objections.

(a) To be considered by the Administrator, an objection must:

- (1) Be in writing.
- (2) Specify with particularity the provision(s) of the order, regulation, or denial objected to, the basis for the objection(s), and the relief sought.
- (3) Be signed by the objector.
- (4) State the objector's name and mailing address.
- (5) Be accompanied by the fee prescribed by § 180.33(i) of this chapter, if the objection is to an order or regulation issued under part 180 of this chapter.
- (6) Be submitted to the hearing clerk.
- (7) Be received by the hearing clerk not later than the close of business of the 30th day following the date of the publication in the FEDERAL REGISTER

of the order to which the objection is taken (or, if such 30th day is a Saturday, Sunday, or Federal holiday, not later than the close of business of the next government business day after such 30th day).

(b) Submissions to the hearing clerk shall be made as follows:

(1) Mailed submissions should be addressed to: Office of the Hearing Clerk (1900L), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

(2) For personal delivery, the Office of the Hearing Clerk is located at: Suite 350, 1099 14th St., NW., Washington, DC.

[55 FR 50291, Dec. 5, 1990, as amended at 69 FR 39864, July 1, 2004]

§ 178.27 Form and manner of submission of request for evidentiary hearing.

To be considered by the Administrator, a request for an evidentiary hearing must meet the criteria in § 178.32, and must:

(a) Be submitted as a part of, and specifically request an evidentiary hearing on an objection that complies with the requirements of § 178.25.

(b) Include a statement of the factual issue(s) on which a hearing is requested and the requestor's contentions on each such issue.

(c) Include a copy of any report, article, survey, or other written document (or the pertinent pages thereof) upon which the objector relies to justify an evidentiary hearing, unless the document is an EPA document that is routinely available to any member of the public.

(d) Include a summary of any evidence not described in paragraph (a)(3) of this section upon which the objector relies to justify an evidentiary hearing.

(e) Include a discussion of the relationship between the factual issues and the relief requested by the objection.

§ 178.30 Response by Administrator to objections and to requests for hearing.

The Administrator will respond to objections, and to requests for a hearing on such objections, as set forth in this section.

§ 178.32

(a) *Denial of objections that are improperly submitted or that seek an unavailable form of relief.* The Administrator will by order issued under §178.37 deny each objection and each request for a hearing that is included with such an objection, if:

(1) The objection is found not to conform to §178.25.

(2) The action requested by the objection is inconsistent with any provision of FFDCA.

(3) The action requested by the objection is inconsistent with any generic, e.g., non-chemical specific, interpretation of a provision of FFDCA in any regulation in this chapter (the proper procedure in such a case is for the person to petition for an amendment of the regulation involved).

(b) *Denial of improperly submitted requests for hearing.* The Administrator will then determine whether any objection that has not been denied under paragraph (a) of this section was accompanied by a request for an evidentiary hearing that conforms to §178.27. The Administrator will deny under §178.37 each request that does not conform to §178.27.

(c) *Grouping of certain related objections.* If the Administrator then finds (1) That two or more undenied objections are substantially similar, or are related in such a way that any judicial review of the Administrator's action on those objections should occur at the same time, and (2) that one or more of those objections was accompanied by an undenied request for an evidentiary hearing on that objection, the Administrator will treat those objections as a group and will rule on them only after ruling under §178.32 on the associated request for hearing.

(d) *Rulings on objections for which a request for hearing has been granted.* If the Administrator rules under §178.32 that an evidentiary hearing should be held on an objection, the Administrator will resolve the issues raised by any other objection grouped with it under paragraph (c) of this section in conjunction with the evidentiary hearing upon which the hearing request was granted, unless the Administrator for good cause determines otherwise.

(e) *Rulings on objections for which no request for hearing was received, or for*

40 CFR Ch. I (7-1-04 Edition)

which each request for hearing was denied. Except as provided in paragraphs (c) and (d) of this section, if no hearing was requested on an objection, or if each such request that was made is denied under the criteria of paragraphs (a) or (b) of this section or §178.32(b), the Administrator will rule on the objection under §178.37.

§ 178.32 Rulings on requests for hearing.

(a) In the case of each request for an evidentiary hearing that was not denied under §178.30(a) or (b), the Administrator will determine whether such a hearing on one or more of the objections is justified, and will publish in the FEDERAL REGISTER the determination in an order issued under §178.37 or 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