

§ 162.151

40 CFR Ch. I (7-1-07 Edition)

any State of pesticide products, or uses thereof, formulated for distribution and use within the State to meet special local needs under sec. 24(c) of the Act. It also sets forth regulations governing the exercise by the Administrator of the power to disapprove specific State registrations and to suspend a State's registration authority under sec. 24(c). Unless otherwise indicated, any reference herein to registrations issued by a State includes amendments of registrations issued by States.

(b) *Applicability.* This subpart applies only to State registration authority granted by sec. 24(c) of FIFRA. It does not apply to any authority granted, or procedures established, by State law with respect to registration, licensing, or approval required for use within the State of federally registered pesticide products.

[46 FR 2014, Jan. 7, 1981, as amended at 53 FR 15999, May 4, 1988; 60 FR 32097, June 19, 1995]

§ 162.151 Definitions.

Unless otherwise indicated, terms used in this subpart have the meanings set forth in FIFRA and in subpart A of this part. In addition, as used in this subpart, the following terms have the meanings set forth below:

(a) *Federally registered* means currently registered under sec. 3 of the Act, after having been initially registered under the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 (Pub. L. 86-139; 73 Stat. 286; June 25, 1947) by the Secretary of Agriculture or under FIFRA by the Administrator.

(b) *Manufacturing-use product* means any pesticide product other than a product to be labeled with directions for end use. This term includes any product intended for use as a pesticide after re-formulation or repackaging.

(c) *New product* means a pesticide product which is not a federally registered product.

(d) *Pest problem* means (1) a pest infestation and its consequences, or (2) any condition for which the use of plant regulators, defoliant, or desiccants would be appropriate.

(e) *Product* or *pesticide product* means a pesticide offered for distribution and use, and includes any labeled container and any supplemental labeling.

(f) *Similar composition* refers to a pesticide product which contains only the same active ingredient(s), or combination of active ingredients, and which is in the same category of toxicity, as a federally registered pesticide product.

(g) *Similar product* means a pesticide product which, when compared to a federally registered product, has a similar composition and a similar use pattern.

(h) *Similar use pattern* refers to a use of a pesticide product which, when compared to a federally registered use of a product with a similar composition, does not require a change in precautionary labeling under §156.10(h) of this chapter, and which is substantially the same as the federally registered use. Registrations involving changed use patterns are not included in this term.

(i) *Special local need* means an existing or imminent pest problem within a State for which the State lead agency, based upon satisfactory supporting information, has determined that an appropriate federally registered pesticide product is not sufficiently available.

(j) *State or State lead agency* as used in this subpart means the State agency designated by the State to be responsible for registering pesticides to meet special local needs under sec. 24(c) of the Act.

[46 FR 2014, Jan. 7, 1981, as amended at 53 FR 15999, May 4, 1988]

§ 162.152 State registration authority.

(a) *Statutory limitations.* In accordance with sec. 24(c) of the Act, each State is authorized to register a new end use product for any use, or an additional use of a federally registered pesticide product, if the following conditions exist:

(1) There is a special local need for the use within the State;

(2) The use is covered by necessary tolerances, exemptions or other clearances under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 346 *et seq.*), if the use is a food or feed use;

(3) Registration for the same use has not previously been denied, disapproved, suspended or cancelled by the Administrator, or voluntarily cancelled by the registrant subsequent to

issuance by the Administrator of a notice of intent to cancel that registration, because of health or environmental concerns about an ingredient contained in the pesticide product, unless such denial, disapproval, suspension or cancellation has been superseded by subsequent action of the Administrator; and

(4) The registration is in accord with the purposes of FIFRA.

(b) *Types of registrations*—(1) *Amendments to federal registrations.* (i) Subject to the provisions of paragraphs (a) and (b)(1)(ii)(iv) of this section, States may register any new use of a federally registered pesticide product.

(ii) A State may register any use of a federally registered product for which registration of other uses of the product was denied, disapproved, suspended, or cancelled by the Administrator, provided that the State may register a use not considered by the Administrator in reaching such a determination only after the State consults with appropriate EPA personnel.

(iii) Except as provided in paragraph (a)(3) of this section, a State may register any use of a federally registered product for which registration of some or all uses has been voluntarily cancelled by the registrant, provided that a State may register such a use only after the State has consulted with appropriate EPA personnel.

(iv) A State may not register an amendment to a federally registered manufacturing-use product.

(2) *New products.* (i) Subject to the provisions of paragraph (a) and subparagraphs (b)(2) (ii) and (iii) of this section, a State may issue registrations to meet special local needs for the following types of new end-use products:

(A) A product which is identical in composition to a federally registered product, but which has differences in packaging, or in the identity of the formulator.

(B) A product which contains the same active and inert ingredients as a federally registered product, but in different percentages.

(C) Subject to the requirements of paragraph (b)(2)(ii) of this section, a product containing a new combination

of active, or active and inert, ingredients.

(ii) A State may register a new product only if each of the active ingredients in the new product is present because of the use of one or more federally registered products and if each of the inert ingredients in the new product is contained in a federally registered product.

(iii) A State may not register a new manufacturing-use product.

(iv) A State may register any use of a new product containing an ingredient described in paragraph (a)(3) of this section, if the new product registration is for a formulation or a use not included in the denial, disapproval, suspension, or cancellation, or if the federally registered use was voluntarily cancelled without a prior notice of intent to cancel by the Administrator. However, a formulation or use of such a new product which was not considered by the Administrator during such proceedings, or which was not the subject of a notice of intent to cancel, may be registered by a State only after the State consults with appropriate EPA personnel regarding the registration application.

(c) *Effect of State registration.* (1) A State registration issued under FIFRA sec. 24(c) which meets the conditions described in paragraphs (a) and (b) of this section, and which is not disapproved by the Administrator under §162.154, shall be considered a federal registration, but shall authorize distribution and use only within that State. Accordingly, such registrations are subject to all provisions of FIFRA which apply to currently registered products, including provisions for cancellation and suspension of registrations, and reregistration of products.

(2) A State may require, as a condition of distribution or use of a pesticide product within the State, that the pesticide product be registered under State law as well as under FIFRA. Neither FIFRA sec. 24(c) nor §§162.150–162.156 affects a State's right under its own law to revoke, suspend, cancel, or otherwise affect such a registration issued under State law. However, the federal registration, whether issued under FIFRA sec. 3 or 24(c), is not affected by such a State action.