THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Legal Compilation

Statutes and Legislative History
Executive Orders
Regulations
Guidelines and Reports

Supplement I
Volume IV
Pesticides

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JANUARY 1973

WILLIAM D. RUCKELSHAUS
Administrator

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FOREWORD

No nation in the history of the world has ever developed as fast as the United States. Starting virtually from scratch, we created in one century the world's first industrial society on a continental scale. Since we derived such great benefits from the exploitation of natural resources, it is not surprising that we equated all forms of growth with progress.

Today, however, there is a new mood in this country. We are disposed to look more carefully at our past assumptions, including those which brought us wealth, comfort, and convenience. We have learned a great deal, especially in the last decade. We have acquired a more comprehensive perception of the problems of modern society and how persistent and intractable they can be. But these problems are not beyond solution. They give way before ingenuity, perseverance, and mutual cooperation.

I think this nation is well on its way to a new era of environmental stewardship. We are beginning to realize that the earth itself, the whole biosphere, is an environment from which we cannot insulate ourselves. We are learning that while we may alter that environment, we must also be prepared to protect it and to foresee the full effects of our actions on tomorrow's world.

When future historians look back on this period, they should say it was an age of enlightenment when man first understood that his limitless capacity to innovate always takes place within nature, not outside it, and that preserving the life systems of the earth is his most sacred task.

It will take decades of heavy investment, generations of strenuous effort, and many hard years of learning to live with new habits and imperatives. But in the end we shall restore the earth—not perhaps to what it was in the past, for the past is unrecoverable— but to a new condition of wholeness, where man may live in peace.

Such a world is ours for the making.

WILLIAM D. RUCKELSHAUS
Administrator
U.S. Environmental Protection Agency

PREFACE

Reorganization Plan No. 3 of 1970 transferred 15 governmental units with their functions and legal authority to create the U.S. Environmental Protection Agency. Since only the major laws were cited in the Plan, the Administrator, William D. Ruckelshaus, requested that a compilation of EPA legal authority be researched and published.

The publication has the primary function of providing a working document for the Agency itself. Secondarily, it will serve as a research tool for the public.

This particular volume, which constitutes the first supplement, is a product of a permanent office in the Office of Legislation, established to perform the updating function.

It is the hope of EPA that this set will assist in the awesome task of developing a better environment.

MARY LANE REED WARD GENTRY, J.D.
Assistant Director, Office of Field Operations
Office of Legislation
U.S. Environmental Protection Agency

2—EPA

INSTRUCTIONS

This new publication is intended to do two things. It is designed first to update the EPA Legal Compilation, which first appeared in 1973. But it is also intended to stand alone as a collection and presentation in one document of the text and legislative history of the *major* environmental legislation enacted during the Second Session of the 92d Congress.

In the first instance, for those using this publication in conjunction with the Compilation, the point system employed there will be continued here. Although in that work at each solely numerical point (1.1, 1.2, etc.) the complete then current text of the pertinent statutes was provided, in this publication ONLY the *public law text* of the latest amendment will be used because the new legislation has not yet been codified. The public law texts appear at the appropriate numerical-alphabetical point (1.32a, 1.2r, etc.) of the legislative history.

For those using this publication as an independent document, the Table of Contents has a listing of the materials included by specific environmental area.

Finally, this work is intended for general legal reference and information, not as one which may be formally cited in the legal sense, and the author disclaims responsibility for liability arising from its use. In this connection, it should be noted that the many quotations from the Congressional Record for the 92nd Congress were taken from the "unofficial" daily version which is subject to subsequent modification by the Members prior to the publication of the final official record, not available at this time.

From the outset, our concern was to make this important material available to the public as quickly as possible and we recognized that in order to accomplish this, we would have to diminish its official character to some extent. We think that it was a fair trade-off.

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1.1 FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT, AS AMENDED

7 U.S.C. §§ 136–136y

(Since the latest amendments have not been codified, see 1.1k for text)

1.1k FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1972

October 21, 1972, P.L. 92–516, 86 Stat. 973

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Environmental Pesticide Control Act of 1972".

AMENDMENTS TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

SEC. 2. The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) is amended to read as follows:

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Federal Insecticide, Fungicide, and Rodenticide Act'.

"(b) TABLE OF CONTENTS.—

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"SEC. 2. DEFINITIONS.

"For purposes of this Act—

"(a) ACTIVE INGREDIENT.—The term 'active ingredient' means—

"(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

"(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

"(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

"(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

"(b) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(c) ADULTERATED.—The term 'adulterated' applies to any pesticide if:

"(1) its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold;

"(2) any substance has been substituted wholly or in part for the pesticide; or

"(3) any valuable constituent of the pesticide has been wholly or in part abstracted.

"(d) ANIMAL.—The term 'animal' means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

"(e) CERTIFIED APPLICATOR, ETC.—

"(1) CERTIFIED APPLICATOR.—The term 'certified applicator' means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

"(2) PRIVATE APPLICATOR.—The term 'private applicator' means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing

any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

"(3) COMMERCIAL APPLICATOR.—The term 'commercial applicator' means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

"(4) UNDER THE DIRECT SUPERVISION OF A CERTIFIED APPLICATOR.—Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

"(f) DEFOLIANT.—The term 'defoliant' means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"(g) DESICCANT.—The term 'desiccant' means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"(h) DEVICE.—The term 'device' means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"(i) DISTRICT COURT.—The term 'district court' means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

"(j) ENVIRONMENT.—The term 'environment' includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

"(k) FUNGUS.—The term 'fungus' means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

"(l) IMMINENT HAZARD.—The term 'imminent hazard' means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the Secretary of the Interior under Public Law 91–135.

"(m) INERT INGREDIENT.—The term 'inert ingredient' means an ingredient which is not active.

"(n) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement which contains—

"(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and

"(2) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

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"(o) INSECT.—The term 'insect' means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

"(p) LABEL AND LABELING.—

"(1) LABEL.—The term 'label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

"(2) LABELING.—The term 'labeling' means all labels and all other written, printed, or graphic matter—

"(A) accompanying the pesticide or device at any time; or

"(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

"(q) MISBRANDED.—

"(1) A pesticide is misbranded if—

"(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

"(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25(c)(3);

"(C) it is an imitation of, or is offered for sale under the name of, another pesticide;

"(D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced;

"(E) any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

"(F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment;

"(G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment.

"(2) A pesticide is misbranded if—

"(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or dis-

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played under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if:

"(i) the size of form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

"(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

"(B) the labeling does not contain a statement of the use classification under which the product is registered;

"(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

"(i) the name and address of the producer, registrant, or person for whom produced;

"(ii) the name, brand, or trademark under which the pesticide is sold;

"(iii) the net weight or measure of the content: *Provided*, That the Administrator may permit reasonable variations; and

"(v) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification; and

"(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this Act—

"(i) the skull and crossbones;

"(ii) the word 'poison' prominently in red on a background of distinctly contrasting color; and

"(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

"(r) NEMATODE.—The term 'nematode' means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

"(s) PERSON.—The term 'person' means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

"(t) PEST.—The term 'pest' means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

"(u) PESTICIDE.—The term 'pesticide' means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

"(v) PLANT REGULATOR.—The term 'plant regulator' means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional

chemicals, plant inoculants, and soil amendments. Also, the term 'plant regulator' shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

"(w) PRODUCER AND PRODUCE.—The term 'producer' means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term 'produce' means to manufacture, prepare, compound, propagate, or process any pesticide or device.

"(x) PROTECT HEALTH AND THE ENVIRONMENT.—The terms 'protect health and the environment' and 'protection of health and the environment' mean protection against any unreasonable adverse effects on the environment.

"(y) REGISTRANT.—The term 'registrant' means a person who has registered any pesticide pursuant to the provisions of this Act.

"(z) REGISTRATION.—The term 'registration' includes reregistration.

"(aa) STATE.—The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

"(bb) UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT.—The term 'unreasonable adverse effects on the environment' means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

"(cc) WEED.—The term 'weed' means any plant which grows where not wanted.

"(dd) ESTABLISHMENT.—The term 'establishment' means any place where a pesticide or device is produced, or held, for distribution or sale.

"SEC. 3. REGISTRATION OF PESTICIDES.

"(a) REQUIREMENT.—Except as otherwise provided by this Act, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person any pesticide which is not registered with the Administrator.

"(b) EXEMPTIONS.—A pesticide which is not registered with the Administrator may be transferred if—

"(1) the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or

"(2) the transfer is pursuant to and in accordance with the requirements of an experimental use permit.

"(c) PROCEDURE FOR REGISTRATION.—

(1) STATEMENT REQUIRED.—Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—

"(A) the name and address of the applicant and of any other person whose name will appear on the labeling;

"(B) the name of the pesticide;

"(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use;

"(D) if requested by the Administrator, a full description of the tests made and the results thereof upon which the

claims are based, except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration unless such other applicant shall have first offered to pay reasonable compensation for producing the test data to be relied upon and such data is not protected from disclosure by section 10(b). If the parties cannot agree on the amount and method of payment, the Administrator shall make such determination and may fix such other terms and conditions as may be reasonable under the circumstances. The Administrator's determination shall be made on the record after notice and opportunity for hearing. If the owner of the test data does not agree with said determination, he may, within thirty days, take an appeal to the federal district court for the district in which he resides with respect to either the amount of the payment or the terms of payment, or both. In no event shall the amount of payment determined by the court be less than that determined by the Administrator;

"(E) the complete formula of the pesticide; and

"(F) a request that the pesticide be classified for general use, for restricted use, or for both.

"(2) DATA IN SUPPORT OF REGISTRATION.—The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If thereafter he requires any additional kind of information he shall permit sufficient time for applicants to obtain such additional information. Except as provided by subsection (c)(1)(D) of this section and section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.

"(3) TIME FOR ACTING WITH RESPECT TO APPLICATION.—The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the Act in accordance with paragraph (6).

"(4) NOTICE OF APPLICATION.—The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs (1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

"(5) APPROVAL OF REGISTRATION.—The Administrator shall register a pesticide if he determines that, when considered with any restrictions imposed under subsection (d)—

"(A) its composition is such as to warrant the proposed claims for it;

"(B) its labeling and other material required to be submitted comply with the requirements of this Act;

"(C) it will perform its intended function without unreasonable adverse effects on the environment; and

"(D) when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides meet the requirements of this paragraph, one should not be registered in preference to the other.

"(6) DENIAL OF REGISTRATION.—If the Administrator determines that the requirements of paragraph (5) for registration are not satisfied, he shall notify the applicant for registration of his determination and of his reasons (including the factual basis) therefor, and that, unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator may refuse to register the pesticide. Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefor. The Administrator shall promptly publish in the Federal Register notice of such denial of registration and the reasons therefor. Upon such notification, the applicant for registration or other interested person with the concurrence of the applicant shall have the same remedies as provided for in section 6.

"(d) CLASSIFICATION OF PESTICIDES.—

"(1) CLASSIFICATION FOR GENERAL USE, RESTRICTED USE, OR BOTH.—

"(A) As a part of the registration of a pesticide the Administrator shall classify it as being for general use or for restricted use, provided that if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for restricted use, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses: *Provided, however*, That the Administrator may require that its packaging and labeling for restricted uses shall be clearly distinguishable from its packaging and labeling for general uses.

"(B) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies, for general use.

"(C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular

use or uses to which the determination applies, for restricted use:

"(i) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that the acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

"(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause unreasonable adverse effects on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may provide by regulation. Any such regulation shall be reviewable in the appropriate court of appeals upon petition of a person adversely affected filed within 60 days of the publication of the regulation in final form.

"(2) CHANGE IN CLASSIFICATION.—If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent unreasonable adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least 30 days before making the change and shall publish the proposed change in the Federal Register. The registrant, or other interested person with the concurrence of the registrant, may seek relief from such determination under section 6(b).

"(e) PRODUCTS WITH SAME FORMULATION AND CLAIMS.—Products which have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added to the registration by supplemental statements.

"(f) MISCELLANEOUS.—

"(1) EFFECT OF CHANGE OF LABELING OR FORMULATION.—If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this Act.

"(2) REGISTRATION NOT A DEFENSE.—In no event shall registration of an article be construed as a defense for the commission of any offense under this Act: *Provided*, That as long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the pesticide, its labeling and packaging comply with the registration provisions of the Act.

"(3) AUTHORITY TO CONSULT OTHER FEDERAL AGENCIES.—In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.

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"SEC. 4. USE OF RESTRICTED USE PESTICIDES; CERTIFIED APPLICATORS.

"(a) CERTIFICATION PROCEDURE.—

"(1) FEDERAL CERTIFICATION.—Subject to paragraph (2), the Administrator shall prescribe standards for the certification of applicators of pesticides. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by such individual's certification.

"(2) STATE CERTIFICATION.—If any State, at any time, desires to certify applicators of pesticides, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—

"(A) designates a State agency as the agency responsible for administering the plan throughout the State;

"(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

"(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

"(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

"(E) contains satisfactory assurances that State standards for the certification of applicators of pesticides conform with those standards prescribed by the Administrator under paragraph (1).

Any State certification program under this section shall be maintained in accordance with the State plan approved under this section.

"(b) STATE PLANS.—If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify applicators of pesticides with respect to such State. Whenever the Administrator determines that a State is not administering the certification program in accordance with the plan approved under this section, he shall so notify the State and provide for a hearing at the request of the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such plan.

"SEC. 5. EXPERIMENTAL USE PERMITS.

"(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

"(b) TEMPORARY TOLERANCE LEVEL.—If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

"(c) USE UNDER PERMIT.—Use of a pesticide under an experimental use permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

"(d) STUDIES.—When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause unreasonable adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

"(e) REVOCATION.—The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

"(f) STATE ISSUANCE OF PERMITS.—Notwithstanding the foregoing provisions of this section, the Administrator may, under such terms and conditions as he may by regulations prescribe, authorize any State to issue an experimental use permit for a pesticide. All provisions of section 4 relating to State plans shall apply with equal force to a State plan for the issuance of experimental use permits under this section.

"SEC. 6. ADMINISTRATIVE REVIEW; SUSPENSION.

"(a) CANCELLATION AFTER FIVE YEARS—

"(1) PROCEDURE.—The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date of its registration (or at the end of any five-year period thereafter) unless the registrant, or other interested person with the concurrence of the registrant, before the end of such period, requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect: *Provided*, That the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is canceled under this subsection or subsection (b) to such extent, under such conditions, and for such uses as he may specify if he determines that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment. The Administrator shall publish in the Federal Register, at least 30 days prior to the expiration of such five-year period, notice that the registration will be canceled if the registrant or other interested person with the concurrence of the registrant does not request that the registration be continued in effect.

"(2) INFORMATION.—If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

"(b) CANCELLATION AND CHANGE IN CLASSIFICATION.—If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment, the Administrator may issue a notice of his intent either—

"(1) to cancel its registration or to change its classification together with the reasons (including the factual basis) for his action, or

"(2) to hold a hearing to determine whether or not its registration should be canceled or its classification changed.

Such notice shall be sent to the registrant and made public. The proposed action shall become final and effective at the end of 30 days from receipt by the registrant, or publication, of a notice issued under paragraph (1), whichever occurs later, unless within that time either (i) the registrant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the notice. In the event a hearing is held pursuant to such a request or to the Administrator's determination under paragraph (2), a decision pertaining to registration or classification issued after completion of such hearing shall be final.

"(c) SUSPENSION.—

"(1) ORDER.—If the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings, he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless the Administrator has issued or at the same time issues notice of his intention to cancel the registration or change the classification of the pesticide.

"Except as provided in paragraph (3), the Administrator shall notify the registrant prior to issuing any suspension order. Such notice shall include findings pertaining to the question of 'imminent hazard'. The registrant shall then have an opportunity, in accordance with the provisions of paragraph (2), for an expedited hearing before the Agency on the question of whether an imminent hazard exists.

"(2) EXPEDITE HEARING.—If no request for a hearing is submitted to the Agency within five days of the registrant's receipt of the notification provided for by paragraph (1), the suspension order may be issued and shall take effect and shall not be reviewable by a court. If a hearing is requested, it shall commence within five days of the receipt of the request for such hearing unless the registrant and the Agency agree that it shall commence at a later time. The hearing shall be held in accordance with the provisions of subchapter II of title 5 of the United States Code, except that the presiding officer need not be a certified hearing examiner. The presiding officer shall have ten days from the conclusion of the presentation of evidence to submit recommended findings and conclusions to the Administrator, who shall then have seven days to render a final order on the issue of suspension.

"(3) EMERGENCY ORDER.—Whenever the Administrator determines that an emergency exists that does not permit him to hold a hearing before suspending, he may issue a suspension order in advance of notification to the registrant. In that case, paragraph (2) shall apply except that (i) the order of suspension shall be in effect pending the expeditious completion of the remedies provided by that paragraph and the issuance of a final order on suspension, and (ii) no party other than the registrant and the Agency shall participate except that any person adversely affected may file briefs within the time allotted by the Agency's rules. Any person so filing briefs shall be considered a party to such proceeding for the purposes of section 16(b). [p. 13]

"(4) JUDICIAL REVIEW.—A final order on the question of suspension following a hearing shall be reviewable in accordance with Section 16 of this Act, notwithstanding the fact that any related cancellation proceedings have not been completed. Petitions to review orders on the issue of suspension shall be advanced on the docket of the courts of appeals. Any order of suspension entered prior to a hearing before the Administrator shall be subject to immediate review in an action by the registrant or other interested person with the concurrence of the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. The effect of any order of the court will be only to stay the effectiveness of the suspension order, pending the Administrator's final decision with respect to cancellation or change in classification. This action may be maintained simultaneously with any administrative review proceeding under this section. The commencement of proceedings under this paragraph shall not operate as a stay of order, unless ordered by the court.

"(d) PUBLIC HEARINGS AND SCIENTIFIC REVIEW.—In the event a hearing is requested pursuant to subsection (b) or determined upon by the Administrator pursuant to subsection (b), such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the objections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpena to compel testimony or production of documents from any person. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness. On contest, the subpena may be enforced by an appropriate United States district court in accordance with the principles stated herein. Upon the request of any party to a public hearing and when in the Hearing Examiner's judgment it is necessary or desirable, the Hearing Examiner shall at any time before the hearing record is closed refer to a Committee of the National Academy of Sciences the relevant questions of scientific fact involved in the public hearing. No member of any committee of the National Academy of Sciences established to carry out the functions of this section shall have a financial or other conflict of interest with respect to any matter considered by such committee. The Committee of the National Academy of Sciences shall report in writing to the Hearing Examiner within 60 days after such referral on these questions of scientific fact. The report shall be made public and shall be considered as part of the hearing record. The Administrator shall enter into appropriate arrangements with the National Academy of Sciences to assure an objective and competent scientific review of the questions presented to Committees of the Academy and to provide such other scientific advisory services as may be required by the Administrator for carrying out the purposes of this Act. As soon as practicable after completion of the hearing (including the report of the Academy) but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to

this section, or shall issue an order either canceling the registration, changing the classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantial evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

"(e) JUDICIAL REVIEW.—Final orders of the Administrator under this section shall be subject to judicial review pursuant to section 16.

"SEC. 7. REGISTRATION OF ESTABLISHMENTS.

"(a) REQUIREMENT.—No person shall produce any pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

"(b) REGISTRATION.—Whenever the Administrator receives an application under subsection (a), he shall register the establishment and assign it an establishment number.

"(c) INFORMATION REQUIRED.—

"(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of pesticides—

"(A) which he is currently producing;

"(B) which he has produced during the past year; and

"(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

"(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 13, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

"(d) CONFIDENTIAL RECORDS AND INFORMATION.—Any information submitted to the Administrator pursuant to subsection (c) shall be considered confidential and shall be subject to the provisions of section 10.

"SEC. 8. BOOKS AND RECORDS.

"(a) REQUIREMENTS.—The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this Act. No records required under this subsection shall extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

"(b) INSPECTION.—For the purposes of enforcing the provisions of this Act, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this Act, shall, upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy: (1) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; or (2) in the event of the inability of any person to produce records containing such

information, all other records and information relating to such delivery, movement, or holding of the pesticide or device. Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

"SEC. 9. INSPECTION OF ESTABLISHMENTS, ETC.

"(a) IN GENERAL.—For purposes of enforcing the provisions of this Act, officers or employees duly designated by the Administrator are authorized to enter at reasonable times, any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

"(b) WARRANTS.—For purposes of enforcing the provisions of this Act and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this Act have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

"(1) entry for the purpose of this section;

"(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any pesticide or device found in the establishment which is adulterated, misbranded, not registered (in the case of a pesticide) or otherwise in violation of this Act and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

"(3) the seizure of any pesticide or device which is in violation of this Act.

"(c) ENFORCEMENT.—

"(1) CERTIFICATION OF FACTS TO ATTORNEY GENERAL.—The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this Act. If it shall appear from any such examination that they fail to comply with the requirements of this Act, the Administrator shall cause notice to be given to the person against whom criminal or civil proceedings are contemplated. Any person so notified shall be

given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this Act have been violated by such person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 14(b) or a civil proceeding under section 14(a), when the Administrator determines that such action will be sufficient to effectuate the purposes of this Act.

"(2) NOTICE NOT REQUIRED.—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

"(3) WARNING NOTICES.—Nothing in this Act shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

"SEC. 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.

"(a) IN GENERAL.—In submitting data required by this Act, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information and (2) submit such marked material separately from other material required to be submitted under this Act.

"(b) DISCLOSURE.—Notwithstanding any other provision of this Act, the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act, information relating to formulas of products acquired by authorization of this Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

"(c) DISPUTES.—If the Administrator proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (b), he shall notify the applicant or registrant, in writing, by certified mail. The Administrator shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate district court for a declaratory judgment as to whether such information is subject to protection under subsection (b).

"SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS.

"(a) IN GENERAL.—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private applicator to maintain any records or file any reports or other documents.

"(b) SEPARATE STANDARDS.—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators.

"SEC. 12. UNLAWFUL ACTS.

"(a) IN GENERAL.—

"(1) Except as provided by subsection (b), it shall be unlawful for any person in any State to distribute, sell, offer for sale, hold

for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—

"(A) any pesticide which is not registered under section 3, except as provided by section 6(a)(1);

"(B) any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3;

"(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3;

"(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5);

"(E) any pesticide which is adulterated or misbranded; or

"(F) any device which is misbranded.

"(2) It shall be unlawful for any person—

"(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act;

"(B) to refuse to keep any records required pursuant to section 8, or to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 9;

"(C) to give a guaranty or undertaking provided for in subsection (b) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name and address, the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

"(D) to use for his own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this Act which is confidential under this Act;

"(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;

"(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder;

"(G) to use any registered pesticide in a manner inconsistent with its labeling;

"(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

"(I) to violate any order issued under section 13;

"(J) to violate any suspension order issued under section 6;

"(K) to violate any cancellation of registration of a pesticide under section 6, except as provided by section 6(a)(1);

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"(L) who is a producer to violate any of the provisions of section 7;

"(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to section 8, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this Act;

"(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act;

"(O) to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of this Act; or

"(P) to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test.

"(b) EXEMPTIONS.—The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—

"(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased or received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this Act;

"(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

"(3) any public official while engaged in the performance of his official duties;

"(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

"(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

"SEC. 13. STOP SALE, USE, REMOVAL, AND SEIZURE.

"(a) STOP SALE, ETC., ORDERS.—Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide has been canceled by a final order or has been suspended, the Administrator may issue a written or printed 'stop sale, use, or removal' order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or

remove the pesticide or device described in the order except in accordance with the provisions of the order.

"(b) SEIZURE.—Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported from a foreign country, shall be liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if—

"(1) in the case of a pesticide—

"(A) it is adulterated or misbranded;

"(B) it is not registered pursuant to the provisions of section 3;

"(C) its labeling fails to bear the information required by this Act;

"(D) it is not colored or discolored and such coloring or discoloring is required under this Act; or

"(E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

"(2) in the case of a device, it is misbranded; or

"(3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this Act and as directed by the labeling, it nevertheless causes unreasonable adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant. or desiccant was applied.

"(c) DISPOSITION AFTER CONDEMNATION.—If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this Act or the laws of the jurisdiction in which it is sold: *Provided*, That upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws of any jurisdiction in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall confrom, as near as may be to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

"(d) COURT COSTS, ETC.—When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

"SEC. 14. PENALTIES.

"(a) CIVIL PENALTIES.—

"(1) IN GENERAL.—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

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"(2) PRIVATE APPLICATOR.—Any private applicator or other person not included in paragraph (1) who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense.

"(3) HEARING.—No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

"(4) REFERENCES TO ATTORNEY GENERAL.—In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

"(b) CRIMINAL PENALTIES.—

"(1) IN GENERAL.—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(2) PRIVATE APPLICATOR.—Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

"(3) DISCLOSURE OF INFORMATION.—Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.

"(4) ACTS OF OFFICERS, AGENTS, ETC.—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

"SEC. 15. INDEMNITIES.

"(a) REQUIREMENT.—If—

"(1) the Administrator notifies a registrant that he has suspended the registration of a pesticide because such action is necessary to prevent an imminent hazard;

"(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

"(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration,

the Administrator shall make an indemnity payment to such person, unless the Administrator finds that such person (i) had knowledge of facts which, in themselves, would have shown that such pesticide did

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not meet the requirements of section 3(c)(5) for registration, and (ii) continued thereafter to produce such pesticide without giving timely notice of such facts to the Administrator.

"(b) AMOUNT OF PAYMENT.—

"(1) IN GENERAL.—The amount of the idemnity payment under subsection (a) to any person shall be determined on the basis of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a)(1); except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a)(1).

"(2) SPECIAL RULE.—Notwithstanding any other provision of this Act, the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner.

"SEC. 16. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW.

"(a) DISTRICT COURT REVIEW.—Except as is otherwise provided in this Act, Agency refusals to cancel or suspend registrations or change classifications not following a hearing and other final Agency actions not committed to Agency discretion by law are judicially reviewable in the district courts.

"(b) REVIEW BY COURT OF APPEALS.—In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any person who will be adversely affected by such order and who had been a party to the proceedings may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.

"(c) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this Act.

"(d) NOTICE OF JUDGMENTS.—The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

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"SEC. 17. IMPORTS AND EXPORTS.

"(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—Notwithstanding any other provision of this Act, no pesticide or device shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices shall be subject to section 8 of this Act.

(b) CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.—Whenever a registration, or a cancellation or suspension of the registration of a pesticide becomes effective, or ceases to be effective, the Administrator shall transmit through the State Department notification thereof to the governments of other countries and to appropriate international agencies.

"(c) IMPORTATION OF PESTICIDES AND DEVICES.—The Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon his request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions set forth in this Act, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any pesticide or device refused delivery which shall not be exported by the consignee within 90 days from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such pesticide or device pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such pesticide or device, together with the duty thereon, and on refusal to return such pesticide or device for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further*, That all charges for storage, cartage, and labor on pesticides or devices which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

"(e) REGULATIONS.—The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of subsection (c) of this section.

"SEC. 18. EXEMPTION OF FEDERAL AGENCIES.

"The Administrator may, at his discretion, exempt any Federal or State agency from any provision of this Act if he determines that emergency conditions exist which require such exemption.

"SEC. 19. DISPOSAL AND TRANSPORTATION.

"(a) PROCEDURES.—The Administrator shall, after consultation with other interested Federal agencies, establish procedures and regula-

tions for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 6(c) if requested by the owner of the pesticide.

"(b) ADVICE TO SECRETARY OF TRANSPORTATION.—The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act (49 U.S.C. 1657), the Transportation of Explosives Act (18 U.S.C. 831–835), the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430, 1472 H), and the Hazardous Cargo Act (46 U.S.C. 170, 375, 416).

"SEC. 20. RESEARCH AND MONITORING.

"(a) RESEARCH.—The Administrator shall undertake research, including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this Act, and he shall give priority to research to develop biologically integrated alternatives for pest control. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.

"(b) NATIONAL MONITORING PLAN.—The Administrator shall formulate and periodically revise, in cooperation with other Federal, State, or local agencies, a national plan for monitoring pesticides.

"(c) MONITORING.—The Administrator shall undertake such monitoring activities, including but not limited to monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.

"SEC. 21. SOLICITATION OF COMMENTS; NOTICE OF PUBLIC HEARINGS.

"(a) The Administrator, before publishing regulations under this Act, shall solicit the views of the Secretary of Agriculture.

"(b) In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

"(c) In connection with all public hearings under this Act the Administrator shall publish timely notice of such hearings in the Federal Register.

"SEC. 22. DELEGATION AND COOPERATION.

"(a) DELEGATION.—All authority vested in the Administrator by virtue of the provisions of this Act may with like force and effect be executed by such employees of the Environmental Protection Agency as the Administrator may designate for the purpose.

"(b) COOPERATION.—The Administrator shall cooperate with the Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

"SEC. 23. STATE COOPERATION, AID, AND TRAINING.

"(a) COOPERATIVE AGREEMENTS.—The Administrator is authorized to enter into cooperative agreements with States—

"(1) to delegate to any State the authority to cooperate in the enforcement of the Act through the use of its personnel or facilities, to train personnel of the State to cooperate in the enforcement of this Act, and to assist States in implementing cooperative enforcement programs through grants-in-aid; and

"(2) to assist State agencies in developing and administering State programs for training and certification of applicators consistent with the standards which he prescribes.

"(b) CONTRACTS FOR TRAINING.—In addition, the Administrator is authorized to enter into contracts with Federal or State agencies for the purpose of encouraging the training of certified applicators.

"(c) The Administrator may, in cooperation with the Secretary of Agriculture, utilize the services of the Cooperative State Extension Services for informing farmers of accepted uses and other regulations made pursuant to this Act.

"SEC. 24. AUTHORITY OF STATES.

"(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act;

"(b) such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required pursuant to this Act; and

"(c) a State may provide registration for pesticides formulated for distribution and use within that State to meet special local needs if that State is certified by the Administrator as capable of exercising adequate controls to assure that such registration will be in accord with the purposes of this Act and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator. Such registration shall be deemed registration under section 3 for all purposes of this Act, but shall authorize distribution and use only within such State and shall not be effective for more than 90 days if disapproved by the Administrator within that period.

"SEC. 25. AUTHORITY OF ADMINISTRATOR.

"(a) REGULATIONS.—The Administrator is authorized to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides.

"(b) EXEMPTION OF PESTICIDES.—The Administrator may exempt from the requirements of this Act by regulation any pesticide which he determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

"(c) OTHER AUTHORITY.—The Administrator, after notice and opportunity for hearing, is authorized—

"(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment:

"(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man;

"(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601)) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion

or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act;

"(4) to specify those classes of devices which shall be subject to any provision of paragraph 2(q)(1) or section 7 of this Act upon his determination that application of such provision is necessary to effectuate the purposes of this Act;

"(5) to prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment; and

"(6) to determine and establish suitable names to be used in the ingredient statement.

"SEC. 26. SEVERABILITY.

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act are severable.

"SEC. 27. AUTHORIZATION FOR APPROPRIATIONS.

"There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1975, shall be the sums hereafter provided by law."

AMENDMENTS TO OTHER ACTS

SEC. 3. The following Acts are amended by striking out the terms "economic poisons" and "an economic poison" wherever they appear and inserting in lieu thereof "pesticides" and "a pesticide" respectively:

(1) The Federal Hazardous Substances Act, as amended (15 U.S.C. 1261 et seq.);

(2) The Poison Prevention Packaging Act, as amended (15 U.S.C. 1471 et seq.); and

(3) The Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.).

EFFECTIVE DATES OF PROVISIONS OF ACT

SEC. 4. (a) Except as otherwise provided in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, and as otherwise provided by this section, the amendments made by this Act shall take effect at the close of the date of the enactment of this Act, provided if regulations are necessary for the implementation of any provision that becomes effective on the date of enactment, such regulations shall be promulgated and shall become effective within 90 days from the date of enactment of this Act.

(b) The provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations thereunder as such existed prior to the enactment of this Act shall remain in effect until superseded by the amendments made by this Act and regulations thereunder: *Provided*, That all provisions made by these amendments and all regulations thereunder shall be effective within four years after the enactment of this Act.

(c)(1) Two years after the enactment of this Act the Administrator shall have promulgated regulations providing for the registration and

classification of pesticides under the provisions of this Act and thereafter shall register all new applications under such provisions.

(2) After two years but within four years after the enactment of this Act the Administrator shall register and reclassify pesticides registered under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act prior to the effective date of the regulations promulgated under subsection (c)(1).

(3) Any requirements that a pesticide be registered for use only by a certified applicator shall not be effective until four years from the date of enactment of this Act.

(4) A period of four years from date of enactment shall be provided for certification of applicators.

(A) One year after the enactment of this Act the Administrator shall have prescribed the standards for the certification of applicators.

(B) Within three years after the enactment of this Act each State desiring to certify applicators shall submit a State plan to the Administrator for the purpose provided by section 4(b).

(C) As promptly as possible but in no event more than one year after submission of a State plan, the Administrator shall approve the State plan or disapprove it and indicate the reasons for disapproval. Consideration of plans resubmitted by States shall be expedited.

(5) One year after the enactment of this Act the Administrator shall have promulgated and shall make effective regulations relating to the registration of establishments, permits for experimental use, and the keeping of books and records under the provisions of this Act.

(d) No person shall be subject to any criminal or civil penalty imposed by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, for any act (or failure to act) occurring before the expiration of 60 days after the Administrator has published effective regulations in the Federal Register and taken such other action as may be necessary to permit compliance with the provisions under which the penalty is to be imposed.

(e) For purposes of determining any criminal or civil penalty or liability to any third person in respect of any act or omission occurring before the expiration of the periods referred to in this section, the Federal Insecticide, Fungicide, and Rodenticide Act shall be treated as continuing in effect as if this Act had not been enacted.

