

§ 164.102

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Board shall issue an order either declining review of the initial decision or expressing its intent to review said initial decision. Such order may include a statement of issues to be briefed by the parties and a time schedule concerning service and filing of briefs adequate to allow the Environmental Appeals Board to issue a final order within 90 days from the close of the hearing.

(c) *Argument before the Environmental Appeals Board.* (1) A party, if he files exceptions and a brief, shall state in writing whether he desires to make an oral argument thereon before the Environmental Appeals Board; otherwise, he shall be deemed to have waived such oral argument. The Environmental Appeals Board shall, however, on its own initiative, have the right to set an appeal for oral argument.

(2) If the Environmental Appeals Board determines that additional exceptions should be argued, counsel for the parties shall be given reasonable written notice of such determination so as to permit preparation of adequate argument on all of the exceptions to be argued.

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

§ 164.102 Appeals from accelerated decisions.

(a) Within 20 days after filing of an accelerated decision by the Administrative Law Judge, any party may file exceptions and a supporting brief with the hearing clerk, stating with particularity the grounds upon which he asserts that the decision is incorrect. The party shall include in its brief page references to the relevant portions of the record, if applicable.

(b) Within 7 days of the service of exceptions and brief under paragraph (a) 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 proceeding 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

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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 an emergency, he shall notify the registrant of his intention to suspend registration of the pesticide at issue.

(b) Such notice shall include findings pertaining to the question of imminent hazard and shall either be personally served on the registrant or be sent to the registrant by registered or certified mail, return receipt requested, and filed with the hearing clerk.

§ 164.121 Expedited hearing.

(a) *Request.* (1) An expedited hearing shall be held whenever the Administrator has received from the registrant a timely request for such hearing in re-

sponse to the Administrator's notice of intention to suspend.

(2) A request for an expedited hearing is timely if made in writing or by telegram and filed with the office of the hearing clerk within 5 days of the registrant's receipt of the notice of intention to suspend.

(3) At the time of filing a request for an expedited hearing, the registrant shall also file a document setting forth objections to the Administrator's notice of intention to suspend and its findings pertaining to the question of imminent hazard. Such objections shall conform to the requirements of §164.21.

(b) *Presiding officer.* (1) An expedited hearing shall be conducted by a presiding officer appointed by the Administrator, and such officer need not be an Administrative Law Judge.

(2) The presiding officer shall not have the authority to make an initial decision on the merits but shall make a recommended decision only.

(c) *The issue.* The expedited hearing shall address only the issue of whether an imminent hazard exists.

(d) *Time of hearing.* The hearing shall commence within 5 days after the filing of the request with the office of the hearing clerk unless the registrant and respondent agree that it shall commence at a later time. As soon as possible, the presiding officer shall publish in the Federal Register notice of such hearing.

(e) *Intervention.* Any person adversely affected by the Administrator's notice may move to intervene within 5 days after the receipt by the registrant of said notice or at any time prior to the conclusion of the presentation of the evidence, upon good cause found, except

(1) Leave to intervene will be granted only if the motion to intervene meets the standards of §164.31 and, in addition, indicates that the movant would raise matters or introduce evidence pertinent to the issue of imminent hazard which would substantially assist in its resolution.

(2) A movant denied permission to intervene under this section but who otherwise meets the standards of §164.31 and who is adversely affected may file proposed findings and conclusions and briefs in support thereof pursuant to