

whether the disapproval should be rescinded.

(c) *Decision and notification of disapproval.* Except as provided in paragraph (b)(1) of this section, the Administrator will make a final decision on disapproval of a State registration, and provide written notification thereof to the State, within 90 days of the effective date of the registration; provided that, if the State does not notify the Agency of a registration within ten days of its effective date, then the Administrator will make a final decision on disapproval within 90 days of the date on which EPA receives notification of the State registration. The notice of disapproval will specify an appropriate date on which the disapproval will become effective. Disapproval may become effective immediately, or at anytime within the period allowed for the Administrator to make a final decision on disapproval. The notice of disapproval will also, when appropriate, give instructions for use or disposal of the pesticide. Each notice of disapproval will be published in the FEDERAL REGISTER.

(d) *Effect of disapproval.* If a registration issued by a State is disapproved by the Administrator, that registration will not be valid for any purpose under FIFRA, as of the date the disapproval becomes effective. Thereafter, distribution or sale of the pesticide, in either interstate or intrastate commerce, for uses subject to the disapproval will be a violation of sec. 12(a)(1) of FIFRA.

(e) *Rescission of disapproval.* If the Administrator determines, after consultation with the State lead agency, that a registration, previously issued by the State and disapproved by the Administrator, should not have been disapproved under FIFRA, then the Administrator shall rescind the disapproval. The Administrator shall send written notification of the rescission to the State. In addition, the Administrator shall publish notice of any rescission of disapproval in the FEDERAL REGISTER.

(f) *Notification of registrants.* Any State that issues a registration which has been disapproved, or which is subject to a notice of intent to disapprove, shall be responsible for notifying the affected registrant of any such notice

of intent or disapproval, and of any rescission of disapproval by the Administrator.

§ 162.155 Suspension of State registration authority.

(a) *General.* (1) If the Administrator finds that a State is not capable of exercising, or has failed to exercise, adequate control over its registration program, so that the State cannot ensure that registrations issued by it will be in accord with the purposes of FIFRA, then the Administrator may suspend the State's authority to register pesticides under sec. 24(c) of the Act. Registrations issued by the State after suspension of its authority will not be considered valid under FIFRA. Registrations issued by the State prior to suspension will not be affected by the suspension.

(2) The Administrator may suspend all or any part of a State's registration authority, as appropriate.

(b) *Grounds for Suspension.* (1) The Administrator may suspend a State's registration authority due to lack of, or failure to exercise, adequate control by the State over its sec. 24(c) registration program. Adequate control includes, but is not limited to, all of the following:

(i) Access to appropriate scientific and technical personnel to review data and make determinations as required by § 162.153.

(ii) Registration procedures satisfying § 162.153.

(iii) Complete and accurate records of State registrations.

(iv) Adequate legal authority. (A) To deny, suspend, revoke, or amend a State registration when the registration is not in compliance with FIFRA, this subpart, or State law, or when necessary to prevent unreasonable adverse effects on the environment.

(B) To enter, at reasonable times, by consent, warrant, or other legal means, any establishment where pesticides are produced or held for distribution or sale, to inspect, sample, and observe whether pesticides are being produced or distributed in compliance with FIFRA, this subpart, State law, and the terms of any State registration.

(2) The Administrator may suspend a State's registration authority if the

Environmental Protection Agency

§ 162.155

State fails to exercise the controls specified in paragraph (b)(1) of this section, or if the State refuses to correct within a reasonable time any other significant deficiencies in its regulatory program, as specified by the Administrator in a notice of intent to suspend.

(c) *Procedures for Suspension.* (1) Prior to suspending the registration authority of any State, the Administrator will notify the State lead agency, in writing, of the Administrator's intent to suspend, and of the specific grounds for suspension. The notice of intent will specify whether the suspension will be complete or partial, and will provide the State an opportunity to respond and a reasonable amount of time, not less than 30 days from the date the notice is received, in which to correct the deficiencies specified in the notice. If the State does not correct the specified deficiencies within the reasonable time allowed by the notice, or if the Administrator has not withdrawn the notice of intent before that time, the notice of intent will be published in the FEDERAL REGISTER, and the public given an opportunity to comment thereon.

(2) If requested by the affected State lead agency within 30 days of receipt of the notice of intent to suspend, an informal consultation between appropriate State and EPA officials will be held to discuss the proposed suspension. In such a case, the Administrator shall not make a final decision on the proposed suspension until after the consultation. The Administrator shall consider all relevant information presented at the consultation, or in any other appropriate manner, in determining whether to suspend the State's authority. If the Administrator determines, on the basis of such information, that the deficiencies listed in the notice of intent no longer exist, or will be corrected in a reasonable time, then the Administrator will withdraw, in writing, the notice of intent to suspend.

(3) Within ten days of the date a notice of intent to suspend is published in the FEDERAL REGISTER, a State may request a public hearing to consider the proposed suspension. If a hearing is requested, the Administrator will:

(i) Schedule a public hearing to be held in that State.