Approved October 21, 1972.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-511 (Comm. on Agriculture) and No. 92-1540 (Comm. of Conference).
SENATE REPORTS: No. 92-838 (Comm. on Agriculture and Forestry) and NO. 92-970 (Comm. on Commerce).
CONGRESSIONAL RECORD:
Vol. 117 (1971): Nov. 8,9, considered and passed House.
Vol. 118 (1972): Sept.26, considered and passed Senate, amended.
Oct. 5, Senate agreed to conference report.
Oct. 12, House agreed to conference report.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:
Vol. 8, No. 44 (1972): Oct. 21, Presidential statement.

1.1k(1) HOUSE COMMITTEE ON AGRICULTURE

H.R. REP. No. 92–511, 92d Cong., 1st Sess. (1971)

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1971

SEPTEMBER 25, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. POAGE, from the Committee on Agriculture, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 10729]

The Committee on Agriculture, to whom was referred the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BRIEF SUMMARY

H.R. 10729 contains four sections.

The *first section of the bill* cites this legislation as the "Federal Environmental Pesticide Control Act of 1971."

Section 2 of the bill contains a series of amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which completely rewrite that statute. The thrust of these amendments is to change FIFRA from a labeling law into a comprehensive regulatory statute that will henceforth more carefully control the manufacture, distribution, and use of pesticides.

In so changing old FIFRA the new statute would contain the following main provisions:

1. It establishes a coordinated Federal-State administrative system to carry out the new program. The States are given prime responsibility for the certification and supervision of pesticide applicators. The Federal Government sets the program standards the States must meet. State authority to change Federal labeling and packaging is

completely preempted, and State authority to further regulate "general use" pesticides is partially preempted.

2. The administrative procedures for pesticide registration, cancellation, or suspension are rewritten. Under the new program the National Academy of Sciences can be called upon by EPA to render opinions on relevant scientific issues that arise in the hearing process.

3. Pesticides will be classed into two categories—"General Use" and the more dangerous "Restricted Use." The latter can be applied by or under the direct supervision of licensed pesticide applicators or under other restrictions set by EPA.

4. There will be two types of pesticide applicators—Commercial and Private. The bulk of the private pesticide applicators are expected to be farmers. All applicators will be licensed and will be required to exhibit a satisfactory knowledge of and ability to safely apply pesticides.

5. The Administrator of EPA is given authority to issue experimental permits for the safe testing of new compounds.

6. EPA is given enforcement powers to (a) issue warnings, (b) bring court injunctions, (c) seize pesticides or devices, (d) impose civil penalties, and (e) bring criminal charges when such action is warranted.

7. The Administrator is given new powers to examine books and records, inspect the premises, and take samples of pesticides in the possession of persons covered by the Act.

8. Trade secrets and certain scientific data submitted in support of registrations are either kept confidential or not made available to support registration applications by other persons.

9. Indemnities must be paid by EPA under certain circumstances and the option to turn over certain condemned pesticides to EPA is provided to pesticide owners.

10. Judicial review of administrative actions guaranteed.

11. New authority concerning the importation or exportation of pesticides and devices is provided. (The bill does not contain any restrictions on the importation of commodities from foreign nations having pesticide programs different than those in the United States.)

12. The President is given limited authority to exempt by Executive Order Federal agencies from all or any of the provisions of the Act.

13. EPA is given authority to do expanded research and monitoring in order to find new and better methods and materials for controlling pests.

14. The bill creates the mechanics for soliciting and evaluating public comments about the new program.

15. FIFRA is continued as a permanent law, but the authorization for appropriations will expire on June 30, 1974.

16. General authority is granted to EPA to write regulations to carry out the Act and recognize the use of specialty chemicals.

Section 3 of the bill contains conforming amendments to three other laws changing the term "economic poison" to "pesticide."

Section 4 of the bill sets forth various effective dates in order to put the new program into operation as quickly and as effectively as possible.

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THE NEED FOR LEGISLATION

The Committee is of course aware of criticism in certain circles to the effect that agriculture is some sort of a major villain on the environmental pollution scene. There is a clear implication by some that if farmers would only return to the ways of the "good old days" many environmental problems would no longer exist.

The Committee realizes that the agricultural community must shoulder its share of the responsibility for a better environment, but on the other hand it should be recognized that many farmers and ranchers have long been in the forefront of the battle for a better earth.

Common sense dictates that a farmer would be careful in handling materials which, if improperly used, could injure himself, his family, and the premises upon which he and his family live and work. Beyond that obvious observation, though, the record of conservation by farm people, both through and outside government, should not only be recognized but applauded.

Some people might better devote increased efforts toward the abatement of Federal, State, municipal and industrial waste rather than to idly point a finger at the farmer.

In regard to this point, the recent remarks of the Nobel Prize winner, Dr. Norman Bourloug, seem appropriate: [1]

> *"Today, everybody talks about the environment. This is also nothing but one more example of a different aspect of this population problem.*
>
> *"I am fearful that there are some purists—and I started out in Forestry and worked in one way or another in ecology from the whole thing of forest protection and watershed protection and wildlife, and I feel I know something about this and yet I'm horrified by what I read and listen to on the radio and television about some of the theories of the purists—who are suddenly going to shut off the use of chemical products that we need to continue the improvement of our agricultural production, and I say it broadly—fertilizers and pesticides. Sometimes we have had accidents with pesticides, but think of the good they have done. Without them where would our agricultural production be today?*
>
> *"We need common sense mixed with these things. But common sense seems to, all too often, go out the window.*
>
> *"You see in this world of tomorrow, those purists—environmental purists—who would deny the use of chemical fetilizers because we are contaminating our waters—and God knows we have done this to our lakes, rivers, and streams—and I'm sure we can do a lot to correct it.*
>
> *"But it all doesn't come from chemical fertilizers. What about the sewage and industrial wastes? What about the pollution of the environment—the smog, industrial and automotive?*
>
> *"We have to and must do something about it because of the way this is all evolving, and I'm sure we can, but I refuse to be stampeded into saying we will discontinue the use of chemical fertilizers in the developing world because it is to commit those*

[1] Remarks at the 9th Federal Reserve District Farm Forum in Minneapolis, Minnesota, on March 3, 1971.

hungry people to starvation. Is this the way to build a better world?"

Even though the Committee recognizes that farmers and ranchers have not been pollution villains, this legislation has been developed in an effort to improve the quality of living for all Americans while recognizing the basic needs of a modern and efficient agricultural industry in this Nation.

The Committee also recognizes that during recent years there has been an increasing public concern over the uses and application of pesticides. This rising concern has reflected expanded interest in environmental protection by many citizens. This bill is in part a result of the growing awareness of possible undesirable effects of pesticides and a realization of the necessity of considering these disadvantages along with the beneficial effects realized through protection of public health and enhancement of agricultural productivity.

The basic law presently regulating pesticides—or "economic poisons" as they are presently known—is the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended, supplemented by sections of the Food, Drug, and Cosmetic Act concerning possible toxic residues left on foodstuffs. The Committee feels that this basic law regulating pesticides in the United States needs to be thoroughly overhauled in order to better serve the Nation in the light of these changing situations.

The machinery for managing these chemical compounds which are being introduced daily into the environment needs updating to properly balance all of the many factors interrelated with our current management of pesticides.

The Committee acknowledges that the wise use of pesticides has saved millions of lives by controlling insect vectors of diseases such as malaria and typhus, and the Nation as a whole has benefited tremendously from the efficiency of insect and weed control made possible by agricultural applications of pesticides of various sorts.

But on the other hand, there is evidence of diminished effectiveness of control and increased undesirable effects on non-target and beneficial organisms resulting from indiscriminate use and abuse of invaluable pesticides.

The Committee found the greatest need for revision of existing law to be in the areas of strengthening regulatory controls on the uses and users of pesticides, speeding up procedures for barring pesticides found to be undesirable; streamlining procedures for making valuable new control measures, procedures, and materials broadly available; strengthening enforcement procedures to protect against misuse of these biologically effective materials; and creating an administrative and legal framework under which continued research can produce more knowledge about better ways to use existing pesticides as well as developing alternative materials and methods of pest control.

The Committee has worked on each of these problems. H.R. 10729 imposes new controls and sanctions on both the uses and the users of pesticides. Old FIFRA is changed from a labeling to a regulatory program. New tools for restricting the introduction and dissemination of pesticides into the environment are given to the EPA. Continued and expanded research, both private and public, is encouraged.

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A Search for Balance

As the Committee labored through the months of hearings and discussions, one central legislative philosophy developed . . . . the theme of a "search for balance."

Expert witness articulated divergent opinions. Individual members of the Committee expressed and debated diverse views. The Committee solicited advice from environmentalists, from farm groups, from State and Federal officials, from the chemical industry, and from the public. These views too were panoramic.

Sifting through the spectrum of opinion, the search for a reasonable balance led the Committee to the legislative concepts of H.R. 10729 which recognize both the benefit and risk of these materials in society; to policies which call for the continued but more carefully controlled use of pesticides; to programs which will mesh, not clash, with the States; and to a philosophy which calls for those of divergent viewpoints to each try to see the problem of environmental pesticide control through the eyes of those with whom he may disagree.

In summary H.R. 10729 is not a "farmer's bill." It's not a "manufacturer's bill." Neither is it an "environmentalist's bill." It is rather a mixture of each, a composite of all, and the manifestation of a sincere effort by the Committee on Agriculture to meet the need for reasoned progress in this important area of public concern.

HISTORICAL BACKGROUND

The use of chemicals in agriculture began with the trend toward intensive farming in the mid-19th century. Cultivation of specialized crops created imbalances in nature which provided insects and other pests ideal conditions in which to multiply.

As an example, the Colorado potato beetle in 1850 lived on local plants and maintained a balanced population in its natural environment. When the early settlers planted potatoes, the beetles were furnished a vast new supply of food. They multiplied. They became a pest to the new settlers and spread eastward to other potato fields as a result of their own population pressure. Nothing was effective against this new pest until the arsenic compound, Paris green was applied.

By the latter half of the 19th century, United States agriculture was well on the way toward becoming a commercial production industry. Progressive, scientific farming was promoted by the founding of the land-grant colleges, the agricultural experiment stations, and the creation of an extension-education system. These institutions, together with the United States Department of Agriculture, made up an extremely effective organization of applied research, informational and demonstration programs, and consulting services for farmers.

As a result of these developments in which the increasing use of chemical pesticides played an important role, most of U.S. food supplies and substantial quantities for export are now produced by fewer than 5 percent of the population.

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Scope of Present Program

Under present law more than 60,000 products made from one or more of 900 chemical compounds are currently registered. Of these, farmers use pesticides to fight harmful weeds, insects, plant diseases, and other pests attacking their livestock and food crops; plant regulators to produce seedless fruits and vegetables and to prevent premature dropping of fruit; and plant defoliants and desiccants to cause leaves to drop or plants to mature uniformly so that mechanical harvesting can be used more efficiently.

Althouth farmers use by far the largest *volume* of the pesticides produced in this country, *approximately half* of the pesticide products registered by EPA are designed for nonfarm uses around or in homes, apartment buildings, and industrial plants.

Industrial uses of chemical products registered as pesticides are quite varied. For example, manufacturers use chemical pesticides against fungi in literally thousands of products ranging from asphalt, paint, and plastics to jet fuel. Other pesticides are used by industry to make such products longer lasting and more attractive to consumers.

All sterilizing, disinfecting, sanitizing, germicidal, and bacteria killing chemicals—except those sold exclusively for use on or in the living body of man or other animals—are classified as "pesticides" and must be registered. These include products to sterilize and disinfect surgical and dental instruments, barber shop and beauty parlor instruments and equipment, dairy equipment, and such restaurant equipment as dishes and glasses.

Homeowners and apartment dwellers alike use pesticides practically every day. The housewife fights such insects as roaches and ants with pesticides; she combats mildew and other fungi in clothing with fungicides; and she applies detergent-sanitizers in her laundry and antibacterial sprays in her bathrooms and kitchens to keep them sanitary and clean smelling.

Homeowners regularly use insecticides on their lawns, rose bushes, and other ornamentals to protect them against insects. They also apply fungicides on lawns to control grass diseases and herbicides on lawns, driveways, and other areas to control weeds. All of these types of chemicals are registered under present law and will be strictly regulated under the provisions of H.R. 10729.

Public Health Benefits

In addition to making an invaluable contribution to efficient food production, pesticides have saved millions of lives as a result of their widespread use to control or eradicate pest carried diseases such as malaria, typhus, sleeping sickness and yellow fever. A widely recognized scientist believes that the much maligned pesticide DDT has saved more lives than all the anti-biotics combined.[1]

Consumer Benefit

The great forward strides in production efficiency made possible by the use of chemical pesticides in combination with other improved

[1] See Page 469, Printed Hearings Serial 92-A, Remarks of Prof. Robert White-Stevens, Bureau of Conservation and Environmental Science, Rutgers University, the State University of New Jersey, New Brunswick, New Jersey, at the 52nd Annual Meeting of the American Farm Bureau Federation, in Houston, Texas, December 7, 1970.

agricultural practices makes it possible for consumers to obtain their domestically produced foods with a smaller and smaller share of their spendable income.

It is commonly reported that consumers, in 1971, are spending 16.5 percent of their disposable income for food. For their production efforts, farmers receive less than a third of these retail-food expenditures. About 5 percent of consumers' disposable income goes to farmers, perhaps 2 percent goes for imported food and approximately 9.5 percent is required to pay the processing and marketing charges.

There are few, if any, countries in the world where such a small percentage of consumers' expenditures is required to purchase the farm supplied foods. There also are few countries which use as much chemical pesticides as American farmers.

Current Production and Sales of Pesticides and Related Products

For the purposes of the following Table 1, the term "pesticides and related products" includes fungicides, herbicides, insecticides, rodenticides, and related products such as plant hormones, seed disinfectants, soil conditioners, soil fumigants and synergists. The following data also reflects 100-percent active material and excludes such materials as diluents, emulsifiers, and wetting agents.

U.S. production of pesticides and related products in 1970 amounted to 1,034 million pounds—6.4 percent less than the 1,104 million pounds reported for 1969. Sales in 1970 were 881 million pounds, valued at $870 million, compared with 929 million pounds, valued at $851 million, in 1969.

The output of cyclic pesticides and related products amounted to 727 million pounds in 1970—about 11.3 percent less than the 819 million pounds produced in 1969. Sales in 1970 were 602 million pounds, valued at $702 million, compared with 666 million pounds, valued at $697 million, in 1969. The output of DDT amounted to 59 million pounds in 1970—the lowest since 1949. Production of acyclic pesticides and related products, increased in 1970 amounting to 307 million pounds, compared with the 285 million pounds reported for 1969. Sales in 1970 were 279 million pounds an increase of about 6.3 percent as compared with 263 million pounds in 1969; the value of sales increased to $169 million in 1970, compared with $154 million in 1969—a gain of 9.6 percent.

SYNTHETIC ORGANIC CHEMICALS, 1970

TABLE 1.—PESTICIDES AND RELATED PRODUCTS: U.S. PRODUCTION AND SALES, 1970

[Listed below are all pesticides and related products for which any reported data on production or sales may be published (Leaders are used where the reported data are accepted in confidence and may not be published or where no data were reported.) Table 2 lists all pesticides and related products for which data on production or sales were reported and identifies the manufacturers of each]

Product	Production (1,000 pounds)	Sales		
		Quantity (1,000 pounds)	Value (1,000 dollars)	Unit value [1] (per pound)
Grand total	1,034,075	880,914	870,314	$0.99
Benzenoid	579,414	497,365	513,087	1.03
Nonbenzenoid	454,661	383,549	357,227	.93
PESTICIDES AND RELATED PRODUCTS, CYCLIC				
Total	727,133	601,755	701,558	1.17
Fungicides, total	95,762	83,465	39,023	.47
3,5-Dimethyl-1,3,5-2H-tetrahydrothiadiazine-2-thione (DMTT)	1,218	1,117	631	.56
Mercury fungicides, total	1,571	1,625	5,902	3.63
Phenylmercuric acetate (PMA)	457	301	2,003	6.65
Other mercury fungicides	1,114	1,324	3,899	2.94
Naphthenic acid, copper salt	1,730	1,795	529	.29
Pentachlorophenol (PCP)	47,170	45,832	6,371	.14
8-Quinolinol (8-Hydroxyquinoline), copper salt	71	68	120	1.76
All other cyclic fungicides [2]	44,002	33,028	25,470	.77
Herbicides and plant hormones, total	330,326	246,534	449,026	1.82
1,2-Dihydropyridazine-3,6-dione (Maleic hydrazide) (MH)	3,271	3,096	5,247	1.69
Phenoxyacetic acid derivatives:				
2,4-Dichlorophenoxyacetic acid (2,4-D)	43,675	15,783	4,136	.26
2,4-Dichlorophenoxyacetic acid esters and salts, total		43,917	13,140	.30
2,4-Dichlorophenoxyacetic acid, n-butyl ester	878	1,454	479	.33
2,4-Dichlorophenoxyacetic acid, sec-butyl ester	6,740	3,931	1,023	.26
2,4-Dichlorophenoxyacetic acid, dimethylamine salt	19,499	19,480	5,350	.27
2,4-Dichlorophenoxyacetic acid, iso-octyl ester	9,989	7,387	2,474	.33
2,4-Dichlorophenoxyacetic acid, isopropyl ester	1,001	1,078	324	.30
All other (2,4-D) esters and salts		10,587	3,490	.33
2,4,5-Trichlorophenoxyacetic acid, esters, and salts, total	12,335	7,214	5,347	.74
2,4,5-Trichlorophenoxyacetic acid, iso-octyl ester	2,142			
All other (2,4,5-T) esters and salts	10,193	7,214	5,347	.74
2-(2,4,5-Trichlorophenoxy) propionic acid (Silvex), and esters	2,016	1,407	1,474	1.05
All other cyclic herbicides and plant hormones [3]	231,021	175,117	419,682	2.40
Insecticides and rodenticides, total	301,045	271,756	213,509	.79
Aldrin-toxaphene group	88,641	84,225	43,159	.51
α Bis (p-chlorophenyl)-β,β,β,-trichloroethane (DDT)	59,316	34,019	5,351	.16
Organophosphorus insecticides, total	77,236	75,055	78,204	1.04
O,O-Diethyl O-p-nitrophenyyl phosphorothioate (Parathion)	15,259	15,504	7,672	.49
O,O-Dimethyl O-p-nitrophenyl phosphorothioate (Methyl parathion)	41,353	39,869	19,173	.48
All other organophosphorus insecticides [5]	20,624	19,682	51,359	2.61
All other insecticides and rodenticides [6]	75,852	78,457	86,795	1.11
PESTICIDES AND RELATED PRODUCTS, ACYCLIC				
Total	306,942	279,159	168,756	.60
Fungicides, total	44,397	45,394	26,155	.58
Dithiocarbamic acid salts [7]	39,381	40,013	18,998	.47
All other acyclic fungicides [8]	5,016	5,381	7,157	1.33
Herbicides and plant hormones, total	73,458	61,578	48,928	.79
Methanearsonic acid salts [9]	30,454	24,521	8,028	.33
All other acyclic herbicides [10]	43,004	37,057	40,900	1.10
Insecticides, rodenticides, and soil conditioners and fumigants, total	189,087	172,187	93,673	.54

See footnotes at end of table, p. 9.

SYNTHETIC ORGANIC CHEMICALS, 1970—Continued

TABLE 1.—PESTICIDES AND RELATED PRODUCTS: U.S. PRODUCTION AND SALES, 1970—Continued

[Listed below are all pesticides and related products for which any reported data on production or sales may be published. (Leaders are used where the reported data are accepted in confidence and may not be published or where no data were reported.) Table 2 lists all pesticides and related products for which data on production or sales were reported and identifies the manufacturers of each]

Product	Production (1,000 pounds)	Sales		
		Quantity (1,000 pounds)	Value (1,000 dollars)	Unit value [1] (per pound)
PESTICIDES AND RELATED PRODUCTS, ACYCLIC—Continued				
Methyl bromide (Bromoethane)	21,047	21,790	8,764	$0.40
Organophosphorus insecticides [11]	55,260			
All other acyclic insecticides (including sales of acyclic organophosphorus insecticides), rodenticides, and soil conditioners and fumigants [12 13]	112,780	150,397	84,909	.56

[1] Calculated from rounded figures.
[2] Includes benomyl, captafol, captan, dinocap, folpet, pentachloronitrobenzene, sodium pentachlorophenate, tri- and tetra-chlorophenols, (including 2,4,5-trichlorophenol and its salts) and others.
[3] Includes acetanilide compounds, amiben esters and salts, farban, benefin, bensulide, other 2,4-D esters and salts (production only), dicamba, dimethylurea compounds, dinitrophenol compounds, endothal, isopropyl phenylcarbamates (IPC and CIPC), MCPA, molinate, NPA, picloram, propanil, triazines, trifluralin, uracils, and others.
[4] Includes aldrin, chlordan, dieldrin, endrin, heptachlor, and toxaphene.
[5] Includes azinphosmethyl, carbophenothion, coumaphos, diazinon, dioxathion, fensulfothion, ronnel, and other phosphorothioates and phosphorodithioates, and others.
[6] Includes carbofuran, chlorobenzilate, dicofol, endosulfan, methoxychlor, and other chlorinated insecticides, carbaryl, insect attractants, DEET and other insect repellents, lindane, small amounts of rodenticides, piperonyl butoxide and other synergists, and others.
[7] Includes ferbam, maneb, metham, nabam, and zineb, plus the remaining dithiocarbamates which are used chiefly as pesticides.
[8] Includes dodine, mercury compounds, PETD, and others.
[9] Includes the mono- and di-sodium salts, and the dodecyl- and octyl-ammonium salts of methanearsonic acid.
[10] Includes cacodylic acid, CDAA, dalapon, thiocarbamate, thiolcarbamate, and organophosphorus herbicides, sodium TCA, and others.
[11] Includes DDVP, dimethoate, disulfoton, ethion, malathion, monocrotophos, naled, phorate, and other organophosphorus insecticides. Sales are included in the data for all other acyclic insecticides.
[12] Includes DBCP, soil conditioners and fumigants, methaldehyde (which is a molluscicide), small quantities of rodenticides, and others.
[13] Sales of acyclic organophosphorus insecticides are included with "All other acyclic insecticides" in order to establish an all other acyclic insecticide total without disclosing the operations of individual companies.

Source: U S. Tariff Commission, Preliminary Report on U.S. Production and Sales of Pesticides and Related Products—1970, issued September 1971.

Federal Inspection Act of 1910

As early as 1910 the distribution and use of chemical pesticides reached a level which required Federal regulation for the protection of users, consumers and the general public. Federal regulation of pesticides began with the enactment of the Federal Insecticide Act of 1910, although State regulation was undertaken in some States at an even earlier date.

The Federal Insecticide Act of 1910 prevented the manufacture, sale or transportation of adulterated or misbranded insecticides and fungicides and authorized regulation of sales of insecticides and fungicides.

As the number and variety of chemical pesticides manufactured and used increased, individual States increased the scope of their regulations. In 1946 the Council of State Governments developed a uniform insecticide, fungicide and rodenticide act for the consideration of and adoption by the individual States. At the same time the Congress began holding hearings on proposed more comprehensive Federal legislation. [p. 9]

FIFRA Enacted

In June 1947, the Insecticide Act of 1910 was repealed and replaced by the Federal Insecticide, Fungicide and Rodenticide Act. By this time great changes had occurred in the field of chemical pesticides, or economic poisons. New plant materials and synthetic chemicals developed through both private and publicly-financed research had greatly increased the number of pesticides available and widened the scope of their usefulness. DDT and herbicides were becoming increasingly important.

The 1947 Act required:

1. The registration of economic poisons or chemical pesticides prior to their sale or movement in interstate or foreign commerce.
2. The prominent display of poison warnings on labels of highly toxic pesticides.
3. The coloring or discoloring of dangerous white powdered insecticides to prevent their being mistaken for foodstuffs.
4. The inclusion of warning statements on the label to prevent injury to people, animals and plants.
5. The inclusion of instructions for use to provide adequate protection for the public.
6. That information be furnished the administrator of the Act with respect to the delivery, movement, or holding of pesticides.

This Act was designed to work in harmony with the uniform State insecticide, fungicide and rodenticide act which was adopted in many States.

Miller Amendment

In 1954 pesticide regulations were expanded further by an amendment to the Food and Drug Act authorizing its administrator to set tolerance limits for the residues of pesticides on foods.

This provision, known as the "Miller amendment," requires the pretesting of a chemical pesticide before it can be used on food crops. The manufacturer is required to provide detailed data to demonstrate to the administrator of the Federal Pesticide Act (FIFRA) that the chemical is useful to agriculture and how much residue, if any, will remain in or on a food crop after application.

The manufacturer must also supply scientific data on the toxicity of the chemical to warm-blooded animals. It is from these data and from their own research that the Federal Food and Drug Administration sets a tolerance or maximum amount of residue which may legally remain in or on the food crop when it is marketed.

1959 Amendments

After 1947 several new types of agricultural chemicals, generally referred to as nematocides, defoliants, desiccants, and plant regulators were developed and acquired widespread commercial use. Nematocides were used to control nematodes, or very small eelworms which attack the roots of plants. Defoliants were found useful to make leaves drop from plants to facilitate mechanical harvesting of the crop. Desiccants also were found useful in drying plant tissues to facilitate harvesting the crop. And, plant regulators were found useful under some conditions in regulating the growth processes of plants.

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In 1959 the 1947 Act was again amended to include these products under the general regulatory provisions for economic poisons on chemical pesticides.

Increasing Concern in the 1960's

In the early 1960's increasing public concern regarding the longer run public health and ecological effects of some of the chemical pesticides led to the creation of a Presidential Scientific Advisory Committee which made a number of recommendations in its 1963 report. It concluded among other things that,

1. Monitoring programs to obtain systematic data on pesticide residues should be expanded.
2. Federal research programs concerned with pesticides should be expanded and coordinated.
3. A broad educational program emphasizing the hazards in the use of pesticides should be undertaken.

It also recommended amendments to existing pesticide legislation to:

1. Eliminate "protest" registrations.
2. Require each pesticide to carry a license number identification, and
3. Include fish and wildlife as useful vertebrates and invertebrates under the Federal Pesticide Act.

It was the consensus of that committee that mankind must continue to fight insects and other pests in the most efficient manner possible, and that an integrated program involving chemicals was absolutely necessary.

1964 Amendments

In 1964, amendments to the Federal Insecticide, Fungicide and Rodenticide Act of 1947 were adopted which, as recommended, eliminated protest registration and authorized each pesticide to carry a license number identification. The 1964 amendments also expedited procedures for suspending the marketing of previously registered pesticides which were found to be unsafe.

At that time, the Departments of Agriculture, Interior and Health, Education, and Welfare entered into an interdepartmental agreement, which among other things established procedures for resolving any differences they might have with respect to the licensing and regulation of new pesticides.

The appropriate use of chemical pesticides and the adequacy of existing regulations has continued to be widely discussed in the public forum. Various committees of both the House and the Senate have held hearings, studied the problem, and issued reports on pesticides and public policy and deficiencies in the administration of the Federal Insecticide, Fungicide and Rodenticide Act.

Two years ago the Department of Health, Education, and Welfare appointed a commission on pesticides and their relationship to environmental health. Over 5,000 references to published and ongoing scientific research were reviewed and evaluated by this Commission. It made a number of recommendations in November, 1969, which were considered by all agencies involved in regulations and research relating to pesticides and their use.

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Creation of Environmental Protection Agency

A year later, President Nixon proposed a reorganization of the agencies of the Federal Government dealing with pesticides to more effectively deal with the problems in this area. In December, 1970, he transferred the pesticide and pure food regulatory staffs located in the Departments of Agriculture, Interior, and Health, Education, and Welfare to a new Environmental Protection Administration.

Pesticide Legislation Proposed

In February 1971 the President submitted the legislative recommendation which became the basis for this bill. The Administration proposal was introduced by Mr. Poage, the Committee Chairman, and Mr. Belcher, the senior Minority member, as H.R. 4152 on February 10, 1971.

H.R. 10729 Compared to the Present Act

The amendments in H.R. 10729 to the Federal Insecticide, Rodenticide, and Fungicide Act, as amended, which is a registration and labeling law, would extend the regulation of pesticides to their manufacture and use, and Federal regulatory authorities would apply throughout the States, not just to the interstate commerce of pesticides.

Under H.R. 10729 registration of pesticides producing establishments is required, and registration of a pesticide entails designation of a use classification carrying concomitant use control requirements. Two classifications are contemplated, general use and restricted use. The former is regulated by the registration and labeling process as under present FIFRA; the latter is also regulated by requiring that users be certified or licensed, or by applying other restrictions.

When a pesticides establishment is registered, certain production information must be submitted and kept current. No such registration is required under the present FIFRA.

Upon initial registration of a pesticide the producer must during the five-year registration period inform the Administrator of any findings relating to adverse environmental effects at any time.

Research and monitoring are authorized, including a national pesticides monitoring plan and program, and provision is made for permits for the experimental use of unregistered pesticides, results to be reported to the Administrator prior to registration.

The requirements under present FIFRA for submission of data for registration and the keeping of books and records available for inspection are continued.

Enforcement is strengthened through inspection of establishments as well as books and records, both routine and under warrant, and the taking of samples. Under present FIFRA only inspection of books and records was authorized.

The coverage of unlawful acts is extended beyond present FIFRA to cover, for example, misuse of a pesticide and failure to register an establishment.

Civil penalties of $1,000 for private applicators and $5,000 for others assessed by the Administrator are provided as well as criminal penalties, which are increased from $1,000 to $25,000 for persons other than private applicators.

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"Stop sale, use, or removal" orders are available when the Administrator believes a violation of the Act has occurred, or when a suspension or final cancellation order has been issued. Present FIFRA has no such provision, but does authorize seizure, as does H.R. 10729.

Aid to States, for enforcement and applicator certification programs is available. States are authorized to further restrict the sale or use of pesticides, and to assist the Administrator in the intrastate registration of pesticides for local needs. Such authorities are not presently contained in present FIFRA.

The amendments provide other new authorities. The Administrator is authorized to solicit public comments on actions taken under the Act. Indemnities for losses suffered by owners of a pesticide subject to suspension and cancellation are provided. Disposal of such pesticides by the Administrator is required upon request. Subpoena of witnesses to a public hearing is authorized.

Referral to a scientific review committee of issues of scientific fact arising during an administrative action hearing is provided; in present FIFRA such referral could be separate from and in addition to the public hearing.

The term "pesticide" replaces "economic poison," and has the same coverage.

COMMITTEE CONSIDERATION

The Committee held 17 public hearings on H.R. 4152 and similar bills beginning on February 10 and ending on March 25, 1971.

Thereafter the Committee prepared and considered three separate Committee Prints and, after holding 19 closed business meetings, ordered H.R. 10729 reported to the House in the presence of a quorum by a division vote of 13–6 on September 17, 1971.

In its consideration of this legislation, the Committee discussed several matters relating to the construction and intent of certain language in the bill as follows:

1. Committee jurisdiction

In the early discussions of this legislation there was some question raised about the jurisdiction of the Committee on Agriculture to consider legislation of this nature. The Committee feels strongly that Rule XI of the House and prior precedent clearly vests this Committee with legislative jurisdiction over all pesticides. Accordingly, the Committee has reasserted its clear jurisdictional mandate by conducting hearings on H.R. 4152 which proposed to repeal the Federal Insecticide, Fungicide, and Rodenticide Act and by reporting H.R. 10729 which will be cited as the "Federal Environmental Pesticide Control Act of 1971" and which substantially rewrites, but does not repeal, FIFRA.

2. Statement of findings

The Committee did not include in H.R. 10729 the statement of legislative findings as originally proposed in H.R. 4152. The Committee did not take this action in derogation of the basic intent of H.R. 4152, but did so to avoid cluttering the final statute with language which the Committee feels is interpretive of the other provisions of this legislation. It is therefore the Committee's intent that:

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The Congress hereby finds that pesticides are valuable to our Nation's agricultural production and to the protection of man and the environment from insects, rodents, weeds, and other forms of life which may be pests; but it is essential to the public health and welfare that they be regulated closely to prevent adverse effects on human life and the environment, including pollution of interstate and navigable waters; that pesticides are used throughout the Nation and the major portion thereof moves in interstate or foreign commerce; that it is essential in the public interest to protect the public health and welfare from adverse effects of pesticide residues on food which is consumed throughout the Nation and which moves in interstate or foreign commerce; and that regulation by the Administrator and cooperation by the States and other jurisdictions as contemplated by this Act are appropriate to prevent and eliminate burdens upon interstate or foreign commerce, to effectively regulate such commerce, and to protect the public health and welfare and the environment.

3. Benefit Risk Concept

In the consideration of this legislation the Committee labored for many days over the term "Substantial Adverse Effects on the Environment." In adopting the definition set forth in section 2(bb), the Committee seeks to articulate the concept that the benefits of using pesticides should be balanced against the risk of using them. The Committee considered, but rejected, language which would have required the consideration of "alternative means of control." In rejecting this language, the Committee felt that the economic and practical realities of alternative means of control would be a natural consideration of the Administrator and therefore it was not necessary to include this specific phrase.

4. Essentiality

In the course of considering this legislation the Committee questioned a criterion that had been adopted by EPA for limiting persistent pesticides. This procedure limited pesticides, shown to be persistent, for "essential uses" only. This "essential use doctrine" was referred to in the Jensen and Mrak studies and eventually was incorporated in a series of communications within the Departments of the Federal Executive Branch and was actually used as a criterion in determining whether or not the pesticide may retain its registration.

The growth of this doctrine assumed a plateau of importance. However, EPA, when testifying during the Committee's hearings, did not raise the criterion of limiting pesticides for essential uses only. In researching the criterion, the Committee found no legislative or regulatory authority for the application of the doctrine.

The Committee felt that continued use of this disputed procedure would place all interested parties involved at a disadvantage. The Agency agreed, and the Committee therefore adopted the language of the last sentence of section 3(c)(5).

