

Environmental Protection Agency

§ 164.4

issues of law, fact, or discretion, as well as reasons therefor. Such decision shall become the final decision and order of the Administrator without further proceedings unless an appeal therefrom is taken or the Administrator orders review thereof as herein provided.

(l) The term *Judicial Officer* means an officer or employee of the Agency designated as a judicial officer, pursuant to these rules, who shall meet the qualifications and perform functions as herein provided.

(1) *Office.* There may be designated for the Agency one or more judicial officers, one of whom may be Chief Judicial Officer. As work requires, there may be a judicial officer designated to act for the purpose of a particular case. All prior designations of judicial officer shall stay in force until further notice.

(2) *Qualification.* A judicial officer shall be a permanent or temporary employee or officer of the Agency who may perform other duties for the Agency. Such judicial officer shall not be employed by the Office of Hazardous Materials Control or have any connection with the preparation or presentation of evidence for a hearing.

(3) *Functions.* The Administrator may delegate any or part of his authority to act in a given case under subparts B and C of this part to a judicial officer. The Administrator can separately delegate his authority to rule on interlocutory orders and motions, and may also delegate his authority to make findings of fact and draw conclusions of law in a particular proceeding, providing that this delegation shall not preclude the Judicial Officer from referring any motion or case to the Administrator when the Judicial Officer determines such referral to be appropriate. The Administrator, in deciding a case himself, may consult with and assign the preliminary drafting of conclusions of law and findings of fact to any judicial officer.

(m) The term *Party* means any person, group, organization, or Federal agency or department that participates in a hearing.

(n) The term *Person* includes any individual, partnership, association, cor-

poration, and any organized group of persons, whether incorporated or not.

(o) The term *Petitioner* means any person adversely affected by a notice of the Administrator who requests a public hearing.

(p) The term *Presiding Officer* means any person designated by the Administrator to conduct an expedited hearing.

(q) The term *Recommended Decision* means the recommended findings and conclusions of the Presiding Officer in an expedited hearing.

(r) The term *Registrant* means any person who has registered a pesticide pursuant to the provisions of the Act.

(s) The term *Respondent* means the Assistant Administrator of the Office of Hazardous Materials Control of the Agency.

Terms defined in the act and not explicitly defined herein are used herein with the meanings given in the act.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5342, Feb. 13, 1992; 57 FR 30657, July 10, 1992]

§ 164.3 Scope and applicability of this part.

The provisions of subpart B of this part shall govern proceedings, conducted pursuant to the provisions of the Act, concerning refusals to register, cancellations of registration, changes of classifications or hearings called by the Administrator; the provisions of subpart C of this part shall govern suspension proceedings conducted pursuant to the provisions of the Act.

§ 164.4 Arrangements for examining Agency records, transcripts, orders, and decisions.

(a) *Reporting of orders, decisions, and other signed documents.* All orders, decisions, or other signed documents required by the rules in this part, whether issued by the Environmental Appeals Board or the Presiding Officer shall be made available to the public.

(b) *Establishment of an Agency repository.* In addition, all transcripts and docket entries shall become part of the official docket and shall be retained by the hearing clerk. At least two copies of all final orders, decisions and a notification of any appeals taken therefrom shall be retained by the hearing

§ 164.5

clerk and filed chronologically and shall be periodically bound and indexed. All the above documents shall be made available to the public for reasonable inspections during Agency business hours.

(c) Whenever any information or data is required to be produced or examined and any party to the proceeding claims that such information is a trade secret or commercial or financial information, other than information relating to the formulas of a pesticide, the Administrative Law Judge, the Presiding Officer, or the Environmental Appeals Board may require production or testimony *in camera* and sealed to all but the parties.

(d) All orders, decisions, or other documents made or signed by the Administrative Law Judge, the Presiding Officer, or the Environmental Appeals Board shall be filed with the hearing clerk. The hearing clerk shall immediately serve all parties with a copy of such order, decision, or other document.

[38 FR 19371, July 20, 1973, as amended at 57 FR 5342, Feb. 13, 1992]

§ 164.5 Filing and service.

(a) All documents or papers required or authorized to be filed, shall be filed with the hearing clerk, except as provided otherwise in this part. At the same time that a party files documents or papers with the clerk, it shall serve upon all other parties copies thereof, with a certificate of service on each document or paper, including those filed with the hearing clerk. If filing is accomplished by mail addressed to the clerk, filing shall be deemed timely if the papers are postmarked on the due date except as to initial filings requesting a public hearing or responding to a notice of intent to hold a hearing, in which case such filings must be received by the hearing clerk either within the time required by statute or by the notice of intent to hold a hearing.

(b) Each document filed, other than papers commencing a proceeding, shall contain the FIFRA docket number and, if the document affects less than all of the registrations included under that docket number, the registration num-

40 CFR Ch. I (7-1-05 Edition)

ber or file symbol of each product which is the subject of the document.

(c) In addition to copies served on all other parties, each party shall file an original and two copies of all papers with the hearing clerk.

§ 164.6 Time.

(a) *Computation.* In computing any period of time prescribed or allowed by these rules, except as otherwise provided, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and legal holidays shall be included in computing the time allowed for the filing of any document or paper, except that when such time expires on a Saturday, Sunday, or legal holiday, such period shall be extended to include the next following business day.

(b) *Enlargement.* When by these rules or by order of the Administrative Law Judge, the Presiding Officer, or the Environmental Appeals Board, an act is required or allowed to be done at or within a specified time, the Administrative Law Judge (before his initial decision is filed), or the Presiding Officer (before his recommended decision is filed), or the Environmental Appeals Board (after the Administrative Law Judge's initial decision or the presiding officer's recommended decision is filed), for cause shown may at any time in their discretion: with or without motion or notice, order the period enlarged if request therefor, which may be made *ex parte*, is made before the expiration of the period originally prescribed or as extended by a previous order; or on motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect. In this connection, consideration shall be given to the fact that, under the provisions of the act, the Administrator must issue his order not later than 90 days after the completion of the hearing, unless all parties agree by stipulation to extend this period of time pursuant to § 164.103.

(c) *Additional time after service by mail.* A prescribed period of time within which a party is required or permitted to do an act shall be computed from the time of service, except that when