

Environmental Protection Agency

§ 173.3

regarding potential unreasonable adverse effects on health or the environment must within 30 days of receipt of such information submit the information to EPA, unless the person has actual knowledge that EPA has been adequately informed of such information. The requirement to submit information applies both to those microbial pesticides subject to the notification requirements under §172.45(c) and those that are exempt under §172.45(d).

§ 172.59 Enforcement.

(a) *Imminent threat of substantial harm to health or the environment.* The use of a microbial pesticide in small-scale testing covered by this subpart (whether subject to the notification requirements of §172.45(c) or exempt under §172.45(d)) in a manner that creates an imminent threat of substantial harm to health or the environment is prohibited, and is considered a violation of section 12(a)(2)(S) of the Act.

(b) *EPA response to violations.* Under section 14 of the Act, EPA may seek civil or criminal penalties for violations of the Act. Failure to comply with the regulations in this part could result in civil or criminal penalties. Moreover, under sections 14 and 16(c) of the Act, EPA may at any time take appropriate action against violators to prevent or otherwise restrain use of a microbial pesticide in small-scale testing if it is determined that:

(1) Such use would create an imminent threat of substantial harm to health or the environment that is prohibited under paragraph (a) of this section; or

(2) The terms or conditions on which approval of the testing was granted under this subpart C are violated.

PART 173—PROCEDURES GOVERNING THE RESCISSION OF STATE PRIMARY ENFORCEMENT RESPONSIBILITY FOR PESTICIDE USE VIOLATIONS

Sec.

173.1 Applicability.

173.2 Definitions.

173.3 Initiation of rescission proceedings.

173.4 Informal conference and settlement.

173.5 Request for hearing.

173.6 Publication of the notice; scheduling the hearing.

173.7 Hearing and recommended decision.

173.8 Final order.

173.9 Judicial review.

AUTHORITY: 7 U.S.C. 136w and 136w-2.

SOURCE: 46 FR 26059, May 11, 1981, unless otherwise noted.

§ 173.1 Applicability.

These procedures govern any proceeding to rescind a State's primary enforcement responsibility for pesticide use violations conducted under section 27(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. 136 *et seq.*

§ 173.2 Definitions.

For purposes of this part:

(a) *Administrator* means the Administrator of the United States Environmental Protection Agency or his delegate.

(b) *Notice of intent to rescind* means a notice to a State issued under §173.3 which initiates a proceeding to rescind the State's primary enforcement responsibility for pesticide use violations.

(c) *State* means the agency or agencies primarily responsible for enforcing pesticide use laws or regulations within the State or jurisdiction undergoing rescission proceedings.

(d) *Party to the proceeding* shall mean the State or the Agency's Office of Enforcement.

(e) *Presiding Officer* means an attorney appointed by the Administrator to conduct the rescission proceeding. The Presiding Officer shall be an employee or representative of the Agency and shall not have had prior direct connection with the specific proceeding except in circumstances where subsequent hearings are in order.

§ 173.3 Initiation of rescission proceedings.

(a) Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out such responsibility, or cannot carry out such responsibility due to the lack of adequate legal authority, the Administrator shall notify the State in writing of his intent to rescind

§ 173.4

its primary enforcement responsibility, in whole or in part, by serving upon the State a notice of intent to rescind.

(b) The notice of intent to rescind shall:

(1) Specify those aspects of the State's pesticide use enforcement program determined to be inadequate;

(2) Specify the facts which underlie the findings contained in the rescission notice;

(3) Have attached thereto copies of any relevant documents discoverable under the Federal Rules of Civil Procedure and the Freedom of Information Act which contain data relied upon by the Administrator in making his decision to issue the notice;

(4) Have attached thereto a copy of this part; and

(5) Be sent to the State by certified mail, return receipt requested.

(c) The State may respond in writing to the findings specified in the notice of intent to rescind.

§ 173.4 Informal conference and settlement.

(a) After receipt of a notice of intent to rescind, the State may request that an informal conference be held between appropriate State and EPA officials to discuss the findings made in the notice of intent to rescind. The informal conference shall then be held in the State. If the Administrator finds, on the basis of information submitted by the State at the conference, that the deficiencies specified in the notice did not exist or were corrected by the State, the Administrator shall issue an order withdrawing the notice of intent to rescind and terminating the rescission proceeding.

(b) At any time after receipt of a notice of intent to rescind and before the issuance of a final order, the State and EPA may resolve the issues raised in the notice by agreement. Any settlement agreement shall be in writing and signed by the parties and shall:

(1) Detail the deficiencies found in the State program;

(2) Specify the steps the State has taken or will take to remedy the deficiencies; and

(3) Set forth a precise schedule for each remedial action yet to be initiated.

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

(c) If a written agreement is signed by the parties, the Administrator shall issue an order withdrawing the notice of intent to rescind and terminating the rescission proceeding. If the State does not comply with the terms of the settlement agreement, the Administrator may reissue the notice of intent to rescind.

§ 173.5 Request for hearing.

A State may request a hearing before a Presiding Officer not later than sixty (60) days after receipt of a notice of intent to rescind.

§ 173.6 Publication of the notice; scheduling the hearing.

(a) If the Administrator has not issued an order terminating the rescission proceeding within sixty (60) days after service of the notice of intent to rescind upon the State, the Administrator shall publish the notice of intent to rescind in the FEDERAL REGISTER. The Administrator may modify the original notice of intent to rescind before its publication by deleting those deficiencies listed in the original notice which have been corrected or which were shown not to have existed. The public may submit comments upon the matters specified in the published notice of intent to rescind within the time specified therein.

(b) Concurrently with the publication of the notice of intent to rescind, the Administrator shall schedule a hearing in the State if one has been requested by the State. The date, time, and location of the hearing shall be published in the FEDERAL REGISTER along with the notice of intent to rescind.

(c) If a hearing is requested and the Administrator has not issued an order terminating the rescission proceeding, the Administrator shall provide for a hearing as scheduled. Representatives of the State, EPA, and the public may present evidence at the hearing. The Administrator shall appoint a Presiding Officer who shall preside over the hearing and make a recommended decision regarding the adequacy of the State's pesticide use enforcement program. The Administrator, after consultation with the State, may prescribe additional procedures governing the conduct of the hearing.