5. Scientific review

One main purpose of the langua[illegible]n section 6(d) is to avoid frivolous and non-germane issues from burdening the hearing and review process. While the language gives the hearing examiner discretion, that discretion is tempered by the intent of this language to require all relevant

and material scientific issues to be referred to and resolved by the National Academy of Sciences.

6. Seaweed and other organic materials

The Committee noted with interest the testimony regarding seaweed and the extensive research conducted on the Norwegian variety, particularly at Clemson University, South Carolina. It is not the Committee's intent that natural, organic products of a non-toxic and non-poisonous nature normally be required to be registered. It is, however, conceivable that certain claims made in the labeling and advertisement may be such as to technically require registration under the Act. In such cases, the Committee emphasizes the need to apply the rules of common sense. The Committee urges the Administrator to consider the scientific data concerning a product which has been extensively researched (for example, Norwegian *Ascophyllum Nodosum* at Clemson's College of Agriculture and Biological Sciences for some 10 years) as being sufficient to constitute the back-up research which may be required by the Administrator in the registration application.

7. Removal of "Use by Permit" category

H. R. 4152, the Administration's legislative proposal, requested authority to designate a pesticide in one of three classifications namely "for general use", "for restricted use", or "for use by permit only". Pesticides designated for "use by permit only" would have required "approval in writing for the amount and type of article for each particular application" of an "approved pest management consultant" licensed by a State. The Committee gave this proposal of a third classification and requirement for pest management consultant very careful consideration. The Committee found this proposal would place on the Administrator and users an unworkable and costly burden far in excess of need or benefits gained by such regulatory machinery.

H. R. 10729 requires the Administrator to designate registered pesticides "for general use" or "for restricted use". The legislation grants no authority for a third classification nor does it grant any authority to the Administrator to establish by regulation or agreement with a State the position or similar function of a licensed or approved pest management consultant.

The bill also makes provisions for certifying pesticide applicators as competent to safely and properly use the pesticides they will apply. The Committee intends that EPA, by regulation, establish fair hearing procedures for the suspension or revocation of licenses as well.

The bill also makes provision for requiring restricted use pesticides to be applied only by such a certified pesticide applicator (or a person under his direct supervision) or subject to such other restrictions as the Administrator may determine as necessary. The flexibility of these provisions will allow the Administrator, in accordance with the guidelines in the Act, to establish restrictions which are suited to the degree of hazard and adverse environmental effects that could be caused by the misuse of the pesticide. For example, in some cases only the signing of a poison or pesticide register would be required while in other cases the purchaser or user might be required to certify that he has read the instructions and will apply it in accordance with such instructions. In other cases general or seasonal licenses, permits, or other similar forms of approval may be required.

Among other advantages, this system may permit certain pesticides to be used during the first years after enactment of the bill when a sufficient number of certified pesticide applicators will not be availabe.

8. Import restrictions on agricultural commodities

The Committee considered at length a proposal (originally introduced as H.R. 26) to apply pesticide restrictions similar to those applicable to U.S. farmers and ranchers to foreign producers. After thorough consideration of this matter the Committee decided to handle this provision as separate and distinct from this bill.

9. Research

There has existed for years collaborative research between manufacturers of pesticides and public and private research institutions. However, initial experimental formulations have largely originated in the laboratories of the manufacturers. The Committee believes this vital research base to be extremely important in the development of new and better materials to meet the environmental and productive needs of the future. This objective is also sought in this legislation.

10. State authority

In dividing the responsibility between the States and the Federal Government for the management of an effective pesticide program, the Committee has adopted language which is intended to completely preempt State authority in regard to labeling and packaging. With regard to this Federal preemption of labeling and packaging, EPA may, where appropriate, in setting labeling and packaging requirements, give consideration to regional, State, and local needs. The Committee also intends for the Federal law to preempt the States from restricting or licensing any "general use" pesticide. The States would also be precluded from adopting programs which are less stringent than the Federal standards. In the case of "restricted use" pesticides the States are left free to impose whatever restrictions they may wish (other than labeling and packaging). The States could also completely prohibit the use of these "restricted use" pesticides within their jurisdictions.

The Committee rejected a proposal which would have permitted political subdivisions to further regulate pesticides on the grounds that the 50 States and the Federal Government should provide an adequate number of regulatory jurisdictions.

Nor is the language in section 24(c) intended to derogate the language in section 24(a). Thus the Administrator would not have authority to delegate to the States authority to set aside the preemption provisions of section 24(a).

11. Inconsistent with label

It is the intent of this definition that articles designated for general or restricted use may be used by a pesticide applicator at a lower dilution than that specified on the label. While it would obviously be dangerous to permit more concentrated solutions to be used, the Committee recognizes the need to apply the standard of use "inconsistent" with respect to labeling in a common sense manner. Thus, for example, the use of pesticide solutions in lower amounts for aerial spraying, when otherwise determined to be safe, should be permitted.

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12. "Produce" and "producer"

It is also the intent of the Committee that the persons who dilute pesticides for further use should not, under ordinary circumstances, be considered "producers" or as "producing" pesticides.

Typographical Errors in H.R. 10729

The bill contains several typographical and technical errors which the committee intends to correct when the bill reaches the Floor of the House. The most serious printing errors occur at page 27, line 7 where the wrong line was inserted and should read, "of his intention and of whether he intends to cancel the"; and on page 28, lines 20 through 23 should be deleted.

Administration Position

The Administration supports the enactment of H.R. 10729 as indicated in the following letter from the Environmental Protection Agency:

Environmental Protection Agency,
Washington, D.C., September 24, 1971.

Hon. W. R. Poage,
Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: I am pleased to learn that your Committee has ordered reported H.R. 10729, the "Federal Environmental Pesticide Control Act of 1971." I am well aware of the great amount of time and effort your Committee has devoted to this important legislation.

The bill provides significant new authorities to enable EPA, in cooperation with the States and those concerned with the use of pesticides, to protect the environment and the health of the Nation against the misuse and overuse of pesticides. While the bill does not accomplish these objectives in the exact manner proposed in H.R. 4152, the Administration's bill, it will provide essentially the same protection to the public and the same opportunities for continued beneficial use of pesticides. I believe that all will agree that the sweeping and highly desirable new authorities of the bill will permit a great advance in our efforts to protect health and the environment.

I congratulate you and your Committee on the development of this legislation. I therefore support the enactment of H.R. 10729 and urge its favorable consideration by the House of Representatives. My staff and I look forward to continuing to work with you and your Committee.

Sincerely yours,

William D. Ruckelshaus,
Administrator.

Current and Five Subsequent Fiscal Year Cost Estimate

Pursuant to Clause 7 of Rule XIII of the Rules of the House of Representatives, the Committee estimates the cost to be incurred by

the Federal Government during the current and the five subsequent fiscal years as a result of the enactment of this legislation would be as follows:

The Committee assumes that H.R. 10729 will be enacted into law during the current fiscal year (FY 1972) but that appropriations to carry out the new program will not be made until fiscal year 1973.

The Committee concurs with the following gross cost estimates for fiscal years 1973–77 as submitted by the Environmental Protection Agency:

Gross costs:	*Millions*
Fiscal year 1973	$15. 7
Fiscal year 1974	33. 3
Fiscal year 1975	42. 0
Fiscal year 1976	43. 8
Fiscal year 1977	43. 3

Section-by-Section Analysis

Sections 1, 3, and 4 of H.R. 10729 deal with matters that do not directly amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Section 1 of H.R. 10729 sets forth the popular Act citation of this bill as the "Federal Environmental Pesticide Control Act of 1971."

Section 3 of H.R. 10729 amends the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, and the Federal Food, Drug, and Cosmetic Act to change the term "economic poison" to the term "pesticide" in order to reflect the change in FIFRA.

Section 4 of H.R. 10729 deals with effective dates of various provisions.

This section provides that except as otherwise noted hereafter the amendments to the Act are effective upon enactment. If regulations are required prior to effectuation of an amendment they shall be prescribed within 90 days after enactment. Provisions of present law are in effect until superseded as provided above or hereafter, and all amendments are required to be effective within four years of enactment.

The following exceptions to immediate effectiveness of amendments enacted are made:

(1) All new registrations of pesticides shall be in accordance with regulations governing registration and classification promulgated within two years of enactment of this Act.

(2) All registrations existing prior to promulgation of the above regulations shall be re-registered and classified in accordance with those regulations after two years but within four years of enactment of the Act.

(3) Any requirements that a pesticide can be used only by a certified pesticide applicator shall not take effect until four years from enactment.

(4) Certification of applicators shall take place during a four year period from the date of enactment. Standards for certification shall have been prescribed one year from enactment. State plans for certification shall have been submitted to the Administrator within three years from enactment. Within one year of such submission the Administrator must approve the State plan, or disapprove and state reasons.

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(5) One year from enactment the Administrator is to have in effect regulations governing the registration of establishments, experimental use permits, and the keeping of books and records.

In addition to the foregoing, the Administrator shall publish in the Federal Register regulations relating to criminal and civil penalty, and no person shall be subject to such a penalty under the amendments of this Act until 60 days after publication of the final regulations.

The present FIFRA shall be treated as continuing in effect as if this Act had not been enacted where a question arises as to a criminal or civil penalty or liability to any third person in respect of any act or omission occurring before the expiration of the periods referred to in this section.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Section 2 of H.R. 10729 rewrites FIFRA into the following 27 sections:

Section 1. Short title and table of contents

This section provides that the Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act" and provides a detailed table of contents of the Act.

Section 2. Definitions

Section 2 includes many of the definitions in the present FIFRA, with several important changes.

A "certified pesticide applicator" is one certified by the State or Federal government according to standards prescribed by the Administrator to use restricted use pesticides.

A "private pesticide applicator" is a certified applicator who uses restricted use pesticides only on his own property, or on the property of another without compensation.

A "commercial pesticide applicator" is any certified applicator other than a private applicator.

The definition of "misbranded" is amended to include requirements based on other provisions of the Act. For example, labels must bear an establishment registration number and use classification.

"Protect health and the environment" is defined, and includes the requirement to take into account the public interest. "Substantial Adverse Effects on the Environment" contains the same requirement.

Section 3. Registration of pesticides

Subsection (a) requires that all pesticides in the channels of U.S. trade must be registered with the Administrator. Under present law only those pesticides in interstate commerce must be so registered.

Subsection (b) exempts from registration pesticides which are transferred from one establishment to another operated by the same pesticides producer, and pesticides transferred in accordance with an experimental use permit.

Subsection (c) sets forth registration procedures. Each application for a registration must include the name and address of the applicant; the name of the pesticide; the labeling, claims, and directions for the pesticide; a description of tests made and results if the Administrator requests; the pesticide formula; and a request for classification.

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Research data originated and submitted by an applicant for registration are not to be considered by the Administrator without permission of the applicant, in support of any other application for registration.

This subsection requires the Administrator to publish guidelines concerning registration information he will require.

He is also required to make available to the public within 30 days after he registers a pesticide the data called for in the registration st tement together with such other scientific information as he deems relevant to his decision except for test data as provided under section 3(c)(1)(D) and for trade secrets as provided under section 10. However, the Administrator is not prohibited from making public the data under section 3(c)(1)(D) but is prohibited as to trade secrets and other information as provided by section 10.

Under the subsection, the Administrator is required to approve or deny registration as expeditiously as possible. He is to publish in the Federal Register notice of applications received for the registration of those pesticides containing a new active ingredient or for which a changed use pattern is proposed. While no specific time limit is placed upon the Administrator with respect to how quickly he must act upon an application for registration he is required to act within a reasonable time and such period of time should not normally exceed three months. Where, however, there are extremely unusual mitigating circumstances, a slightly longer period of time could be necessary. The Administrator is similarly authorized to request additional kinds of information and while in some rare instances such additional kinds of information may be necessary prior to registration, requests for such additional kinds of information are not to be utilized as a device to delay registration.

The subsection provides that the Administrator shall approve a registration if he determines that, when considered with any section 3(d) restrictions, the pesticide warrants the claims made for it, its labeling complies with the Act, and it will not have substantial adverse effects on the environment when properly used. If such determination cannot be made the Administrator shall notify the applicant and state why the above requirements are not met. The applicant has thirty days to make necessary corrections. At the end of this period the Administrator is required to refuse to register the pesticide if the corrections are not made. The applicant then has recourse to the administrative remedies in Section 6.

The burden of proof remains with the applicant (as in present FIFRA) to substantiate the claims for the pesticide by test data and otherwise to support the registration of a pesticide. It is only after the Administrator has reviewed all of the test data and any other information he may require to support a registration and has found that its composition is such as to warrant the proposed claims for it, that the labeling and other material required to be submitted comply with the Act, and that it will perform its intended function without substantial adverse affects on the environment that he must register a pesticide. If the applicant cannot satisfy the Administrator on the above requirements the pesticide will not be registered.

Subsection (d) provides authority for the classification of pesticides and where applicable the imposition of restrictions on their use.

Subparagraph (A) of Paragraph (1) states that a pesticide may be classified for general use, for restricted use, or both. In the case of a

pesticide registered for both general and restricted use the bill requires that directions for each be separate and distinguishable.

Subparagraph (B) specifies that a general use pesticide is one which the Administrator has determined will not cause substantial adverse effects on the environment when applied in accordance with its directions for use and warning or caution statements.

Subparagraph (C) specifies that a restricted use pesticide is one which the Administrator has determined could cause substantial adverse effects on the environment without additional regulatory restrictions.

The subparagraph further provides that when the pesticide presents a hazard to the applicator or other persons, it must be used only by or under the supervision of a certified pesticide applicator or be subject to other regulatory restrictions.

The foregoing classification and restriction provisions are not contained in present law and constitute entry of Federal regulation into a significantly unregulated area. General use pesticides will be regulated as all pesticides under Federal jurisdiction are regulated at present. Registration for specific uses under specified conditions, as well as directions for use, warnings, and cautions constitute the major means to control pesticide use under present law. The provisions of the bill for classifying pesticides for restricted use and in some cases requiring that they be applied by or under the supervision of a certified pesticide applicator or in other cases subject to different regulatory restrictions are the key new authorities of the bill. Such provisions enable the Environmental Protection Agency to impose a variety of restrictions as the nature and uses of the pesticide warrant in order to protect persons and the environment, while U.S. agriculture continues to derive the benefits of pesticides use.

Paragraph (2) requires the Administrator to notify the registrant 30 days before changing the classification of a pesticide, and to publish the proposed changes in the Federal Register. Remedies for such a registrant are contained in Sec. 6.

Subsection (e) permits a registrant to register as a single pesticide products having the same formulation, claims, and identifying label-designation.

Subsection (f) provides for minor changes to registrations, prohibits construing registration as a defense for any offense under the bill, and states the Administrator may consult with other Federal agencies on registration matters.

The term "factual basis", as utilized in sections 3 and 6 of the Act, is intended to require the Administrator to set forth the specific manner in which the pesticide, its labeling, or other material concerned with the pesticide fails to comply with the Act, and to also set forth the scientific basis for his determination. Mere reference to statutory language is not to be construed as a statement of the "factual basis", but rather a statement of conclusions and therefore would not be in compliance with the intent of this provision.

Section 4. Use of restricted use pesticides; certified applicators

This section provides for Federal or State certification of pesticide applicators according to standards prescribed by the Administrator. A State may certify applicators if a plan submitted by the Governor is approved which designates a State agency to administer the plan;

assures legal authority, adequate funds, and qualified personnel to execute the plan; provides for reports to the Administrator; and contains applicator certification standards at least equal to those prescribed by the Administrator. A State must be given due notice and opportunity for hearing if the Administrator rejects a pesticide applicator certification plan.

The provisions for certification of applicators comprise new and important authorities for regulating pesticides use. Many restricted use pesticides would be restricted to use by certified pesticide applicators whose misuse of pesticides could result in withdrawal of certification. In the case of commercial applicators, such action would be extremely serious. In the case of private pesticide applicators such action would remove from them the opportunity to obtain and use restricted use pesticides so regulated.

Further, the educational process entailed by certification provides an opportunity not only to greatly diminish the possibility of injury to persons but also injury to the environment from both misuse and, more importantly, overuse.

Section 5. Experimental Use Permits

The Administrator may issue, under terms and conditions established by him, experimental use permits if an applicant needs such permit in order to accumulate information necessary to register a pesticide. Such permit may be revoked if its terms or conditions are violated or are inadequate to avoid substantial adverse effects on the environment.

Section 6. Administrative review; Suspension

Section 6 provides for the cancellation of a registered pesticide at the end of each five year period unless the registrant requests that the registration be continued. If a pesticide is otherwise cancelled for cause or the classification is changed the registrant may make corrections or file objections and request a public hearing.

In order to prevent an imminent hazard during the time required for cancellation proceedings the registration of a pesticide may be suspended. When an order of suspension is issued, a cancellation order must also be issued and the registrant is entitled to the hearing and review remedies available under a cancellation order. An order of suspension is also subject to immediate limited judicial review solely to determine whether the order was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with legal procedures.

When an applicant requests a public hearing in the course of such hearing any party (including the hearing officer) may refer questions of scientific fact to a Committee of the National Academy of Sciences. Such Committee would be required to report in writing to the hearing officer within sixty days on these questions of scientific fact and the report would be made public and considered as part of the hearing record.

This language in the bill relating to scientific advice would maintain a role for scientific advisory committees of the National Academy of Sciences equivalent to that in the present provisions of FIFRA. The amended language would have the further benefit of allowing the advisory committee to consider questions of scientific fact while the public hearing is in process rather than in a completely separate admin-

istrative review process which causes long delays and division of responsibility for actions under the Act. However, the Committee would meet outside of the public hearing so that the scientists who participate would not be subject to cross-examination and other procedural strictures.

As soon as practicable after completion of the public hearing but not later than 90 days thereafter the Administrator must evaluate the data and reports and issue a final order. If questions of scientific fact have been referred to a Committee, the 90 days would not, of course, begin until the Committee submits its report for the hearing record or otherwise until after the completion of the hearing. Under section 6(d) the Administrator after completion of the administrative review proceedings is required to issue an order appropriate to the proceedings which have occurred. Thus, he may by order (1) revoke his notice of intention issued under section 6(b); (2) grant registration; (3) cancel registration, change the classification, or deny registration; or (4) require a modification of the labeling or packaging of the pesticide.

All final orders of the Administrator would be subject to judicial review pursuant to section 16 of the Act.

Section 7. Registration of establishments

Products subject to the Act must be produced in establishments which are registered with the Administrator. The producer who operates an establishment must inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and devices which he is currently producing, produced during the past year, or which he has sold or distributed during the past year. Such information is required to be kept current and submitted to the Administrator annually. All such information is considered confidential and subject to the provisions of section 10.

Section 8. Books and records

The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the products produced as are necessary for enforcement of the Act. Such records required do not extend to financial data, sales data other than shipment data, pricing data, personnel data, or research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

Any officer or employee of the Environmental Protection Agency or of any State or political subdivision duly designated by the Administrator shall at reasonable times have access to and may copy records showing the delivery, movement or holding of pesticides and devices, or related information if the above is not available. Such access does not extend to sales, financing, pricing and similar data.

Section 9. Inspection of Establishments

For purposes of enforcing the Act officers or employees duly designated by the Administrator are authorized to enter any establishments at reasonable times to inspect and obtain samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such products. Before an inspection appropriate credentials and a written statement as to the reason for the inspection and whether a violation of law is suspected must be presented. If no violation is suspected other sufficient reason

must be given. If samples are obtained, an equal portion of such sample must be left with the establishment and a copy of any analysis which may be made. This section also authorizes officers or employees duly designated by the Administrator to obtain and execute a warrant for inspection and reproduction of certain records and for the seizure of products in violation of the Act.

If the examination of pesticides or devices indicates that they fail to comply with the Act, the Administrator must give notice to the person against whom any criminal proceedings are contemplated and provide an opportunity for him to present his views with regard to the contemplated proceedings. If, thereafter, the Administrator believes the Act has been violated he shall certify the facts to the Attorney General for the institution of criminal proceedings pursuant to section 16 if he believes that such action will be sufficient to effectuate the purposes of the Act. However, this notice and opportunity to present views are not prerequisites to the institution of any proceedings by the Attorney General. Warning notices may be issued in lieu of a prosecution for minor violations if the Administrator believes the public interest will be served.

Section 10. Protection of trade secrets and other information

Section 10 of the Act provides that an applicant for the registration of a pesticide may mark any part of the data submitted which in his opinion are trade secrets or commercial or financial information and submit such material separately from the other material required.

The Administrator would not make public any such information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential. However, if necessary to carry out provisions of the Act, information relating to formulas of products acquired by authorization of the Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

Section 11. Standards applicable to pesticide applicators

This section exempts private pesticide applicators from any record-keeping or report filing regulations prescribed by the Administrator under the Act, and provides that the Administrator shall establish separate certification standards for commercial and private applicators.

Section 12. Unlawful acts

This section includes many prohibited acts from present law and is expanded to cover intrastate acts and to prohibit violations of the provisions of the Act. Among the new prohibitions is refusal to permit lawful inspection of an establishment or sampling of a pesticide; advertisment of a restricted use product not containing such classification; making available for use, or using, a restricted use pesticide other than as provided under the Act or inconsistant with its labeling; and violation of a "stop sale, use, or removal" order.

Violation of record-keeping and establishment registration provisions is also prohibited.

The section also provides exemption for certain persons dealing with pesticides.

The purpose of Scetion 12 (a) (2) (F) is to make it unlawful for any person to make available for or to use a pesticide, classified for

restricted use for some or all purposes, for its restricted uses without complying with the restrictions imposed under this Act. If, however, a pesticide in accordance with Section 3 (d) is also classified for general use for some purposes the restrictions imposed for its restricted uses are not applicable to its general uses under either this Section or Section 3 (d).

Section 13. Stop sale, use, removal, and seizure

Subsection (a) of this section authorizes the Administrator to issue a "stop sale, use, or removal" order to any person possessing a device if he believes that the pesticide or device is or will be sold in violation of the Act or if the registration has been suspended or is subject to a final cancellation order.

Subsection (b) authorizes condemnation and seizure of pesticides if they are adulterated, misbranded, not registered, improperly labeled, not colored or discolored as required, or falsely represented as to claims or directions for use. A misbranded device is liable to similar action, as are pesticides and devices which, when used as directed on the label and as required under the Act, nevertheless cause substantial adverse effects on the environment.

Subsection (c) provides for the disposition of condemned and seized pesticides and devices by distribution, sale, or return to the owner under certain conditions and upon the posting of a bond.

Subsection (d) provides for awarding court costs and other expenses against the claimant of the pesticide or device subject to this section.

Section 14. Penalties

H.R. 10729 contains provisions for civil penalties. Such provisions are not included in the existing FIFRA. Persons violating any provision of the Act would be subject to a civil penalty of not more than $5,000 for each offense, except that a private pesticide applicator would be subject to only a $1,000 penalty, and only after receiving a written warning or citation for a prior violation. No civil penalty could be assessed until the person charged has been given a notice and an opportunity for a hearing in the county, parish or city of his residence.

Civil penalty provisions are considered a necessary part of a regulatory program such as pesticides control. While the criminal provisions may be used where circumstances warrant, the flexibility of having civil remedies available provides an appropriate means of enforcement without subjecting a person to criminal sanctions. The alleged violator is always provided an opportunity for a hearing before any civil penalty may be assessed, and any misunderstanding as to what constitutes compliance with the Act can be considered by the Administrator and the penalty dispensed with if warranted.

The reported bill also provides that any person who knowingly violates any provision of the Act shall be guilty of a misdemeanor and on conviction be fined not more than $25,000 or imprisoned for not more than one year or both, except that a private pesticide applicator could be fined not more than $1,000 or imprisoned more than 30 days, or both.

Section 15. Indemnities

Subsection (a) provides that if the Administrator notified a registrant that he has suspended the registration of a pesticide because

such action is necessary to prevent an imminent hazard and such registration is cancelled as a result of a final determination that the use of such pesticide will create an imminent hazard, any person owning any such pesticide before the suspension notice and who suffered losses because of suspension and ensuing cancellation would be entitled to an indemnity payment.

Subsection (b) provides that the amount of the indemnity payment would be determined on the basis of the cost of the pesticide owned by such person immediately before the notice of suspension, except that no indemnity payment to any person could exceed the fair market value of the pesticide owned by such person immediately before such notice.

The provisions relating to indemnity payments provide for indemnification for pesticide losses where a registration has been suspended to prevent an imminent hazard and a final cancellation order has subsequently been issued. Therefore such payments should not occur frequently as the provisions do not apply to the numerous routine pesticide registration cancellations. Further, because of the more flexible regulatory program which the bill provides, there should be fewer occasions to suspend registrations under the new legislation.

Section 16. Administrative review; judicial review

Except as otherwise provided by this section, chapter 5 of title 5 of the U.S. Code relating to administrative procedure and chapter 7 of title 5 of the U.S. Code relating to judicial review apply in respect of rules, rule making, orders, adjudication, licensing, sanctions, agency proceedings,and agency actions under the Act.

Section 16 also provides that in the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any party at interest may obtain judicial review by filing in the U.S. Court of Appeals for the circuit where such person resides or has a place of business within 60 days a petition that the order be set aside in whole or in part. In its review the court shall consider all evidence of record and shall sustain the order of the Administrator if it is supported by substantial evidence when considered on the record as a whole. The commencement of proceedings under this section does not, unless the court specifically orders to the contrary, operate as a stay of any order. The court is required to expedite the disposition of cases filed under this section.

The district courts of the U.S. are vested with jurisdiction to enforce, and to prevent and restrain violations of the Act.

The Administrator must give notice by publication or otherwise of all judgments entered in actions under the Act.

Section 17. Imports and exports

Subsection (a) exempts from the provisions of the Act an exported pesticide or device which is in accordance with the specifications of the foreign purchaser.

Subsection (b) requires the Administrator to transmit through the State Department to foreign governments and international agencies notice of pesticide registration cancellations.

Subsection (c) provides for the inspection of samples of imported pesticides and devices provided by the Secretary of the Treasury to the Administrator, and for the refusal of admission of a pesticide

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or device upon a finding by the Administrator that it is in violation of the Act. Disposition of such products is provided as well as payments of expenses incurred by such finding and refusal of admission.

Subsection (d) requires the Administrator to participate in international efforts to develop improved pesticide research and regulations, and subsection (e) requires the Secretary of the Treasury to prescribe regulations under this section.

Section 18. Exemption of Federal agencies

This section authorizes the President to exempt a Federal agency from the provisions of the Act if emergency conditions so require. In this regard the President is authorized to establish procedures to require EPA to promptly consult with other Federal Agencies in order to facilitate temporary registration of restricted use pesticides for meeting emergency outbreaks of plant or animal diseases. Using this authority the President can enable farmers and ranchers to cope with emergency conditions before they spread to other areas, even though in some instances EPA might not possess the fully detailed information normally required. Such a temporary registration should, however, be granted only if EPA has determined that the proposed emergency use will not endanger man or adversely affect the environment.

Section 19. Disposal and transportation

Section 19 provides that the Administrator of the Environmental Protection Agency shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides. The Administrator would be also required to accept at convenient locations for safe disposal a pesticide the registration of which has been cancelled under section 6(c) if requested by the owner of the pesticide.

Section 6(c) of the Act provides for the suspension of a pesticide when such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings. This section also provides that a cancellation proceeding has to be initiated at the same time a registration is suspended so as to provide the affected party with an opportunity for a hearing. The Administrator would not, of course, be required to accept pesticides for disposal until any hearing and review procedures have been completed and a final order issued. Since this requirement to accept for disposal is keyed to suspensions under section 6(c) and not to all pesticide cancellations, such disposal by the government should not be required frequently.

The Administrator of EPA would also be required under section 19 to advise the Secretary of Transportation with respect to the transportation in light of the Secretary's responsibilities regarding hazardous materials.

Section 20. Research and monitoring

This section authorizes the Administrator to use necessary means to undertake pesticides research, giving priority to biologically integrated alternatives to chemicals for pest control; to establish and implement a national plan for monitoring pesticides, as well as undertake other monitoring activities necessitated by provisions of the Act.

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Section 21. Solicitation of public comments

Section 21 provides that in addition to any other authority relating to public hearings and solicitation of views in connection with the suspension or cancellation of a pesticide registration or other action under the Act, the Administrator may solicit views of all interested parties and seek such advice from farmers, farm organizations, and other qualified persons as he deems proper.

Section 22. Delegation and cooperation

This section authorizes the delegation of authorities vested in the Administrator under the Act to his designees, and provides for cooperation by the Administrator with other Federal agencies and with agencies of State and local governments in carrying out the Act.

Section 23. State cooperation, aid, and training

This section authorizes the Administrator to enter into cooperative agreements with States for purposes of enforcement of the Act, including training of personnel and including grants for enforcement programs, and to assist States in establishing applicator certification programs. Further, he may enter into contracts with Federal and State agencies for the purpose of encouraging certified applicator training.

Section 24. Authority of States

This section specifies the authorities retained by the States under the Act. Generally, the intent of the provision is to leave to the States the authority to impose stricter regulation on pesticides use than that required under the Act.

Subsection (a) gives States the authority to regulate the sale or use of a pesticide or device so long as such regulation does not permit sale or use prohibited under the Act, and does not restrict further the use of a general use pesticide by requiring a license or permit.

Subsection (b) preempts any State labeling or packaging requirements differing from such requirements under the Act.

Subsection (c) provides the Administrator with authority to certify a State for the purpose of registering pesticides formulated for intrastate distribution to meet specific local needs. The purpose of this subsection is to give States the opportunity to meet expeditiously and with less cost and administrative burden on the registrant the problem of registering for limited local use a pesticide needed to treat sudden pest infestation.

Section 25. Authority of the Administrator

Subsection (a) of this section authorizes the Administrator to prescribe regulations to carry out the Act.

Subsection (b) provides for exemption of pesticides adequately regulated by another Federal agency or unnecessary to be subject to the Act.

Subsection (c) authorizes the Administrator, after notice and opportunity for hearing, to declare as pests certain forms of life, determine which pesticides are highly toxic to man, establish packaging standards, specify classes of devices subject to the Act, prescribe regulations for the discoloration or coloring of pesticides, and determine and establish suitable names to be used in ingredient statements.

Section 26. Severability

This standard severability section states that the provisions of the Act are severable, and the invalidity of one does not affect the validity of the others.

Section 27. Authorization for Appropriations

This section authorizes appropriation of such sums as may be necessary to carry out the provisions of the Act for fiscal years 1972, 1973, and 1974. Thereafter new legislation will be necessary to determine authorized appropriations.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):[1]

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT[2]

AN ACT

To regulate the marketing of economic poisons and devices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[TITLE

[SECTION 1. This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

[DEFINITIONS

[SEC. 2. For the purposes of this Act—

[a. The term "economic poison" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant.

[b. The term "device" means any instrument or contrivance intended for trapping, destroying, repelling, or mitigating insects or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pests as may be designated by the Secretary,[1] but not including equipment used for the application of economic poisons when sold separately therefrom.

[1] The changes in existing law shown herein reflect the correction of various typographical and clerical errors in H.R. 10729, as reported to the House.

[2] Section 4 of H.R. 10729 provides effective dates for various provisions of this Act.

[3] The functions of the Secretary of Agriculture and the Department of Agriculture were transferred to the Administrator of the Environmental Protection Agency pursuant to Reorganization Plan No. 3 of 1970, effective December 2, 1970. therefore the reference to the word "Secretary" in this statute should be construed as being the "Administrator" of EPA

[c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects which may be present in any environment whatsoever.

[d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

[e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary[1] shall declare to be a pest.

[f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

[g. The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

[h. The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of ornamental or crop plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

[i. The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

[j. The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

[k. The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform; or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

[l. The term "weed" means any plant which grows where not wanted.

[m. The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

[n. The term "fungi" means all non-chlorophyll-bearing thallophytes (that is, all non-chlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other animals.

[o. The term "ingredient statement" means either—

[(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

[(2) a statement of the name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any there be, in the economic poison (except option 1

shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act);

and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.

[p. The term "active ingredient" means—

[(1) in the case of an economic poison other than a plant regulator, defoliant or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

[(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the produce thereof;

[q. The term "inert ingredient" means an ingredient which is not active.

[r. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid treatment.

[s. The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

[t. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.

[u. The term "Secretary" means the Secretary of Agriculture.

[v. The term "registrant" means the person registering any economic poison pursuant to the provisions of this Act.

[w. The term "label" means the written, printed, or graphic matter on, or attached to, the economic poison or device or the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device.

[x. The term "labeling" means all labels and other written, printed, or graphic matter—

[(1) upon the economic poison or device or any of its containers or wrappers;

[(2) accompanying the economic poison or device at any time;

[(3) to which reference is made on the label or in literature accompanying the economic poison or device, except to current official publications of the United States Departments of Agriculture and Interior, the United States Public Health Service, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of economic poisons;

[y. The term "adulterated" shall apply to any economic poison if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the article, or if any valuable constituent of the article has been wholly or in part abstracted.

[z. The term "misbranded" shall apply—

[(1) to any economic poison or device if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

[(2) to any economic poison—

[(a) if it is an imitation of or is offered for sale under the name of another economic poison;

[(b) if its labeling bears any reference to registration under this Act other than the registration number assigned to the economic poison;

[(c) if the labeling accompanying it does not contain directions for use which are necessary and if complied with adequate for the protection of the public;

[(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

[(e) if the label does not bear an ingredient statement on that part of the immediate container and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of purchase: *Provided,* That the Secretary[1] may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under customary conditions of purchase;

[(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

[(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

[(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided,* That physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations; or

[(i) if its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.

[PROHIBITED ACTS

[SEC. 3. (a) It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Colum-

bia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory, or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, any of the following:

[(1) Any economic poison which is not registered pursuant to the provisions of section 4 of this Act, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in connection with its registration: *Provided,* That in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.

