

## § 152.414

lack commercial feasibility for the pesticide applicant. An applicant requesting a waiver on this basis must provide supporting information that demonstrates that anticipated revenues from the uses that are the subject of the application would be insufficient to pay back the cost of the fee. The burden of proof of the reasonableness of this estimate rests with the applicant.

(2) *IR-4*. Fees will be waived for registration actions that are determined to be specifically associated with tolerance petitions submitted by the Inter-Regional Research Project Number 4 (IR-4 program) when such waiver is deemed by the Agency to be in the public interest.

(3) *Severe economic impact*. The Agency may waive two-thirds of any cumulative registration fee payment in a 12-month period following completion of the applicant's most recent fiscal year that exceeds 3 percent of the applicant's pesticide sales in its most recently completed fiscal year. An applicant requesting a waiver on this basis must provide documentation (e.g. copy of an annual report, or income tax forms filed with the Internal Revenue Service, or if needed, a notarized statement signed by a corporate officer regarding annual pesticide sales) demonstrating that:

(i) The company applying had less than \$40 million in gross revenue (including all revenue sources) in the most recently concluded fiscal year of operation, and a single fee would constitute more than 3 percent of the applicant's gross revenue from pesticide sales in the most recently completed fiscal year of operation, or

(ii) The company applying had less than \$40 million in gross revenue (including all revenue sources) in the most recently concluded fiscal year of operation, and the cumulative registration fees paid during the 12 months following the applicant's most recently completed fiscal year, including any registration fees paid for the applicant for which a waiver is requested, constitute more than 3 percent of the applicant's gross revenue from pesticide sales in the most recently concluded fiscal year of operation.

(iii) The Agency will not grant such a waiver if it determines that the entity

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submitting the application has been formed or manipulated to qualify for such a waiver.

(4) *Public interest*. The Agency, in its discretion, may waive in whole or in part any of the fees established herein in the public interest. Examples include, but are not limited to, pesticides offering unique advantages for reducing public health risks, those that significantly reduce a current environmental risk, or a product with extraordinary utility for use in Integrated Pest Management (IPM).

[53 FR 19114, May 26, 1988, as amended at 58 FR 34203, June 23, 1993]

### § 152.414 Procedures.

(a) *Procedures for requesting a waiver*.

(1) A request for a waiver must be submitted in writing at the time the application is submitted to the Environmental Protection Agency, Office of Pesticide Programs, Registration Division (TS-767C), 401 M. Street SW., Washington, DC 20460.

(2) A payment of \$1,200 for processing the waiver or the amount of the actual fee, whichever is less, must be submitted simultaneously to the address set forth in paragraph (b) of this section. This fee will be refunded (or applied to any resulting partial fee) if the waiver is granted. Payment of fees for the registration activities, in contrast to the waiver fee, shall not be required until the Agency makes a determination on the waiver request. Since the actual fee is submitted to an address different than the one to which the waiver request is submitted, a copy of the payment document must be submitted with the waiver request that is submitted to the Washington, DC address set forth in paragraph (a)(1) of this section. No fee is required from a person who has no financial interest in the application.

(b) *Procedures for payment of fees*. All fees required by this section must be paid by money order, bank draft, or certified check drawn to the order of the Environmental Protection Agency. All payment of fees must be forwarded to the Environmental Protection Agency, Headquarters Accounting Operations Branch, Office of Pesticide Programs (Registration Fees), P.O. Box

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360277M, Pittsburgh, PA 15251. The payments should be specifically labeled "Registration Fees" and should be accompanied only by a copy of the registration application form or the experimental use permit application form, as appropriate. An application will not be accepted for processing until the required fees have been submitted.

(c) *Procedures for submitting application and supporting data.* The application, along with supporting data, shall be forwarded within 30 days of payment to the Washington DC address set forth in paragraph (a)(1) of this section.

[53 FR 19114, May 26, 1988, as amended at 58 FR 34203, June 23, 1993]

### Subparts V–Y [Reserved]

### Subpart Z—Devices

#### § 152.500 Requirements for devices.

(a) A device is defined as any instrument or contrivance (other than a firearm) intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than a bacterium, virus, or other microorganism on or in living man or living animals) but not including equipment used for the application of pesticides (such as tamper-resistant bait boxes for rodenticides) when sold separately therefrom.

(b) A device is not required to be registered under FIFRA sec. 3. The Agency has issued a policy statement concerning its authority and activities with respect to devices, which was published in the FEDERAL REGISTER of November 19, 1976 (41 FR 51065). A device is subject to the requirements set forth in:

- (1) FIFRA sec. 2(q)(1) and part 156 of this chapter, with respect to labeling;
- (2) FIFRA sec. 7 and part 167 of this chapter, with respect to establishment registration and reporting;
- (3) FIFRA sec. 8 and part 169 of this chapter, with respect to books and records;
- (4) FIFRA sec. 9, with respect to inspection of establishments;
- (5) FIFRA sec. 12, 13, and 14, with respect to violations, enforcement activities, and penalties;

(6) FIFRA sec. 17, with respect to import and export of devices;

(7) FIFRA sec. 25(c)(3), with respect to child-resistant packaging; and

(8) FIFRA sec. 25(c)(4), with respect to the Agency's authority to declare devices subject to certain provisions of the Act.

[53 FR 15990, May 4, 1988. Redesignated at 60 FR 32096, June 19, 1995]

## PART 153—REGISTRATION POLICIES AND INTERPRETATIONS

### Subparts A–F [Reserved]

### Subpart G—Determination of Active and Inert Ingredients

Sec.

153.125 Criteria for determination of pesticidal activity.

### Subpart H—Coloration and Discoloration of Pesticides

153.140 General.

153.155 Seed treatment products.

### Subparts I–M [Reserved]

AUTHORITY: 7 U.S.C. 136w.

### Subparts A–F [Reserved]

### Subpart G—Determination of Active and Inert Ingredients

SOURCE: 53 FR 15989, May 4, 1988, unless otherwise noted.

#### § 153.125 Criteria for determination of pesticidal activity.

(a) An ingredient will be considered an active ingredient if it is contained in a pesticide product and:

(1) The ingredient has the capability by itself, and when used as directed at the proposed use dilution, to function as a pesticide; or

(2) The ingredient has the ability to elicit or enhance a pesticidal effect in another compound whose pesticidal activity is substantially increased due to the interaction of the compounds. Compounds which function simply to enhance or prolong the activity of an active ingredient by physical action, such as stickers and other adjuvants,