

Respondent must also include any proposals for modification of the order. The memorandum shall also present any arguments on the legal conclusions contained in the order.

(d) *Written questions to EPA.* The respondent may file a request with the Presiding Officer for permission to submit written questions to the EPA Regional Office issuing the order concerning issues of material fact in the order.

(1) Requests shall be accompanied by the proposed questions. In most instances, no more than twenty-five (25) questions, including subquestions and subparts, may be posed. The request and questions must be submitted to the Presiding Officer at least twenty-one (21) days before the hearing.

(2) The Presiding Officer may direct EPA to respond to such questions as he designates. In deciding whether or not to direct the Agency to respond to written questions the Presiding Officer should consider whether such responses are required for full disclosure and adequate resolution of the facts. No questions shall be allowed regarding privileged internal communications. The Presiding Officer shall grant, deny, or modify such requests expeditiously. If a request is granted the Presiding Officer may revise questions and may limit the number and scope of questions. Questions may be deleted or revised in the discretion of the Presiding Officer for reasons, which may include the fact that he finds the questions to be irrelevant, redundant, unnecessary, or an undue burden on the Agency. The Presiding Officer shall transmit the questions as submitted or as modified to EPA. EPA shall respond to the questions within fourteen (14) calendar days of service of the questions by the Presiding Officer, unless an extension is granted.

(e) *Submission of additional information.* The Presiding Officer shall have the discretion to order either party to submit additional information (including but not limited to post-hearing briefs on undeveloped factual, technical, or legal matters) in whatever form he deems appropriate either before, at, or after the hearing. The Presiding Officer may issue subpoenas for the attendance and testimony of per-

sons and the production of relevant papers, books and documents. Since these hearing procedures provide elsewhere that the parties are not to engage in direct or cross-examination of witnesses, the subpoena power is to serve only as an adjunct to the Presiding Officer's authority to ask questions and otherwise take steps to clarify factual matters which are in dispute. Upon request of the respondent the Presiding Officer may, in his discretion, allow submittal by the respondent of additional information in support of its claim, if it is received by the Clerk and petitioner at least five (5) business days before the hearing.

(f) *Location of hearing.* The hearing shall be held in the city in which the relevant EPA Regional Office is located, unless the Presiding Officer determines that there is good cause to hold it in another location.

§ 24.15 Hearing; oral presentations and written submissions by the parties.

(a) The Presiding Officer shall conduct the hearing in a fair and impartial manner, take action to avoid unnecessary delay in the disposition of the proceedings, and maintain order. The Presiding Officer shall permit oral statements on behalf of the respondent and EPA. The Presiding Officer may address questions to the respondent's or the EPA's representative(s) during the hearing. Each party shall ensure that a representative(s) is (are) present at the hearing, who is (are) capable of responding to questions and articulating that party's position on the law and facts at issue. Apart from questions by the Presiding Officer, no direct examination or cross-examination shall be allowed.

(b) Upon commencement of the hearing, a representative of EPA shall introduce the order and record supporting issuance of the order, and summarize the basis for the order. The respondent may respond to the administrative record and offer any facts, statements, explanations or documents which bear on any issue for which the hearing has been requested. Any such presentation by respondent may include new documents only to the extent that respondent can demonstrate that, through no fault of its own, such

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documents could not have been submitted before hearing in accordance with the requirements of §24.14 (c) and (e). The Agency may then present matters solely in rebuttal to matters previously presented by the respondent. The Presiding Officer may allow the respondent to respond to any such rebuttal submitted. The Presiding Officer may exclude repetitive or irrelevant matter. The Presiding Officer may upon request grant petitioner leave to respond to submissions made by respondent pursuant to this paragraph or §24.14(e).

§24.16 Transcript or recording of hearing.

(a) The hearing shall be either transcribed stenographically or tape recorded. Upon written request, such transcript or tape recording shall be made available for inspection or copying.

(b) The transcript or recording of the hearing and all written submittals filed with the Clerk by the parties subsequent to initial issuance of the order including post-hearing submissions will become part of the administrative record for the proceeding, for consideration by the Presiding Officer and Regional Administrator.

§24.17 Presiding Officer's recommendation.

(a) The Presiding Officer will, as soon as practicable after the conclusion of the hearing, evaluate the entire administrative record and, on the basis of the administrative record, prepare and file a recommended decision with the Regional Administrator. The recommended decision must address all material issues of fact or law properly raised by respondent, and must recommend that the order be modified, withdrawn or issued without modification. The recommended decision must provide an explanation, with citation to material contained in the record for any decision to modify a term of the order, to issue the order without change or to withdraw the order. The recommended decision shall be based on the administrative record. If the Presiding Officer finds that any contested relief provision in the order is not supported by a preponderance of

the evidence in the record, the Presiding Officer shall recommend that the order be modified and issued on terms that are supported by the record, or withdrawn.

(b) At any time within twenty-one (21) days of service of the recommended decision on the parties, the parties may file comments on the recommended decision with the Clerk. The Clerk shall promptly transmit any such comments received to the Regional Administrator for his consideration in reaching a final decision.

Subpart D—Post-Hearing Procedures

§24.18 Final decision.

As soon as practicable after receipt of the recommended decision, the Regional Administrator will either sign or modify such recommended decision, and issue it as a final decision. If the Regional Administrator modifies the recommended decision, he shall insure that the final decision indicates the legal and factual basis for the decision as modified. The Regional Administrator's decision shall be based on the administrative record.

§24.19 Final order.

If the Regional Administrator does not adopt portions of the initial order, or finds that modification of the order is necessary, the signatory official on the initial administrative order shall modify the order in accordance with the terms of the final decision and file and serve a copy of the final administrative order. If the Regional Administrator finds the initial order appropriate as originally issued, the final decision shall declare the initial administrative order to be a final order, effective upon service of the final decision. If the Regional Administrator declares that the initial order must be withdrawn, the signatory official on the initial administrative order will file and serve a withdrawal of the initial administrative order. This may be done without prejudice.

§24.20 Final agency action.

The final decision and the final administrative order are final agency actions that are effective on filing and