[(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one through which the required information on the immediate container cannot be clearly read, a label bearing—

[(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

[(b) the name, brand, or trade-mark under which said article is sold;

[(c) the net weight or measure of the content: *Provided,* That the Secretary may permit reasonable variations; and

[(d) when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.

[(3) Any economic poison which contains any substance or substances in quantities highly toxic to man, determined as provided in section 6 of this Act, unless the label shall bear, in addition to any other matter required by this Act—

[(a) the skull and crossbones;

[(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

[(c) a statement of an antidote for the economic poison.

[(4) The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Act, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored unless it has been so colored or discolored: *Provided,* That the Secretary may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

[(5) Any economic poison which is adulterated or misbranded or any device which is misbranded

[b. Notwithstanding any other provision of this Act, no article shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

[c. It shall be unlawful—

[(1) for any person to detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this Act or the rules and regulations promulgated hereunder, or to add any substance to, or take any substance from, an economic poison in a manner that may defeat the purpose of this Act;

[(2) for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Secretary to have access to and to copy such records as authorized by section 5 of this Act;

[(3) for any person to give a guaranty or undertaking provided for in section 7 which is false in any particular, except that a person who receives and relies upon a guaranty authorized under section 7 may give a guaranty to the same effect, which guaranty shall contain in addition to his own name and address the name and address of the person residing in the United States from whom he received the guaranty or undertaking; and

[(4) for any person to use for his own advantage or to reveal, other than to the Secretary, or officials or employees of the United States Department of Agriculture, or other Federal agencies, or to the courts in response to a subpena, or to physicians, and in emergencies to pharmacists and other qualified persons, for use in the preparation of antidotes, in accordance with such directions as the Secretary may prescribe, any information relative to formulas of products acquired by authority of section 4 of this Act.

[REGISTRATION

[SEC. 4. a. Every economic poision which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Secretary: *Provided*, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the applicant for registration shall file with the Secretary a statement including—

[(1) the name and address of the applicant for registration and the name and address of the person whose name will appear on the label, if other than the applicant for registration;

[(2) the name of the economic poison;

[(3) a complete copy of the labeling accompanying the economic poison and a statement of all claims to be made for it, including the directions for use; and

[(4) if requested by the Secretary, a full description of the tests made and the results thereof upon which the claims are based.

[b. The Secretary, whenever he deems it necessary for the effective administration of this Act, may require the submission of the complete formula of the economic poison. If it appears to the Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3 of this Act, he shall register it.

[c. If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Act, he shall notify the applicant for registration of the manner in which the article, labeling, or other material required to be submitted fail to comply with the Act so as to afford the applicant for registration an opportunity to make the corrections necessary. If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee

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the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided,* That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 3(c)(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to an advisory committee in support of a petition under this section shall be considered confidential by such advisory committee: *Provided,* That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary.

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Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act.

[d. In a case of actual controversy as to the validity of any order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Secretary with respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 18 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

[e. Notwithstanding any other provision of this Act, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under this Act.

[f. The Secretary is authorized to cancel the registration of any economic poison at the end of a period of five years following the registration of such economic poison or at the end of any five-year period thereafter, unless the registrant, prior to the expiration of each

such five-year period, requests in accordance with regulations issued by the Secretary that such registration be continued in effect.

[BOOKS AND RECORDS

[SEC. 5. For the purposes of enforcing the provisions of this Act, any manufacturer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery, or who receives or holds any economic poison or device subject to this Act, shall, upon request of any employee of the United States Department of Agriculture or any employee of any State, Territory, or political subdivision, duly designated by the Secretary, furnish or permit such person at all reasonable times to have access to, and to copy all records showing the delivery, movement, or holding of such economic poison or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the economic poison or device. Notwithstanding this provision, however, the specific evidence obtained under this section, or any evidence which is directly or indirectly derived from such evidence, shall not be used in a criminal prosecution of the person from whom obtained.

[ENFORCEMENT

[SEC. 6. a. The Secretary (except as otherwise provided in this section) is authorized to make rules and regulations for carrying out the provisions of this Act, including the collection and examination of samples of economic poisons and devices subject to this Act and the determination and establishment of suitable names to be used in the ingredient statement. The Secretary is, in addition, authorized after opportunity for hearing—

[(1) to declare a pest any form of plant or animal life or virus which is injurious to plants, man, domestic animals, articles, or substances;

[(2) to determine economic poisons, and quantities of substances contained in economic poisons, which are highly toxic to man; and

[(3) to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 3a (4) of this Act.

[b. The Secretary of the Treasury and the Secretary of Agriculture shall jointly prescribe regulations for the enforcement of section 10 of this Act.

[c. The examination of economic poisons or devices shall be made in the United States Department of Agriculture or elsewhere as the Secretary may designate for the purpose of determining from such examination whether they comply with the requirements of this Act, and if it shall appear from any such examination that they fail to comply with the requirements of this Act, the Secretary [1] shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Secretary

it appears that the provisions of this Act have been violated by such person, then the Secretary shall certify the facts to the proper United States attorney, with a copy of the results of the analysis or the examination of such article: *Provided,* That nothing in this Act shall be construed as requiring the Secretary to report for prosecution or for the institution of libel proceedings minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

[d. It shall be the duty of each United States attorney, to whom the Secretary or his agents shall report any violation of this Act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

[e. The Secretary shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

[EXEMPTIONS

[SEC. 7. a. The penalties provided for a violation of section 3a of this Act shall not apply to—

[(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the article in the same unbroken package, to the effect that the article was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, designating this Act. In such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this Act;

[(2) any carrier while lawfully engaged in transporting an economic poison or device if such carrier upon request by a person duly designated by the Secretary shall permit such person to copy all records showing the transactions in and movement of the articles;

[(3) to public officials while engaged in the performance of their official duties;

[(4) to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary.

[PENALTIES

[SEC. 8. a. Any person violating section 3a (1) of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000.

[b. Any person violating any provision other than section 3a (1) of this Act shall be guilty of a misdemeanor and shall upon conviction be fined not more than $500 for the first offense, and on conviction for each subsequent offense be fined not more than $1,000 or imprisoned for not more than one year, or both such fine and imprisonment: *Provided,* That an offense committed more than five years after the last previous conviction shall be considered a first offense. An article

the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Secretary to comply with all the requirements of this Act.

[c. Notwithstanding any other provision of this section, in case any person, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 4 of this Act, he shall be fined not more than $10,000 or imprisoned for not more than three years, or both such fine and imprisonment.

[d. When construing and enforcing the provisions of this Act, the act, omission, or failure, of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

[SEIZURES

[SEC. 9. a. Any economic poison or device that is being transported from one State, Territory, or District to another, or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in the District of Columbia or any Territory, or that is imported from a foreign country, shall be liable to be proceeded against in any district court of the United States in the district where it is found and seized for confiscation by a process of libel for condemnation—

[(1) in the case of an economic poison—

[(a) if it is adulterated or misbranded;

[(b) if it is not registered pursuant to the provisions of section 4 of this Act;

[(c) if it fails to bear on its label the information required by this Act; or

[(d) if it is a white powder economic poison and is not colored as required under this Act; or

[(2) in the case of a device if it is misbranded.

[b. If the article is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the legal costs, shall be paid into the Treasury of the United States, but the article shall not be sold contrary to the provisions of this Act or of the laws of the jurisdiction in which it is sold: *Provided,* That upon the payment of the costs of the libel proceedings and the execution and delivery of a good and sufficient bond conditioned that the article shall not be sold or otherwise disposed of contrary to the provisions of this Act or the laws of any State, Territory, or District in which sold, the court may direct that such articles be delivered to the owner thereof. The proceedings of such libel cases shall conform, as near as may be, to the proceedings in admiralty, except that neither party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

[c. When a decree of condemnation is entered against the article, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the article.

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[IMPORTS

[SEC. 10. The Secretary of the Treasury shall notify the Secretary of Agriculture of the arrival of economic poisons and devices offered for importation and shall deliver to the Secretary of Agriculture, upon his request, samples of economic poisons or devices which are being imported or offered for import into the United States, giving notice to the owner or consignee, who may appear before the Secretary of Agriculture and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the prohibitions set forth in this Act, or is otherwise dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported, the said article may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any goods refused delivery which shall not be exported by the consignee within three months from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such goods pending examination and decision in the matter on execution of a penal bond for the amount of the full invoice value of such goods, together with the duty thereon, and on refusal to return such goods for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of the bond: *And provided further*, That all charges for storage, cartage, and labor on goods which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

[DELEGATION OF DUTIES

[SEC. 11. All authority vested in the Secretary by virtue of the provisions of this Act may with like force and effect be executed by such employees of the United States Department of Agriculture [1] as the Secretary may designate for the purpose.

[AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES

[SEC. 12. a. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purposes and administration of this Act. In order to carry out the provisions of this Act, which take effect prior to the repeal of the Insecticide Act of 1910, appropriations available for the enforcement of such Act are authorized to be made available.

[b. The Secretary is authorized from the funds appropriated for this Act to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of this Act.

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[COOPERATION

[SEC. 13. The Secretary is authorized to cooperate with any other department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession, or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

[SEPARABILITY

[SEC. 14. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

[EFFECTIVE DATE

[SEC. 15. All provisions of this Act, except section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", shall take effect upon enactment, and sections 3, 8, 9, and 10 of this Act shall take effect as follows: (1) As to devices, upon enactment, (2) as to rodenticides and herbicides, six months after enactment, and (3) as to insecticides, fungicides, and all other economic actions, one year after enactment: *Provided*, That the Secretary, upon application, may at any time within one year after sections 3, 8, 9, and 10 of this Act become applicable to devices, rodenticides and herbicides, and insecticides, fungicides, and other economic poisons, respectively, if he determines that such action will not be unduly detrimental to the public interest, and is necessary to avoid hardship, exempt, under such terms and conditions as he may prescribe, any economic poison from the provisions of this Act if such economic poison was labeled, shipped, and delivered by the manufacturer thereof prior to the time the sections of this Act referred to above become applicable to such economic poison and in case the economic poison is an insecticide or fungicide if its sale, delivery, or shipment has not been and will not be in violation of the provision of the Insecticide Act of 1910.

[REPEALS

[SEC. 16. The Insecticide Act of 1910, approved April 26, 1910 (36 Stat. 331, 7 U.S.C. 121–134), is hereby repealed one year after the date of the enactment of this Act: *Provided*, That, with respect to violations, liabilities incurred, or appeals taken prior to said date, and with respect to sales, shipments, or deliveries of insecticides and fungicides under an exemption granted by the Secretary [1] under section 15, all provisions of the Insecticide Act of 1910 shall be deemed to remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, appeals, or to such sales, shipments or deliveries of insecticides and fungicides exempted by the Secretary under section 15.]

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SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

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SEC. 2. DEFINITIONS.

For purposes of this Act—

(a) ACTIVE INGREDIENT.—The term "active ingredient" means—

(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(b) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(c) ADULTERATED.—The term "adulterated" applies to any pesticide if:

(1) its strength or purity falls below the professed standard or quality as expressed on its labeling under which it is sold;

(2) any substance has been substituted wholly or in part for the pesticide; or

(3) any valuable constituent of the pesticide has been wholly or in part abstracted.

(d) ANIMAL.—The term "animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(e) CERTIFIED PESTICIDE APPLICATOR, ETC.—

(1) CERTIFIED PESTICIDE APPLICATOR.—The term "certified pesticide applicator" means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(2) PRIVATE PESTICIDE APPLICATOR.—The term "private pesticide applicator" means a certified pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(3) COMMERCIAL PESTICIDE APPLICATOR.—The term "commercial pesticide applicator" means a certified pesticide applicator (whether or not he is a private pesticide applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

(f) DEFOLIANT.—The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop rom a plant, with or without causing abscission.

(g) DESICCANT.—The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

(h) DEVICE.—The term "device" means any instrument or contrivance (other than a firearm) which (1) is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals), and (2) is within a class of devices in respect of which the Administrator has made the determination referred to in section 25(c)(4).

(i) DISTRICT COURT.—The term "district court" means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

(j) ENVIRONMENT.—The term "environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

(k) FUNGUS.—The term "fungus" means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

(l) IMMINENT HAZARD.—The term "imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would likely result in substantial adverse effects on the environment.

(m) INERT INGREDIENT.—The term "inert ingredient" means an ingredient which is not active.

(n) INGREDIENT STATEMENT.—The term "ingredient statement" means a statement which contains—

(1) the name of each active ingredient in the pesticide;

(2) if all the uses of the pesticide are classified for general use, then either—

(i) the total percentage of all inert ingredients, and of all active ingredients, in the pesticide; or

(ii) the percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and if all the uses of the pesticide are not classified for general use, then the information required under (ii); and

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(3) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

(o) INSECT.—The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

(p) LABEL AND LABELING.—

(1) LABEL.—The term "label" means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

(2) LABELING.—The term "labeling" means all labels and all other written, printed, or graphic matter—

(A) accompanying the pesticide or device at any time; or

(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

(q) MISBRANDED.—

(1) A pesticide or device subject to this Act is misbranded if—

(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25(c)(3);

(C) it is an imitation of, or is offered for sale under the name of, another pesticide or device;

(D) its labeling does not bear the registration number assigned under section 7 to each establishment in which it was produced;

(E) any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(F) if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment; or

(G) if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment.

(2) *A pesticide is misbranded if—*

(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if:

(i) the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

(B) the labeling does not contain a statement of the use classification under which the product is registered;

(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

(i) the name and address of the producer, registrant, or person for whom produced;

(ii) the name, brand, or trademark under which the pesticide is sold;

(iii) the net weight or measure of the content: Provided, That the Administrator may permit reasonable variations; and

(iv) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification; and

(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this Act—

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color; and

(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

(r) NEMATODE.—The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegemented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

(s) PERSON.—The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

(t) PEST.—The term "pest" means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

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(u) PESTICIDE.—*The term "pesticide" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.*

(v) PLANT REGULATOR.—*The term "plant regulator" means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.*

(w) PRODUCER AND PRODUCE.—*The term "producer" means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term "produce" means to manufacture, prepare, compound, propagate, or process any pesticide or device.*

(x) PROTECT HEALTH AND THE ENVIRONMENT.—*The terms "protect health and the environment" and "protection of health and the environment" means protection against any injury to man and protection against any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.*

(y) REGISTRANT.—*The term "registrant" means a person who has registered any pesticide pursuant to the provisions of this Act.*

(q) REGISTRATION.—*The term "registration" includes reregistration.*

(aa) STATE.—*The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.*

(bb) SUBSTANTIAL ADVERSE EFFECTS ON THE ENVIRONMENT.—*The term "substantial adverse effects on the environment" means any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.*

(cc) WEED.—*The term "weed" means any plant which grows where not wanted.*

SEC. 3. REGISTRATION OF PESTICIDES.

(a) REQUIREMENT.—*Except as otherwise provided by this Act, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person any pesticide which is not registered with the Administrator.*

(b) EXEMPTIONS.—*A pesticide which is not registered with the Administrator may be transferred if—*

(1) the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or

(2) the transfer is pursuant to and in accordance with the requirements of an experimental use permit.

(c) PROCEDURE FOR REGISTRATION.—

(1) STATEMENT REQUIRED.—Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—

(A) the name and address of the applicant and of any other person whose name will appear on the labeling;

(B) the name of the pesticide;

(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use;

(D) if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration;

(E) the complete formula of the pesticide; and

(F) a request that the pesticide be classified for general use, for restricted use, or for both.

(2) DATA IN SUPPORT OF REGISTRATION.—The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If thereafter he requires any additional kind of information he shall permit sufficient time for applicants to obtain such additional information. Except as provided by subsection (c)(1)(D) of this section and section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.

(3) TIME FOR ACTING WITH RESPECT TO APPLICATION.—The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the Act in accordance with paragraph (6).

(4) NOTICE OF APPLICATION.—The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs (1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

(5) APPROVAL OF REGISTRATION.—The Administrator shall register a pesticide if he determines that, when considered with any restrictions imposed under subsection (d)—

(A) its composition is such as to warrant the proposed claims for it;

(B) its labeling and other material required to be submitted comply with the requirements of this Act; and

(C) it will perform its intended function without substantial adverse effects on the environment.

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide.

(6) DENIAL OF REGISTRATION.—If the Administrator determines that the requirements of paragraph (5) for registration are not satisfied, he shall notify the applicant for registration of his determination and of his reasons (including the factual basis) therefor, and that,

unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator will refuse to register the pesticide. Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefor. Upon such notification, the applicant for registration shall have the same remedies as provided for the registrant in section 6.

(*d*) *CLASSIFICATION OF PESTICIDES.*—

(*1*) *CLASSIFICATION FOR GENERAL USE, RESTRICTED USE, OR BOTH.*—

(*A*) *As a part of the registration of a pesticide the Administrator shall classify it as being for general use or for restricted use, provided that if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for restricted use, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses.*

(*B*) *If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, will not cause substantial adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies for general use.*

(*C*) *If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, may cause, without additional regulatory restrictions, substantial adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use.*

(*i*) *If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified pesticide applicator.*

(*ii*) *If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause substantial adverse effect on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified pesticide applicator, or subject to such other restrictions as the Administrator may determine.*

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(2) CHANGE IN CLASSIFICATION.—*If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent substantial adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least 30 days before making the change and shall publish the proposed change in the Federal Register.*

(e) PRODUCTS WITH SAME FORMULATION AND CLAIMS.—*Products which have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added by supplemental statements.*

(f) MISCELLANEOUS.—

(1) EFFECT OF CHANGE OF LABELING OR FORMULATION.—*If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this Act.*

(2) REGISTRATION NOT A DEFENSE.—*In no event shall registration of an article be construed as a defense for the commission of any offense under this Act.*

(3) AUTHORITY TO CONSULT OTHER FEDERAL AGENCIES.—*In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.*

SEC. 4. USE OF RESTRICTED USE PESTICIDE; CERTIFIED APPLICATORS.

(a) CERTIFICATION PROCEDURE.—

(1) FEDERAL CERTIFICATION.—*Subject to paragraph (2), the Administrator shall prescribe standards for the certification of pesticide applicators. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or of the use and handling of the pesticide or class of pesticides covered by such individual's certification.*

(2) STATE CERTIFICATION.—*If any State, at any time, desires to certify pesticide applicators, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—*

(A) *designates a State agency as the agency responsible for administering the plan throughout the State;*

(B) *contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;*

(C) *gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;*

(D) *provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and*

(E) *contains satisfactory assurances that State standards for the certification of pesticide applicators conform with those standards prescribed by the Administrator under paragraph (1).*

(b) STATE PLANS.—*If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due*

notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify pesticide applicators with respect to such State.

SEC. 5. EXPERIMENTAL USE PERMITS.

(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

(b) TEMPORARY TOLERANCE LEVEL.—If the Administrator determines that the use of a pesticide may reasonably be expected to result in any resudue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

(c) USE UNDER PERMIT.—Use of a pesticide under an experimental use permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

(d) STUDIES.—When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause substantial adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

(e) REVOCATION.—The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid substantial adverse effects on the environment.

SEC. 6. ADMINISTRATIVE REVIEW; SUSPENSION.

(a) CANCELLATION AFTER FIVE YEARS.—

(1) PROCEDURE.—The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date of its registration (or at the end of any five-year period thereafter) unless the registrant, before the end of such period, requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect.

(2) INFORMATION.—If at any time after the registration of a pesticide the registrant has additional factual information regarding substantial adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

(b) CANCELLATION AND CHANGE IN CLASSIFICATION.—If the Administrator determines that registration of a pesticide should be canceled or that the classification of a pesticide should be changed, he shall notify the registrant of his intention and of whether he intends to cancel the registration or change the classification and of his reasons (including the factual basis) therefor in writing. Upon receipt of such notice, the registrant may, within 30 days (A) make the necessary corrections and so notify the Administrator, or (B) file objections and request a public hearing. If the registrant does not take any such action, the notice shall, at the end of 30 days from its receipt by the registrant, constitute a final order of cancellation or change in classification. If the registrant

files objections and requests a public hearing, the order of cancellation or change in classification may only be issued after completion of such proceeding.

(c) SUSPENSION.—

(1) ORDER.—If the Administrator determines that such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings, he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless at the same time the Administrator issues notices of his intention to cancel the registration of the pesticide. Any remedy elected by the registrant under section 6(a) shall be held as expeditiously as possible.

(2) DURATION OF ORDER.—Any suspension order shall remain in effect only until 90 days after the completion of the administrative remedies provided for under section 6(a) or until the Administrator issues his final order either canceling or denying cancellation of the registration, whichever is sooner.

(3) JUDICIAL REVIEW.—Any order of suspension shall be subject to immediate review in all actions by the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. This action may be maintained simultaneously with any administrative review proceeding under section 6.

(d) PUBLIC HEARINGS AND SCIENTIFIC REVIEW.—In the event a hearing is requested pursuant to subsection (a) or (d) or determined upon by the Administrator pursuant to subsection (d), such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the objections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpena to compel testimony from any person. Upon the request of any party or when in the hearing officer's judgment it is necessary or desirable, the hearing officer shall refer to a Committee of the National Academy of Sciences all relevant questions of scientific fact arising in the course of the public hearing. The Committee of the National Academy of Sciences shall report in writing to the officer within 60 days on these questions of scientific fact. The report shall be made public and shall be considered as part of the hearing record. The Administrator shall enter into appropriate arrangements with the National Academy of Sciences to assure an objective and competent scientific review of the questions presented to Committees of the Academy and to provide such other scientific advisory services as may be required by the Administrator for carrying out the purposes of this Act. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness and shall order the payment of reasonable fees and expenses as a condition to requiring his testimony. On contest, the subpena may be enforced by an appropriate United States District Court in accordance with the principles stated herein and the Administrative Procedure Act. As soon as practicable after completion of the hearing but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or shall issue an order either cancelling the registration, changing the

classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantial evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

(e) JUDICIAL REVIEW.—Final orders of the Administrator under this section shall be subject to judicial review pursuant to section 16.

SEC. 7. REGISTRATION OF ESTABLISHMENTS.

(a) REQUIREMENT.—No person shall produce any pesticide or device subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

(b) REGISTRATION.—Whenever the Administrator receives an application under subsection (a), he shall register the establishment and assign it an establishment number.

(c) INFORMATION REQUIRED.—

(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and devices—

(A) which he is currently producing;

(B) which he has produced during the past year; and

(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 13, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

(d) CONFIDENTIAL RECORDS AND INFORMATION.—Any information submitted to the Administrator pursuant to subsection (c) shall be considered confidential and shall be subject to the provisions of section 10.

SEC. 8. BOOKS AND RECORDS.

(a) REQUIREMENT.—The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this Act. No records required under this subsection shall extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

(b) INSPECTION.—For the purposes of enforcing the provisions of this Act, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this Act, shall, upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy: (1) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; or (2) in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or devices.

Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

SEC. 9. INSPECTION OF ESTABLISHMENTS, ETC.

(a) IN GENERAL.—For purposes of enforcing the provisions of this Act, officers or employees duly designated by the Administrator are authorized—

(1) to enter, at reasonable times, any establishment; and

(2) to inspect and obtain samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) WARRANTS.—For purposes of enforcing the provisions of this Act and upon a showing to an officer or court of competent jurisdication that there is reason to believe that the provisions of this Act have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

(1) entry for the purpose of this section;

(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any illegal pesticide or device found in the establishment and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

(3) the seizure of any pesticide or device which is in violation of this Act.

(c) ENFORCEMENT.—

(1) CERTIFICATION OF FACTS TO ATTORNEY GENERAL.—The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this Act. If it shall appear from any such examination that they fail to comply with the requirements of this Act, the Administrator shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this Act have been violated by such

person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 16, when the Administrator determines that such action will be sufficient to effectuate the purposes of this Act.

(2) NOTICE NOT REQUIRED.—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

(3) WARNING NOTICES.—Nothing in this Act shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

SEC. 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.

(a) IN GENERAL.—In submitting data required by this Act, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information, and (2) submit such marked material separately from other material required to be submitted under this Act.

(b) DISCLOSURE.—Notwithstanding any other provision of this Act, the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act, information relating to formulas of products acquired by authorization of this Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS.

(a) IN GENERAL.—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private pesticide applicator to maintain any records or file any reports or other documents.

(b) SEPARATE STANDARDS.—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators.

SEC. 12. UNLAWFUL ACTS.

(a) IN GENERAL.—

(1) Except as provided by subsection (b), it shall be unlawful for any person in any State to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—

(A) any pesticide which is not registered under section 3;

(B) any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3;

(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3;

(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5);

(E) any pesticide which is adulterated or misbranded; or

(F) any device which is misbranded.

(2) It shall be unlawful for any person—

(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act;

(B) to refuse to keep any records required pursuant to section 8, or to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 9;

(C) to give a guaranty or undertaking provided for in subsection (b) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name and address, the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

(D) to use for his own advantage or to reveal, other than to the the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this Act which is confidential under this Act;

(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;

(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder;

(G) to use any registered pesticide in a manner inconsistent with its labeling;

(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

(I) to violate any order issued under section 13;

(J) to violate any suspension order issued under section 6;

(K) to violate any cancellation of registration of a pesticide under section 6;

(L) who is a producer to violate any of the provisions of section 7;

(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to section 8, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this Act;

(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act; or

(O) to add any substance to, or take any substance from any pesticide in a manner that may defeat the purpose of this Act.

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(b) EXEMPTIONS.—*The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—*

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provision of this Act;

(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

(3) any public official while engaged in the performance of his official duties;

(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

SEC. 13. STOP SALE, USE, REMOVAL AND SEIZURE.

(a) STOP SALE, ETC., ORDERS.—*Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide or device has been canceled by a final order or has been suspended, the Administrator may issue a written or printed "stop sale, use, or removal" order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.*

(b) SEIZURE.—*Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported from a foreign country, shall be liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if—*

(1) in the case of a pesticide—

(A) it is adulterated or misbranded;

(B) it is not registered pursuant to the provisions of section 3;

(C) its labeling fails to bear the information required by this Act;

(D) it is not colored or discolored and such coloring or discoloring is required under this Act; or

(E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

(2) in the case of a device, it is misbranded; or

(3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this Act and as directed by the labeling, it nevertheless causes substantial adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

(c) DISPOSITION AFTER CONDEMNATION.—If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this Act or the laws of the jurisdiction in which it is sold: Provided, That upon the payments of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws of any State in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

(d) COURT COSTS, ETC.—When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

SEC. 14. PENALTIES.

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—Any registrant, commercial pesticide applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

(2) PRIVATE PESTICIDE APPLICATOR.—Any private pesticide applicator who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense.

(3) HEARING.—No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

(4) REFERENCES TO ATTORNEY GENERAL.—In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who

shall recover such amount by action in the appropriate United States district court.

(b) CRIMINAL PENALTIES.—

(1) IN GENERAL.—Any registrant, commercial pesticide applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

(2) PRIVATE PESTICIDE APPLICATOR.—Any private pesticide applicator who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

(3) DISCLOSURE OF INFORMATION.—Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.

(4) ACTS OF OFFICERS, AGENTS, ETC.—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

SEC 15. INDEMNITIES.

(a) REQUIREMENT.—If—

(1) the Administrator notifies a registrant that he has suspended the registration of a pesticide because such action is necessary to prevent an imminent hazard;

(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration, the Administrator shall make an indemnity payment to such person.

(b) AMOUNT OF PAYMENT.—

(1) IN GENERAL.—The amount of the indemnity payment under subsection (a) to any person shall be determined on the basis of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a) (1); except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a)(1).

(2) SPECIAL RULE.—Notwithstanding any other provision of this Act, the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner.

SEC. 16. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW.

(a) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—Except as provided by subsection (b), subchapter II of chapter 5 of title 5 of the United States Code (sec. 551 and following, relating to administrative procedure) and chapter 7 of title 5 of the United States Code (sec. 701

and following, relating to judicial review) apply in respect of rules, rule making, orders, adjudication, licensing, sanctions, agency proceedings, and agency actions (as such terms are used in subchapter II of chapter 5 and in chapter 7 of title 5 of the United States Code).

(b) JUDICIAL REVIEW.—In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any party at interest may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.

(c) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this Act.

(d) NOTICE OF JUDGMENTS.—The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

SEC. 17. IMPORTS AND EXPORTS.

(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—Notwithstanding any other provision of this Act, no pesticide or device shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

(b) CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.—Whenever a cancellation of the registration of a pesticide becomes effective, the Administrator shall transmit through the State Department copies of each notice of cancellation of a registration of a pesticide to the governments of other countries and to appropriate international agencies.

(c) IMPORTATION OF PESTICIDES AND DEVICES.—The Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon his request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions set forth in this Act, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission, and the Secretary of the Treasury shall refuse delivery

to the consignee and shall cause the destruction of any pesticide or device refused delivery which shall not be exported by the consignee within 90 days from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: Provided, That the Secretary of the Treasury may deliver to the consignee such pesticide or device pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such pesticide or device, together with the duty thereon, and on refusal to return such pesticide or device for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: And provided further, That all charges for storage, cartage, and labor on pesticide or device which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

(e) REGULATIONS.—The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of this section.

SEC. 18. EXEMPTION OF FEDERAL AGENCIES.

The President by executive order may exempt any Federal agency from any provision or all provisions of this Act if he determines that emergency conditions exist which require such exemption.

SEC. 19. DISPOSAL AND TRANSPORTATION.

(a) PROCEDURES.—The Administrator shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 6(c) if requested by the owner of the pesticide.

(b) ADVICE TO SECRETARY OF TRANSPORTATION.—The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act (49 U.S.C. 1657) the Transportation of Explosives Act (18 U.S.C. 831–835), the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430, 1472 H), and the Hazardous Cargo Act (46 U.S.C. 170, 375, 416).

SEC. 20. RESEARCH AND MONITORING.

(a) RESEARCH.—The Administrator shall undertake research, including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this Act, and he shall give priority to research to develop biologically integrated alternatives for pest control. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.

(b) NATIONAL MONITORING PLAN.—The Administrator shall formulate and periodically revise, in cooperation with other Federal, State, or local agencies, a national plan for monitoring pesticides.

(c) MONITORING.—The Administrator shall undertake such monitoring activities, including but not limited to monitoring in air, soil, water, man,

plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.

SEC. 21. SOLICITATION OF PUBLIC COMMENTS.

In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

SEC. 22. DELEGATION AND COOPERATION.

(a) DELEGATION.—All authority vested in the Administrator by virtue of the provisions of this Act may with like force and effect be executed by such employees of the Environmental Protection Agency as the Administrator may designate for the purpose.

(b) COOPERATION.—The Administrator shall cooperate with the Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

SEC. 23. STATE COOPERATION, AID, AND TRAINING.

(a) COOPERATIVE AGREEMENTS.—The Administrator is authorized to enter into cooperative agreements with States—

(1) to delegate to any State the authority to cooperate in the enforcement of the Act through the use of its personnel or facilities, to train personnel of the State to cooperate in the enforcement of this Act, and to assist States in implementing cooperative enforcement programs through grants-in-aid; and

(2) to assist State agencies in developing and administering State programs for training and certification of pesticide applicators consistent with the standards which he prescribes.

(b) CONTRACTS FOR TRAINING.—In addition, the Administrator is authorized to enter into contracts with Federal or State agencies for the purpose of encouraging the training of certified pesticide applicators.

SEC. 24. AUTHORITY OF STATES.

(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act or restrict by license or permit the use of a pesticide registered for general use;

(b) such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required pursuant to this Act; and

(c) a State may assist the Administrator in the registration of pesticides formulated for intrastate distribution to meet specific local needs if that State is certified by the Administrator as capable of exercising adequate controls.

SEC. 25. AUTHORITY OF ADMINISTRATOR.

(a) REGULATIONS.—The Administrator is authorized to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides.

(b) EXEMPTION OF PESTICIDES.—The Administrator may exempt from the requirements of this Act by regulation any pesticide which he determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

(c) OTHER AUTHORITY.—The Administrator, after notice and opportunity for hearing, is authorized—

(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment;

(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man;

(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601)) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act;

(4) to specify that any class of devices shall be subject to this Act if he determines that the application of this Act in respect of such class is necessary to effectuate the purposes of this Act;

(5) to prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment; and

(6) to determine and establish suitable names to be used in the ingredient statement.

SEC. 26. SEVERABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act are severable.

SEC. 27. AUTHORIZATION FOR APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each fiscal year ending June 30, 1972, June 30, 1973, and June 30, 1974. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1974, shall be the sums hereafter provided by law.

FEDERAL HAZARDOUS SUBSTANCES ACT

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DEFINITIONS

SEC. 2. For the purposes of this Act—

(a) * * *

* * * * * * *

(f) The term "hazardous substance" means:

1. * * *

* * * * * * *

2. The term "hazardous substance" shall not apply to [economic poisons] *pesticides* subject to the Federal Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, but such term shall apply to any article which is not itself [an economic poison] *a pesticide* within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such [an economic poison] *a pesticide.*

* * * * * * *

POISON PREVENTION PACKAGING ACT

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SEC. 2. For the purpose of this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 2(f) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f));

(B) [an economic poison] *a pesticide* as that term is defined in section 2a of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135(a));

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FEDERAL FOOD, DRUG, AND COSMETIC ACT

* * * * * * *

CHAPTER II—DEFINITIONS

SEC. 201. For the purposes of this Act—

(a) * * *

* * * * * * *

(q) The term "pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is [an "economic poison"] *a "pesticide"* within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135–135*k*) as now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

* * * * * * *

CHAPTER IV—FOOD

* * * * * * *

TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

SEC. 408. (a) * * *

* * * * * * *

(d)(1) Any person who has registered, or who has submitted an application for the registration of, [an economic poison] *a pesticide* under the Federal Insecticide, Fungicide, and Rodenticide Act may file with the Secretary of Health, Education, and Welfare, a petition proposing the issuance of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of such [economic poison] *pesticide*, or exempting the pesticide chemical from the requirement of a tolerance. The petition shall contain data showing—

(A) the name, chemical identity, and composition of the pesticide chemical; * * *

* * * * * * *

(e) The Secretary may at any time, upon his own initiative or upon the request of any interested person, propose the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. Thirty days after publication of such a proposal, the Secretary may by order publish a regulation based upon the proposal which shall become effective upon publication unless within such thirty-day period a person who has registered, or who has submitted an application for the registration of, [an economic poison] *a pesticide* under the Federal Insecticide, Fungicide, and Rodenticide Act containing the pesticide chemical named in the proposal, requests that the proposal be referred to an advisory committee. In the event of such a request, the Secretary shall forthwith submit the proposal and other relevant data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Secretary may, after giving due consideration to all data before him, including such report, recommendations, underlying data and statement, by order publish a regulation establishing a tolerance for the pesticide chemical named in the proposal or exempting it from the necessity of a tolerance which shall become effective upon publication. Regulations issued under this subsection shall upon publication be subject to paragraph (5) or subsection (d).

