

## Environmental Protection Agency

## § 725.350

subpart, EPA determines that the proposed research and development activity will present an unreasonable risk of injury to health or the environment, EPA will notify the submitter in writing and state its reasons.

(2) In the notice, EPA may prescribe additional safeguards to address or reduce the risk, or may instruct the submitter to suspend the research and development activities.

(3) Within 48 hours, the submitter must implement the instructions contained in the notice. The submitter may then submit additional information or arguments concerning the matters raised by EPA and whether EPA should modify or revoke the approval of the TERA in accordance with paragraph (a)(2) of this section.

(4) EPA will consider the information and arguments in accordance with paragraph (a)(3) of this section.

(5) Following consideration of the information and arguments under paragraph (a)(3) of this section, if EPA notifies the submitter that the R&D activity must be suspended or terminated, the submitter may resume the activity only upon written notice from EPA that EPA has approved resumption of the activity. In approving resumption of an activity, EPA may prescribe additional conditions which must be followed by the submitter.

(c) *Modifications.* If, after approval of a TERA under this subpart, the submitter concludes that it is necessary to alter the conduct of the research and development activity in a manner which would result in the activity being different from that described in the TERA agreement and any conditions EPA prescribed in its approval, the submitter must inform the EPA contact for the TERA and may not modify the activity without the approval of EPA.

### Subpart F—Exemptions for Test Marketing

#### § 725.300 Scope and purpose.

(a) This subpart describes exemptions from the reporting requirements under subpart D of this part for test marketing activities involving microorganisms.

(b) In lieu of complying with subpart D of this part, persons described in § 725.305 may submit an application for a test marketing exemption (TME).

(c) Submission requirements specific for TME applications are described at § 725.350.

(d) Data requirements for TME applications are set forth in § 725.355.

(e) EPA review procedures specific for TMEs are set forth in § 725.370.

(f) Subparts A through C of this part apply to any submission under this subpart.

#### § 725.305 Persons who may apply under this subpart.

A person identified in this section may apply for a test marketing exemption. EPA may grant the exemption if the person demonstrates that the microorganism will not present an unreasonable risk of injury to health or the environment as a result of the test marketing. A person may apply under this subpart for the following test marketing activities:

(a) A person who intends to manufacture or import for commercial purposes a new microorganism.

(b) A person who intends to manufacture, import, or process for commercial purposes a microorganism identified in subpart M of this part for a significant new use.

#### § 725.350 Procedural requirements for this subpart.

General requirements for all submissions under this part are contained in subparts A through C of this part. In addition, the following requirements apply to applications submitted under this subpart:

(a) *Prenotice consultation.* EPA strongly suggests that for a TME, the applicant contact EPA for a prenotice consultation regarding eligibility for a TME.

(b) *When to submit a TME application.* Each person who is eligible to apply for a TME under this subpart must submit the application at least 45 calendar days before the person intends to commence the test marketing activity.

(c) *Recordkeeping.* Each person who is granted a TME must comply with the recordkeeping requirements of § 725.65. In addition, any person who obtains a

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TME must retain documentation of compliance with any restrictions imposed by EPA when it grants the TME. This information must be retained for 3 years from the final date of manufacture or import under the exemption.

### § 725.355 Information to be included in the TME application.

(a) To review a TME application, EPA must have sufficient information to permit a reasoned evaluation of the health and environmental effects of the planned test marketing activity. The person seeking EPA approval must submit all information known to or reasonably ascertainable by the person on the microorganism and the test marketing activity, including information not listed in paragraphs (c), (d), and (e) of this section that the person believes will demonstrate that the microorganism will not present an unreasonable risk of injury to health or the environment as a result of the test marketing. The TME application must be in writing and must include at least the information described in paragraphs (b), (c), (d), and (e) of this section.

(b) When specific information is not submitted, an explanation of why such information is not available or not applicable must be included.

(c) Persons applying for a TME must submit the submitter identification and microorganism identity information required for MCANs in § 725.155(c), (d)(1), and (d)(2).

(d) Persons applying for a TME must submit phenotypic and ecological characteristics information required in § 725.155(d)(3) as it relates directly to the conditions of the proposed test marketing activity.

(e) Persons applying for a TME must also submit the following information about the proposed test marketing activity:

(1) *Proposed test marketing activity.* (i) The maximum quantity of the microorganism which the applicant will manufacture or import for test marketing.

(ii) The maximum number of persons who may be provided the microorganism during test marketing.

(iii) The maximum number of persons who may be exposed to the microorganism as a result of test marketing, in-

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cluding information regarding duration and route of such exposures.

(iv) A description of the test marketing activity, including its duration and how it can be distinguished from full-scale commercial production and research and development activities.

(2) *Health and environmental effects data.* All existing data regarding health and environmental effects of the microorganism must be reported in accordance with § 725.160.

### § 725.370 EPA review of the TME application.

General procedures for review of all submissions under this part are contained in §§ 725.28 through 725.60. In addition, the following procedures apply to EPA review of TME applications submitted under this subpart:

(a) No later than 45 days after EPA receives a TME, the Agency will either approve or deny the application.

(b) A submitter may only proceed with test marketing activities after receipt of EPA approval.

(c) In approving a TME application, EPA may impose any restrictions necessary to ensure that the microorganism will not present an unreasonable risk of injury to health and the environment as a result of test marketing.

## Subpart G—General Exemptions for New Microorganisms

### § 725.400 Scope and purpose.

(a) This subpart describes exemptions from reporting under subpart D of this part, and from review under this part altogether, for manufacturing and importing of certain new microorganisms for commercial purposes.

(b) Recipient microorganisms eligible for the tiered exemption from review under this part are listed in § 725.420.

(c) Criteria for the introduced genetic material contained in the new microorganisms are described in § 725.421.

(d) Physical containment and control technologies are described in § 725.422.

(e) The conditions for the Tier I exemption are listed in § 725.424.

(f) In lieu of complying with subpart D of this part, persons using recipient microorganisms eligible for the tiered