

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

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SOURCE: 40 FR 18782, Apr. 30, 1975, unless otherwise noted.

**Subpart A—Federal Issuance of Experimental Use Permits**

**§ 172.1 Definitions.**

Terms used in this part have the same meaning as in the Act. In addition, as used in this part, the following terms shall apply:

*Act* means the Federal Insecticide, Fungicide and Rodenticide Act, as amended.

*Applicant* means any person who applies for an experimental use permit pursuant to section 5 of the Act.

*Cooperator* means any person who grants permission to a permittee or a permittee's designated participant for the use of an experimental use pesticide at an application site owned or controlled by the cooperator.

*Experimental animals* means individual animals or groups of animals, regardless of species, intended for use and used solely for research purposes. The term does not include animals intended to be used for any food purposes.

*Participant* means any person acting as a representative of the permittee and responsible for making available for use, or supervising the use or evaluation of, an experimental use pesticide to be applied at a specific application site.

*Permittee* means any applicant to whom an experimental use permit has been granted.

*Value for pesticide purposes* means that characteristic of a substance or mixture of substances which produces an efficacious action on a pest.

[73 FR 75599, Dec. 12, 2008]

**§ 172.2 General.**

(a) Pursuant to section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 983), and except as herein provided by § 172.3, any person wishing to accumulate information necessary to register under section 3 of the Act and the regulations thereunder (1) a pesticide not registered with this Agency or (2) a registered pesticide for a use not previously approved in the registration of the pesticide may apply to the Administrator at any time for an experimental use permit.

(b) Pesticides under experimental use permits may not be sold or distributed other than through participants and, if sold or distributed through participants, may be used only at an application site of a cooperator and in accordance with the terms and conditions of the experimental use permit.

**§ 172.3 Scope of requirement.**

(a) An experimental use permit (EUP) is generally required for testing of any unregistered pesticide or any registered pesticide being tested for an unregistered use. However, as described in paragraph (b) of this section, certain of such tests are presumed not to involve unreasonable adverse effects and, therefore, do not require an EUP.

(b) Except as provided in subpart C of this part or as specifically determined by the Environmental Protection Agency (EPA), it may be presumed that EUPs are not required when:

(1) The experimental use of the pesticide is limited to:

- (i) Laboratory or greenhouse tests,
- (ii) Limited replicated field trials as described in paragraph (c) of this section to confirm such tests, or
- (iii) Other tests as described in paragraph (c) of this section whose purpose is only to assess the pesticide's potential efficacy, toxicity, or other properties.

(2) The producer, applicator, or any other person conducting the test does not expect to receive any benefit in pest control from the pesticide's use.

(c) For purposes of paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, the following types of experimental tests are presumed not to need an EUP:

(1) A small-scale test involving use of a particular pesticide that is conducted on a cumulative total of no more than 10 acres of land per pest, except that:

(i) When testing for more than one target pest occurs at the same time and in the same locality, the 10 acre limitation shall encompass all of the target pests.

(ii) Any food or feed crops involved in, or affected by, such tests (including, but not limited to, crops subsequently grown on such land which may reasonably be expected to contain residues of the tested pesticides) shall be destroyed or consumed only by experimental animals unless an appropriate tolerance or exemption from a tolerance has been established under the Federal Food, Drug, and Cosmetic Act (FFDCA) for residues of the pesticide.

(2) A small-scale test involving the use of a particular pesticide that is conducted on a cumulative total of no more than 1 surface acre of water per pest, except that:

(i) When the testing for more than one target pest occurs at the same time and in the same locality, the 1 acre limitation shall encompass all of the target pests.

(ii) Waters which are involved in or affected by such tests are not used for irrigation purposes, drinking water supplies, or body contact recreational activities.

(iii) Testing shall not be conducted in any waters which contain or affect fish, shellfish, plants, or animals taken for recreational or commercial purposes and used for food or feed, unless an appropriate tolerance or exemption from a tolerance has been established under the FFDCA for residues of the pesticide.

(3) Animal treatment tests involving the use of a particular pesticide that are conducted only on experimental animals which will not be used for food or feed, unless an appropriate tolerance or an exemption from a tolerance has been established for animal products and byproducts under the FFDCA for residues of the pesticide.

(d) The examples in paragraphs (c)(1), (c)(2), and (c)(3) of this section are not all-inclusive and do not preclude testing in larger areas or larger numbers of units if the intended use meets the cri-

teria of paragraph (a) of this section. However, tests which do not come within the examples in paragraphs (c)(1), (c)(2), and (c)(3) of this section, absent a specific determination by EPA to the contrary, require an EUP. Persons intending to conduct tests who are uncertain whether the testing may be conducted without a permit may submit a request for determination to the Office of Pesticide Programs' Document Processing Desk at the appropriate address as set forth in 40 CFR 150.17(a) or (b). Such a request shall include the information listed in §172.4(b)(1)(ii) and (b)(1)(iii) and in the case of an unregistered product, the information in §172.4(b)(3)(i).

(e) Notwithstanding paragraphs (b) through (d) of this section, EPA may, on a case-by-case basis, require that certain testing of a particular pesticide or class of pesticides be carried out under an EUP, if it is determined that such EPA oversight is warranted. If EPA determines that an EUP is required, it will notify the developer of the pesticide of the need for an EUP and provide opportunity for comment or objections before imposing the requirement.

(f) No EUP is required for a substance or mixture of substances being put through tests for the sole purpose of gathering data required for approval of such substance or mixture under the FFDCA (21 U.S.C. 301 *et seq.*) as:

(1) A "new drug" (21 U.S.C. sec. 321(p) and sec. 355).

(2) A "new animal drug" (21 U.S.C. sec. 321(w) and sec. 360(b)), or

(3) An "animal feed" (21 U.S.C. sec. 321 (x)) containing a "new animal drug" (21 U.S.C. sec. 360(b)).

(g) Paragraph (f) of this section shall not apply when a purpose of such test is to accumulate information necessary to register a pesticide under section 3 of the Act.

[59 FR 45611, Sept. 1, 1994, as amended at 71 FR 35546, June 21, 2006; 73 FR 75599, Dec. 12, 2008]

#### § 172.4 Applications.

(a) *Time for submission.* An application or request for amendment to an existing permit shall be submitted as far as possible in advance of the intended date of shipment or use to the Office of