* * * * * * *

(l) The Secretary of Agriculture, upon request of any person who has registered, or who has submitted an application for the registra-

tion of, [an economic poison] *a pesticide* under the Federal Insecticide, Fungicide, and Rodenticide Act, and whose request is accompanied by a copy of a petition filed by such person under subsection (d)(1) with respect to a pesticide chemical which constitutes, or is an ingredient of, such [economic poison] *pesticide*, shall, within thirty days or within sixty days if upon notice prior to the termination of such thirty days the Secretary deems it necessary to postpone action for such period, on the basis of data before him, either—

(1) certify to the Secretary of Health, Education, and Welfare that such pesticide chemical is useful for the purpose for which a tolerance or exemption is sought; or

(2) notify the person requesting the certification of his proposal to certify that the pesticide chemical does not appear to be useful for the purpose for which a tolerance or exemption is sought, or appears to be useful for only some of the purposes for which a tolerance or exemption is sought.

In the event that the Secretary of Agriculture takes the action described in clause (2) of the preceding sentence, the person requesting the certification, within one week after receiving the proposed certification, may either (A) request the Secretary of Agriculture to certify to the Secretary of Health, Education, and Welfare on the basis of the proposed certification; (B) request a hearing on the proposed certification or the parts thereof objected to; or (C) request both such certification and such hearing. If no such action is taken, the Secretary may by order make the certification as proposed. In the event that the action described in clause (A) or (C) taken, the Secretary shall by order make the certification as proposed with respect to such parts thereof as are requested. In the event a hearing is requested, the Secretary of Agriculture shall provide opportunity for a prompt hearing. The certification of the Secretary of Agriculture as the result of such hearing shall be made by order and shall be based only on substantial evidence of record at the hearing and shall set forth detailed findings of fact. In no event shall the time elapsing between the making of a request for a certification under this subsection and final certification by the Secretary of Agriculture exceed one hundred and sixty days. The Secretary shall submit to the Secretary of Health, Education, and Welfare with any certification of usefulness under this subsection an opinion, based on the data before him, whether the tolerance or exemption proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which the certification is made. The Secretary of Agriculture, after due notice and opportunity for public hearing, is authorized to promulgate rules and regulations for carrying out the provisions of this subsection.

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ADDITIONAL VIEWS OF CONGRESSMAN THOMAS S. FOLEY

Many of the amendments to the FIFRA which the committee has reported in H.R. 10729 are needed and salutory. In my judgment, however, the bill is so defective in several significant aspects that I find it difficult to support the proposed legislation in its present form.

Indemnities, Section 15, page 47—A key element of the committee bill to which I object is a far-reaching extension of indemnities to manufacturers, retailers, and users for the cost of pesticides and devices when registrations are suspended or cancelled. In addition to the burden of paying indemnity holders of materials on which registration is suspended or cancelled, the Administrator is required to arrange for the disposal of the material at the option of the holder.

I do not believe that it is wise to undertake so broad and farreaching a policy of indemnity for the imposition of government prohibitions on hazardous substances. I find it particularly difficult to support this section of the bill when the committee rejected what seemed to me to be an eminently reasonable limitation on the amount of pesticides or devices indemnity might be claimed; namely, no more than a 12-month supply.

Restriction on Research Data, Section 3(c)(I)(d) page 17 provides that data support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration. The effect of this provision is to enable an applicant to restrict the use of research and other data provided by him to the Administrator as a means of slowing or blocking subsequent registrations of other products. It is argued by the proponents of this section that some reward should be given to research investment in order to stimulate and encourage such investment. While I do not quarrel with the need to maintain continued research in pesticides and other agricultural chemicals, it seems to me that this is a clumsy, inefficient, and expensive way in which to provide such stimulation. The Administrator, in effect, is asked to ignore perhaps clearly defined and established data and, at the very least, necessitate an expensive re-invention of the wheel through duplicative research or data gathering efforts which are totally wasteful and otherwise unnecessary. I am concerned that this technique may be a precedent for other efforts to establish quasi-patents on licenses for manufactured products when Congress has decided not to grant more direct protection.

Judicial Review, Section 16(b)—I agree with the objection of my colleague, John Dow, that the committee has undoubtedly sought to restrict the access of parties to judicial review following a public hearing on the refusal to register, or the cancellation or suspension of pesticides or devices. It seems to me this is directed against the intervention of environmental groups or public interest parties in the judicial review process. Considering the obvious national interest in appropriate regulation of pesticides and materials potentially hazard-

ous to man or to the environment, I see no justification for this effort to so restrict access to judicial review.

Record-keeping, Section 11(a)—In an overly enthusiastic effort to avoid burdendome restrictions on farmers, the committee adopted an amendment which prohibits the Administrator from requiring the maintenance or filing of records by private pesticide users, even when restricted use pesticides are involved. This amendment is typical of many adopted by the committee circumscribing the authority of the Administrator so severely that efficient and effective administration of the Act may be extraordinarily difficult. I fear also that if the Administrator is barred from imposing even the most minimal record-keeping requirements on private pesticide users, it will be more difficult to obtain registration in some cases, or the conditions under which restricted use of pesticides or devices may be applied will be controlled by regulation in other and more burdensome ways. Despite the committee's good intentions toward farmers, I feel that it will be the farmer users who suffer if this provision remains in the bill.

Authority of States—Section 24—The committee accepted an amendment which authorizes the States to regulate the sale or use of any pesticide or device within the State if such State regulation does not permit the sale or use prohibited by the Act. The Amendment also forbids the State to "restrict by license or permit the use of a pesticide registered for general use, . . ."

Pesticides are to be classified as "restricted use" under this bill if they are acutely toxic, either dermally or by inhalation, or if they may cause substantial adverse effects on the environment. For over 25 year, States have restricted "general use" pesticides which do not fit the criteria of the two hazards listed above. These restrictions relate to local conditions such as climate, cropping practices, population density, soils, and pest populations. Their purpose is to protect susceptible crops and ornamentals, pollinating insects, animals, and people.

The application of this amendment will apparently preempt the authority of States to restrict otherwise "general use" pesticides for this purpose. This amendment will do violence to many effective State pesticide programs and restrict the ability of States to apply reasonable restrictions in meeting particular needs created by local conditions. It sharply restricts needed flexibility of administration in cooperation between the Federal and State programs and serves no valid purpose whatsoever.

There are other aspects of this bill with which I find myself in disagreement. While I recognize the long and difficult task that the committee undertook in updating Federal law in this critical and complex area, I believe that there is an urgent need to correct these and other deficiencies of the bill if an efficient and workable program is to be developed which can balance the needs of the economy with the essential protection of our natural environment. I hope that in consideration of the bill by the House corrective amendments will be adopted.

THOMAS S. FOLEY,
Member of Congress.

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ADDITIONAL VIEWS OF HON. JOHN G. DOW

INTRODUCTION

The question that must be asked by the reviewer of the amendments to the Federal Insecticide, Fungicide, and Rodenticide Act is whether the changes in H.R. 10729 create a reasonable and effective law. In the months of testimony before the Agriculture Committee on pesticides many points of view were heard. Yet we did not have the opportunity to listen to more than a handful of entomologists tell us that the use of pesticides may destroy the ecological balance in nature, that plants themselves become weakened by successive applications, and that sprays used in our agricultural fields are dangerous to life. We did not hear, as the Government Operations Committee did, that some authorities put the number of pesticide poisonings to people in the U.S. at 50,000 annually.

A report issued on Monday, September 20th, by a group of scientists chosen by the Environmental Protection Agency said that DDT presents "a substantial threat to the quality of the human environment through widespread damage to some nontarget organisms."

This bill is the Committee's response to the recognized need both to register the pesticides and to restrict or control their use. In my view H.R. 10729 (1) fails to establish a balanced approach to the problem of pesticides, (2) limits disclosure of information about the pesticides, and (3) requires that the EPA, rather than the manufacturer, assume the burden of proving the pesticide to have a "substantial adverse effect", Sec. 3 Registration of Pesticides (c)(5)(C) p. 19.

The present Law, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), either allows or disallows the pesticide sought to be registered. FIFRA's strength lies in its approach which requires the manufacturer to label his product with directions for use and with a warning statement. Under FIFRA the Administrator must be assured that the article warrants the manufacturer's proposed claims based on the statement submitted by the applicant. If he is not satisfied, the Administrator denies registration. When he finds that his action is necessary to prevent an imminent hazard to the public, the Administrator may suspend the registration of the pesticide. The Administrator is not unduly limited in his ability to disclose information surrounding the registration of the pesticide, but is properly constrained from releasing data on the business records and documents which he may require under the Act (FIFRA).

H.R. 10729 substantially weakens the clear-cut approach incorporated in present law without providing adequate safeguards. In its reluctance to treat pesticides in a manner similar to prescription drugs, which are controlled over the counter, the bill fails to set up adequate mechanisms for registration and use, relying on a loosely drawn procedure for licensing applicators.

ANALYSIS

H.R. 10729, in my view, effectively reduces the control of the Environmental Protection Agency (EPA) through several devices which must be separately analyzed.

1. Information submitted by the applicant is subject to restrictions imposed by the applicant himself.

Under Sec. 3 *Registration of Pesticides.* (c)(1)(D) p. 17, "data submitted in support of an application shall not, *without permission of the applicant* (emphasis added), be considered by the Administrator in support of any other application for registration."

Under sec. 10. *Protection of Trade Sections and Other Information,* p. 36, concerning application form, the applicant may "clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information."

As a result of these sections the applicant is in a position to make the original classification on the confidentiality of the information. The EPA Administrator's decision on which data may be disclosed is in effect made for him by the applicant.

While it can be argued that the Administrator under the following sub-section on disclosure, sec. 10(6) p. 36, may exercise his "judgement" on the release of information, the fact is that the applicant's power to classify is sufficiently strong to limit the flow of information surrounding the application to a mere trickle and successfully inhibit access to data which is not subject to patent laws and which should be available to the public.

2. The burden of proving that a pesticide represents a substantial environmental impact has been shifted to the Administrator.

The registration procedure requires a statement of (A) the name and address; (B) the name of the pesticide; (C) a complete copy of the labeling, statement of all claims, directions for use; (D) *if requested* (emphasis added), a full description of tests; (E) the complete formula; and (F) a request that the pesticide be classified for general or restricted use. This procedure fails to sustain the burden of proof which should rest fully on the applicant to prove that the pesticide will perform without substantial adverse effect on the environment. The placing of this responsibility on the Administrator under sec. 3(c)(5), the approval mechanism on p. 19 of the bill, gives the EPA the burden of finding that the product sought to be registered is environmentally unsound.

The shoe should be on the other foot. The responsibility for the protection of our environment is as much a burden of the manufacturer as it is a Federal function of the EPA. Until the requirements are spelled out in the registration process the burden will not rest on both parties as it must when such a critical factor as our environmental health is at stake.

3. Judicial review following a public hearing is narrowly limited to "any party at interest."

The language "any party at interest," sec. 16, Administrative Review; Suspension (6), p. 49, was changed during committee proceedings from the earlier language which read: "any person adversly

affected." This is an attempt to narrow the scope of review to registration applicants and preclude the intervention of outside parties who wish to carry the burden of proving that they are adversly affected. To attempt by statute to eliminate this avenue for a class action after the case of *Environmental Defense Fund* v. *Hardin*, 428 F. 2d 1093, should not be allowed by the House when this bill is considered.

Nowhere in the bill are there provisions which would allow any party the opportunity to request public hearings unless they are applicants for registration of pesticides. This effectively excludes such parties not only from public hearings but also court appeals.

4. Judicial Review of orders of suspensions may be maintained simultaneously with any administrative review.

Under sec. 6. *Administrative Review; Suspension*, (c)(3) p. 28, the district court is empowered to take immediate review of an order of suspension issued by the Administrator. The court action is limited under the language of the bill starting on line 13, "solely to determine whether the order of suspension was arbitrary, capricous or an abuse of discretion . . ." I submit that the court, which is given the power to move at the same time that the administrative review is proceeding will be involved in substantive issues before these issues have been fully formulated by the administrative review. The provision would run counter to the established precedent of administrative law which is that judicial action follows after administrative remedies have been exhuasted. This provision well exemplifies a strong tendency in H.R. 10729 to place many procedural hurdles in the way of the EPA Administrator during the course of his regulatory functions.

5. The bill implies that the benefits from the use of a pesticide can offset its injuriousness.

The definition of "protect health and environment" under Sec. 2. Definitions, p. 15 is particularly strained when it seeks "to take into account the public interest, including benefits from the use of the pesticide."

In another instance, under sec. 3, *Registration of Pesticides*, (c)(5), p. 19, the bill provides that the Administrator shall *not make any lack of essentiality a criterion for denying registration of any pesticide.* (Emphasis added.) This raises questions about the purpose of pesticides proposed and also about the purpose of the bill itself.

The foregoing two phrases taken together cannot be construed in any way to establish a balanced system of control. They are not in keeping with the National Environmental Policy Act of 1969, Public Law 91–190. In that act Congress established the policy that the widest range of beneficial uses of the environment without degradation, risk to health or safety together must be balanced with population and resource use. It did not suggest, as the new bill before us does, that questionable aspects of pesticides are to be given consequence.

I commend the committee for sincerely assuming the difficult task of weighing the various interests who came before it during consideration of this legislation. In this instance, however, there is no public interest to be served by requiring the Administrator to recognize negative factors in the balance of control and disregard a basic concept, essentiality, in his decision on registration.

6. Additional major areas which are of questionable value when compared with the present law (FIFRA) are noted below.

(a) Sec. 15. *Indemnities*, p. 47. The Administrator is required to indemnify registrants whose registrations are suspended or canceled because of action taken to prevent imminent hazards. The section also applies to persons owning any quantity of the pesticide. The amount of payment is not limited in time and is based on cost of the pesticide before notice to the registrant.

I fail to comprehend any basis for compensating any registrant whose product is determined to create an "imminent hazard." I can only relate to my earlier argument that the burden of proof is improperly resting on the Administrator as this bill is written. Any compensation mechanism which takes care of these producers who did not anticipate the environmental impact of their pesticide is insurance for their failure to maintain up-to-date research, and should be eliminated.

(b) Sec. 6(d). *Public Hearings and Scientific Review*, p. 28. After much discussion in the committee the decision was reached to require *all relevant* questions of scientific fact arising during a public hearing to be referred to a committee of the National Academy of Sciences. This mechanism is to be distinguished from current practice under FIFRA whereby the Administrator chooses a panel of experts from a list submitted to him by the National Academy of Sciences. This adherence to the Academy, which is made exclusive in the new bill, has been the subject of criticism by environmentalists who sense in it an excessive institutional restraint.

The new section improves the present procedure somewhat by requiring the scientific review to be part and parcel of the hearing record. However, it may still be used as a delaying tactic since it prevents implementation of the Administrator's order unless an "imminent hazard" is involved.

(c) Sec. 18. *Exemption of Federal Agencies*. p. 52. This section would enable the President to exempt Federal Agencies for any or all of the provisions of the act if he declared that emergency conditions exist. FIFRA, the present law, has no such exemption.

The vagueness of the language conceivably permits controversial emergency situations to be dealt with in spite of their critical effect on the environment. Such occasions have arisen this year. In New York State aerial spraying programs with the insecticide carbaryl or Sevin were extensively carried out this spring without prior submission of a final environmental impact statement to the Council on Environmental Quality as required by Public Law 91–190. What constituted an emergency for some in this instance was a serious evasion of the provisions of Public Law 91–190 for others. An insecticide was indiscriminately sprayed in spite of substantial evidence that the insecticide had serious ecological effects. Sec. 18 is a loophole with every potential for repeated instances of the Sevin experience. At the present time, the President is empowered by law to act in national emergencies. This provision, which opens new and possibly unnecessary avenues, should be deleted.

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I am prepared to offer amendments to the bill, H.R. 10729, based on certain of these comments. I cannot support the bill as it stands. It is essentially weaker than the present law and not nearly as protective of our environment as such a bill ought to be in this enlightened year of 1971.

JOHN G. DOW,
Member of Congress.

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ADDITIONAL VIEWS OF CONGRESSMAN JOHN MELCHER

H.R. 10729, the Federal Insecticide Act of 1971, fails to close a loophole where chemicals on imported foodstuffs are used that may have harmful effects on consumers. We depend on domestic food producers, or livestock, not to use chemicals on their products that science has found to be injurious to the health of consumers. H.R. 10729 continues this requirement for domestic producers, but fails to apply the same safeguard to food products that are imported into the U.S.

With the everwidening use of chemicals in food production, there is increasing need to protect the wholesomeness of dairy, fruit, vegetable, cereal, or meat products by avoiding application of chemicals that would leave residues injurious to health. It is fraudulent to tolerate a double standard between imported and domestic food supplies. Chemical pesticides or herbicides banned for use on domestic food products because their residue would be injurious to consumers, should not be allowed on imported foodstuffs. In most cases, there is no way for the consumer to know which products are imported and which are of domestic origin. But in neither case should we take the chance with the health of our consuming public.

Testimony before the Committee from Food and Drug Administration officials outlining surveillance for harmful residues was not reassuring. The testing of chemical residues on ready-to-eat meats, poultry, and fish was haphazard and raised doubts as to any effective control on residues on imported foods. As a result, the Committee approved a section in the bill requiring producers of imported foods to follow the same procedures as we do in this country to avoid contamination with toxic chemicals. (A copy of this section follows my views.) The State Department objected saying it would interfere with good relations with countries that export foods to us. The Department of Agriculture objected, stating it would interfere with agricultural trade. The Environmental Protection Agency, in sympathy with these two Cabinet Departments, also objected. But obviously the health of our consumers should be paramount to the speculation conjured by the two Departments which have little basis for their arguments. Their pale objections based on anemic judgments should not be allowed to jeopardize the health of American consumers. Exporting countries are interested in the health of their own consumers as well as the health of their customers abroad; and when our scientists determine that a chemical leaves a harmful residue in foodstuffs, this fact should be noted and observed by all countries. It is of mutual beneficial interest which is on a level higher than mundane trade policy or profits.

Nevertheless, the pressure applied by the Administration through the State Department and the Department of Agriculture caused the deletion from the bill of what I believe to be a very important section to apply the same standards to imported food products that we apply to domestic supplies.

The argument is made that consumers have adequate protection through the surveillance of the Food and Drug Administration and the Department of Agriculture. That is not the case. Very little sampling is done. I am including at the end of my views tables provided by the Food and Drug Administration and by the Department of Agriculture. Examination of their tables prompts the following conclusions:

(1) In the case of meat, fish and poultry, residues for only 13 pesticide compounds in a very few samples are examined. These are pesticides available in this country, but banned for use in production of these foods or allowed only with strict limitations found to be safe.

(2) The incidence percent and the average parts per million are greater in the imported food samples than from the domestic products. Improvement in the presence and amounts of residues found in domestic food products as compared to imported food products in the years 1967, 1968 and 1969 was much better on the domestic side as compared to the imported products. This argues strongly for the banning or limiting uses of the objectionable pesticides as has been done in the U.S. for our domestic producers with a like extension to all producers in other countries who wish to sell products in this country.

(3) Residue sampling is decreasing. The bulwark of consumer protection continues to be reliance on producer compliance not to use banned or limited use chemicals. Even if sampling were increased a hundredfold, it would still only be spot checks which without compliance by producers on banned chemicals offer little assurance to consumers that an adequate job was being done to guard against harmful residues.

(4) There was very little sampling done in 1970, and rejections of shipments of imported meat because of residues in excess of tolerance levels only totaled 23 for the year. However, imports showed the incidence of benzene hexachloride, DDT, dieldrin, and heptachlor epoxide residues are all on the increase indicating a much more extensive use by the producers of the countries of the imported meat. These chemicals are all banned or require strict limitations on use for livestock in this country.

The only valid conclusion in the face of these facts is that H.R. 10729 can only assure consumers adequate protection from harmful residues from pesticides or herbicides when every means is taken to prevent the use of these chemicals on food products consumed by our people. Not to apply these same standards based on scientific evaluations to imported foods may give us, as our State and Agriculture Departments have implied, an open door trade policy, but it is an open door invitation to abuse imported food supplies inviting residues that may harm the health of untold numbers of our people. There can be no justification in taking that chance. Decisions to limit chemicals used by our domestic producers are not decisions lightly made but are made after long and careful study and evaluation. The results should not be ignored by any producers anywhere in the world. Their health and our health is at stake. If the House does not include a section such as Section 17(e) in the Committee print or similar protection, H.R. 10729 has a serious, damaging flaw.

JOHN MELCHER,
Member of Congress.

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(Committee Print No. 3, dated July 13, 1971, was used by the committee in the preparation of H.R. 10729. Section 17(e) of Committee Print No. 3 is as follows:)

"(e) IMPORTATION OF AGRICULTURAL PRODUCTS.—Notwithstanding any other provision of law, whenever the use of any pesticide in connection with the producing, processing, or handling of any agricultural commodity is prohibited or limited under any Federal statute, the President shall prohibit importation of such commodity from any country if he determines that—

"(1) such country does not have at least equal restrictions with respect to the use of such pesticide, and

"(2) such commodity is produced in substantial quantities in the continental United States.

The provisions (including penalties and forfeitures) of section 545 of title 18, United States Code, shall apply in enforcing the provisions of this subsection. The President may prescribe rules and regulations to carry out the purposes of this subsection, including but not limited to, provisions for the deferral of the effective date thereof with respect to particular pesticides or agricultural commodities for not more than three years.

PESTICIDE RESIDUES IN MEATS (FAT BASIS) FISCAL YEARS 1965-69 (BEEF, PORK, ETC.)

[Total diet samples—ready-to-eat food, meat, fish, and poultry (roast beef, ground beef, pork chops, chicken, fish fillets, eggs, frankfurters, etc.)]

Specific compound	Domestic samples, 12,146		Import samples,[1] 3,674		Total diet samples (meat, fish, and poultry), 134 composites	
	Incidence percent	Average p.p.m.	Incidence percent	Average p.p.m.	Incidence percent	Average p.p.m.
DDT[2]	75.4	0.33	83.9	0.41	88.1	0.182
DDE[2]					92.5	.168
TDE[2]					80.6	.092
Dieldrin	31.3	.05	46.7	.10	61.9	.026
Heptachlor epoxide[3]	[4] 21.6	.02	10.2	.01	53.7	.016
Heptachlor[3]	9.6	.01	1.1	(5)	3.0	(6)
Lindane	6.6	.01	12.4	.01	19.4	.006
BHC	[7] 20.2	.02	[7] 63.2	.15	50.0	.018
Aldrin	.1	(5)	[7] 1.4	(5)	.7	(6)
Endrin	.4	(5)	1.0	(5)	1.5	(6)
Methoxychlor	1.8	.01	.6	(5)		
Toxaphene	1.4	.01	.1	(5)	1.5	.004
MCP	[8] 11.8	.02	[4] 45.1	.10	.7	(6)

[1] Import samples for fiscal years 1967, 1968, and 1969 only.
[2] DDT includes DDE and TDE.
[3] Heptachlor includes heptachlor epoxide except fiscal year 1967 (domestic samples only).
[4] Fiscal year 1967 only, 3,098 domestic samples, 1,901 import samples.
[5] Less than 0.005 p.p.m.
[6] Less than 0.001 p.p.m.
[7] Fiscal year 1968 and 1969 only, 4,012 domestic samples and 1,773 import samples.
[8] Fiscal year 1965, 1966, and 1967 only, 8,134 domestic samples.

Source: Food and Drug Administration.

NUMBER OF SAMPLES

Range (parts per million)	Domestic						Imported			
	1965	1966	1967	1968	1969	Total	1967	1968	1969	Total
Methyl chlorophenoxy acetic acid (MCP):										
None found	3,200	1,614	2,357	0	0	7,171	1,044	0	0	1,044
Trace to 0.10	51	134	621	0	0	806	564	0	0	564
0.11 to 0.50	1	35	90	0	0	126	214	0	0	214
0.51 to 1.00	0	1	15	0	0	16	52	0	0	52
1.01 to 1.50	0	0	6	0	0	6	14	0	0	14
1.51 to 2.00	0	0	2	0	0	2	5	0	0	5
2.01 to 3.00	0	0	3	0	0	3	3	0	0	3
Above 3.00	0	0	4	0	0	4	5	0	0	5
Total	3,252	1,784	3,098	0	0	8,134	1,901	0	0	1,901

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NUMBER OF SAMPLES—Continued

Range PPM	Domestic						Imported		
	1965	1966	1967	1968	1969	Total	1968	1969	Total
Aldrin:									
None found	3,252	1,783	3,098	2,709	1,298	2,140	1,264	484	1,748
Trace to 0.10	0	0	0	3	1	4	9	13	22
0.11 to 0.50	0	0	0	1	0	1	1	2	3
0.51 to 0.00	0	1	0	0	0	1	0	0	0
1.01 to 1.50	0	0	0	0	0	0	0	0	0
1.51 to 2.00	0	0	0	0	0	0	0	0	0
2.01 to 3.00	0	0	0	0	0	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	2,146	1,274	499	1,773
Benzene hexachloride (BHC):									
None found				2,070	1,130	3,200	446	206	652
Trace to 0.10				576	146	722	370	178	548
0.11 to 0.50				49	17	66	382	98	480
0.51 to 1.00				10	3	13	60	14	74
1.01 to 1.50				4	1	5	11	3	14
1.51 to 2.00				2	0	2	0	0	0
2.01 to 3.00				2	1	3	2	0	2
Above 3.00				0	1	1	3	0	3
Total				2,713	1,299	4,012	1,274	499	1,773

Range PPM	Domestic						Imported			
	1965	1966	1967	1968	1969	Total	1967	1968	1969	Total
DDT:										
None found	1,148	568	644	472	161	2,993	300	216	76	592
Trace to 0.10	1,245	513	925	728	383	3,794	522	365	129	1,016
0.11 to 0.50	435	386	1,106	1,080	572	3,579	638	499	201	1,338
0.51 to 1.00	203	129	241	253	103	929	236	113	45	394
1.01 to 1.50	67	59	76	60	43	305	78	30	24	132
1.51 to 2.00	70	38	25	43	13	189	39	22	6	67
2.01 to 3.00	41	42	38	37	20	178	50	16	6	72
Above 3.00	43	49	43	40	4	179	38	13	12	63
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Dieldrin:										
None found	3,220	1,713	1,054	1,561	798	8,346	1,017	636	304	1,957
Trace to 0.10	30	50	827	963	434	2,304	481	267	139	887
0.11 to 0.50	2	20	1,186	181	63	1,452	366	326	52	744
0.51 to 1.00	0	0	13	6	3	22	29	38	4	71
1.01 to 1.50	0	1	4	1	0	6	3	4	0	7
1.51 to 2.00	0	0	8	1	1	10	3	3	0	6
2.01 to 3.00	0	0	2	0	0	2	0	0	0	0
Above 3.00	0	0	4	0	0	4	2	0	0	2
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Endrin:										
None found	3,248	1,782	3,096	2,692	1,279	12,097	1,886	1,271	481	3,638
Trace to 0.10	2	0	1	17	20	40	8	3	17	28
0.11 to 0.50	2	2	1	4	0	9	6	0	1	7
0.51 to 1.00	0	0	0	0	0	0	1	0	0	1
1.01 to 1.50	0	0	0	0	0	0	0	0	0	0
1.51 to 2.00	0	0	0	0	0	0	0	0	0	0
2.01 to 3.00	0	0	0	0	0	0	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Heptachlor:										
None found	3,241	1,709	3,020	1,970	1,044	10,984	1,896	1,243	494	3,633
Trace to 0.10	11	50	74	628	213	976	5	13	2	20
0.11 to 0.50	0	25	4	109	42	180	0	18	3	21
0.51 to 1.00	0	0	0	5	0	5	0	0	0	0
1.01 to 1.50	0	0	0	1	0	1	0	0	0	0
1.51 to 2.00	0	0	0	0	0	0	0	0	0	0
2.01 to 3.00	0	0	0	0	0	0	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674

NUMBER OF SAMPLES—Continued

Range PPM	Domestic						Imported			
	1965	1966	1967	1968	1969	Total	1967	1968	1969	Total
Lindane:										
None found	3,202	1,680	2,831	2,462	1,171	11,346	1,747	1,091	382	3,220
Trace to 0.10	26	56	217	202	106	607	116	144	104	364
0.11 to 0.50	15	34	40	43	22	154	29	38	13	80
0.51 to 1.00	6	6	5	5	0	22	4	1	0	5
1.01 to 1.50	1	3	4	1	0	9	4	0	0	4
1.51 to 2.00	0	2	1	0	0	3	1	0	0	1
2.01 to 3.00	2	3	0	0	0	5	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Toxaphene:										
None found	3,104	1,773	3,093	2,709	1,298	11,977	1,899	1,274	499	3,672
Trace to 0.10	56	3	0	0	1	60	0	0	0	0
0.11 to 0.50	45	4	2	0	0	51	0	0	0	0
0.51 to 1.00	23	3	1	0	0	27	0	0	0	0
1.01 to 1.50	5	0	0	0	0	5	0	0	0	0
1.51 to 2.00	12	1	0	0	0	13	0	0	0	0
2.01 to 3.00	4	0	2	1	0	7	0	0	0	0
Above 3.00	3	0	0	3	0	6	2	0	0	2
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Heptachlor epoxide:										
None found			2,429	0	0	2,429	1,714	1,161	426	3,301
Trace to 0.10			600	0	0	600	161	94	60	315
0.11 to 0.50			60	0	0	60	26	19	13	58
0.51 to 1 00			3	0	0	3	0	0	0	0
1.01 to 1.50			2	0	0	2	0	0	0	0
1.51 to 2.00			0	0	0	0	0	0	0	0
2.01 to 3.00			2	0	0	2	0	0	0	0
Above 3.00			2	0	0	2	0	0	0	0
Total			3,098	0	0	3,098	1,901	1,274	499	3,674
Methoxychlor:										
None found	3,157	1,780	3,076	2,658	1,260	11,931	1,888	1,271	492	3,651
Trace to 0.10	46	1	8	6	16	77	8	1	3	12
0.11 to 0.50	21	1	9	38	23	92	3	0	3	6
0.51 to 1.00	19	0	4	10	0	33	1	2	1	4
1.01 to 1.50	4	0	0	0	0	4	1	0	0	1
1.51 to 2.00	3	2	0	0	0	5	0	0	0	0
2.01 to 3.00	2	0	1	0	0	3	0	0	0	0
Above 3.00	0	0	0	1	0	1	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674

Source: Food and Drug Administration.

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PESTICIDE RESIDUES IN IMPORTED MEATS, CALENDAR YEARS 1967–70 (BEEF, PORK, SWINE, SHEEP)

[Number of samples]

Range (parts per million)	1967	1968	1969	1970
DDT				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	413	266	299	333
0.11 to 0.50	534	498	438	453
0.51 to 1	196	116	95	85
1.01 to 1.50	86	32	36	14
1.51 to 2	51	20	9	2
2.01 to 2.50	27	9	2	4
2.51 to 3	19	10	5	5
3.01 to 3.50	13	2	3	3
3.51 to 4	5	5	4	1
4.01 to 4.50	6		5	
4.51 to 5	1	2	1	
5.01 to 6	6		3	1
6.01 to 7	3		1	
7.01 to 8		1	2	
8.01 to 10			2	2
10 to 15	2			
15 and over	1		1	
Total positives	363	961	906	903
Violations of total positives	7	1	7	2
Total samples in violation	302	377	107	77
DIELDRIN				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	467	334	411	592
0.11 to 0.50	370	414	95	42
0.51 to 1	29	39	5	
1.01 to 1.50	2	4		
1.51 to 2	3	2		
2.01 to 2.50				
2.51 to 3				
3.01 to 3.50	1			
3.51 to 4				
4.01 to 4.50	1			
4.51 to 5				
5.01 to 6				
6.01 to 7				
7.01 to 8				
8.01 to 10				
10.0 to 15				
15.0 and over				
Total positives	873	793	511	634
Violations of total positives	174	193	11	21
Total samples in violation	302	377	107	77
BENZENE HEXACHLORIDE				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	540	508	435	523
0.11 to 0.50	290	423	188	200
0.51 to 1	50	77	15	4
1.01 to 1.50	15	12	4	1
1.51 to 2	6	2	1	
2.01 to 2.50	4	2	1	
2.51 to 3	1	2		
3.01 to 3.50	1	1		
3.51 to 4	1	1		
4.01 to 4.50				
4.51 to 5	1			
5.01 to 6				
6.01 to 7	2			
7.01 to 8				
8.01 to 10		1		
10.0 to 15				
15.0 and over				
Total positives	911	1,029	644	728
Violations of total positives	173	263	64	68
Total samples in violation	302	377	107	77

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PESTICIDE RESIDUES IN IMPORTED MEATS, CALENDAR YEARS 1967-70 (BEEF, PORK, SWINE, SHEEP)—Continued

[Number of samples]

Range (parts per million)	1967	1968	1969	1970
HEPTACHLOR EPOXIDE				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	137	127	121	203
0.11 to 0.50	26	29	28	26
0.51 to 1			1	
1.01 to 1.50				
1.51 to 2				
2.01 to 2.50				1
2.51 to 3				
3.01 to 3.50				
3.51 to 4				
4.01 to 4.50				
4.51 to 5				
5.01 to 6				
6.01 to 7				
7.01 to 8				
8.01 to 10				
10.0 to 15				
15.0 and over	1	1		
Total positives	164	157	150	230
Violations of total positives	5	2	8	2
Total samples in violation	302	377	107	77

Source: U S. Department of Agriculture.

