

Environmental Protection Agency

§ 104.16

without remand for further proceedings, or may remand with such instructions as he deems appropriate concerning cross-examination, or opportunity for any party to submit further evidence, with respect to such evidence as he directs should be admitted. In making his determination whether to remand, the Administrator shall consider whether the statutory time restraints permit a remand, and whether it would be constructive to allow cross-examination or further evidence with respect to the newly admitted evidence. If evidence is admitted without cross-examination, the Administrator shall consider the lack of opportunity for cross-examination in determining the weight to be given such evidence.

(g) Motions shall be brief, in writing, and may be filed at any time following the publication of the proposed effluent standards, unless otherwise ordered by the Presiding Officer or the Administrator. Unless otherwise ordered or provided in these rules, responses to motions may be filed within seven days of the actual filing of the motion with the hearing clerk.

§ 104.14 Tentative and final decision by the Administrator.

(a) As soon as practicable following the certification of the record and the filing by the parties of briefs and proposed findings of fact and conclusions under § 104.11, the Administrator, with such staff assistance as he deems necessary and appropriate, shall review the entire record and prepare and file a tentative decision based thereon. The tentative decision shall include findings of fact and conclusions, and shall be filed with the hearing clerk who shall at once transmit a copy thereof to each party who participated at the hearing, or his attorney or other representative.

(b) Upon filing of the tentative decision, the Administrator may allow a reasonable time for the parties to file with him any exceptions to the tentative decision, a brief in support of such exceptions containing appropriate references to the record, and any proposed changes in the tentative decision. Such materials shall, upon submission, become part of the record. As soon as practicable after the filing

thereof the Administrator shall prepare and file a final decision, copies of which shall be transmitted to the parties or their representatives in the manner prescribed in paragraph (a) of this section.

(c) In the event that the Administrator determines that due and timely execution of his functions, including compliance with time limitations established by law, imperatively and unavoidably so requires, he may omit the preparation and filing of the tentative decision and related procedures set forth in paragraph (b) of this section, and shall instead prepare and file a final decision, copies of which shall be transmitted to the parties or their representatives in the manner prescribed in paragraph (a) of this section.

(d) Any decision rendered by the Administrator pursuant to this section shall include a statement of his findings and conclusions, and the reasons and basis therefor, and shall indicate the toxic pollutant effluent standard or standards which the Administrator is promulgating or intends to promulgate based thereon.

§ 104.15 Promulgation of standards.

Upon consideration of the record, at the time of his final decision the Administrator shall determine whether the proposed effluent standard or standards should be promulgated as proposed, or whether any modification thereof is justified based upon a preponderance of the evidence adduced at the hearing, regardless of whether or not such modification was actually proposed by any objecting party. If he determines that a modification is not justified, he shall promulgate the standard or standards as proposed. If he determines that a modification is justified, he shall promulgate a standard or standards as so modified.

§ 104.16 Filing and time.

(a) All documents or papers required or authorized by the foregoing provisions of this part including, but not limited to, motions, applications for review, and briefs, shall be filed in duplicate with the hearing clerk, except as otherwise expressly provided in these rules. Any document or paper so required or authorized to be filed with

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the hearing clerk, if it is filed during the course of the hearing, shall be also filed with the Presiding Officer. A copy of each document or paper filed by any party with the Presiding Officer, with the hearing clerk, or with the Administrator shall be served upon all other parties, except to the extent that the list of parties to be so served may be modified by order of the Presiding Officer, and each such document or paper shall be accompanied by a certificate of such service.

(b) A party may be represented in any proceeding under this part by an attorney or other authorized representative. When any document or paper is required under these rules to be served upon a party such service shall be made upon such attorney or other representative.

(c) Except where these rules or an order of the Presiding Officer require receipt of a document by a certain date, any document or paper required or authorized to be filed by this part shall be deemed to be filed when post-marked, or in the case of papers delivered other than by mail, when received by the hearing clerk.

(d) Sundays and legal holidays shall be included in computing the time allowed for the filing of any document or paper, provided, that when such time expires on a Sunday or legal holiday, such period shall be extended to include the next following business day.

PART 108—EMPLOYEE PROTECTION HEARINGS

Sec.

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AUTHORITY: Sec. 507(e), Pub. L. 92-500, 86 Stat. 816 (33 U.S.C. 1251 *et seq.*).

SOURCE: 39 FR 15398, May 3, 1974, unless otherwise noted.

§ 108.1 Applicability.

This part shall be applicable to investigations and hearings required by section 507(e) of the Federal Water Pollu-

tion Control Act, as amended, 33 U.S.C. 1251 *et seq.* (Pub. L. 92-500).

§ 108.2 Definitions.

As used in this part, the term:

(a) *Act* means the Federal Water Pollution Control Act, as amended;

(b) *Effluent limitation* means any effluent limitation which is established as a condition of a permit issued or proposed to be issued by a State or by the Environmental Protection Agency pursuant to section 402 of the Act; any toxic or pretreatment effluent standard established under section 307 of the Act; any standard of performance established under section 306 of the Act; and any effluent limitation established under section 302, section 316, or section 318 of the Act.

(c) *Order* means any order issued by the Administrator under section 309 of the Act; any order issued by a State to secure compliance with a permit, or condition thereof, issued under a program approved pursuant to section 402 of the Act; or any order issued by a court in an action brought pursuant to section 309 or section 505 of the Act.

(d) *Party* means an employee filing a request under § 108.3, any employee similarly situated, the employer of any such employee, and the Regional Administrator or his designee.

(e) *Administrator* or *Regional Administrator* means the Administrator or a Regional Administrator of the Environmental Protection Agency.

§ 108.3 Request for investigation.

Any employee who is discharged or laid-off, threatened with discharge or lay-off, or otherwise discriminated against by any person because of the alleged results of any effluent limitation or order issued under the Act, or any representative of such employee, may submit a request for an investigation under this part to the Regional Administrator of the region in which such discrimination is alleged to have occurred.

§ 108.4 Investigation by Regional Administrator.

Upon receipt of any request meeting the requirements of § 108.3, the Regional Administrator shall conduct a full investigation of the matter, in