

§ 209.31

has taken action to review or stay the effective date of the decision.

(c) The administrative law judge's decision shall include a statement of findings and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact or law presented on the record and an appropriate rule or order. The decision shall be supported by a preponderance of the evidence and based upon a consideration of the whole record.

(d) At any time prior to issuing his or her decision, the administrative law judge may reopen the proceeding for the reception of further evidence.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5345, Feb. 13, 1992]

§ 209.31 Appeal from the decision of the administrative law judge.

(a) Any party to a proceeding may appeal the administrative law judge's decision to the Environmental Appeals Board: Provided, That within 10 days after the administrative law judge's decision is issued, the party files a notice of intention to appeal, and within 30 days of the decision the party files an appeal brief.

(b) When an appeal is taken from the decision of the administrative law judge, any party may file a brief with respect to such appeal. The brief shall be filed within 20 days of the date of the filing of the appellant's brief.

(c) Any brief filed under this section shall contain, in the order indicated:

(1) A subject index of the matter in the brief, with page references, and a table of cases (alphabetically arranged), textbooks, statutes, and other material cited, with page references thereto;

(2) A specification of the issues which will be argued;

(3) The argument presenting clearly the points of fact and law relied upon in support of the position taken on each issue, with specific page references to the record and the legal or other material relied upon; and

(4) A proposed form of rule or order for the Environmental Appeals Board's consideration if different from the rule or order contained in the administrative law judge's decision.

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(d) Briefs shall not exceed 40 pages without leave of the Environmental Appeals Board.

(e) The Environmental Appeals Board may allow oral argument in its discretion.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5345, Feb. 13, 1992]

§ 209.32 Review of the administrative law judge's decision in absence of appeal.

(a) If, after the expiration of the period for taking an appeal under § 209.31, no notice of intention to appeal the decision of the administrative law judge has been filed, or if filed, not perfected, the hearing clerk shall so notify the Environmental Appeals Board.

(b) The Environmental Appeals Board, upon receipt of notice from the hearing clerk that no notice of intention to appeal has been filed, or if filed, not perfected pursuant to § 209.31, may, on its own motion, within the time limits specified in § 209.30(b), review the decision of the administrative law judge. Notice of the Environmental Appeals Board's intention to review the decision of the administrative law judge shall be given to all parties and shall set forth the scope of such review and the issues which shall be considered and shall make provision for filing of briefs.

[57 FR 5345, Feb. 13, 1992]

§ 209.33 Decision on appeal or review.

(a) Upon appeal from or review of the administrative law judge's decision, the Environmental Appeals Board shall consider such parts of the record as are cited or as may be necessary to resolve the issues presented and, in addition shall to the extent necessary or desirable exercise all the powers which the Environmental Appeals Board could have exercised if it had presided at the hearing.

(b) The Environmental Appeals Board shall render a decision as expeditiously as possible. The Environmental Appeals Board shall adopt, modify, or set aside the findings, conclusions, and rule or order contained in the decision of the administrative law judge and