1.1k(2) SENATE COMMITTEE ON AGRICULTURE AND FORESTRY

S. REP. No. 92–838, 92d Cong., 2d Sess. (1972)

PESTICIDE CONTROL

JUNE 7, 1972.—Ordered to be printed

Mr. ALLEN, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany H.R. 10729]

The Committee on Agriculture and Forestry, to which was referred the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, having considered the same, reports favorably thereon with an amendment and recommends that the bill (as amended) do pass.

SHORT EXPLANATION

This bill completely revises the Federal Insecticide, Fungicide, and Rodenticide Act.

At the present time, this Act prohibits interstate commerce in unregistered pesticides, and permits registration only when if used as directed or in accordance with commonly recognized practice the pesticide is not injurious to man, vertebrate animals, or desirable vegetation. It does not prohibit the misuse of any registered pesticide, nor does it regulate pesticides moving only in intrastate commerce.

The new bill would—

(A) regulate the use of pesticides to protect man and his environment; and

(B) extend Federal pesticide regulation to actions entirely within a single State.

The major provisions would—

(1) prohibit the use of any pesticide in a manner inconsistent with its labeling. (Section 2(a)(2)(G)) No pesticide could be registered or sold unless its labeling was such as to prevent any injury to man or any substantial adverse effect on environmental values, taking into account the public interest, including benefits from its use. (Sections 2(q)(F), (G), and (H) and 3)

(2) require pesticides to be classified for general or restricted use. Restricted use pesticides could be used only by or under the supervision of certified applicators or subject to such other restrictions as the Administrator may determine. (Section 3(d)) This should not be construed as a limitation of the broad authority described in item (1). The House Committee report (page 15) indicates that the Administrator should not set up a system for use only by permit approved in writing for each application by a pest management consultant; but that general or seasonal licenses, permits, or other similar forms of approval may be required.

(3) extend the Act to all pesticides by including those distributed entirely within a single State. (Section 3.)

(4) strengthen enforcement by—

(a) requiring the registration of all pesticide producing establishments, and regular submission by them of production and sales-volume information; (Section 7)

(b) authorizing entry of establishments and other places where pesticides are held for sale or distribution and inspection and sampling of pesticides and devices; (Section 9)

(c) authorizing stop sale, use, or removal orders and seizure; (Section 13)

(d) providing for civil and increased criminal penalties; (Section 14)

(e) authorizing cooperation with States; (Sections 21 and 22)

(f) improving procedures governing registration and cancellation actions by combining scientific review and public hearings and requiring all questions to be submitted for scientific review at the outset of the hearing; (Section 6)

(5) give applicants for registration proprietary rights in their test data. (Section 3(c)(1)(D))

(6) authorize the Administrator to—

(a) establish pesticide packaging standards to protect children and adults and for other purposes; (Section 24(c)(3))

(b) regulate pesticide and container disposal; (Section 18)

(c) issue experimental use permits; (Section 5)

(d) conduct research on pesticides and alternatives and monitor pesticide use and presence in the environment. (Section 19)

(7) provide for certification of applicators by the States under a program approved by the Administrator. In addition, the States would be authorized to issue conditional registrations for pesticides intended for local use; and States could impose greater regulation on a pesticide than that of the Federal Government. (Sections 4 and 23)

(8) limit appropriations to carry out the Act to the period ending June 30, 1975.

General Explanation of H.R. 10729

This bill provides for the more complete regulation of pesticides in order to provide for the protection of man and his environment and the enhancement of the beauty of the world around him.

Pesticides affect the food man eats, the water he drinks, the air he breathes and the flora and fauna that surround him and provide him with beauty, recreation, and inspiration. They are necessary to keep his home free from vermin, to protect him from diseases spread by insects, rats, and other vectors, protect his possessions from termites and other destructive insects, and beautify his lawns and parks.

Pesticides are essential to man's food supply both as to quality and quantity. A generation ago consumers could expect to find occasional worms in apples and more frequent worms in sweet corn. Today we are blessed with wholesome, attractive, pest-free foods, processed, packaged, and marketed under clean and sanitary conditions. We have an abundance of food at reasonable prices.

Farm Production has increased by 156 percent since the 1935–39 period notwithstanding the fact that approximately 50 million acres were retired from production in 1970. And this level of production has been achieved in spite of the fact that the farm population has decreased from about 30 million persons to about 9.4 million persons.

More than 200 million persons in the United States, and many more millions throughout the world, now depend upon these farms and farm operators for most of their food and fiber. All of us are consumers. As consumers we all benefit from the increased efficiency and use of modern technology in the production and marketing of farm products.

When we go to market we can choose from over 6,000 different food items including fresh, frozen, canned, concentrated, dehydrated, ready-mixed, ready-to-serve, or in heat-and-serve form. Today, farmers feed over 70 million more persons in this country than they did in the late thirties. Consumers are now required to devote less of their income for a wider variety and higher quality of food than they did before. In 1972, only 15.8 per cent of disposable income was spent on food as compared to 23 per cent in earlier years. Compare this to 30 per cent in Europe . . . 50 per cent in the Soviet Union . . . and as high as 90 per cent in many other countries.

American food is the best buy in the world.

Pesticides are important in the preservation of natural beauty. As examples of the unpleasant effects caused by insects in the absence of effective pesticides, the following are quoted from a pamphlet on the gypsy moth published by the Department of Agriculture in April of this year.

> Gypsy moths have been in this country since 1869, when imported specimens escaped during experiments being performed by a Massachusetts naturalist. Extensive Federal-State efforts confined gypsy moth destruction to New

England, New York and Pennsylvania for many years. But, in 1958, concern over the possibility of environmental contamination caused a switch from large-scale spraying of DDT to limited application of less persistent insecticides.

In recent years, gypsy moth populations have built up to alarming levels, with spread occurring throughout much of the Northeast and into parts of the South. The nearly 2 million acres of trees defoliated in 1971 doubled the acreage stripped in 1970, was six times more than in 1969, and was twelve times more than recorded in 1968.

The gypsy moth is a European insect and is one of the world's worst forest pests. They are harmless in the moth stage, but as caterpillars feed on the leaves of forest, shade, ornamental and fruit trees. A single complete defoliation can kill some softwood trees; two or more defoliations can kill many types of hardwoods.

* * * * *

Gypsy moth infestations leave their mark on urban and suburban areas, as well as forests. Caterpillars cover sidewalks and get into water reservoirs, stores, homes and swimming pools. They make parks and other outdoor recreational facilities temporarily unusable and lower property values with tree-killing defoliations.

While appropriate pesticides properly used are essential to man and his environment, many constitute poisons that are too dangerous to be used for any purpose. Others are dangerous unless used extremely carefully, and some may have long lasting adverse effects on the environment. Some may be taken up in the food chain and accumulated in man and other animals. Improperly used they may endanger bees and other useful insects, birds, and other animals and their food supply. Pesticides may cause injury through accidental ingestion, inhalation or deposit on the skin. Pesticides therefore have important environmental effects, both beneficial and deleterious. Their wise control based on a careful balancing of benefit versus risk to determine what is best for man is essential.

At present the Federal Insecticide, Fungicide and Rodenticide Act provides for the labeling of pesticides with appropriate directions for their use and cautions and warnings. If a pesticide is such that when used in accordance with its label or common practice it is injurious to man, other vertebrates, or useful plants, it cannot be registered under the Act and cannot be sold or distributed in interstate commerce. If a chemical is registered and it subsequently appears that under the foregoing criteria it should not have been registered, its registration may be cancelled; and in case of imminent hazard its registration may be immediately suspended pending the completion of cancellation proceedings.

But there is no prohibition at present against the misuse of a registered pesticide. There also is no control under the Act for pesticides distributed entirely within a single state. The provisions of H.R. 10729 are needed to correct these and other deficiencies in the law in order to provide effective control. Some of the major changes provided for by the bill are as follows:

(1) *Restrictions on use.*—Section 12(a)(2)(G) prohibits the use of any pesticide in a manner inconsistent with its labeling. Section 2(q) designates a pesticide as misbranded in certain circumstances, one being that when used in accordance with its label or commonly recognized practice it causes any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide. Section 3(d)(1)(C) provides that if the pesticide, when used in accordance with its label or commonly recognized practice, may cause, without additional regulatory restrictions, any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide, it shall be classified for restricted use and subjected to additional restrictions. If it is so classified because of a determination that the acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons it would be required to be applied only by or under the direct supervision of a certified applicator. If it is so classified for any other reason, it would either be required to be applied only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may determine. By comparing these provisions with each other and with existing law, it can be seen that (1) they provide for a more finely tuned control of pesticides which will more easily permit their beneficial use and prevent their misuse; and (2) few pesticides which are now registered would be classified for restricted use. Since the present criteria for registration, the criteria for registration under the bill, and the criteria for restricted use classification under the bill are essentially similar, except for the provision for additional restrictions in connection with classification for restricted use, it follows that currently registered pesticides were at the time of registration found to be safe based on present criteria without the imposition of such additional restrictions. The Committee understands that EPA is engaged in upgrading its criteria (as to safety and effectiveness) for the registration of pesticides and expects to use the revised criteria for the classification of existing pesticides under the new Act. Also because of research and other information being accumulated on the risks and benefits associated with pesticides, this will warrant some pesticides being placed in the restricted category. The effect of classification for restricted use therefore is to provide for additional regulatory restrictions, additional to those on the label, which will make the pesticide safe to use and thereby bring it within the criteria for registration. The difference between restrictions in use shown on the label and additional regulatory restrictions imposed on restricted use pesticides is that the additional restrictions may more easily be changed as conditions warrant, and that in many cases it would be more appropriate to control the use or the making available for use of a pesticide through general regulations than through its labeling. In order to change the restrictions on the label or labelling, the Administrator might have to start cancellation proceedings. Regulatory restrictions may be changed promptly by issuing a new regulation or by exercising authority provided for in the existing regulation. The additional regulatory restrictions thus constitute a tighter form of control.

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Section 12(a)(2)(F) makes it unlawful to make available for use or use any restricted use pesticide contrary to such regulations, and section 12(a)(2)(G) makes it unlawful to use any registered pesticide in a manner inconsistent with its labeling. By prohibiting the misuse of pesticides, these provisions protect the environment and also prevent the growth of commonly recognized practices which would require the cancellation of registration of a pesticide, thereby assuring the continued use of pesticides in a manner designed to protect and improve the environment.

(2) *Extension to actions entirely within a single state.*—The existing law prohibits the sale or distribution of unregistered pesticides in interstate commerce. Section 3 of the bill would extend this prohibition to any commerce so that pesticides produced and sold in a single state would be subject to federal registration and all of the prohibitions of the Act.

(3) *Strengthening enforcement, proprietary rights in test data, and additional authorities.*—All of these provisions are designed to provide for tighter control of pesticide registration and use to insure protection to man and the environment. Registration of pesticide producing establishments will aid the Administrator in tracking down violations and accidental discharge or spillage. Stop sale, use, or removal orders and seizures will provide immediate means for preventing the use of dangerous pesticides. Improved procedures for registering and cancelling registration will speed desirable pesticides to the market and speed the removal of undesirable pesticides. Giving applicants proprietary rights in their test data will encourage applicants to spend the money necessary to test their products fully and assure their safety. Requiring subsequent applicants to make their own tests will serve as a double check on the original test procedures and either provide double assurance that the products are safe or show up their shortcomings.

Historical Background

The use of chemicals in agriculture began with the trend toward intensive farming in the mid-19th century. Cultivation of specialized crops created imbalances in nature which provided insects and other pests ideal conditions in which to multiply.

As an example, the Colorado potato beetle in 1850 lived on local plants and maintained a balanced population in its natural environment. When the early settlers planted potatoes, the beetles were furnished a vast new supply of food. They multiplied. They became a pest to the new settlers and spread eastward to other potato fields as a result of their own population pressure. Nothing was effective against this new pest until the arsenic compound, Paris green was applied.

By the latter half of the 19th century, United States agriculture was well on the way toward becoming a commercial production industry. Progressive scientific farming was promoted by the founding of the land-grant colleges, the agricultural experiment stations, and the creation of an extension-education system. These institutions, together with the United States Department of Agriculture, made up an extremely effective organization of applied research, informational and demonstration programs, and consulting services for farmers.

As a result of these developments in which the increasing use of chemical pesticides played an important role, most of U.S. food supplies and substantial quantities of food for export are now produced by fewer than 5 percent of the population.

Federal Inspection Act of 1910

As early as 1910 the distribution and use of chemical pesticides reached a level which required Federal regulation for the protection of users, consumers and the general public. Federal regulation of pesticides began with the enactment of the Federal Insecticide Act of 1910, although State regulation was undertaken in some States at an even earlier date.

The Federal Insecticide Act of 1910 prevented the manufacture, sale or transportation of adulterated or misbranded insecticides and fungicides and authorized regulation of sales of insecticides and fungicides.

As the number and variety of chemical pesticides manufactured and used increased, individual States increased the scope of their regulations. In 1946 the Council of State Governments developed a uniform insecticide, fungicide and rodenticide act for the consideration of and adoption by the individual States. At the same time the Congress began holding hearings on proposed more comprehensive Federal legislation.

FIFRA Enacted

In June 1947, the Insecticide Act of 1910 was repealed and replaced by the Federal Insecticide, Fungicide and Rodenticide Act. By this time great changes had occurred in the field of chemical pesticides, or economic poisons. New plant materials and synthetic chemicals developed through both private and publicly-financed research had greatly increased the number of pesticides available and widened the scope of their usefulness. DDT and herbicides were becoming increasingly important.

The 1947 Act required:

1. The registration of economic poisons or chemical pesticides prior to their sale or movement in interstate or foreign commerce.
2. The prominent display of poison warnings on labels of highly toxic pesticides.
3. The coloring or discoloring of dangerous white powdered insecticides to prevent their being mistaken for foodstuffs.
4. The inclusion of warning statements on the label to prevent injury to people, animals and plants.
5. The inclusion of instructions for use to provide adequate protection for the public.
6. That information be furnished the administrator of the Act with respect to the delivery, movement, or holding of pesticides.

This Act was designed to work in harmony with the uniform State insecticide, fungicide and rodenticide act which was adopted in many States.

MILLER AMENDMENT

In 1954 pesticide regulations were expanded further by an amendment to the Food and Drug Act authorizing its administrator to set tolerance limits for the residues of pesticides on foods.

This provision, known as the "Miller amendment," requires the pretesting of a chemical pesticide before it can be used on food crops. The manufacturer is required to provide detailed data to demonstrate to the administrator of the Federal Pesticide Act (FIFRA) that the chemical is useful to agriculture and how much residue, if any, will remain in or on a food crop after application.

The manufacturer must also supply scientific data on the toxicity of the chemical to warm-blooded animals. It is from these data and from their own research that the Federal Food and Drug Administration sets a tolerance or maximum amount of residue which may legally remain in or on the food crop when it is marketed.

1959 AMENDMENTS

After 1947 several new types of agricultural chemicals, generally referred to as nematocides, defoliants, desiccants, and plant regulators were developed and acquired widespread commercial use. Nematocides were used to control nematodes, or very small eelworms which attack the roots of plants. Defoliants were found useful to make leaves drop from plants to facilitate mechanical harvesting of the crop. Desiccants also were found useful in drying plant tissues to facilitate harvesting the crop. And, plant regulators were found useful under some conditions in regulating the growth processes of plants.

In 1959 the 1947 Act was again amended to include these products under the general regulatory provisions for economic poisons on chemical pesticides.

INCREASING CONCERN IN THE 1960'S

In the early 1960's increasing public concern regarding the longer run public health and ecological effects of some of the chemical pesticides led to the creation of a Presidential Scientific Advisory Committee which made a number of recommendations in its 1963 report.

It concluded among other things that,

1. Monitoring programs to obtain systematic data on pesticide residues should be expanded.
2. Federal research programs concerned with pesticides should be expanded and coordinated.
3. A broad educational program emphasizing the hazards in the use of pesticides should be undertaken.

It also recommended amendments to existing pesticide legislation to:

1. Eliminate "protest" registrations.
2. Require each pesticide to carry a license number identification, and
3. Include fish and wildlife as useful vertebrates and invertebrates under the Federal Pesticide Act.

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It was the consensus of that committee that mankind must continue to fight insects and other pests in the most efficient manner possible, and that an integrated program involving chemicals was absolutely necessary.

1964 Amendments

In 1964, amendments to the Federal Insecticide, Fungicide and Rodenticide Act of 1947 were adopted which, as recommended, eliminated protest registration and authorized each pesticide to carry a license number identification. The 1964 amendments also expedited procedures for suspending the marketing of previously registered pesticides which were found to be unsafe.

At that time, the Departments of Agriculture, Interior and Health, Education, and Welfare entered into an interdepartmental agreement, which among other things established procedures for resolving any differences they might have with respect to the licensing and regulation of new pesticides.

The appropriate use of chemical pesticides and the adequacy of existing regulations has continued to be widely discussed in the public forum. Various committees of both the House and the Senate have held hearings, studied the problem, and issued reports on pesticides and public policy and deficiencies in the administration of the Federal Insecticide, Fungicide and Rodenticide Act.

Two years ago the Department of Health, Education, and Welfare appointed a commission on pesticides and their relationship to environmental health. Over 5,000 references to published and ongoing scientific research were reviewed and evaluated by this Commission. It made a number of recommendations in November, 1969, which were considered by all agencies involved in regulations and research relating to pesticides and their use.

Creation of Environmental Protection Agency

A year later, President Nixon proposed a reorganization of the agencies of the Federal Government dealing with pesticides to more effectively deal with the problems in this area. In December, 1970, he transferred the pesticide and pure food regulatory staffs located in the Departments of Agriculture, Interior, and Health, Education, and Welfare to a new Environmental Protection Administration.

Pesticide Legislation Proposed

In February 1971 the President submitted the legislative recommendation which along with other proposals before the Committee became the basis for this bill.

Committee Deliberation

The Subcommittee on Agricultural Research and General Legislation held open hearings on four bills, S. 232, S. 272, S. 660, and S. 745, all of which deal with pesticide regulations, during the period March 23–26, 1971. All who wished to testify were provided an opportunity. Statements were presented to the subcommittee by a total of 70

witnesses. A number of other letters, statements, reports, and recommendations were also formally furnished the Committee in connection with the hearings.

Subsequently, on March 7 and 8, 1972, additional open hearings were held on a House passed pesticide bill, H.R. 10729, and a Committee Print thereof prepared especially for this purpose. At this time a total of 89 witnesses presented statements. As in the previous hearings additional papers were also made available to the Committee.

A list comprising 86 typewritten pages of all amendments proposed to H.R. 10729 and reasons therefor was prepared for subcommittee consideration. Subsequently Committee Print No. 2 was prepared illustrating a number of suggestions for amendments to the bill. The subcommittee, in executive session considered all of these, as well as other amendments. Most were accepted and are shown below:

AMENDMENTS RECOMMENDED BY THE SUBCOMMITTEE

(1) delete "pesticide" from "certified pesticide applicator" to avoid confusion with certified public accountants (CPA's);

(2) give EPA discretion as to the necessity for the physical presence of a certified applicator;

(3) define "imminent hazard" to include a situation involving hazard to survival of an endangered species;

4) define "ingredient statement" to require all pesticides to show the name and percentage of each active ingredient and the total percent of inert ingredients;

(5) require the establishment registration number to be shown on the label (rather than on accompanying labeling);

(6) classify a pesticide as misbranded if "when used in accordance with the requirements of the Act or commonly recognized practice" it causes substantial adverse effects on the environment;

(7) exclude non-toxic, vitamin-hormone products not intended for pest destruction from the definition of "plant regulator";

(8) leave the determination of what is a trade secret to the courts (rather than the Administrator);

(9) add to the provision for proprietary rights in test data a proviso permitting the Administrator to refer to any applicant's test data in evaluating the adequacy of another applicant's test data;

(10) give the Administrator discretion to give an applicant more than thirty days to make corrections;

(11) permit "other interested persons with the concurrence of the registrant" to contest the denial, cancellation, or suspension of registration, or a change in classification, where the registrant fails to do so;

(12) authorize the Administrator to require pesticide packaging and labeling for restricted use to be clearly distinguishable from packaging and labeling for general use;

(13) make restricted classification depend in part on the hazards involved in the use of a pesticide "in accordance with a commonly recognized practice";

(14) make it clear that EPA can withdraw its approval of a state certification plan;

(15) allow the Administrator to permit continued sale or use of a pesticide whose registration is cancelled where not inconsistent with the purposes of the Act;

(16) require submission of all scientific questions "at the outset of the hearing" to prevent delays through additional references while the hearing is proceeding;

(17) provide for entry by EPA of any place where pesticides or devices are held for distribution or sale (as well as manufacturing establishments);

(18) permit the Administrator (rather than the President by executive order in emergency conditions) to exempt federal or state agencies;

(19) require the Administrator to solicit the views of the Secretary of Agriculture before publishing regulations;

(20) authorize the Administrator to utilize the cooperative state extension services in providing information to farmers;

(21) make it clear that a state may provide registration to meet specific local needs (subject to disapproval by the Administrator);

(22) give the Administrator discretion as to which provisions of section 2(q)(1) (definition of misbranded) or section 7 (registration of establishments) shall be applicable to any class of device;

(23) extend the appropriation authority for the Act one year to fiscal 1975; and

(24) prohibit EPA from charging fees, other than reasonable registration fees.

Four amendments were passed for submission to the full Committee for its deliberation without subcommittee recommendation as follows:

Amendment 1, would authorize third parties to petition for cancellation or suspension and obtain judicial review. There were three alternative proposals:

(A) NACA proposal would make registration prima facie evidence of compliance for all purposes, provide for cancellation in contested cases only on the basis of scientific data not considered at time of registration, strike the provision for hearings initiated by the Administrator, and provide for judicial review in such cases in the district court;

(B) Hart-Nelson Amendment No. 1010 provided for review in such cases in the circuit court, prohibited stay of an agency action unless the party seeking the stay was likely to prevail and would suffer irreparable harm;

(C) EPA proposed appeal to the circuit court and indicated that the Hart-Nelson provision for a stay duplicated that already in the bill. EPA recommended an alternative version.

Amendment 2 would strike out the provision for indemnities to owners of pesticides for which registration is first suspended and then cancelled.

Amendment 3 would provide for citizens' civil actions for injunctive relief against the United States, the Administrator, or any other person. EPA suggested an alternative which would (i) limit it to cases against producers, applicators, and the Administrator; (ii) specify venue in the district in which the violation occurred, or in the case of suits against the Administrator, the District of Columbia; (iii) strike the provision for citizen intervention in U.S. suits and provide for

intervention by the U.S. (rather than the Administrator) in citizens suits; and (iv) provide for consolidation of like citizen suits.

Amendment 4 would strike the provisions of section 3(d)(1)(C) authorizing the Administrator to impose restrictions other than the requirement that the pesticide be applied by or under the direct supervision of a certified applicator.

Committee Print No. 3 was then prepared showing all of this action and was used by the full Committee as a basis for its deliberations.

The full Committee considered the bill submitted by the subcommittee on June 7, 1972.

The amendments recommended by the subcommittee were adopted and decisions were made on the four amendments presented by the subcommittee without recommendation.

With respect to Amendments No. 1 and No. 4 the full Committee adopted compromise proposals as follows:

The compromise proposal for Amendment 1—

(a) makes registration prima facie evidence of compliance only as long as no cancellation proceedings are pending;

(b) continues the present clear criteria (compliance with the Act) for cancellation proceedings;

(c) provides for the initiation of cancellation proceedings either by notice of intent to cancel, or notice of intent to hold a hearing (so that the Administrator may have the benefit of more information before he decides to cancel);

(d) provides for hearings on suspensions except in emergency situations;

(e) provides for judicial review by the court of appeals in all cases where there has been an administrative hearing and by the district court in all cases where there has not been an administrative hearing; and

(f) makes it clear that any person who will be adversely affected by an order may obtain judicial review.

Before adopting this compromise proposal, the Committee considered all of the numerous amendments submitted to clarify the procedure for judicial review, third-party participation in the administrative decision-making process, and the grounds which permit the Administrator to cancel a registration before a five-year period. The procedures adopted carry forward the language of present law by which the Administrator cancels where a substantial question exists. Under present practice third-parties may request the Administrator to review new data and determine whether formal proceedings should be commenced. The Committee action permits persons adversely affected to continue to be able to request review of the status of a registration and adversely affected persons, like users, also to participate in the administrative process. The language "adversely affected" is in present law and the Committee has rejected the House language which refers to "interested persons" so as to avoid any implication of desiring to change present law.

The Committee has determined that the Administrator should be able to call a hearing when he believes it useful rather than issue a notice of intent to cancel. Such a procedure permits the Administrator to initiate formal review without placing a stigma on a product when he is not convinced that the registration should be cancelled. It also

permits the Administrator to proceed without automatically cancelling if no specific request for a hearing is received.

After a hearing judicial review on petition by any person adversely affected is properly lodged in the courts of appeals, since an adequate record exists for such review. Where, however, the Administrator has determined no substantial question of safety exists which warrants formal review, and thus has refused to hold a hearing, review should be by a district court since there is no record for the court of appeals.

The Committee has also provided for expedited hearings on questions of suspension so that the procedure will be analogous to cancellation. Where a suspension action is taken prior to a hearing, a district court could stay the suspension pending the Administrator's determination after a hearing except such stay shall be dissolved at the time the Administrator issues a decision. If, after the hearing, the Administrator determines to suspend, the order becomes effective and any district court restraining order is dissolved, and the power to stay the Agency's order shall rest with the courts of appeals.

The Committee has also endorsed the House bill which eliminates the two-step procedure in present law requiring review by a scientific advisory committee followed by a public hearing. The House bill substitutes a procedure whereby at the start of a public hearing relevant questions of scientific fact are referred to a Committee of the National Academy of Sciences as part of the hearing procedures.

The compromise proposal for Amendment 4 leaves the Administrator with broad power to impose such regulatory restrictions as may be necessary, but gives any person adversely affected by such regulations 60 days to petition the court of appeals for review of such regulations.

The Committee adopted Amendment No. 2 and turned down Amendment No. 4. In addition it considered several minor amendments adopting several including technical amendments.

In connection with striking the indemnity provisions the Committee felt that with the tighter regulation provided by the bill, suspension and cancellation should rarely be necessary; and that on such rare occasions it should be possible to permit existing stocks to be used up in a safe manner. In this connection the Committee considered the following letter from Mr. David D. Dominick, Assistant Administrator, E.P.A., outlining the method to be used by EPA in cancelling registration:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., May 10, 1972.

Hon. HENRY BELLMON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BELLMON: You may recall that during our discussion of H.R. 10729, the proposed legislation for the regulation of pesticides, you were concerned that EPA have the flexibility to continue a registration for use during a growing season, even though we have determined after a hearing that the registration should be cancelled.

I believe our present authority under H.R. 10729 is sufficiently flexible to permit an orderly phase-out where farmers have relied on a pesticide for use during an upcoming growing season. It is open to

registrants and user groups to raise at the hearing any question bearing on the benefits of using a product. Any showing of need for a pesticide during an upcoming season would be relevant and the statute would permit us to issue an order that would result in a label use for a given season or period of time or indeed in a certain geographical location. It would be our policy to invoke this flexibility on a showing by affected groups that the particular chemical were needed for the growing season.

While I am reasonably confident that we have such flexibility, (see the attached memorandum), I think a few words to this effect in the Senate Committee Report could nail the situation down.

On a related subject, this matter underscores the importance for broad public participation in our regulatory process. As the law stands at present, users and interested groups, like environmentalists, have standing to participate in our decisions. The House bill has changed the language in the present act. It is our view that this change in language does not create a change in substance in view of the case law which does not suggest that courts view these two phrases differently. While we do not believe a change back to the original FIFRA language is required, the Committee may wish to include language in the Committee report which would clarify what we believe to be the case.

Sincerely,

DAVID D. DOMINICK,
Assistant Administrator for Categorical Programs.

The Subcommittee recommended and the full Committee approved the following comments:

1. A number of witnesses recommended amendments to specifically require the labeling to bear directions and warnings to protect farmers and others coming into contact with pesticides or residues; prohibit use of test data unless the tests were legal and voluntary; specifically mention danger to farmers and others coming in contact with pesticides or residues as a ground for restricted use classification; and specifically require certified applicators to have the ability to guard against such danger. The bill, as reported by the Committee, provides complete safeguards to protect farmers and others coming into contact with pesticides or residues. It does so in general terms that are very broad and cover much more than would be covered by the proposed amendments. The Committee felt that by specifically mentioning particular areas protected by the general provisions, there might be some suggestion that the general provisions should be construed to cover less than actually intended. Section 2(j) of the bill defines "*environment*" to include all men, whether they come into contact with the pesticides or pesticide residues, or not. Sections 2(q)(1) (F), (G), and (H) and 3(c)(6)(C) are designed to protect all men. The Committee believes there can be no question about the matter, but takes this occasion to emphasize that the bill requires the Administrator to require that the labeling and classification of pesticides be such as to protect farmers, farm workers, and others coming in contact with pesticides or pesticide residues.

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2. A number of witnesses supported amendments to—

(1) add a new definition, defining "unreasonable adverse effects on the environment",

(2) provide for use of the new definition in section 3(c)(5)(C) providing for approval of registration, and

(3) strike out the last sentence of section 3(c)(5) which prohibits denial of registration because of "lack of essentiality".

The Environmental Protection Agency advised the Committee that it would construe the new definition to have exactly the same meaning as that for "substantial adverse effects on the environment" in section 2(bb) of the bill, that adoption of the new definition would require additional changes throughout the bill, and that striking out the last sentence of section 3(c)(5), which prohibits denial of registration because of "lack of essentiality", would make no difference in the manner in which the bill was carried out. With respect to lack of essentiality, EPA said:

> We believe the present language of section 3(b) is preferable since it states Agency policy. Where two products pose the same degree of risk and are equally necessary and effective, one should not be registered in preference to the other. Of course, where the same control can be achieved more safely than with a product which is being examined, the definition of "substantial adverse effects" in section 2(bb) would itself mandate consideration of the alternatives.

Consequently the Committee did not adopt these amendments.

3. Dr. Ralph E. Heal, Executive Secretary of the National Pest Control Association, raised the following question at the Committee's hearings on this bill:

> At the hearings on S. 745 last year, our Association asked for an amendment that would permit enough flexibility in interpretation of label instructions to permit our industry to control certain minor pests legally under circumstances where no pesticide had been registered for the control of that pest. H.R. 10729 provides wording that could be interpreted as giving this flexibility when it says "Section 12(a)(2)(G) It shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling." The Report of the House Committee on Agriculture, No. 92–511, discussed the interpretation of "inconsistent," recommending that it be applied in a common sense manner (page 16, item 11). The illustration used, however, dealt with concentration of pesticide rather than species of pest to be controlled.
>
> We again ask your consideration of this question. A preliminary check has shown that we have no effective pesticide registered for the following pest problems:
>
> Honey bees nesting in a house.
> Book lice in a home.
> Strawberry root weevil invading a home.
> Springtails in an office.
> Box elder bug invading a house.

Carpenter bees in the siding of a house.
Bamboo borer in furniture.
Fungus beetles in a home.
Elm leaf bettles invading a home.
Wax moths from abandoned honey comb in a wall.
The blood sucking cone nose bug.

Undoubtedly there are many more. We cannot expect a manufacturer to go to the expense of registering a product for the control of minor and occasional pests such as these. But these pests can be controlled by pesticides that have been registered for control of other pests in comparable locations or environments. It would be helpful in the cause of permitting us to be a law-abiding industry if it were recognized that such a use of a pesticide would not be "inconsistent" with its labelling. If we can help in any way in formulating such a clarification we would want to do so.

This bill would regulate the use of a pesticide for the first time. It is not the intention of the Committee to prohibit any use which is in no way harmful, and which has only beneficial effects on man and his environment. The Committee considered an amendment to the bill to assure that such use would not be prohibited, but concluded that this was a matter which would have to be left to the good sense of the Administrator, the manufacturers, and the users. It is the hope of the Committee that by proper administration of the labeling requirements and administrative interpretations of the law and the labels approved by him, the Administrator will be able to make it clear to users that such uses are not prohibited. Further, it is the belief of the Committee that the use of the word "inconsistent" should be read and administered in a way so as to visit penalties only upon those individuals who have disregarded instructions on a label that would indicate to a man of ordinary intelligence that use not in accordance with such instructions might endanger the safety of others or the environment. Thus, for example, it would be expected that use of a general, unrestricted pesticide registered for use on enumerated household pests to exterminate a pest not specified on the label would not be inconsistent with the labeling. On the other hand, the use of even a general use pesticide in a manner inconsistent with a specified caution or restriction on the label should be considered inconsistent with the labeling. For example, the use in the home of a general use pesticide labeled "for use outdoors", or "not for use in enclosed areas", would be prohibited under this provision.

4. The Senate Committee considered the decision of the House Committee to deprive political subdivisions of States and other local authorities of any authority or jurisdiction over pesticides and concurs with the decision of the House of Representatives. Clearly, the fifty States and the Federal Government provide sufficient jurisdictions to properly regulate pesticides. Moreover, few, if any, local authorities whether towns, counties, villages, or municipalities have the financial wherewithal to provide necessary expert regulation comparable with that provided by the State and Federal Governments. On this basis and on the basis that permitting such regulation would be an extreme burden on interstate commerce, it is the intent that section 24, by not providing any authority to political subdivisions and other local

authorities of or in the States, should be understood as depriving such local authorities and political subdivisions of any and all jurisdiction and authority over pesticides and the regulation of pesticides.

