

## § 164.130

SOURCE: 40 FR 12265, Mar. 18, 1975, unless otherwise noted.

### § 164.130 General.

EPA has determined that any application under section 3 or section 18 of the Act to allow use of a pesticide at a site and on a pest for which registration has been finally cancelled or suspended by the Administrator constitutes a petition for reconsideration of such order. Because of the extensive notice and hearing opportunities mandated by FIFRA and the Administrative Procedures Act before a final cancellation or suspension order may be issued, EPA has determined that such orders may not be reversed or modified without affording interested parties—who may in fact have participated in lengthy cancellation proceedings—similar notice and hearing opportunities. The procedures set forth in this subpart D shall govern all such applications.

### § 164.131 Review by Administrator.

(a) The Administrator will review applications subject to this subpart D and supporting data submitted by the applicant to determine whether reconsideration of the Administrator's prior cancellation or suspension order is warranted. The Administrator shall determine that such reconsideration is warranted when he finds that: (1) The applicant has presented substantial new evidence which may materially affect the prior cancellation or suspension order and which was not available to the Administrator at the time he made his final cancellation or suspension determination and (2) such evidence could not, through the exercise of due diligence, have been discovered by the parties to the cancellation or suspension proceeding prior to the issuance of the final order.

(b) If after review of the application and other supporting data submitted by the applicant, the Administrator determines, in accordance with paragraph (a) of this section, that reconsideration of his prior order is not warranted, then the application will be denied without requirement for an administrative hearing. The Administrator shall publish notice in the FEDERAL REGISTER of the denial briefly de-

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scribing the basis for his determination as soon as practicable. Such denial shall constitute final agency action.

(c) If after review of the application and other supporting data submitted by the applicant, the Administrator determines, in accordance with paragraph (a) of this section, that reconsideration of his prior order is warranted, he will then publish notice in the FEDERAL REGISTER setting forth his determination and briefly describing the basis for the determination. Such notice shall announce that a formal public hearing will be held in accordance with 5 U.S.C. section 554. The notice shall specify: (1) The date on which the hearing will begin and end, (2) the issues of fact and law to be adjudicated at the hearing, (3) the date on which the presiding officer shall submit his recommendations, including findings of fact and conclusions, to the Administrator, and (4) the date on which a decision by the Administrator is anticipated.

### § 164.132 Procedures governing hearing.

(a) The burden of proof in the hearing convened pursuant to § 164.131 shall be on the applicant and he shall proceed first. The issues in the hearing shall be whether: (1) Substantial new evidence exists and (2) such substantial new evidence requires reversal or modification of the existing cancellation or suspension order. The determination of these issues shall be made taking into account the human and environmental risks found by the Administrator in his cancellation or suspension determination and the cumulative effect of all past and present uses, including the requested use, and uses which may reasonably be anticipated to occur in the future as a result of granting the requested reversal or modification. The granting of a particular petition for use may not in itself pose a significant risk to man or the environment, but the cumulative impact of each additional use of the cancelled or suspended pesticide may re-establish, or serve to maintain, the significant risks previously found by the Administrator.

(b) The presiding officer shall make recommendations, including findings of fact and conclusions and to the extent