

## § 172.43

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

arguments relevant to the revocation action;

(iii) All other procedural opportunities to which the permittee may be entitled by law.

(8) The Administrator shall notify the affected permittee and State Agency, in writing, of his final decision on the revocation matter as expeditiously as possible and shall attempt to do so within 30 days after the conclusion of a conference conducted under paragraph (c)(7). The Administrator shall also provide the permittee and the State agency with a written statement of the reasons for his decision, which shall take into account the evidence presented pursuant to paragraph (c)(7)(ii) of this section.

(9) A decision to revoke a permit under paragraph (c)(8) of this section is a final Agency action subject to judicial review as provided by law.

### Subpart C—Notification for Certain Genetically Modified Microbial Pesticides

SOURCE: 59 FR 45612, Sept. 1, 1994, unless otherwise noted.

#### § 172.43 Definitions.

Terms used in this subpart shall, with the exception of those defined below, have the meaning set forth in the Act and in § 172.1.

*Containment and inactivation controls* means any combination of mechanical, procedural, or biological controls designed and operated to restrict environmental release of viable microorganisms from a facility.

*Deliberately modified* means the directed addition, rearrangement, or removal of nucleotide sequences to or from genetic material.

*Introduction of genetic material* means the movement of nucleotide sequences into a microorganism, regardless of the technique used.

*Inversions of genetic material* means the replacement of an internal section of a chromosome in the reverse orientation.

*Microbial pesticide* means any pesticide whose active ingredient is a microorganism intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as

a plant regulator, defoliant, or desiccant.

*Microbial pesticides resulting from rearrangements* means a microbial pesticide resulting from translocations or inversions of genetic material.

*Microorganism* means a bacterium, fungus, alga, virus, or protozoan.

*Nonindigenous microbial pesticide* means a microbial pesticide brought into one of the following geographic areas from outside that area:

(1) The continental United States, including Alaska, and the immediately adjoining countries (*i.e.*, Canada and Mexico).

(2) The Hawaiian Islands.

(3) The Caribbean Islands including Puerto Rico and the U.S. Virgin Islands.

*Pesticidal property* means a characteristic exhibited by a microorganism that contributes to the intentional use of the microorganism to prevent, destroy, repel, or mitigate a pest or to act as a plant regulator, defoliant, or desiccant.

*Single genome* means the sum total of chromosomal and extrachromosomal genetic material of an isolate and any descendants derived under axenic culture conditions from that isolate.

*Small-scale test* means the experimental use of a microbial pesticide in a facility such as a laboratory or greenhouse, or use in limited replicated field trials or other tests as described in § 172.3(c).

*Test* or *testing* means any use of a microbial pesticide consistent with section 5 of the Act, including limited replicated field trials and associated activities.

*Translocations of genetic material* means a chromosomal configuration in which part of a chromosome becomes attached to a different chromosome, or inserts in a different location on the same chromosome.

#### § 172.45 Requirement for a notification.

(a) *Who must submit a Notification.* Notwithstanding § 172.3, any person who plans to conduct small-scale testing of a type of microbial pesticide identified in paragraph (c) of this section must submit a Notification to

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EPA and obtain prior approval for either of the following tests:

(1) Small-scale tests that involve an intentional environmental introduction of that microbial pesticide.

(2) Small-scale tests performed in a facility without adequate containment and inactivation controls as provided in paragraph (e) of this section.

(b) *Alternative to Notification.* In lieu of a Notification, any person required to submit a Notification under paragraph (a) of this section may submit an application for an experimental use permit (EUP) to EPA for approval.

(c) *Small-scale testing that requires a Notification.* As provided in paragraph (a) of this section, and notwithstanding any other approval by any governmental entity, EPA review and approval are required prior to the initiation of any small-scale test involving either of the following microbial pesticides:

(1) Microbial pesticides whose pesticidal properties have been imparted or enhanced by the introduction of genetic material that has been deliberately modified.

(2) Nonindigenous microbial pesticides that have not been acted upon by the U.S. Department of Agriculture (*i.e.*, either by issuing or denying a permit or determining that a permit is unnecessary; or a permit is not pending with the USDA).

(d) *Small-scale testing that does not require a Notification.* (1) Testing conducted with microbial pesticides identified in paragraph (c) of this section, but made exempt pursuant to §172.52, does not require a Notification. The following microbial pesticides (or classes of pesticides) are exempt from the notification requirement in paragraph (a) of this section:

(i) Microbial pesticides resulting from deletions or rearrangements within a single genome that are brought about by the introduction of genetic material that has been deliberately modified.

(ii) [Reserved]

(2) Testing conducted in a facility with adequate containment and inactivation controls, as provided in paragraph (e) of this section, does not require a Notification.

(e) *Selection and use of containment and inactivation controls.* (1) Selection and use of containment and inactivation controls for a particular microbial pesticide shall take into account the following:

(i) Factors relevant to the microbial pesticide's ability to survive in the environment.

(ii) Potential routes of release in air, solids, and liquids; in or on waste materials and equipment; in or on people (including maintenance and custodial personnel); and in or on other organisms such as insects and rodents.

(iii) Procedures for transfer of materials between facilities.

(iv) Plans for routine or emergency clean-up and test termination.

(2) For purposes of paragraph (e)(1) of this section, EPA will presume that compliance with the containment provisions of the National Institutes of Health (NIH) "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986) constitutes selection and use of adequate containment and inactivation controls.

(3) The selection of containment and inactivation controls shall be approved by an authorized official of the organization that is conducting the test prior to commencement of the test.

(4) Records shall be developed and maintained describing the selection and use of the containment and inactivation controls, including contingency plans for emergency clean-up and test termination, that will be used during the test. These records shall be available for inspection at the test facility. In addition, these records shall be submitted to EPA at EPA's request and within the time frame specified in EPA's request.

(5) Subsequent to any EPA review of the containment/inactivation controls selected under paragraph (e)(1) of this section, changes to the controls necessary to prevent unreasonable adverse effects must be made upon EPA request. Failure to comply with EPA's request shall result in automatic revocation of the exemption from the requirement to submit a Notification.