(ii) Publish in the FEDERAL REGISTER a notice announcing the date, time, and location of the hearing.

(iii) Appoint a presiding officer who shall preside over the hearing.

(iv) Prescribe additional, appropriate procedures for the conduct of the hearing, including procedures for the presentation of relevant material evidence from the State, EPA, or members of the public who would be affected by the outcome of the hearing. Evidence may be presented in either oral or written form, at the discretion of the Administrator.

(4) Following the close of any hearing held under paragraph (c)(3) of this section, the presiding officer shall make a recommended decision that the State's authority to register pesticides under sec. 24(c) of FIFRA be suspended, in whole or in part, or that the State's authority not be suspended and that the notice of intent to suspend be withdrawn.

(5) Any recommended decision made by a presiding officer under paragraph (c)(4) of this section may be appealed to the Administrator within 30 days after its issuance by the State or by EPA. Any recommended decision which is not appealed, or which the Administrator does not review on his own initiative, will become a final Agency action 30 days after its issuance.

(6) If no hearing is requested under paragraph (c)(3) of this section, or if a recommended decision is appealed to the Administrator under paragraph (c)(5) of this section, the Administrator shall issue a final order either suspending the State's authority to register pesticides under section 24(c) of FIFRA, in whole or in part, or withdrawing the notice of intent to suspend.

(7) Any final order suspending State registration authority, issued under paragraph (c) (5) or (6) of this section, will specify the grounds therefor and an effective date for the suspension. If the suspension is merely partial, the notice of suspension will specify the types of registrations which will not be recognized as valid under sec. 24(c). All final orders issued under paragraph (c)

(5) or (6) will be published in the FEDERAL REGISTER.

(d) *Termination of suspension.* Suspension of a State's authority will be effective for the period specified in the notice of suspension, or if no period was specified, until such time as the Administrator is satisfied that the State can and will exercise adequate control over its program. In the latter case, the Administrator will notify the State that the suspension is terminated, or that it will be terminated on a specific date. In either case, the Administrator will publish a notice of the termination of suspension in the FEDERAL REGISTER.

(e) *Judicial review.* Any State whose authority to register pesticides has been finally suspended by the Administrator may seek judicial review of the Administrator's decision under sec. 16 of FIFRA, at any time prior to termination of the suspension. Such suspension shall remain in effect during the period of judicial review unless otherwise ordered by the Administrator.

§ 162.156 General requirements.

(a) *Requirements for distribution and use.* (1) Any product whose State registration has been issued in accordance with §§ 162.152 and 162.153 may be distributed and used in that State, subject to the following provisions of the Act and the regulations promulgated thereunder:

(i) Sec. 12(a)(1) (A) through (E), in accordance with:

(A) Sec. 2(q)(1) (A) through (G).

(B) Sec. 2(q)(2) (A) through (D).

(ii) Sec. 12(a)(2) (A) through (G) and (I) through (P).

(2) A product or use classified by a State for restricted use under § 162.153(g) may be used only by, or under the direct supervision of, an applicator certified under a plan approved by EPA in accordance with sec. 4 of FIFRA.

(3) State registrations which are not issued in accordance with § 162.152 (a) and (b)(2) (i), (ii) and (iii) are not authorized by section 24(c) and are not considered valid for any purposes under FIFRA. When the Administrator determines that a registration is invalid, the Administrator shall notify the registering State that the registration is

invalid, and may specify the reason for the invalidity.

(b) *Establishment registration requirements.* No person may produce any pesticide, including any pesticide registered by a State under section 24(c), unless the establishment in which it is produced is registered by the Administrator in accordance with sec. 7 of FIFRA and 40 CFR part 167.

(c) *Books and records requirements.* All producers of pesticides, including those producers of pesticides registered by States under sec. 24(c), must maintain records in accordance with the requirements imposed under sec. 8 of FIFRA and 40 CFR part 169.

Subpart E [Reserved]

PART 163—CERTIFICATION OF USEFULNESS OF PESTICIDE CHEMICALS

Sec.

163.1 Words in the singular form.

163.2 Definitions.

163.3 Administration.

163.4 Filing of requests for certification.

163.5 Material in support of the request for certification.

163.6 Certification limited to economic poison uses.

163.7 Factors considered in determining usefulness.

163.8 Basis for determination of usefulness.

163.9 Proposed certification; notice; request for hearing.

163.10 Withdrawal of request for certification pending clarification or completion.

163.11 Registration under the Federal Insecticide, Fungicide, and Rodenticide Act.

163.12 Opinion as to residue.

AUTHORITY: 21 U.S.C. 346a.

SOURCE: 36 FR 22533, Nov. 25, 1971, unless otherwise noted.

§ 163.1 Words in the singular form.

Words in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 163.2 Definitions.

Unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

(a) *Act* means the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301