5. Sec. 164.31(c) of the rules of procedure which were proposed and published in the Federal Register of January 22, 1972, would authorize any witness testifying in a review proceeding under the Act to record his testimony for subsequent televising or broadcasting. The Committee disapproves of this provision. The review proceedings authorized by section 6 are adjudicatory in nature. As such they are subject to the various statutory and constitutional provisions relating to adjudicatory hearings. The purpose of the hearings is to provide a record of competent scientific evidence for the consideration of the Administrator in making his decision as to whether or not a registration should be granted or denied. The obligation is on the Administrator to make this decision based upon the record as a whole and not upon any one part of the record. Televising or broadcasting is of necessity related to just one portion of a witness' testimony. It would of necessity exclude any cross-examination or other testimony which would raise a question as to the qualifications of the witness or the validity of this testimony.

The rules published on May 11, 1972, did not include the provision discussed above, and the Committee does not approve of their inclusion at any later date.

Cost Estimate

In accordance with section 252 of the Legislative Reorganization Act of 1970, the Committee agrees with the cost estimates submitted by the Environmental Protection Agency for new activities required by the bill. No costs would be incurred under the bill in the current fiscal year. Costs would amount to $15.0 million in FY 1973; $22.3 million in FY 1974; $30.8 million in FY 1975; $32.2 million in FY 1976; and $31.4 million in FY 1977.

Section-by-Section Analysis

Sections 1, 3, and 4 of H.R. 10729 deal with matters that do not directly amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Section 1 of H.R. 10729 sets forth the popular Act citation of this bill as the "Federal Environmental Pesticide Control Act of 1971."

Section 3 of H.R. 10729 amends the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, and the Federal Food, Drug, and Cosmetic Act to change the term "economic poison" to the term "pesticide" in order to reflect the change in FIFRA.

Section 4 of H.R. 10729 deals with effective dates of various provisions.

This section provides that except as otherwise noted hereafter the amendments to the Act are effective upon enactment. If regulations are required prior to effectuation of an amendment they shall be prescribed within 90 days after enactment. Provisions of present law are in effect until superseded as provided above or hereafter, and all amendments are required to be effective within four years of enactment.

The following exceptions to immediate effectiveness of amendments enacted are made:

(1) All new registrations of pesticides after such regulations are promulgated shall be in accordance with regulations governing registration and classification promulgated within two years of enactment of this Act.

(2) All registrations existing prior to promulgation of the above regulations shall be re-registered and classified in accordance with those regulations after two years but within four years of enactment of the Act.

(3) Any requirements that a pesticide can be used only by a certified pesticide applicator shall not take effect until four years from enactment.

(4) Certification of applicators shall take place during a four year period from the date of enactment. Standards for certification shall have been prescribed one year from enactment. State plans for certification shall have been submitted to the Administrator within three years from enactment. Within one year of such submission the Administrator must approve the State plan, or disapprove and state reasons.

(5) One year from enactment the Administrator is to have in effect regulations governing the registration of establishments, experimental use permits, and the keeping of books and records.

In addition to the foregoing, the Administrator shall publish in the Federal Register regulations relating to criminal and civil penalty, and no person shall be subject to such a penalty under the amendments of this Act until 60 days after the Administrator has published the final regulations and taken such other action as may be necessary to permit compliance.

The present FIFRA shall be treated as continuing in effect as if this Act had not been enacted where a question arises as to a criminal or civil penalty or liability to any third person in respect to any act or omission occurring before the expiration of the periods referred to in this section.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

Section 2 of H.R. 10729 rewrites FIFRA into the following 27 sections:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

This section provides that the Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act" and provides a detailed table of contents of the Act.

SECTION 2. DEFINITIONS

Section 2 includes many of the definitions in the present FIFRA, with several important changes or additions.

A "certified applicator" is one certified by the State or Federal government according to standards prescribed by the Administrator to use restricted use pesticides.

A "private applicator" is a certified applicator who uses restricted use pesticides only on his own or his employer's property, or on the property of another without compensation.

A "commercial applicator" is any certified applicator other than a private applicator.

A requirement imposed on the application of restricted use pesticides is clarified by the definition of "Under the direct supervision of a certified applicator," which can mean that the certified applicator does not have to be physically present at the site of application if the person applying the pesticide is competent and properly instructed. However, the Administrator may require the physical presence of the certified applicator if the pesticide poses a particular threat to health or the environment which requires close supervision.

The definition of "ingredient statement" is amended to make one requirement applicable to all pesticides rather than making two alternatives available.

The definition of "misbranded" is amended to include requirements based on other provisions of the Act. For example, labels must bear an establishment registration number and use classification.

"Protect health and the environment" is defined, and includes the requirement to take into account the public interest. "Substantial Adverse Effects on the Environment" contains the same requirement.

SECTION J. REGISTRATION OF PESTICIDES

Subsection (a) requires that all pesticides in the channels of U.S. trade must be registered with the Administrator. Under present law only those pesticides in interstate commerce have to be so registered.

Subsection (b) exempts from registration pesticides which are transferred from one establishment to another operated by the same pesticide producer, and pesticides transferred in accordance with an experimental use permit.

Subsection (c) sets forth registration procedures. Each application for a registration must include the name and address of the applicant; the name of the pesticide; the labeling, claims, and directions for the pesticide; a description of tests made and results if the Administrator requests; the pesticide formula; and a request for classification. Tests made and their results are not to be considered by the Administrator, without permission of the applicant, in support of any other application for registration, but may be used to determine the adequacy of an applicant's data.

This subsection requires the Administrator to publish guidelines concerning registration information he will require.

He is also required to make available to the public within 30 days after he registers a pesticide the data called for in the registration statement together with such other scientific information as he deems relevant to his decision except for trade secrets as provided under section 10.

Under this subsection, the Administrator is required to approve or deny registration as expeditiously as possible. He is to publish in the Federal Register notice of applications received for the registration of those pesticides containing a new active ingredient or for which a changed use pattern is proposed.

The subsection provides that the Administrator shall approve a registration if he determines that, when considered with any section 3(d) restrictions, the pesticide warrants the claims made for it, its labeling complies with the Act, and it will not have substantial adverse effects on the environment when properly used. If such determination cannot be made the Administrator shall notify the applicant and state why the above requirements are not met. The applicant has thirty days to make necessary corrections. At the end of this period the Administrator may, if the corrections are not made, refuse to register the pesticide and publish the refusal in the Federal Register or allow the applicant more time. The applicant or another interested person then has recourse to the administrative remedies in section 6. Lack of essentiality of the pesticide cannot be a criterion for denial of registration. Registration may be denied because the pesticide is not effective or because it is dangerous, but registration cannot be denied simply because the existence of an alternate means of control makes the new pesticide not essential. Pests may develop an immunity to one pesticide, or undersirable side effects or deficiencies in one pesticide may show up, making the existence of an alternate presticide desirable.

The burden of proof remains with the applicant (as in FIFRA) to substantiate the claims for the pesticide by test data and otherwise to support the registration of a pesticide. It is only after the Administrator has reviewed all of the test data and any other information he may require to support a registration and has found that its composition is such as to warrant the proposed claims for it, that the labeling and other material required to be sumbitted comply with the Act, and that it will perform its intended function without substantial adverse effects on the environment that he may register a pesticide. If the applicant cannot satisfy the Administrator on the above requirements the pesticide will not be registered.

Subsection (d) provides authority for the classification of pesticides and where applicable the imposition of restrictions on their use.

Subparagraph (A) of Paragraph (1) states that a pesticide may be classified for general use, for restricted use, or both. In the case of a pesticide for both general and restricted use the bill requires that directions for each be separate and distinguishable or, if the Administrator requires, that the packaging and labeling for each be separate and distinguishable.

Subparagraph (B) specifies that a general use pesticide is one which the Administrator has determined will not cause substantial adverse effects on the environment when applied in accordance with its directions for use and warning or caution statement, or in accordance with a commonly recognized practice.

Subparagraph (C) specifies that a restricted use pesticide is one which the Administrator has determined could cause substantial adverse effects on the environment without additional regulatory restrictions.

This subparagraph further provides that when the pesticide presents a hazard to the applicator or other persons, it must be used only by or under the supervision of a certified applicator. If the pesticide presents a hazard to the environment, it must be used by or under the direct supervision of a certified applicator, or be subject to othei regulatory restrictions. Explanation: Any such regulatory restriction (other than

requirement of application by a certified applicator) would be subject to review in the appropriate court of appeals upon petition of any party adversely affected filed within 60 days after issuance of the regulation.

The foregoing classification and restriction provisions are not contained in present law and (together with the provisions prohibiting any use inconsistent with the labeling and prohibiting the making available for use, or using any pesticide other than in accordance with the provisions of this subsection) constitute entry of Federal regulation into a significantly unregulated area. General use pesticides will be regulated as to labeling as all pesticides under Federal jurisdiction are regulated at present, and, in addition, will be regulated as to use in accordance with the labeling. Registration for specific uses under specified conditions, as well as directions for use, warnings, and cautions constitute the major means to control pesticide use under present law. But there is nothing in the present law requiring that those directions, warnings, and cautions be followed. The provisions of the bill requiring compliance with the labeling, providing for classifying pesticides for restricted use, in some cases requiring that they be applied by or under the supervision of a certified applicator, and in other cases requiring them to be subject to different regulatory restrictions are the key new authorities of the bill. Such provisions enable the Environmental Protection Agency to impose a variety of restrictions as the nature and uses of the pesticide warrant in order to protect persons and the environment, while U.S. agriculture continues to derive the benefits of pesticides use.

The bill makes provisions for certifying pesticide applicators as competent to safely and properly use the pesticides they will apply, and provisions are made for requiring restricted use pesticides to be applied only by such a certified applicator (or a person under his direct supervision) or subject to such other restrictions as the Administrator may determine necessary. The flexibility of these provisions will allow the Administrator, in accordance with the guidelines in the Act, to establish restrictions which are suited to the degree of hazard and adverse environmental effects that could be caused by the misuse of the pesticide. For example, in some cases only the signing of a poison or pesticide register would be required while in other cases the purchaser or user might be required to certify that he has read the instructions and will apply it in accordance with such instructions. In other cases general or seasonal licenses, permits, or other forms of approval may be required; but it is not intended that anything similar to the "permit only" type of restriction proposed in S. 745 is to be required.

Section 3(d)(1)(C)(ii) establishes a system to assure a full and fair consideration of alternative or additional restrictions which the Administrator may wish to impose. The Committee wishes to emphasize, however, that the language contained in this paragraph authorizing the Administrator to impose alternative restrictions does not constitute open-ended authorization for the Administrator. Specifically, the authorization to impose such restrictions does not constitute authorization to establish restrictions which would create a use-by-permit only category or other restrictions such as were disapproved in Report No. 92–511 of the House Agriculture Committee, page 15, paragraph

7, or to impose any gallonage or poundage restrictions. This does not, however, preclude the Administrator from regulating the quantity to be applied for a given use for a particular application to a particular crop in a given area at a given time, from limiting the number of applications, or from prohibiting the use thereof; nor does it preclude the Administrator from enforcing such regulations, limitations, or prohibitions through such measures as certification, the signing of registers, or the regulation of appropriate outlets for distribution. The Administrator may, in determining such restrictions, take into account the overall effects on the environment of the probable amount of a chemical that will be used for a given purpose in a given area at a given time.

It is anticipated that the Administrator in determining upon such restrictions will coordinate them with controls which are imposed by the various states, and thus prevent conflicting or overlapping federal and state controls.

The Committee has provided that these restrictions shall be adopted by regulation after affording interested and adversely affected parties an opportunity to comment. It is contemplated where hearings are appropriate the Administrator will afford the public a chance to present views in addition to the formal submission of written comment. In order to simplify the administration of this section, jurisdiction to review regulations issued under the authority in this section is vested in the courts of appeals. The classification of a particular pesticide for restricted use and the imposition of a particular restriction as part of its registration is, however, still subject to review under Section 6, except that no question as to the validity of regulations issued under this section shall be raised except by petitions to review in the courts of appeals filed within 60 days of the publication of the regulation.

Paragraph (2) requires the Administrator to notify the registrant 30 days before changing the classification of a pesticide, and to publish the proposed changes in the Federal Register. Remedies for such a registrant or other interested person are contained in Section 6.

Subsection (e) permits a registrant to register as a single pesticide products having the same formulation, claims, and identifying label designation.

Subsection (f) provides for minor changes to registrations, prohibits construing registration as a defense for any offense under the bill, and states the Administrator may consult with other Federal agencies on registration matters.

SECTION 4. USE OF RESTRICTED USE PESTICIDES; CERTIFIED APPLICATORS

This section provides for Federal or State certification of applicators of pesticides according to standards prescribed by the Administrator. A State may certify applicators if a plan submitted by the Governor is approved which designates a State agency to administer the plan; assures legal authority, adequate funds, and qualified personnel to execute the plan; provides for reports to the Administrator; and contains applicator certification standards at least equal to those prescribed by the Administrator. A State must be given due notice and opportunity for hearing if the Administrator rejects a pesticide applicator certification plan; and must maintain its certification

program in accordance with the plan approved by the Administrator or approval could be withdrawn after opportunity for hearing.

The provisions for certification of applicators comprise new and important authorities for regulating pesticide use. Many restricted use pesticides would be restricted to use by certified applicators whose misuse of pesticides could result in withdrawal of certification. In the case of commercial applicators, such action would be extremely serious. In the case of private applicators such action would remove from them the opportunity to obtain and use restricted use pesticides so regulated.

Further, the educational process entailed by certification provides an opportunity not only to greatly diminish the possibility of injury to persons but also injury to the environment from both misuse and, more importantly, overuse.

SECTION 5. EXPERIMENTAL USE PERMITS

The Administrator may issue, under terms and conditions established by him, an experimental use permit if an applicant meeds such a permit in order to accumulate information necessary to register a pesticide. Such a permit may be revoked if its terms or conditions are violated or are inadequate to avoid substantial adverse effects on the environment.

This section also provides that the administrator may under such terms and conditions as he may by regulation prescribed authorize any State to issue an experimental use permit. The provisions relating to State plans under section 4 apply for the issuance of experimental use permits under section 5.

SECTION 6. ADMINISTRATIVE REVIEW; SUSPENSION

Subsection (a) provides that any registration terminates at the end of five years unless the registrant or another interested person, with the concurrence of the registrant, requests continuation of the registration. The Administrator is authorized to permit the sale and use of pesticides whose registrations are canceled under this subsection or subsection (b) if such sale or use is not inconsistent with the purposes of the Act. The Administrator is required to publish in the Federal Register notice of registrations which will be canceled under this subsection.

Subsection (b) authorizes the Administrator to issue a notice of intent to cancel a registration or change its classification or intent to hold a hearing on a registration or classification if it does not appear that a pesticide is in compliance with the Act. Unless the registrant makes the necessary corrections, or he or any other adversely affected person requests a hearing, in the case of notice of intent to cancel the notice of intent becomes a final order at the end of 30 days. In the case of notice of intent to hold a hearing, or if a hearing is requested after a notice of intent to cancel the decision reached after the hearing will be final. Subsection (c) authorizes the Administrator to issue an order of suspension if he (1) determines that an imminent hazard exists, (2) issues at the same time a notice of intent to cancel, and (3) has given prior notice to the registrant.

When notified of the Administrator's intent to suspend, a registrant has five days to request a hearing. If requested, the hearing must occur within five days, and parties to the hearing can only be the registrant and the Agency, with briefs filed by adversely affected persons permitted. After the hearing the Administrator issues a final order on suspension within seven days. If no hearing is requested, the notice of intent to suspend becomes a final order not reviewable by a court.

Subsection (c) also provides for an emergency suspension order prior to hearing, with an expedited hearing provided in accordance with the foregoing procedures.

A final order of suspension following a hearing would be reviewable by a Court of Appeals under Section 15. Orders issued prior to a hearing are subject to immediate review in a district court to determine if they were arbitrary, capricious, or an abuse of discretion, or not issued in accordance with statutory procedures.

Subsection (d) sets forth procedures for hearings pursuant to Subsection (b) and provides for scientific review. When an applicant requests a public hearing, at the outset of such hearing any party (including the hearing officer) may refer questions of scientific fact to a Committee of the National Academy of Sciences. Such Committee would be required to report in writing to the hearing officer within sixty days on these questions of scientific fact and the report would be made public and considered as part of the hearing record.

This language in the bill relating to scientific advice would maintain a role for scientific advisory committees of the National Academy of Sciences equivalent to that in the present provisions of FIFRA. The amended language would have the further benefit of allowing the advisory committee to consider questions of scientific fact while the public hearing is in process rather than in a completely separate administrative review process which causes long delays and division of responsibility for actions under the Act. However, the Committee would meet outside of the public hearing so that the scientists who participate would not be subject to cross-examination and other procedural strictures.

As soon as practicable after completion of the public hearing but not later than 90 days thereafter the Administrator must evaluate the data and reports and issue a final order. Under section 6(d) the Administrator after completion of the administrative review proceedings is required to issue an order appropriate to the proceedings which have occurred. Thus, he may by order (1) revoke his notice of intention issued under section 6(b); (2) grant registration; (3) cancel registration, change the classification, or deny registration; or (4) require a modification of the labeling or packaging of the pesticide.

All final orders of the Administrator would be subject to judicial review pursuant to section 15 of the Act.

SECTION 7. REGISTRATION OF ESTABLISHMENTS

Products subject to registration under Section 3 of the Act must be produced in establishments which are registered with the Administrator. The producer who operates an establishment must inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and, when required pursuant to Section 25(c)(4),

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devices which he is currently producing, produced during the past year, or which he has sold or distributed during the past year. Such information is required to be kept current and submitted to the Administrator annually. All such information is considered confidential and subject to the provisions of Section 10.

This section is not meant to include farming operations where a grower might mix two or more pesticides in a single container before applying them to his fields. The grower must comply with all requirements imposed on pesticides used but is not required to register his mixing operations under this section.

SECTION 8. BOOKS AND RECORDS

The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the products produced as are necessary for enforcement of the Act. Such records required do not extend to financial data, sales data other than shipment data, pricing data, personnel data, or research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

Any officer or employee of the Environmental Protection Agency or of any State or political subdivision duly designated by the Administrator shall at reasonable times have access to and may copy records showing the delivery, movement or holding of pesticides and devices, or related information if the above is not available. Such access does not extend to sales, financing, pricing and similar data.

SECTION 9. INSPECTION OF ESTABLISHMENTS

For purposes of enforcing the Act officers or employees duly designated by the Administrator are authorized to enter any establishment or other place where pesticides are held for distribution or sale at reasonable times to inspect and obtain samples of any pesticides or devices which are packaged, labeled, and released for shipment, and samples of any containers or labeling for such products. Before an inspection appropriate credentials and a written statement as to the reason for the inspection and whether a violation of law is suspected must be given. If samples are obtained an equal portion of such sample must be left with the establishment, and a copy of any analysis which may be made must be furnished. This section also authorizes officers or employees duly designated by the Administrator to obtain and execute a warrant for inspection and reproduction of certain records and for the seizure of products in violation of the Act.

If the examination of pesticides or devices indicates that they fail to comply with the Act, the Administrator must give notice to the person against whom proceedings are contemplated and provide an opportunity to present his views. If thereafter the Administrator believes the Act has been violated he shall certify the facts to the Attorney General for the institution of criminal proceedings, or shall institute civil proceedings if he believes that such action will be sufficient to effectuate the purposes of the Act. However, this notice and opportunity to present views are not prerequisites to the institution issued in lieu of a prosecution for minor violations if the Administrator believes the public interest will be served.

SECTION 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION

Section 10 of the Act provides that an applicant for the registration of a pesticide may mark any part of the data submitted which in his opinion are trade secrets or commercial or financial information and submit such material separately from the other material required.

The Administrator would not make public any such information which contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out provisions of the Act, information relating to formulas or products acquired by authorization of the Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

With regard to the public disclosure of data submitted under subsection (a) the Committee deleted the phrase "in his judgment" from subsection (b) of the House passed bill in order that the subsection would not infer that the Administrator's decision to release trade secrets or confidential information to the public is not reviewable in an appropriate court. Where information is submitted to EPA and is marked that in the opinion of the registrant or applicant it is a trade secret or commercial or financial information and privileged or confidential, the Committee would expect the Administrator to give the applicant or registrant notice, before he would release any such data so marked, of his intention to release it. This would give to the registrant or applicant the opportunity to bring an action in an appropriate court to obtain a decision by that court of whether or not the data may be released.

SECTION 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS

This section exempts private pesticide applicators from any record-keeping or report regulations prescribed by the Administrator under the Act, and provides that the Administrator shall establish certification standards for commercial and private applicators.

SECTION 12. UNLAWFUL ACTS

This section includes many prohibited acts from present law and is expanded to cover intrastate acts and to prohibit violations of the provisions of the Act. Among the new prohibitions is refusal to permit lawful inspection of an establishment or sampling of a pesticide; advertisement of a restricted use product not containing such classification; making available for use, or using, a restricted use pesticide other than as provided under the Act or inconsistant with its labeling; and violation of a "stop sale, use, or removal" order.

Violation of record-keeping and establishment registration provisions is also prohibited.

The section also provides exemption for certain persons dealing with pesticides.

SECTION 13. STOP SALE, USE, REMOVAL, AND SEIZURE

Subsection (a) of this section authorizes the Administrator to issue a "stop sale, use, or removal" order to any person possessing a pesticide or device if he believes that the pesticide or device is or will be sold

in violation of the Act or if the registration has been suspended or is subject to a final cancellation order.

Subsection (b) authorizes condemnation and seizure of pesticides if they are adulterated, misbranded, not registered, improperly labeled, not colored or discolored as required, or falsely represented as to claims or directions for use. A misbranded device is liable to similar action, as are pesticides and devices which, when used as directed on the label and as required under the Act, nevertheless cause substantial adverse effects on the environment.

Subsection (c) provides for the disposition of condemned and seized pesticides and devices by distribution, sale, or return to the owner under certain conditions and upon the posting of a bond.

Subsection (d) provides for awarding court costs and other expenses against the claimant of the pesticide or device subject to this section.

SECTION 14. PENALTIES

H.R. 10729 contains provisions for civil penalties. Such provisions are not included in the existing FIFRA. A registrant, commercial applicator, or dealer violating any provision of the Act would be subject to a civil penalty of not more than $5,000 for each offense, except that a private applicator or any other person would be subject to only a $1,000 penalty, and only after receiving a written warning or citation for a prior violation. No civil penalty could be assessed until the person charged has been given a notice and an opportunity for a hearing in the county, parish or city of his residence.

Civil penalty provisions are considered a necessary part of a regulatory program such as pesticides control. While the criminal provisions may be used where circumstances warrant, the flexibility of having civil remedies available provides an appropriate means of enforcement without subjecting a person to criminal sanctions. The alleged violator is always provided an opportunity for a hearing before any civil penalty may be assessed, and any misunderstanding as to what constitutes compliance with the Act can be considered by the Administrator and the penalty penalty dispensed with if warranted.

The bill also provides that any registrant, commercial applicator, or dealer who knowingly violates any provision of the Act shall be guilty of a misdemeanor and on conviction be fined not more than $25,000 or imprisoned for not more than one year or both, except that a private pesticide applicator or any other person could be fined not more than $1,000 or imprisoned not more than 30 days, or both.

SECTION 15. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW

Subsection (a) provides that, except as is otherwise provided in the Act, refusals by EPA to cancel or suspend registrations or change classifications where no hearing has been held, and other final EPA actions not committed to the discretion of the agency, are reviewable in the district courts.

Subsection (b) provides that other actions of the Agency are reviewable in the Courts of Appeals. This subsection provides that in the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any person who will be adversely affected by the order may obtain judicial review by

filing in the U.S. Court of Appeals for the circuit where such person resides or has a place of business within 60 days a petition that the order be set aside in whole or in part. In its review the court shall consider all evidence of record and shall sustain the order of the Administrator if it is supported by substantial evidence when considered on the record as a whole. The commencement of proceedings under this section does not, unless the court specifically orders to the contrary, operate as a stay of any order. The court is required to expedite the disposition of cases filed under this section.

Subsection (c) provides that the district courts of the U.S. are vested with jurisdiction to enforce, and to prevent and restrain violations of the Act.

Subsection (d) provides that the Administrator must give notice by publication or otherwise of all judgments entered in actions under the Act.

The Committee has simplified the procedures for judicial review of agency actions by providing that all actions taken after a hearing shall be reviewed by the courts of appeals and all actions taken without a hearing, unless otherwise provided in the Act, shall be reviewable in district courts.

Judicial review in district courts will be in accordance with the law generally applicable to administrative procedure.

The Committee has added language to clarify existing law and make clear that the decision to cancel or suspend is not one committed to agency discretion by law.

The district courts also have jurisdiction to enforce orders and restrain violations of the Act.

SECTION 16. IMPORTS AND EXPORTS

Subsection (a) exempts from the provisions of the Act an exported pesticide or device which is in accordance with the specifications of the foreign purchaser.

Subsection (b) requires the Administrator to transmit through the State Department to foreign governments and international agencies notice of pesticide registration cancellations.

Subsection (c) provides for the inspection of samples of imported pesticides and devices provided by the Secretary of the Treasury to the Administrator, and for the refusal of admission of a pesticide or device upon a finding by the Administrator that it is in violation of the Act. Disposition of such products is provided as well as payment of expenses incurred by such finding and refusal of admission.

Subsection (d) requires the Administrator to participate in international efforts to develop improved pesticide research and regulations, and subsection (e) requires the Secretary of the Treasury to prescribe regulations under this section.

SECTION 17. EXEMPTION OF FEDERAL AGENCIES

This section authorizes the Administrator to exempt a Federal or State agency from any provision of the Act if he determines that exemption is consistent with the purposes of the Act and the public interest.

SECTION 18. DISPOSAL AND TRANSPORTATION

Section 18 provides that the Administrator of the Environmental Protection Agency shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides. The Administrator would be also required to accept at convenient locations for safe disposal a pesticide the registration of which has been cancelled under section 6(c) if requested by the owner of the pesticide.

Section 6(c) of the Act provides for the suspension of a pesticide when such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings. This section also provides that a cancellation proceeding has to be initiated at the same time a registration is suspended so as to provide the affected party with an opportunity for a hearing. The Administrator would not, of course, be required to accept pesticides for disposal until any hearing and review procedures have been completed and a final order issued. Since this requirement to accept for disposal is keyed to suspensions under section 6(c) and not to all pesticide cancellations, such disposal by the government should not be required frequently.

The Administrator of EPA would also be required under section 18 to advise the Secretary of Transportation with respect to the transportation in light of the Secretary's responsibilities regarding hazardous materials.

SECTION 19. RESEARCH AND MONITORING

This section authorizes the Administrator to use necessary means to undertake pesticides research, giving priority to biologically integrated alternatives to chemicals for pest control; to establish and implement a national plan for monitoring pesticides, as well as undertake other monitoring activities necessitated by provisions of the Act.

SECTION 20. SOLICITATION OF PUBLIC COMMENTS

This section requires the Administrator to solicit the views of the Secretary of Agriculture before publishing regulations under this Act.

Section 20 also provides that in addition to any other authority relating to public hearings and solicitation of views in connection with the suspension or cancellation of a pesticide registration or other action under the Act, the Administrator may solicit views of all interested parties and seek such advice from farmers, farm organizations, and other qualified persons as he deems proper.

SECTION 21. DELEGATION AND COOPERATION

This section authorizes the delegation of authorities vested in the Administrator under the Act to his designees, and provides for cooperation by the Administrator with other Federal agencies and with agencies of State and local governments in carrying out the Act.

SECTION 22. STATE COOPERATION, AID, AND TRAINING

This section authorizes the Administrator to enter into cooperative agreements with States for purposes of enforcement of the Act, including training of personnel and including grants for enforcement

programs, and to assist States in establishing applicator certification programs. Further, he may enter into contracts with Federal and State agencies for the purpose of encouraging certified applicator training. The Administrator may also keep farmers informed on pesticide uses and regulations through the Cooperative State Extension Services.

SECTION 23. AUTHORITY OF STATES

This section specifies the authorities retained by the States under the Act. Generally, the intent of the provision is to leave to the States the authority to impose stricter regulation on pesticides use than that required under the Act.

Subsection (a) gives States the authority to regulate the sale or use of a pesticide or device so long as such regulation does not permit sale or use prohibited under the Act.

Subsection (b) preempts any State labeling or packaging requirements differing from such requirements under the Act.

Subsection (c) provides the Administrator with authority to certify a State for the purpose of registering pesticides formulated for intrastate distribution to meet specific local needs. Such registration would not be effective for more than 90 days if disapproved by the Administrator within that period. The purpose of this subsection is to give a State the opportunity to meet expeditiously and with less cost and administrative burden on the registrant the problem of registering for local use a pesticide needed to treat a pest infestation which is a problem in such State but is not sufficiently widespread to warrant the expense and difficulties of Federal registration.

SECTION 24. AUTHORITY OF THE ADMINISTRATOR

Subsection (a) of this section authorizes the Administrator to prescribe regulations to carry out the Act.

Subsection (b) provides for exemption of pesticides adequately regulated by another Federal agency or unnecessary to be subject to the Act.

Subsection (c) authorizes the Administrator, after notice and opportunity for hearing, to declare as pests certain forms of life, determine which pesticides are highly toxic to man, establish packaging standards, specify classes of devices subject to certain provisions of the Act, prescribe regulations for the discoloration or coloring of pesticides, and determine and establish suitable names to be used in ingredient statements.

SECTION 25. SEVERABILITY

This standard severability section states that the provisions of the Act are severable, and the invalidity of one does not affect the validity of the others.

SECTION 26. AUTHORIZATION FOR APPROPRIATIONS

This section authorizes appropriation of such sums as may be necessary to carry out the provisions of the Act for fiscal years 1973, 1974, and 1975. Thereafter new legislation will determine authorized appropriations. The section provides that the expenses of the Federal government in carrying out the Act are to be paid from general appropriations, not fees, except that reasonable registration fees may be charged.

Changes in existing law made by the bill, as passed by the House, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman, editorial notes are shown in boldface):

Sections of existing law appear below in the order in which they appear in existing law. Sections of the bill are shown with the sections of existing law to which they relate. To locate sections of the bill, use the following table:

For the following section of H.R. 10729:	See the following section of existing law:
Section 1	Section 1.
Section 2	Section 2.
Section 3	Section 4.
Section 3(b)	Section 4(e).
Section 4	(New) after Section 4.
Section 5	(New) after Section 4.
Section 6(a)(1)	Section 4f.
Section 6(a)(2), 6(b), 6(c), 6(d), and 6(e).	Section 4c.
Section 7	(New) after Section 4.
Section 8	Section 5.
Section 9(a) and (b)	(New) at end of bill.
Section 9(c)	Section 6c.
Section 10	(New) at end of bill.
Section 11	(New) at end of bill.
Section 12(a)(1)	Section 3.
Section 12(a)(2)	Section 3c.
Section 12(b)	Section 7.
Section 13	Section 9.
Section 14	Section 8.
Section 15	(New) at end of bill.
Section 15(a)	(New) at end of bill.
Section 15(b)	Section 4d.
Sections 15(c) and (d)	Sections 6d and e.
Section 16(a)	Section 3b.
Sections 16(b), (c), and (d)	Section 10.
Section 16(e)	Section 6b.
Section 17	(New) at end of bill.
Section 18	(New) at end of bill.
Section 19	(New) at end of bill.
Section 20	(New) at end of bill.
Section 21(a)	Section 11.
Section 21(b)	Section 13.
Section 22	(New) at end of bill.
Section 23	(New) at end of bill.
Section 24	Section 6a.
Section 25	Section 14.
Section 26	Section 12.

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

[TITLE]

Sec. 1. Short Title and Table of Contents.

[SECTION 1.] (*a*) Short Title.—This Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act."

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Sec. 23. Authority of States.
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(a) *Regulations.*
(b) *Exemption of pesticides.*
(c) *Other authority.*
Sec. 25. Severability.
Sec. 26. Authorization for appropriations.

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Subsections of section 2 are set out below in the order in which they appear in existing law. The following table will help to locate the corresponding subsections in the bill (which rearranges the definitions in alphabetical order)

Subsection of bill	Subsection of existing law
(a) Active Ingredient	p.
(b) Administrator	u. (Secretary).
(c) Adulterated	y.
(d) Animal	New.
(e) Certified Pesticide Applicator, Etc.	New.
(f) Defoliant	i.
(g) Dessicant	j.
(h) Device	b.
(i) District Court	New.
(j) Environment	New.
(k) Fungus	n.
(l) Imminent Hazard	New.
(m) Inert Ingredient	g.
(n) Ingredient Statement	o.
(o) Insect	m.
(p) Label and Labeling	w. and x.
(q) Misbranded	z.
(r) Nematode	k.
(s) Person	s.
(t) Pest	New.
(u) Pesticide	a.
(v) Plant Regulator	r.
(w) Producer and Produce	New.
(x) Protect Health and the Environment.	New.
(y) Registrant	v.
(z) Registration	New.
(aa) State	t. (Territory).
(bb) Substantial Adverse Effects on the Environment.	New.
(cc) Weed	l.
(dd) State Issuance of Permits	New.

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[DEFINITIONS]

Sec. 2. Definitions.

[SEC. 2.] For [the] purposes of this Act—

[a.] (*u*) *Pesticide.*—The term "[economic poison] *pesticide*" means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any [insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Secretary shall declare to be a] pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

[b.] (*h*) *Device.*—The term "device" means any instrument or contrivance (*other than a firearm*) *which* (*1*) *is* intended for trapping, destroying, repelling, or mitigating [insects, or rodents or destroying, repelling, or mitigating fungi, nematodes, or such other pests as may be designated by the Secretary, but not including equipment used for the application of economic poisons when sold separately therefrom] *any pest or any other form of plant or animal life* (*other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals*).

