

Chapter Six

CANCELLATION AND SUSPENSION

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CANCELLATION AND SUSPENSION

AUTHORITY

Sections 3(c)(2)(B), 4(d), and 4(f) of FIFRA provide the Administrator the authority to cancel and/or suspend the registration of a pesticide for failure of the registrant to provide, or commit to provide, data required by the Agency.

Section 6 provides the Administrator the authority to cancel the registration of a pesticide for *unreasonable adverse effects on the environment* or suspend the registration if it is *necessary to prevent an imminent hazard*.

Cancellation

The Administrator shall cancel the registration of a pesticide at the end of five years unless the registrant (or other interested party acting with the registrant's concurrence) requests renewal of the registration before the end of the five years.

The Administrator may issue a Notice of Intent (NOI) to cancel if it appears that the pesticide, or its labeling, or other material required to be submitted does not comply with the provisions of the Act, or when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment.

The inspector should be aware that all suspended pesticides do not present an imminent hazard. If there is any doubt as to the reason for the suspension, treat the product as an imminent hazard. (Note: The Regional office can provide the inspector with the suspension reason.)

Suspension

If the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings, the Administrator may, by order, suspend the registration of the pesticide immediately. Suspension can be accomplished through an ordinary suspension or an emergency suspension under sections 6(c), 3(c)(2)(B), and 4 of the Act. Under an ordinary suspension, the Administrator shall

notify the registrant prior to issuing any suspension order. Such notice shall include findings pertaining to the question of "imminent hazard." Under an emergency suspension order, the Administrator determines that an emergency exists that does not permit the Administrator to hold a hearing before suspending the registration. The Administrator may issue a suspension order in advance of notification to the registrant (see section 6(c)(3)).

Unlawful Acts

Under section 12(a)(2)(J), it is unlawful to violate any suspension order issued under sections 3(c)(2)(B), 4, or 6. In addition, under section 12(a)(2)(K), it is unlawful to violate any cancellation order issued under the Act or to fail to submit a notice in accordance with section 6(g). Under section 12 (a)(1)(A), it is unlawful to distribute or sell any pesticide that is not registered under section 3 or whose registration has been canceled or suspended, except to the extent that distribution or sale otherwise has been authorized by the Administrator under FIFRA.

OBJECTIVE

To determine compliance with the Administrator's orders concerning suspended and/or canceled products.

POLICY

It is the policy of EPA to followup all suspension and/or cancellation orders with appropriate surveillance and regulatory action, as dictated by the nature of the order. Compliance monitoring strategies are generally developed for each suspension and/or cancellation order.

GENERAL

Canceled pesticides in trade may be sold and used unless prohibited by the terms of the order.

Suspension orders normally prohibit the distribution, sale, or use of the pesticides named.

The Administrator may, however, under special circumstances, permit the sale or use of existing stocks of canceled and/or suspended pesticide products.

The inspector must carefully review and be familiar with the terms of the order as terms may vary among orders and strategy. For example, the length of grace periods allowing the temporary sale or distribution of products are not standardized and may vary for each order.

PROCEDURES

Producer Establishment Inspections

If canceled or suspended pesticides are discovered during a producer establishment inspection, the inspector must take the following steps:

- < If production of a canceled or suspended product is encountered, this information must be immediately brought to the attention of the inspector's supervisor.
- < If the terms of the order are being violated, an official sample must be obtained and the Regional office must be contacted to determine whether a Stop Sale, Use or Removal Order (SSURO) must be served. Obtain a copy of the production record to document production date(s) and document any shipments that may be in violation.
- < Determine whether the products are being held for disposal. If held for disposal, inventory the lot and determine what disposal steps have been taken.
- < Determine if and when the establishment was notified of the Administrator's order.

Marketplace Inspections

If canceled or suspended pesticides are discovered during marketplace inspections, the inspector must take the following actions:

- < Contact his/her supervisor immediately. The supervisor will determine whether a Stop Sale, Use or Removal Order must be issued.
- < Document the receipt of the shipment by the market place establishment.
- < Document the further sale or distribution by the market place establishment.
- < If the product was shipped in violation of a cancellation/suspension order, the inspector must visit the producer to determine whether other consignees may be involved. This may require that the inspector/supervisor coordinate this activity if the producing establishment is in another State or EPA Region.

It must be noted that in documenting shipment, distribution, sale, etc. of canceled or suspended products, individual batch numbers of the products as well as sales records for RUN products must be documented.

Use Inspections

If canceled or suspended pesticides are discovered during use inspections, the inspector must contact his/her supervisor to initiate the process for issuing a Stop Sale, Use, or Removal Order (SSURO).

Storage and Disposal of Suspended or Canceled Pesticides

The FIFRA amendments gave EPA the authority to regulate the storage, transportation, and disposal of pesticides. In addition to the authority to require data on storage and disposal methods, the 1988 Amendments authorized EPA to establish labeling requirements for transportation, storage, and disposal of the pesticide and its container. The law also enabled EPA, for the first time, to take direct enforcement action against violations of storage, disposal, and transportation requirements (see sections 19 (a) and 6 (g) of the Act). The amendments eliminated the requirement that EPA, upon request, must accept suspended and canceled pesticides and dispose of them at government expense. EPA may require registrants and distributors to recall suspended and canceled pesticide products. The Agency is authorized to require registrants to give evidence of their financial capacity to carry out such a recall.

To facilitate any recalls of this kind, EPA may require all persons who sell, distribute, or commercially use pesticides to notify EPA and State and local officials of the quantities and locations of suspended and canceled pesticides in their possession.

A registrant who wishes to become eligible for reimbursement of storage costs incurred as a result of a recall must submit a plan of storage and disposal of the pesticide that meets EPA's established criteria. Registrants will be reimbursed for portions of their storage costs that are attributable to delays in approval of storage plans.

A producer or exporter of pesticides, registrant of a pesticide, applicant for registration of a pesticide, applicant for or holder of an experimental use permit, commercial applicator, or any person who distributes or sells any pesticide who possesses a pesticide that has had its registration canceled or suspended must notify the Administrator and appropriate State and local officials. The notification must include the following information:

- < The quantity of the pesticide in possession.
- < The place at which the pesticide is stored.

Indemnity Payments

Prior to the 1988 Amendments, if EPA suspended and canceled the registration of a pesticide, the Agency was required (under FIFRA) to indemnify holders of the pesticide for losses suffered,

up to the cost of the pesticide. Moreover, FIFRA was silent as to the source of funding for any indemnification (or disposal) payments that could occur. Persons previously covered by indemnification included “end users” (such as farmers and commercial pesticide applicators) as well as pesticide formulators, pesticide dealers, distributors, and registrants.

The 1988 Amendments ended automatic entitlement to indemnity payments for all persons other than certain end users, and provided that all indemnity payments made will come from the Judgment Fund of the Treasury not from EPA's operating budget. End users will continue to be eligible for indemnification through the Judgment Fund.

Indemnification to anyone other than an end user may be paid under the 1988 Amendments only if Congress provides a line-item appropriation.

The 1988 Amendments also require all sellers of a pesticide (including registrants and wholesalers) to reimburse the buyer for the purchase price of a product whose registration is suspended and canceled unless at the time of purchase the seller told the buyer in writing that the seller would not make such refunds.