

manner proposed, consideration will be given, among other things, to:

(1) Data furnished by the petitioner showing (i) the results of tests to ascertain the amount of residue remaining, including a description of the analytical methods used, and (ii) practicable methods for removing residue which exceeds any proposed tolerance;

(2) Reports of other experimental work before the Director in publications, the official files of the Agency, or otherwise;

(3) Opinions of experts qualified in the fields involved.

(b) If a tolerance proposed by the petitioner is reasonably to reflect the amount of residue likely to result when a pesticide chemical is used, it must be large enough to include all residue which is likely to result when the pesticide chemical is used in the manner proposed by the petitioner, but not larger than needed for this purpose. The tolerance proposed by the petitioner may take into account reduction of residue by washing, brushing, or other applicable method.

(c) If there is insufficient information before the Director to support an opinion as to whether the tolerance proposed by the petitioner reasonably reflects the amount of residue likely to result, the opinion will so state.

PART 164—RULES OF PRACTICE GOVERNING HEARINGS, UNDER THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT, ARISING FROM REFUSALS TO REGISTER, CANCELLATIONS OF REGISTRATIONS, CHANGES OF CLASSIFICATIONS, SUSPENSIONS OF REGISTRATIONS AND OTHER HEARINGS CALLED PURSUANT TO SECTION 6 OF THE ACT

Subpart A—General

Sec.

- 164.1 Number of words.
- 164.2 Definitions.
- 164.3 Scope and applicability of this part.
- 164.4 Arrangements for examining Agency records, transcripts, orders, and decisions.
- 164.5 Filing and service.
- 164.6 Time.
- 164.7 Ex parte discussion of proceeding.

164.8 Publication.

Subpart B—General Rules of Practice Concerning Proceedings (Other Than Expedited Hearings)

COMMENCEMENT OF PROCEEDING

- 164.20 Commencement of proceeding.
- 164.21 Contents of a denial of registration, notice of intent to cancel a registration, 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.

§ 164.1

40 CFR Ch. I (7-1-04 Edition)

- 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.
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.

(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