

§ 179.45

(d) No person may participate in a hearing who has not filed a written Notice of Participation or whose participation has been stricken under paragraph (f) of this section.

(e) The presiding officer may permit the late filing of a Notice of Participation upon a showing of good cause. Arrangements and agreements previously made in the proceeding shall apply to any party admitted late.

(f) The presiding officer may strike the participation of a person for failure to comply with any requirement of this subpart. Any person whose participation is stricken may obtain interlocutory review thereof by the Administrator.

[55 FR 50293, Dec. 5, 1990, as amended at 57 FR 28087, June 24, 1992]

§ 179.45 Appearance.

(a) A party to a hearing may appear in person or by counsel or other representative in the hearing.

(b) The presiding officer may strike a person's right to appear in the hearing for violation of the rules of conduct in § 179.50.

§ 179.50 Conduct at oral hearings or conferences.

The parties and their representatives must conduct themselves with dignity and observe the same standards of practice and ethics that would be required of parties in a judicial proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing constitute grounds for immediate exclusion from the proceeding by the presiding officer.

Subpart D—Presiding Officer

§ 179.60 Designation and qualifications of presiding officer.

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105 and designated by the Agency's chief administrative law judge.

40 CFR Ch. I (7-1-06 Edition)

§ 179.70 Authority of presiding officer.

The presiding officer shall conduct the hearing in a fair and impartial manner subject to the precepts of the Administrative Procedure Act. The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to:

(a) Specify and change the date, time, and place for conferences, and issue and modify a schedule for the hearing.

(b) Establish an orderly manner for developing evidentiary facts at preliminary conferences under § 179.87, for making rulings on oral testimony and cross-examination under § 179.93, and for making other similar evidentiary rulings in accord with these regulations.

(c) Prepare statements of the areas of factual disagreement among the participants.

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing.

(e) Administer oaths and affirmations.

(f) Control the course of the hearing and the conduct of the participants.

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions.

(h) Rule on, admit, exclude, or limit evidence.

(i) Set the time for filing pleadings.

(j) Rule on motions and other procedural matters.

(k) Rule on motions for summary decision under § 179.90.

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex.

(m) Strike the participation of any person under § 179.42(f), or exclude any person from the hearing under § 179.50, or take other reasonable disciplinary action.

(n) Take any other action for the fair, expeditious, and orderly conduct of the hearing that is not in conflict with law or these rules.