

## § 179.107

filed with the hearing clerk will be decided by the Administrator.

(d) The initial decision becomes the final decision of the Administrator by operation of law unless a party files exceptions with the hearing clerk under § 179.107 or the Administrator files a notice of review under § 179.110.

### § 179.107 Appeal from or review of initial decision.

(a) A party may appeal an initial decision to the Administrator by filing exceptions with the hearing clerk, and serving them on the other parties, within the period specified in the initial decision. The period may not exceed 30 days, unless extended by the Administrator under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law or policy in the initial decision and, if errors in the findings of fact are alleged, must provide supporting citations to evidence of record. Oral argument before the Administrator may be requested in the exceptions.

(c) Any reply to the exceptions is to be filed and served within the timeperiod specified in the initial decision. The timeperiod may not exceed 30 days after the end of the period (including any extensions) for filing exceptions, unless extended by the Administrator under paragraph (d) of this section.

(d) The Administrator may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Administrator decides to hear oral argument, the parties will be informed of the date, time, and place; the amount of time allotted to each party, and the issues to be addressed.

### § 179.110 Determination by Administrator to review initial decision.

Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Administrator may file with the hearing clerk, and serve on the parties, a notice of the Administrator's determination to review the initial decision. The Administrator may invite the parties to file briefs or present oral argument on the matter. The time for filing briefs or

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presenting oral argument will be specified in that or a later notice.

### § 179.112 Decision by Administrator on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Administrator shall have the same powers as did the presiding officer in making the initial decision. On the Administrator's own initiative or on motion, the Administrator may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues on appeal to, or on review by the Administrator is the same as the scope of the issues before the presiding officer, unless the Administrator specifies otherwise.

(c) After the filing of briefs and any oral argument, the Administrator will issue a final decision on the issues of fact in the hearing and the objections related to those issues. A final decision must contain the elements required for an initial decision by § 179.105(b).

(d) The Administrator may adopt the initial decision as the final decision.

(e) The Administrator's decision, or a summary of the decision and a notice of its availability, will be published in the FEDERAL REGISTER.

### § 179.115 Motion to reconsider a final order.

A party may file a motion requesting the Administrator to reconsider a final decision under this part. Any such motion must be filed within 10 days after service of the final decision, and must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such a motion shall not stay the effective date of the final decision unless specifically so ordered by the Administrator.

### § 179.117 Designation and powers of judicial officer.

(a) One or more judicial officers may be designated by the Administrator. A judicial officer shall be an attorney who is a permanent or temporary employee of the Agency or of another Federal agency. A judicial officer may perform other duties. A judicial officer who performs any duty under this part may not be employed by OPPTS, by the Pesticides and Toxic Substances

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Division of the Office of General Counsel, or by any other person who is a representative of OPPTS in the hearing. A person may not be designated as a judicial officer in a hearing if he or she performed any prosecutorial or investigative functions in connection with that hearing or any other factually related hearing.

(b) The Administrator may delegate to the judicial officer all or part of the Administrator's authority to act in a given proceeding under this part. Such a delegation does not prevent the judicial officer from referring any motion or case to the Administrator when appropriate.

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

### Subpart G—Judicial Review

#### § 179.125 Judicial review.

(a) The Administrator's final decision is final agency action reviewable in the courts as provided by FFDCA section 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure of a person to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA sections 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

(b) The record for judicial review of a final decision under this part consists of the record described in § 179.130.

#### § 179.130 Administrative record.

(a) For purposes of judicial review, the record of a hearing that culminates in a final decision of the Administrator under § 179.105(d) or § 179.112(c) ruling on an objection shall consist of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) The regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(4) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) The regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under § 180.29(f) of this chapter to which the objection related, the regulation that was the subject of that order, and each related Notice of Proposed Rulemaking.

(6) The comments submitted by members of the public in response to the Notice of Filing or Notice of Proposed Rulemaking, and the information submitted as part of the comments, the Administrator's response to comments and the documents or information relied on by the Administrator in issuing the regulation or order.

(7) All other documents or information submitted to the docket for the rulemaking in question under parts 177 or part 180 of this chapter.

(8) The Notice of Hearing published under § 179.20.

(9) All notices of participation filed under § 179.42.

(10) Any FEDERAL REGISTER notice issued under this part that pertains to the proceeding.

(11) All submissions filed under § 179.80.

(12) Any document of which official notice was taken under § 179.95.

(b) The record of the administrative proceeding is closed:

(1) With respect to the taking of evidence, when specified by the presiding officer.