

SUBCHAPTER D—WATER PROGRAMS

PART 100 [RESERVED]

PART 104—PUBLIC HEARINGS ON EFFLUENT STANDARDS FOR TOXIC POLLUTANTS

Sec.

- 104.1 Applicability.
- 104.2 Definitions.
- 104.3 Notice of hearing; objection; public comment.
- 104.4 Statement of basis and purpose.
- 104.5 Docket and record.
- 104.6 Designation of Presiding Officer.
- 104.7 Powers of Presiding Officer.
- 104.8 Prehearing conferences.
- 104.9 Admission of evidence.
- 104.10 Hearing procedures.
- 104.11 Briefs and findings of fact.
- 104.12 Certification of record.
- 104.13 Interlocutory and post-hearing review of rulings of the Presiding Officer; motions.
- 104.14 Tentative and final decision by the Administrator.
- 104.15 Promulgation of standards.
- 104.16 Filing and time.

AUTHORITY: Secs. 501 and 307(a) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*, Pub. L. 92-500, 86 Stat. 816).

SOURCE: 41 FR 17902, Apr. 29, 1976, unless otherwise noted.

§ 104.1 Applicability.

This part shall be applicable to hearings required by statute to be held in connection with the establishment of toxic pollutant effluent standards under section 307(a) of the Act.

§ 104.2 Definitions.

As used in this part, the term:

(a) *Act* means the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, Public Law 92-500, 86 Stat. 816.

(b) *Administrator* means the Administrator of the Environmental Protection Agency, or any employee of the Agency to whom the Administrator may by order delegate his authority to carry out his functions under section 307(a) of the Act, or any person who shall by operation of law be authorized to carry out such functions.

(c) *Agency* means the Environmental Protection Agency.

(d) *Hearing Clerk* means the Hearing Clerk, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(e) *Party* means the Environmental Protection Agency as the proponent of an effluent standard or standards, and any person who files an objection pursuant to § 104.3 hereof.

(f) *Person* means an individual, corporation, partnership, association, state, municipality or other political subdivision of a state, or any interstate body.

(g) *Effluent standard* means any effluent standard or limitation, which may include a prohibition of any discharge, established or proposed to be established for any toxic pollutant under section 307(a) of the Act.

(h) *Presiding Officer* means the Chief Administrative Law Judge of the Agency or a person designated by the Chief Administrative Law Judge or by the Administrator to preside at a hearing under this part, in accordance with § 104.6 hereof.

§ 104.3 Notice of hearing; objection; public comment.

(a) *Notice of hearing.* Whenever the Administrator publishes any proposed effluent standard, he shall simultaneously publish a notice of a public hearing to be held within thirty days following the date of publication of the proposed standard. Any person who has any objection to a proposed standard may file with the hearing clerk a concise statement of any such objection. No person may participate in the hearing on the proposed toxic pollutant effluent standards unless the hearing clerk has received within 25 days of the publication of the notice of the proposed standards a statement of objection as herein described. In exceptional circumstances and for good cause shown the Presiding Officer may allow an objection to be filed after the filing deadline prescribed in the preceding sentence, which good cause must include at a minimum lack of actual notice on the part of the objector or any

§ 104.4

40 CFR Ch. I (7-1-07 Edition)

representative of such objector of the proposed standards despite his exercise of due diligence, so long as such later filing will not cause undue delay in the proceedings or prejudice to any of the parties.

(b) *Objections.* Any objection to a proposed standard which is filed pursuant to paragraph (a) of this section shall meet the following requirements:

(1) It shall be filed in triplicate with the hearing clerk within the time prescribed in paragraph (a) of this section;

(2) It shall state concisely and with particularity each portion of the proposed standard to which objection is taken; to the greatest extent feasible it shall state the basis for such objection;

(3) To the greatest extent feasible it shall (i) state specifically the objector's proposed modification to any such standard proposed by the Agency to which objection is taken, (ii) set forth the reasons why such modification is sought, and (iii) identify and describe the scientific or other basis for such proposed modification, including reference to any pertinent scientific data or authority in support thereof.

Any objection which fails to comply with the foregoing provisions shall not be accepted for filing. The Presiding Officer shall promptly notify any person whose objection is not accepted for any of the reasons set forth in this section, stating the reasons therefor.

(c) *Data in support of objection or modification.* In the event that the time prescribed for filing objections pursuant to paragraphs (a) and (b) of this section is insufficient to permit an objecting party to fully set forth with such objection the basis therefor together with the information and data specified in paragraph (b)(3) of this section, he may so state at the time of the filing of such objection, and file a more complete statement of such basis, information, and data (hereinafter referred to as "supplemental data") within the time prescribed by this paragraph (c). The supplemental data herein described shall be filed not later than 40 days following publication of the proposed effluent standards.

(d) *Public comment.* The notice required under paragraph (a) of this section shall also provide for the submission to the Agency of written com-

ments on the proposed rulemaking by interested persons not filing objections pursuant to this section as hereinabove described, and hence not participating in the hearing as parties. The notice shall fix a time deadline for the submission of such comments which shall be not later than the date set for commencement of the hearing. Such comments shall be received in evidence at the commencement of the hearing. The Administrator in making any decision based upon the record shall take into account the unavailability of cross-examination in determining the weight to be accorded such comments.

(e) *Promulgation in absence of objection.* If no objection is filed pursuant to this section, then the Administrator shall promulgate the final standards on the basis of the Agency's statement of basis and purpose and any public comments received pursuant to paragraph (d) of this section.

§ 104.4 Statement of basis and purpose.

Whenever the Administrator publishes a proposed effluent standard, the notice thereof published in the FEDERAL REGISTER shall include a statement of the basis and purpose of the standard or a summary thereof. This statement shall include:

(a) The purpose of the proposed standard;

(b) An explanation of how the proposed standard was derived;

(c) Scientific and technical data and studies supporting the proposed standard or references thereto if the materials are published or otherwise readily available; and

(d) Such other information as may be reasonably required to set forth fully the basis of the standard.

Where the notice of the proposed rulemaking summarizes the full statement of basis and purpose, or incorporates documents by reference, the documents thus summarized or incorporated by reference shall thereupon be made available by the Agency for inspection and copying by any interested person.

§ 104.5 Docket and record.

Whenever the Administrator publishes a notice of hearing under this part, the hearing clerk shall promptly establish a docket for the hearing. The