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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

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shall set forth in its decision a statement of the reasons or bases for its action. The Environmental Appeals Board's decision shall be the final order in the proceeding.

(c) In those cases where the Environmental Appeals Board determines that it should have further information or additional views of the parties as to the form and content of the rule or order to be issued, the Environmental Appeals Board, in its discretion, may withhold final action pending the receipt of such additional information or views, or may remand the case to the administrative law judge.

[57 FR 5345, Feb. 13, 1992]

§209.34 Reconsideration.

Within five (5) days after service of the Environmental Appeals Board's decision, any party may file a petition for reconsideration of such decision, setting forth the relief desired and the grounds in support thereof. Petitions for reconsideration under this provision shall be directed to, and decided by, the Environmental Appeals Board. Petitions for reconsideration directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered, except in cases that the Environmental Appeals Board has referred to the Administrator's pursuant to §209.3(k) and in which the Administrator has issued the final order. Any petition filed under this subsection must be confined to new questions raised by the decision or final order and upon which the petitioner had no opportunity to argue before the administrative law judge or the Environmental Appeals Board. Any party desiring to oppose a petition shall file an answer thereto within five (5) days after service of the petition. The filing of a petition for reconsideration shall not operate to stay the effective date of the decision or order.

[57 FR 5345, Feb. 13, 1992]

§209.35 Conclusion of hearing.

(a) If no appeal has been taken from the administrative law judge's decision before the period for taking an appeal under §209.31 has expired, and the period for review by the Environmental Appeals Board on its own motion under

§209.30 has expired, and the Environmental Appeals Board does not move to review such decision, the hearing will be deemed to have ended at the expiration of all periods allowed for such appeal and review.

(b) If an appeal of the administrative law judge's decision is taken under §209.31, or if, in the absence of such appeal, the Environmental Appeals Board moves to review the decision of the administrative law judge under §209.32, the hearing will be deemed to have ended upon the rendering of a final decision by the Environmental Appeals Board.

[57 FR 5346, Feb. 13, 1992]

§209.36 Judicial review.

(a) The Administrator hereby designates the general counsel, Environmental Protection Agency as the officer upon whom copy of any petition for judicial review shall be served. That officer shall be responsible for filing in the court the record on which the order of the Environmental Appeals Board is based.

(b) Before forwarding the record to the court, the Agency shall advise the petitioner of the costs of preparing it and as soon as payment to cover fees is made shall forward the record to the court.

[43 FR 34132, Aug. 3, 1978, as amended at 57 FR 5346, Feb. 13, 1992]

PART 210—PRIOR NOTICE OF CITIZEN SUITS

Sec.

210.1 Purpose.

210.2 Service of notice.

210.3 Contents of notice.

AUTHORITY: Sec. 12, Noise Control Act, (Pub. L. 92-574, 86 Stat. 1234).

SOURCE: 39 FR 36011, Oct. 7, 1974, unless otherwise noted.

§210.1 Purpose.

Section 12 of the Noise Control Act authorizes any person to commence a civil action on his own behalf to enforce the Act or to enforce certain requirements promulgated pursuant to the Act. The purpose of this part is to prescribe procedures governing the manner of giving notices as required by