

Environmental Protection Agency

§ 164.121

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