

Environmental Protection Agency

§ 164.120

of this section, any other party or *amicus curiae* may file and serve a brief responding thereto, with appropriate page references to the relevant portions of the record, if applicable.

(c) Ordinarily, the appeal from an accelerated decision will be decided on the basis of the submission of briefs, but the Environmental Appeals Board may allow additional briefs and oral argument.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5343, Feb. 13, 1992]

§ 164.103 Final decision or order on appeal or review.

Within 90 days after the close of the hearing or within 90 days from the filing of an accelerated decision, unless otherwise stipulated by the parties, the Environmental Appeals Board shall, on appeal or review from an initial or accelerated order of the Administrative Law Judge, issue its final decision and order, including its rulings on any exceptions filed by the parties; such final order may accept or reject all or part of the initial or accelerated decision of the Administrative Law Judge even if acceptable to the parties.

[57 FR 5343, Feb. 13, 1992]

§ 164.110 Motion for reopening hearings; for rehearing; for reargument of any proceeding; or for reconsideration of order.

(a) *Filing; service.* A motion for reopening the hearing to take further evidence, or for rehearing or reargument of any proceeding or for reconsideration of the order, must be made by motion to the Environmental Appeals Board filed with the hearing clerk. Every such motion must state specifically the grounds relied upon.

(b) *Motion to reopen hearings.* A motion to reopen a hearing to take further evidence may be filed at any time prior to the issuance of the Administrator's final order. Every such motion shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth good reason why such evidence was not adduced at a hearing.

(c) *Motions to rehear or reargue proceedings, or to reconsider final orders.* A motion to rehear or reargue the pro-

ceeding or to reconsider the final order shall be filed within 10 days after the date of service of the final order. Every such motion must state specifically the matters claimed to have been erroneously decided, and alleged errors must be briefly stated. Motions to rehear or reargue proceedings or to reconsider final orders shall be directed to, and heard by, the Environmental Appeals Board. Motions under this section directed to the Administrator will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator pursuant to §164.2(g) and in which the Administrator has issued the final order. A motion for reconsideration shall not stay the effective date of the final order unless specifically so ordered by the Environmental Appeals Board.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5343, Feb. 13, 1992]

§ 164.111 Procedure for disposition of motions.

Within 7 days following the service of any motion provided for in §164.110, any other party to the proceeding may file with the hearing clerk an answer thereto. As soon as practicable thereafter, the Environmental Appeals Board shall announce its decision whether to grant or to deny the motion. Unless the Environmental Appeals Board shall determine otherwise, operation of the order shall not be stayed pending the decision to grant or to deny the motion. In the event that any such motion is granted by the Environmental Appeals Board, the applicable rules of practice, as set out elsewhere herein, shall be followed.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5344, Feb. 13, 1992]

Subpart C—General Rules of Practice for Expedited Hearings

§ 164.120 Notification.

(a) Whenever the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings, but that the hazard does not constitute