

Environmental Protection Agency

§ 164.22

REGISTER by appropriate announcement, a notice of the filing of any objections, pursuant to §164.20(b) or responses pursuant to §164.24, and a notice of the public hearing as provided by §164.80 *et seq.* Said notice of public hearing shall designate the place where the hearing will be held and specify the time when the hearing will commence. The hearing shall convene at the place and time announced in the notice, unless amended by subsequent notice published in the FEDERAL REGISTER, but thereafter it may be moved to a different place and may be continued from day to day or recessed to a later day without other notice than announcement thereof at the hearing.

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

COMMENCEMENT OF PROCEEDING

§ 164.20 Commencement of proceeding.

(a) A proceeding shall be commenced whenever a hearing is requested by any person adversely affected by a notice of the Administrator of his refusal to register or of his intent to cancel the registration or to change the classification of a pesticide. A proceeding shall likewise be commenced whenever the Administrator decides to call a hearing to determine whether or not the registration of a pesticide should be canceled or its classification changed. Such request or notice of intent to hold a hearing shall be timely filed with the hearing clerk, and the matter shall be docketed and assigned a FIFRA docket number.

(b) If a request for a hearing is filed, the person filing the request shall, at the same time, file a document stating his objections to the Administrator's refusal to register or his intent to cancel the registration or to change the classification of a pesticide. If a notice of intent to hold a hearing is filed by the Administrator, he shall, at the same time, file a statement of issues.

(c) Upon the filing of any objections or notice of intent to hold a hearing, the proceeding shall be referred to the Chief Administrative Law Judge by the hearing clerk. The Chief Administra-

tive Law Judge shall refer the proceeding to himself or another Administrative Law Judge who shall thereafter be in charge of all further matters concerning the proceedings, except as otherwise provided for by order of the Chief Administrative Law Judge, the Administrator, or the Environmental Appeals Board.

[38 FR 19371, July 20, 1973, as amended at 38 FR 34117, Dec. 11, 1973; 57 FR 5342, Feb. 13, 1992]

§ 164.21 Contents of a denial of registration, notice of intent to cancel a registration, or notice of intent to change a classification.

(a) *Contents.* The denial of registration or a notice of intent to cancel a registration or to change a classification shall be accompanied by the reasons (including the factual basis) for the action.

(b) *Amendments to contents of denials and notices.* Such documents under this section may be amended or enlarged by the Administrator at any time prior to the commencement of the public hearing. If the Administrative Law Judge determines that additional time is necessary to permit a party to prepare for matters raised by such amendments, the commencement of the hearing shall be delayed for an appropriate period.

§ 164.22 Contents of document setting forth objections.

(a) *Concise statement required.* Any document containing objections to an order of the Administrator of his refusal to register, or his intent to cancel the registration, or change the classification of a pesticide, shall clearly and concisely set forth such objections and the basis for each objection, including relevant allegations of fact concerning the pesticide under consideration. The document shall indicate the registration number of the pesticide, if applicable, a copy of the currently accepted and/or proposed labeling and a list of the currently registered or proposed uses of said pesticide.

(b) *Amendments to objections by leave.* Objections may be amended at any time prior to the commencement of the

§ 164.23

public hearing by leave of the Administrative Law Judge or by written consent of all parties. The Administrative Law Judge shall freely grant such leave when justice so requires. If the Administrative Law Judge determines that additional time is necessary to permit a party to prepare for matters raised by amendments to objections, the commencement of the hearing shall be delayed for an appropriate period. This subsection shall not permit the addition, beyond the statutory deadline, of registered pesticides which are not included in the objections filed pursuant to paragraph (a) of this section.

(c) *Amendments to objections as a matter of right.* Objections may be amended as a matter of right within 30 days, or in such time as the Administrator shall designate, after the Administrator amends his notice of intent to cancel a registration, change a classification, or his refusal to register a pesticide.

§ 164.23 Contents of the statement of issues to accompany notice of intent to hold a hearing.

(a) *Concise statement required.* The statement of issues by the Administrator shall set a time in which any person wishing to participate in the hearing shall file a written response to the statement of issues as provided by § 164.24. The statement of issues shall include questions as to which evidence shall be taken at the hearing. Those questions may include questions concerning whether a pesticide's registration should be canceled or its classification changed, whether its composition is such as to warrant the claims for it, whether its labeling and other material submitted comply with the requirements of the Act, whether it will perform its intended function without unreasonable adverse effects on the environment, and whether, when used in accordance with widespread and commonly recognized practice, it will or will not generally cause unreasonable adverse effects on the environment.

(b) *Amendment to statement of issues.* The statement of issues may be amended or enlarged by the Administrator at any time prior to the commencement of the public hearing. If the Adminis-

40 CFR Ch. I (7-1-06 Edition)

trative Law Judge determines that additional time is necessary to permit a party to prepare for matters raised by amendments or enlargements to the statement of issues, the commencement of the hearing shall be delayed for an appropriate period.

§ 164.24 Response to the Administrator's notice of intention to hold a hearing.

Any person wishing to participate in any proceeding commenced pursuant to any notice by the Administrator of intention to hold a hearing, shall file with the hearing clerk, within the time set by the Administrator in the notice (in no case less than 30 days from the date of the notice), a written response to the statement of issues which shall include the position and interest of such person with respect thereto. If any such person is a registrant or an applicant for registration, he shall also file the registration number of the pesticide, if applicable, a copy of the currently accepted and/or proposed labeling and a list of the currently registered or proposed uses of said pesticide.

§ 164.25 Filing copies of notification of intent to cancel registration or change classification or refusal to register, and statement of issues.

After a copy of the document setting forth the objections and requesting a public hearing is filed with the hearing clerk or a response to the statement of issues is filed, the hearing clerk shall serve a copy of the document upon Respondent and the Office of the General Counsel of the Agency. Respondent shall, by counsel, thereupon file with the hearing clerk a copy of the appropriate notice of intention to cancel, the notice of intention to change the classification or the registration refusal order.

APPEARANCES, INTERVENTION, AND CONSOLIDATION

§ 164.30 Appearances.

Representatives. Parties may appear in person or by counsel or other representative. Persons who appear as counsel or in a representative capacity