

## § 178.32

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 factual issues that are not determinative with respect to the action requested. For example, a hearing will not be granted if the Administrator concludes that the action would be the

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same even if the factual issue were resolved in the manner sought.

(c) Where appropriate, the Administrator will make rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted.

### **§ 178.35 Modification or revocation of regulation.**

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation in question should be modified or revoked, the Administrator will by order publish appropriate rulemaking documents in the FEDERAL REGISTER.

(b) The Administrator will provide an opportunity for objections and requests for hearing on such rule to the extent required by law. Such objections to the modification or revocation of the regulation, and requests for a hearing on such objections, may be submitted under §§ 178.20 through 178.27.

(c) Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in accordance with this part.

### **§ 178.37 Order responding to objections on which a hearing was not requested or was denied.**

(a) The Administrator will publish in the FEDERAL REGISTER an order under FFDC section 408(d)(5) or 409(f)(1) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under §178.20 on which:

(1) A hearing was not requested.

(2) A hearing was requested, but denied.

(b) Each order published under paragraph (a) of this section must state the reasons for the Administrator's determination. If the order denies a request for a hearing on the objection, the order also must state the reason for that denial (e.g., why the request for a hearing did not conform to §178.27, or why the request was denied under §178.32).

(c) Each order published under paragraph (a) of this section must state its effective date, which must not be earlier than the 90th day after the order is