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the Administrator and shall serve upon all hearing participants a brief concerning each of the exceptions being appealed. Each brief shall include page references to the relevant portions of the record and to the recommended decision.

(2) Within 10 days of the service of exceptions and briefs under paragraph (a)(1) of this section, any hearing participant may file and serve a reply brief responding to exceptions or arguments raised by any other hearing participant together with references to the relevant portions of the record, recommended decision, or opposing brief. Reply briefs shall not, however, raise additional exceptions.

(b) *Sua sponte review by the Administrator*. Whenever the Administrator determines *sua sponte* to review a recommended decision, notice of such intention shall be served upon the parties by the Hearing Clerk within 30 days after the date of service of the recommended decision. Such notice shall include a statement of issues to be briefed by the hearing participants and a time schedule for the service and filing of briefs.

(c) *Scope of appeal or review*. The appeal of the recommended decision shall be limited to the issues raised by the appellant, except when the Administrator determines that additional issues should be briefed or argued. If the Administrator determines that briefing or argument of additional issues is warranted, all hearing participants shall be given reasonable written notice of such determination to permit preparation of adequate argument.

(d) *Argument before the Administrator*. The Administrator may, upon request by a party or sua sponte, set a matter for oral argument. The time and place for such oral argument shall be assigned after giving consideration to the convenience of the parties.

§ 57.813 Final decision.

(a) *After review*. As soon as practicable after all appeal or other review proceedings have been completed, the Administrator shall issue his final decision. Such a final decision shall include the same elements as the recommended decision, as well as any additional reasons supporting his decisions on exceptions filed by hearing participants. The final decision may accept or reject all or part of the recommended decision. The Administrator may consult with the Presiding Officer, members of the hearing panel or any other EPA employee in preparing his final decision. The Hearing Clerk shall file a copy of the decision on all hearing participants.

(b) *In the absence of review*. If no party appeals a recommended decision to the Administrator and if the Administrator does not review it sua sponte, he shall be deemed to have adopted the recommended decision as the final decision of the Agency upon the expiration of the time for filing any exceptions under § 57.812(a).

(c) *Timing of judicial review*. For purposes of judicial review, final Agency action on a request for a waiver of the interim requirement that each NSO provide for the use of constant controls shall not occur until EPA approves or disapproves the issuance of an NSO to the source requesting such a waiver.

§ 57.814 Administrative record.

(a) *Establishment of record*. (1) Upon receipt of request for a waiver, an administrative record for that request shall be established, and a Record and Hearing Clerk appointed to supervise the filing of documents in the record and to carry out all other duties assigned to him under this subpart.

(2) All material required to be included in the record shall be added to the record as soon as feasible after its receipt by EPA. All material in the record shall be appropriately indexed. The Hearing Clerk shall make appropriate arrangements to allow members of the public to copy all nonconfidential record materials during normal EPA business hours.

(3) Confidential record material shall be indexed under paragraph (a)(2). Confidential record material shall, however, be physically maintained in a separate location from public record material.

(4) Confidential record material shall consist of the following:

(i) Any material submitted pursuant to § 57.802 for which a proper claim of confidentiality has been made under