

§ 164.1

- or notice of intent to change a classification.
- 164.22 Contents of document setting forth objections.
- 164.23 Contents of the statement of issues to accompany notice of intent to hold a hearing.
- 164.24 Response to the Administrator's notice of intention to hold a hearing.
- 164.25 Filing copies of notification of intent to cancel registration or change classification or refusal to register, and statement of issues.

APPEARANCES, INTERVENTION, AND CONSOLIDATION

- 164.30 Appearances.
- 164.31 Intervention.
- 164.32 Consolidation.

ADMINISTRATIVE LAW JUDGE

- 164.40 Qualifications and duties of Administrative Law Judge.

PREHEARING PROCEDURES AND DISCOVERY

- 164.50 Prehearing conference and primary discovery.
- 164.51 Other discovery.

MOTIONS

- 164.60 Motions.

SUBPOENAS AND WITNESS FEES

- 164.70 Subpoenas.
- 164.71 Fees of witnesses.

THE HEARINGS

- 164.80 Order of proceeding and burden of proof.
- 164.81 Evidence.
- 164.82 Transcripts.

INITIAL OR ACCELERATED DECISION

- 164.90 Initial decision.
- 164.91 Accelerated decision.

APPEALS

- 164.100 Appeals from or review of interlocutory orders or rulings.
- 164.101 Appeals from or review of initial decisions.
- 164.102 Appeals from accelerated decisions.
- 164.103 Final decision or order on appeal or review.
- 164.110 Motion for reopening hearings; for rehearing; for reargument of any proceeding; or for reconsideration of order.
- 164.111 Procedure for disposition of motions.

Subpart C—General Rules of Practice for Expedited Hearings

- 164.120 Notification.
- 164.121 Expedited hearing.
- 164.122 Final order and order of suspension.

40 CFR Ch. I (7–1–07 Edition)

- 164.123 Emergency order.

Subpart D—Rules of Practice for Applications Under Sections 3 and 18 To Modify Previous Cancellation or Suspension Orders

- 164.130 General.
- 164.131 Review by Administrator.
- 164.132 Procedures governing hearing.
- 164.133 Emergency waiver of hearing.

AUTHORITY: 7 U.S.C. 136d.

SOURCE: 38 FR 19371, July 20, 1973, unless otherwise noted.

Subpart A—General

§ 164.1 Number of words.

As used in this part, a word in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

§ 164.2 Definitions.

For the purposes of this part, the following terms shall be defined, as listed below:

(a) The term *Act* means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 973) and other legislation supplementary thereto and amendatory thereof.

(b) The term *Administrative Law Judge* means an Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (see also 5 CFR part 930, as amended), and such term is synonymous with the term "Hearing Examiner" as used in the Act or in the United States Code.

(c) The term *Administrator* means the Administrator of the United States Environmental Protection Agency.

(d) The term *Agency*, unless otherwise specified, means the United States Environmental Protection Agency.

(e) The term *Applicant* means any person who has made application to have a pesticide registered or classified pursuant to the provisions of the Act.

(f) The term *Committee* means a group of qualified scientists designated by the National Academy of Sciences according to agreement under the Act to submit an independent report to the Administrative Law Judge on questions of scientific fact referred from a hearing under subpart B of this part.

Environmental Protection Agency

§ 164.2

(g) *Environmental Appeals Board* shall mean the Board within the Agency described in §1.25 of this title. The Administrator delegates authority to the Environmental Appeals Board to issue final decisions in appeals filed under subparts B and C of this part. An appeal directed to the Administrator, rather than to the Environmental Appeals Board, will not be considered. This delegation does not preclude the Environmental Appeals Board from referring an appeal or a motion under subparts B and C to the Administrator when the Environmental Appeals Board, in its discretion, deems it appropriate to do so. When an appeal or motion is referred to the Administrator, all of the parties shall be so notified and the rules in subparts B and C referring to the Environmental Appeals Board shall be interpreted as referring to the Administrator.

(h) The term *Expedited Hearing* means a hearing commenced as the result of the issuance of a notice of intention to suspend or the suspension of a registration of a pesticide by an emergency order, and is limited to a consideration as to whether a pesticide presents an imminent hazard which justifies such suspension.

(i) The term *Hearing* means a public hearing which is conducted pursuant to the provisions of chapter 5, subchapter II of title 5 of the United States Code and the regulations of this part.

(j) The term *Hearing Clerk* means the Hearing Clerk, Environmental Protection Agency, Washington, DC 20460.

(k) The term *Initial Decision* means the decision of the Administrative Law Judge supported by findings of fact and conclusions regarding all material 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, corporation, 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.

§ 164.3

(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 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 Ad-

40 CFR Ch. I (7-1-07 Edition)

ministrative 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 number 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