[c. The term "insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any insects which may be present in any environment whatsoever.

[d. The term "fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi.

[e. The term "rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the Secretary shall declare to be a pest.

[f. The term "herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

[g. The term "nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.]

[h.] (*v*) *Plant Regulator.*—The term "plant regulator" means any substance or mixture of substances, [intended through] *intended, through* physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of [ornamental or crop] plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. *Also, the term "plant regulator" shall not be required to include at all any of such of those nutriment mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.*

[i.] (*f*) *Defoliant.*—The term "defoliant" means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

[j.] (*g*) *Desiccant.*—The term "desiccant" means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

[k.] (*r*) *Nematode.*—The term "nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms.

[l.] (*cc*) *Weed.*—The term "weed" means any plant which grows where not wanted.

[m.] (*o*) *Insect.*—The term "insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as, for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as, for example, spiders, mites, ticks, centipedes, and wood lice.

[n.] (*k*) *Fungus.*—The term "[fungi] *fungus*" means [all] *any* non-chlorophyll-bearing [thallophytes] *thallophyte* (that is, [all] *any* non-chlorophyll-bearing [plants] *plant* of a lower order than mosses and liverworts), as, for example, [rusts] *rust*, [smuts] *smut*, [mildews] *mildew*, [molds] *mold*, [yeasts] *yeast*, and bacteria, except those on or in living man or other animals *and those on or in processed food, beverages, or pharmaceuticals.*

[o.] (*n*) *Ingredient Statement.*—The term "ingredient statement" means [either—

[(1) a statement of the name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the economic poison; or

[(2) a statement of the name of each active ingredient, together, with the name of each and total percentage of the inert ingredients if any there be, in the economic poison (except option 1 shall apply if the preparation is highly toxic to man, determined as provided in section 6 of this Act); and, in addition to (1) or (2) in case the economic poison contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, each calculated as elemental arsenic.]

a statement which contains—

(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and

(2) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

[p.] (*a*) *Active Ingredient.*—The term "active ingredient" means—

(1) in the case of [an economic poison] *a pesticide* other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate [insects, nematodes, fungi, rodents, weeds, or other pests] *any pest;*

(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the [produce] *product* thereof;

(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; *and*

(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

[q.] (*m*) *Inert Ingredient.* The term "inert ingredient" means an ingredient which is not active.

[r. The term "antidote" means a practical immediate treatment in case of poisoning and includes first-aid tretament.]

(s) *Person.*—The term "person" means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

[t. The term "Territory" means any Territory or possession of the United States, excluding the Canal Zone.]

(*aa*) *State.—The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.*

[u.] (*b*) *Administrator.*—The term "[Secretary] *Administrator*" means the [Secretary of Agriculture] *Administrator of the Environmental Protection Agency.*

[v.] (*y*) *Registrant.*—The term "registrant" means [the] *a* person [registering] *who has registered* any [economic poison] *pesticide* pursuant to the provisions of this Act.

[w.] (*p*) *Label and Labeling.*

(*1*) *Label.*—The term "label" means the written, printed, or graphic matter on, or attached to, the [economic poison] *pesticide* or device or [the immediate container thereof, and the outside container or wrapper of the retail package, if any there be, of the economic poison or device] *any of its containers or wrappers.*

[x.] (*2*) *Labeling.*—The term "labeling" means all labels and other written, printed, or graphic matter—

[(1) upon the economic poison or device or any of its containers or wrappers;]

[(2)] (*A*) accompanying the [economic poison] *pesticide* or device at any time; *or*

[(3)] (*B*) to which reference is made on the label or in literature accompanying the [economic poison] *pesticide* or device, except to current official publications of the *Environmental Protection Agency, the* United States Departments of Agriculture and Interior, the [United States Public Health Service] *Department of Health, Education, and Welfare,* State experiment stations, State agriculturel colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of [economic poisons] *pesticides.*

[y.] (*c*) *Adulterated.*—The term "adulterated" [shall apply] *applies* to any [economic poison] *pesticide* if:

(*1*) its strength or purity falls below the professed standard [or] *of* quality as expressed on its labeling [or] under which it is sold [,or if];

(*2*) any substance has been substituted wholly or in part for the [article, or if] *pesticide; or*

(*3*) any valuable constituent of the [article] *pesticide* has been wholly or in part abstracted.

[z.] (*q*) *Misbranded.*—[The term "misbranded" shall apply—]

(1) [to any economic poison or device if] *A pesticide subject to this Act is misbranded if—*

(*A*) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

[(2) to any economic poison—]

Compare the following paragraph with section 2z(2)(i) of existing law, infra.

(*B*) *it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25 (c) (3);*

[(a)] (*C*) [if] it is an imitation of, or is offered for sale under the name of, another [economic poison] *pesticide or device;*

[(b) if its labeling bears any reference to registration under this Act other than the registration number assigned to the economic poison]

(*D*) *its label does not bear the registration number assigned under section 7 to each establishment in which it was produced;*

(*E*) *any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;*

[(c)] (*F*) [if] the labeling accompanying it does not contain directions for use which are necessary *for effecting the purpose for which the product is intended* and if complied with, *together with any requirements imposed under section 3(d) of this Act, are* adequate [for the protection of the public] *to protect health and the environment;*

[(d)] (*G*) [if] the label does not contain a warning or caution statement which may be necessary and if complied with, *together with any requirements imposed under section 3(d) of this Act, is* adequate to [prevent injury to] *protect health and the environment* [living man and other vertebrate animals, vegetation, and useful invertebrate animals;] *or*

(*H*) *when used in accordance with the requirements imposed under this Act or commonly recognized practice, it nevertheless causes substantial adverse effects on the environment. In the case of a plant regulator, defoliant, or dessicant used in accordance with its labeling, physical or physiological effects on plants or parts thereof shall not be deemed to be injury when such effects are the purpose for which the plant regulator, defoliant, or dessicant was applied.*

(*2*) *A pesticide is misbranded if—*

[(e)] (*A*) [if] the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package) which is presented or displayed under customary conditions of purchase[: *Provided*, That the Secretary may permit the ingredient statement to appear prominently on some other part of the container, if the size or form of the container makes it impracticable to place it on the part of the retail package which is presented or displayed under

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customary conditions of purchase;], *except that a pesticide is not misbranded under this subparagraph if:*

(i) the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

(B) the labeling does not contain a statement of the use classification under which the product is registered;

Compare the following with section 3a(2) of existing law, infra.

(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

(i) the name and address of the producer, registrant, or person for whom produced;

(ii) the name, brand, or trademark under which the pesticide is sold;

(iii) the net weight or measure of the content: Provided, That the Administrator may permit reasonable variations; and

(iv) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification; and

Compare the following with section 3a(3) of existing law, infra.

(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this Act—

(i) the skull and crossbones;

(ii) the word "poison" prominently in red on a background of distinctly contrasting color; and

(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

[(f) if any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or

[(g) if in the case of an insecticide, nematocide, fungicide, or herbicide when used as directed or in accordance with commonly recognized practice it shall be injurious to living man or other vertebrate animals, or vegetation, except weeds, to which it is applied, or to the person applying such economic poison; or

[(h) if in the case of a plant regulator, defoliant, or desiccant when used as directed it shall be injurious to living man or other vertebrate animals, or vegetation to which it is applied, or to the person applying such economic poison: *Provided,* That physical or physiological

effects on plants or parts thereof shall not be deemed to be injury, when this is the purpose for which the plant regulator, defoliant, or desiccant was applied, in accordance with the label claims and recommendations; or

Compare the following subsection with section 2(q)(1)(B) of the bill, supra.

[(i) if its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Poison Prevention Packaging Act of 1970.]

(d) ANIMAL.—The term "animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

(e) CERTIFIED APPLICATOR, ETC.—

(1) CERTIFIED APPLICATOR.—The term "certified applicator" means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

(2) PRIVATE APPLICATOR.—The term "private applicator" means a certified pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

(3) COMMERCIAL APPLICATOR.—The term "commercial applicator" means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

(4) UNDER THE DIRECT SUPERVISION OF A CERTIFIED APPLICATOR.—Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

(i) DISTRICT COURT.—The term "district court" means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

(j) ENVIRONMENT.—The term "environment" includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

(l) IMMINENT HAZARD.—The term "imminent hazard" means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in substantial adverse effects on the environment or will involve hazard to the survival of a species declared endangered by the Secretary of the Interior under Public Law 91-135.

Compare the following subsection with language contained in subsection a of existing law.

(t) PEST.—The term "pest" means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

(w) PRODUCER AND PRODUCE.—The term "producer" means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term "produce" means to manufacture, prepare, compound, propagate, or process any pesticide or device.

(x) PROTECT HEALTH AND THE ENVIRONMENT.—The terms "protect health and the environment" and "protection of health and the environment" means protection against any injury to man and protection against any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

(z) REGISTRATION.—The term "registration" includes reregistration.

(bb) SUBSTANTIAL ADVERSE EFFECTS ON THE ENVIRONMENT.—The term "substantial adverse effects on the environment" means any injury to man or any substantial adverse effects on environmental values, taking into account the pullic interest, including benefits from the use of the pesticide.

(dd) ESTABLISHMENT.—The term "establishment" means any place where a pesticide or device is produced, or held, for distribution or sale.

Comparison of section 3 of existing law with section 12 of the bill.
[Prohibited Acts]

SEC. 12. UNLAWFUL ACTS.

(a) IN GENERAL.—

[Sec. 3.a. It] *(1) Except as provided by subsection (b), it* shall be unlawful for any person *in any State* to distribute, sell, offer for sale, *hold for sale* [in any Territory or in the District of Columbia, or to], ship [or], deliver for shipment [from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or to any foreign country, or to] *or* receive [in any State, Territory, or the District of Columbia from any other State, Territory, or the District of Columbia, or foreign country,] (and having so received[,]) deliver or offer to deliver [in the original unbroken package] to any [other] person[, any of the following:]—

(A) [(1) Any economic poison] *any pesticide* which is not registered [pursuant to the provisions of section 4 of this Act, or] *under section 3, except as provided by section 6(a)(1);*

(B) any [economic poison] *registered pesticide* if any [of the] claims made for it [or any of the directions for its use] *as a part of its distribution or sale substantially* differ [in substance] from [the representations] *any claims* made *for it as a part of the statement required* in connection with its registration *under section 3;* [, or if the composition of an economic poison differs from its composition as represented]

(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration *under section 3;*
Compare the following with section 3(f)(1) the bill set out infra after section 4d of existing law. [: *Provided,* That in the discretion of the Secretary, a change in the labeling or formula of an economic poison may be made within a registration period without requiring reregistration of the product.];

Compare the following with the definition of "misbranded" in section 2(q)(2)(C) of the bill (compared supra with section 2z(2)(e) of existing law).

[(2) Any economic poison unless it is in the registrant's or the manufacturer's unbroken immediate container, and there is affixed to such container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

[(a) the name and address of the manufacturer, registrant, or person for whom manufactured;

[(b) the name, brand, or trade-mark under which said article is sold;

[(c) the net weight or measure of the content: *Provided,* That the Secretary may permit reasonable variations; and

[(d) when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act.]

Compare the following with the definition of "misbranded" in section 2(q)(2)(D) of the bill (compared supra with section 2z(2)(e) of existing law).

[(3) Any economic poison which contains any substance or substances in quantities highly toxic to man determined as provided in section 6 of this Act, unless the label shall bear, in addition to any other matter required by this Act—

[(a) the skull and crossbones;

[(b) the word "poison" prominently (IN RED) on a background of distinctly contrasting color; and

[(c) a statement of an antidote for the economic poison.

[(4)] *(D)* [The economic poisons commonly known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by regulations issued in accordance with this Act, or any other white powder economic poison which the Secretary, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of such coloration or discoloration, shall, by regulation, require to be distinctly colored or discolored unless it has been so colored or discolored: *Provided,* That the Secretary may exempt any economic poison to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this section if he determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.] *Any pesticide which has not been colored or discolored pursuant to the provisions of section 24(c)(5),*

[(5)] (*E*) [Any economic poison] *any pesticide* which is adulterated or misbranded; or

(*F*) any device which is misbranded.

Comparison of section 3b of existing law with section 17(a) of the bill.

[b.] (*a*) *Pesticides and Devices Intended for Export.*—Notwithstanding any other provision of this Act, no [article] *pesticide or device* shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

Comparison of section 3c of existing law with section 12(a)(2) of the bill.

[c.] (2) It shall be unlawful *for any person*—

[(1)] (*A*) [for any person] to detach, alter, deface, or destroy, in whole or in part, any [label or] labeling [provided for in] *required under* this Act [or the rules and regulations promulgated hereunder, or]

(*O*) to add any substance to, or take any substance from, [an economic poison] *any pesticide* in a manner that may defeat the purpose of this Act[;].

[(2)] (*B*) [for any manufacturer, distributor, dealer, carrier, or other person to refuse, upon a request in writing specifying the nature or kind of economic poison or device to which such request relates, to furnish to or permit any person designated by the Secretary to have access to and to copy such records as authorized by section 5 of this Act] *to refuse to keep any records required pursuant to section 8, or to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 9;*

[(3)] (*C*) [for any person] to give a guaranty or undertaking provided for in [section 7] *subsection* (*b*) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under [section 7] *subsection* (*b*) may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name and address, the name and address of the person residing in the United States from whom he received the guaranty or undertaking; [and]

[(4)] (*D*) [for any person] to use for his own advantage or to reveal, other than to the [Secretary] *Administrator*, or officials or employees of the [United States Department of Agriculture] *Environmental Protection Agency* or other Federal *executive* agencies, or to the courts [in response to a subpoena], or to physicians, [and in emergencies to] pharmacists, and other qualified persons, [for use in the preparation of antidotes] *needing such information for the performance of their duties,* in accordance with such directions as the [Secretary] *Administrator* may prescribe, any information [relative to formulas of products] acquired by authority [of section 4] of this Act *which is confidential under this Act*[.];

(*E*) *who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;*

(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder;

(G) to use any registered pesticide in a manner inconsistent with its labeling;

(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

(I) to violate any order issued under section 13;

(J) to violate any suspension order issued under section 6;

(K) to violate any cancellation of registration of a pesticide under section 6, except as provided by section 6(a)(1);

(L) who is a producer to violate any of the provisions of section 7;

(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to section 8, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this Act;

(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act; or

Subparagraph (O) (of the bill) is set out above following subparagraph (A).

Section 12(b) of the bill is hereafter compared with section 7 of the law.

Comparison of section 4 of existing law with section 3 of the bill.

[Registration]

SEC. 3. REGISTRATION OF PESTICIDES.

[Sec. 4. a.**]** *(a) Requirement.*—**[**Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Secretary: **Compare the following proviso with section 3(e) of the bill set out infra after section 4d of existing law.** Provided, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplemental statements;**]** *Except as otherwise provided by this Act, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person any pesticide which is not registered with the Administrator.*

For section 3(b) of the bill, see section 4e of existing law.

(c) PROCEDURE FOR REGISTRATION.—

(1) STATEMENT REQUIRED.—**[**the**]** *Each* applicant for registration *of a pesticide* shall file with the **[**Secretary**]** *Administrator* a statement **[**including**]** *which includes*

[(1)**]** *(A)* the name and address of the applicant **[**for registration**]** and **[**the name and address of the**]** *of any other* person whose name will appear on the **[**label, if other than the applicant for registration**]** *labeling;*

[(2)] (*B*) the name of the [economic poison] *pesticide*;
[(3)] (*C*) a complete copy of the labeling [accompanying the economic poison] *of the pesticide* [and], a statement of all claims to be made for it, [including the] *and any* directions for *its* use; [and]
[(4)] (*D*) if requested by the [Secretary] *Administrator*, a full description of the tests made and the results thereof upon which the claims are based, *except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration Provided, That the Administrator may refer to any applicant's test data in making a determination of the adequacy of the test data of the applicant under consideration;*

Compare the following paragraph with the first sentence of section 4b of existing law.

(E) the complete formula of the pesticide; and

(F) a request that the pesticide be classified for general use, for restricted use, or for both.

(2) DATA IN SUPPORT OF REGISTRATION.—The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If thereafter he requires any additional kind of information he shall permit sufficient time for applicants to obtain such additional information. Except as provided by subsection (c)(1)(D) of this section and section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.

(3) TIME FOR ACTING WITH RESPECT TO APPLICATION.—The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the Act in accordance with paragraph (6).

(4) NOTICE OF APPLICATION.—The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs (1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

[b.] *(5) Approval of Registration.*—**Compare the following sentence with section 3(c)(1)(E) of the bill compared supra with section 4a of existing law.** [The Secretary, whenever he deems it necessary for the effective administration of this Act, may require the submission of the complete formula of the economic poison. If it appears to the Secretary that the composition of the article is such as to warrant the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of section 3 of this Act, he shall register it.] *The Administrator shall register a pesticide if he determines that, when considered with any restrictions imposed under subsection (d)—*

(A) its composition is such as to warrant the proposed claims for it;

(B) its labeling and other material required to be submitted comply with the requirements of this Act; and

(C) it will perform its intended function without substantial adverse effects on the environment.

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide.

[c.] *(6) Denial of Registration.*—[If it does not appear to the Secretary that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of this Act] *If the Administrator determines that the requirements of paragraph (5) for registration are not satisfied,* he shall notify the applicant for registration of [the manner in which the article, labeling or other material required to be submitted fail to comply with the Act so as to afford the applicant for registration an opportunity to make the corrections necessary] *his determination and of his reasons (including the factual basis) therefor, and that, unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator may refuse to register the pesticide.* [If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article.] *Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefor. The Administrator shall promptly publish in the Federal Register notice of such denial of registration and the reasons therefor. Upon such notification, the applicant for registration or other interested person with the concurrence of the applicant shall have the same remedies as provided for in section 6.*

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Note: Compare the following with sections 6(b) and 6(d) of the bill.

[The Secretary, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever the Secretary refuses registration of an economic poison or determines that registration of an economic poison should be cancelled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined

Section 6 of the bill is as follows:

Sec. 6. Administrative Review; Suspension.

(a) Cancellation After Five Years.—

Paragraph (1) is compared, infra, with section 4f of existing law.

(2) Information.—If at any time after the registration of a pesticide the registrant has additional factual information regarding substantial adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

(b) Cancellation and Change in Classification.—If it does not appear to the Administrator that a pesticide or its labeling or other material required to be submitted complies with the provisions of this Act, the Administrator may issue a notice of his intent either—

(1) to cancel its registration or to change its classification together with the reasons (including the factual basis) for his action, or

(2) to hold a hearing to determine whether or not its registration should be cancelled or its classification changed.

Such notice shall be sent to the registrant and made public. The proposed action shall become final and effective at the end of 30 days from receipt by the registrant, or publication, of a notice issued under paragraph (1), whichever occurs latest, unless within that time either (i) the registrant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the notice. In the event a hearing is held pursuant to such a request or to the Administrator's determination under paragraph (2), a decision pertaining to registration or classification issued after completion of such hearing shall be final.

Subsection (c) is compared, infra, with the corresponding material at the end of section 4c of existing law.

by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Secretary. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, submit a report and recommendation to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Secretary shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or regis-

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(d) PUBLIC HEARINGS AND SCIENTIFIC REVIEW.—In the event a hearing is requested pursuant to subsection (b) or determined upon by the Administrator pursuant to subsection (b), such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the objections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpena to compel testimony or production of documents from any person. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness. On contest, the subpena may be enforced by an appropriate United States District Court in accordance with the principles stated herein. Upon the request of any party to a public hearing or when in the Hearing Examiner's judgment it is necessary or desirable, the Hearing Examiner shall at the outset of the hearing refer to a Committee of the National Academy of Sciences the relevant questions of scientific fact involved in the public hearing. The Committee of the National Academy of Sciences shall report in writing to the Hearing Examiner within 60 days after such referral on these questions of scientific fact. The report shall be made public and shall be considered as part of the hearing record. The Administrator shall enter into appropriate arrangements with the National Academy of Sciences to assure an objective and competent scientific review of the questions presented to Committees of the Academy and to provide such other scientific advisory services as may be required by the Administrator for carrying out the purposes of this Act. As soon as practicable after completion of the

trant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Secretary, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than ninety days, the Secretary shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or cancelling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record of such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. **Compare the following sentence with section 3(f)(3) of the bill set out infra after section 4f of existing law.** In connection with consideration of any registration or application for registration under this section, the Secretary may consult with any other Federal agency or with an advisory committee appointed as herein provided. **Compare the following with section 10(b) of the bill set out infra after section 16 of existing law.**

hearing (including the report of the Academy) but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or shall issue an order either cancelling the registration, changing the classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantial evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

Section 6(c) of the bill is as follows:

SUSPENSION.—

(1) ORDER.—If the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings, he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless the Administrator has issued or at the same time issues notice of his intention to cancel the registration or change the classification of the pesticide.

Except as provided in paragraph (3), the Administrator shall notify the registrant prior to issuing any suspension order, such notice shall include findings pertaining to the question of "imminent hazard". The registrant shall then have an opportunity, in accordance with the provisions of paragraph (2), for an expedited hearing before the Agency on the question of whether an imminent hazard exists.

(2) EXPEDITE HEARING.—If no request for a hearing is submitted to the Agency within five days of the registrant's receipt of the notification provided for by paragraph (1), the suspension order may be issued and shall take effect. If a hearing is requested, it shall commence within five days of the receipt of the request for such hearing unless the registrant and the Agency agree that it shall commence at a later time. The hearing shall be held in accordance with the provisions of subchapter II of title 5 of the United States Code, except that the presiding officer need not be a certified hearing examiner. No party other than the registrant and the Agency shall participate except that any person adversely affected may file briefs within the time allotted by the Agency's rules. The presiding officer shall have ten days from the conclusion of the presentation of evidence to submit recommended findings and conclusions to the Administrator, who shall then

Notwithstanding the provisions of section 3c(4), information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Secretary. All data submitted to an advisory committee in support of a petition under this section shall be considered confidential by such advisory committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the United States Department of Agriculture, as provided for herein, and in connection with its report and recommendations to the Secretary.

Note: Compare the following with section 6(c) of the bill. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection (d). **Compare the following sentence with section 3(f)(2) of the bill set out infra after section 4f of existing law.** In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act.]

have seven days to render a final order on the issue of suspension.

(3) EMERGENCY ORDER.—Whenever the Administrator determines that an emergency exists that does not permit him to hold a hearing before suspending, he may issue a suspension order in advance of notification to the registrant. In that case, paragraph (2) shall apply except that the order of suspension shall be in effect pending the expeditious completion of the remedies provided by that paragraph and the issuance of a final order on suspension.

(4) JUDICIAL REVIEW.—A final order on the question of suspension following a hearing shall be reviewable in accordance with Section 16 of this Act, notwithstanding the fact that any related cancellation proceedings have not been completed. Petitions to review orders on the issue of suspension shall be advanced on the docket of the courts of appeals. Any order of suspension entered prior to a hearing before the Administrator shall be subject to immediate review in an action by the registrant or other interested person with the concurrence of the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. The effect of any order of the court will be only to stay the effectiveness of the suspension order, pending hearing before the Administrator. This action may be maintained simultaneously with any administrative review proceeding under this section. The commencement of proceedings under this paragraph shall not operate as a stay of order, unless ordered by the court.

Section 6(e) of the bill is as follows:

(e) JUDICIAL REVIEW.—Final orders of the Administrator under this section shall be subject to judicial review pursuant

Comparison of section 4d of existing law with section 16(b) of the bill.

[d.] *(b) Review by Court of Appeals.*—In [a] *the* case of actual controversy as to the validity of any order [under this section] *issued by the Administrator following a public hearing,* any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has [his principal] *a* place of business, [or in the United States Court of Appeals for the District of Columbia Circuit,] within [sixty] *60* days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the [Secretary,] *Administrator* or any officer designated by him for that purpose, and thereupon the [Secretary] *Administrator* shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. *The court shall consider all evidence of record.* The [findings] *order* of the [Secretary] *Administrator* [with respect to questions of fact] shall be sustained if *it is* supported by substantial evidence when considered on the record as a whole[, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Secretary may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order]. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title [18] *28* of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all [causes] *cases* filed therein pursuant to this section.

The following is a comparison of section 4e of existing law with section 3(b) of the bill.

[e.] *(b) Exemptions.* [Notwithstanding any other provision of this Act, registration is not required in the case of an economic poison shipped from one plant to another plant operated by the same person and used solely at such plant as a constituent part to make an economic poison which is registered under this Act] *A pesticide which is not registered with the Administrator may be transferred if—*

(1) the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or

(2) the transfer is pursuant to and in accordance with the requirements of an experimental use permit.

The following is a comparison of section 4f of existing law with section 6(a)(1) of the bill.

[f.] (*a*) *Cancellation After Five Years.*—

(*1*) *Procedure.*—The [Secretary] *Administrator* [is authorized to] *shall* cancel the registration of any [economic poison] *pesticide* at the end of [a period of five years following the registration of such economic poison] *the five-year period which begins on the date of its registration* (or at the end of any five-year period thereafter [,]) unless the registrant, *or other interested person with the concurrence of the registrant,* [prior to] *before* the [expiration] *end* of [each] *such* [five-year] period, requests in accordance with regulations [issued by the Secretary] *prescribed by the Administrator* that [such] *the* registration be continued in effect: *Provided, That the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is canceled under this subsection or subsection (b) to such extent, under such conditions, and for such uses as he may specify if he determines that such sale or use is not inconsistent with the purposes of this Act and will not have substantial adverse effects on the environment. The Administrator shall publish in the Federal Register, at least 30 days prior to the expiration of such five-year period, notice that the registration will be canceled if the registrant or other interested person with the concurrence of the registrant does not request that the registration be continued in effect.*

The following constitute sections 3(d) through 3(f) of the bill.

(*d*) CLASSIFICATION OF PESTICIDES.—

(*1*) CLASSIFICATION FOR GENERAL USE, RESTRICTED USE, OR BOTH.—

(*A*) *As a part of the registration of a pesticide the Administrator shall classify it as being for general use or for restricted use, provided that if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for restricted use, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses: Provided, however, That the Administrator may require that its packaging and labeling for restricted uses shall be clearly distinguishable from its packaging and labeling for general uses.*

(*B*) *If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a commonly recognized practice, will not cause substantial adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies, for general use.*

(C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a commonly recognized practice, may cause, without additional regulatory restrictions, substantial adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use.

(i) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that the acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause substantial adverse effects on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may provide by regulation. Any such regulation shall be reviewable in the appropriate court of appeals upon petition of a person adversely affected filed within 60 days of the publication of the regulation in final form.

(2) CHANGE IN CLASSIFICATION.—If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent substantial adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least 30 days before making the change and shall publish the proposed change in the Federal Register. The registrant, or other interested person with the concurrence of the registrant, may seek relief from such determination under section 6(b).

Compare the following with the proviso in section 4a of existing law.

(e) PRODUCTS WITH SAME FORMULATION AND CLAIMS.—Products which have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added to the registration by supplemental statements.

(f) MISCELLANEOUS.—

Compare the following with the proviso at the end of section 3a(1) of existing law.

(1) EFFECT OF CHANGE OF LABELING OR FORMULATION.—If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this Act.

Compare the following with the last sentence of section 4c of existing law.

(2) REGISTRATION NOT A DEFENSE.—In no event shall registration of an article be construed as a defense for the commission of any offense under this Act: Provided, That as long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the pesticide, its labeling and packaging comply with the registration provisions of the Act.

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Compare the following with similar sentence in section 4c of existing law.

(3) AUTHORITY TO CONSULT OTHER FEDERAL AGENCIES.—In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.

The following constitutes sections 4 and 5 of the bill.

SEC. 4. USE OF RESTRICTED USE PESTICIDES; CERTIFIED APPLICATORS.

(a) CERTIFICATION PROCEDURE.—

(1) FEDERAL CERTIFICATION.—Subject to paragraph (2), the Administrator shall prescribe standards for the certification of applicators of pesticides. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by such individual's certification.

(2) STATE CERTIFICATION.—If any State, at any time, desires to certify applicators of pesticides, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—

(A) designates a State agency as the agency responsible for administering the plan throughout the State;

(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan.

(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

(E) contains satisfactory assurances that State standards for the certification of applicators of pesticides conform with those standards prescribed by the Administrator under paragraph (1).

Any State certification program under this section shall be maintained in accordance with the State plan approved under this section.

(b) STATE PLANS.—If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify applicators of pesticides with respect to such State. Whenever the Administrator determines that a State is not administering the certification program in accordance with the plan approved under this section, he shall so notify the State and provide for a hearing at the request of the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such plan.

SEC. 5. EXPERIMENTAL USE PERMITS.

(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

(b) TEMPORARY TOLERANCE LEVEL.—If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

(c) USE UNDER PERMIT.—Use of a pesticide under an experimental use permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

(d) STUDIES.—When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause substantial adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

(e) REVOCATION.—The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid substantial adverse effects on the environment.

(f) STATE ISSUANCE OF PERMITS.—Notwithstanding the foregoing provisions of this section, the Administrator may, under such terms and conditions as he may by regulations prescribe, authorize any State to issue an experimental use permit for a pesticide. All provisions of section 4 relating to State plans shall apply with equal force to a State plan for the issuance of experimental use permits under this section.

Section 6 of the bill is compared, supra, with the similar provisions of section 4 of existing law.

Section 7 of the bill is as follows:

SEC. 7. REGISTRATION OF ESTABLISHMENTS.

(a) REQUIREMENT.—No person shall produce any pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

(b) REGISTRATION.—Whenever the Administrator receives an application under subsection (a), he shall register the establishment and assign it an establishment number.

(c) INFORMATION REQUIRED.—

(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of pesticides—

(A) which he is currently producing;

(B) which he has produced during the past year; and

(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 13, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

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(d) CONFIDENTIAL RECORDS AND INFORMATION.—Any information submitted to the Administrator pursuant to subsection (c) shall be considered confidential and shall be subject to the provisions of section 10.

[Books and Records]

SEC. 8. BOOKS AND RECORDS.

[Sec. 5.] *(a) REQUIREMENT.—The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this Act. No records required under this subsection shall extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).*

(b) INSPECTION.—For the purposes of enforcing the provisions of this Act, any [manufacturer] *producer*, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery [or who receives or holds any economic poison] *any pesticide* or device subject to this Act, shall, upon request of any *officer or* employee of the [United States Department of Agriculture] *Environmental Protection Agency* or *of* any State [, Territory,] or political subdivision, duly designated by the [Secretary] *Administrator*, furnish or permit such person at all reasonable times to have access to, and to copy *:(1)* all records showing the delivery, movement, or holding of such [economic poison] *pesticide* or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; [and] *or (2)* in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the [economic poison] *pesticide* or device. [Notwithstanding this provision, however, the specific evidence obtained under this section or any evidence which is directly or indirectly derived from such evidence shall not be used in a criminal prosecution of the person from whom obtained.] *Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).*

Comparison of section 6(a) of existing law with section 24 of the bill.

[Enforcement]

SEC. 24. AUTHORITY OF ADMINISTRATOR.

[SEC. 6.a.] *(a) REGULATIONS.*—The [Secretary] *Administrator* [(except as otherwise provided in this section)] is authorized to [make rules and] *prescribe* regulations [for carrying] *to carry* out the provisions of this Act [, including the collection and examination of samples of economic poisons and devices subject to this Act and **compare the following clause with subsection (c)(6) infra** the determination and establishment of suitable names to be used in the ingredient statement]. *Such regulations shall take into account the difference in concept and usage between various classes of pesticides.*

"(b) EXEMPTION OF PESTICIDES.—The Administrator may exempt from the requirements of this Act by regulation any pesticide which he determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

(c) OTHER AUTHORITY.—The [Secretary] *Administrator,* [is, in addition, authorized] after *notice and* opportunity for hearing, *is authorized—*

(1) to declare a pest any form of plant or animal life [or virus] *(other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals)* which is injurious to [plants, man, domestic animals, articles, or substances] *health or the environment;*

(2) to determine [economic poisons] *any pesticide which contains any substance or substances in quantities* [and quantities of substances contained in economic poisons which are] highly toxic to man; [and]

(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601)) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act;

(4) to specify those classes of devices which shall be subject to any provision of paragraph 2(q)(1) or section 7 of this Act upon his determination that application of such provision is necessary to effectuate the purposes of this Act;

[3](5) [to determine standards of coloring or discoloring for economic poisons, and to subject economic poisons to the requirements of section 3a(4) of this Act[.] *to prescribe regulations reguiring any pesticide to be colored or discolored if he determines that such reguirement is feasible and is necessary for the protection of health and the environment; and*

Compare the following with the similar clause in section 6a of existing law supra.

(6) to determine and establish suitable names to be used in the ingredient statement.

Comparison of section 6b of existing law with section 16(e) of the bill.

[b.] *(e) Regulations.*—The Secretary of the Treasury [and the Secretary of Agriculture], *in consultation with the Administrator,* shall [jointly] prescribe regulations for the enforcement of *this* section [10 of this Act].

[p. 60]

Comparison of section 6c of existing law with section 9(c) of the bill.

[c.] (c) *Enforcement.—*

(1) *Certification of Facts to Attorney General.*—The examination of [economic poisons] *pesticides* or devices shall be made in the [United States Department of Agriculture] *Environmental Protection Agency* or elsewhere as the [Secretary] *Administrator* may designate for the purpose of determining from such [examination] *examinations* whether they comply with the requirements of this Act ,[and if]. *If* it shall appear from any such examination that they fail to comply with the requirements of this Act, the [Secretary] *Administrator* shall cause notice to be given to the person against whom criminal *or civil* proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the [Secretary] *Administrator* it appears that the provisions of this Act have been violated by such person, then the [Secretary] *Administrator* shall certify the facts to the [proper United States attorney] *Attorney General,* with a copy of the results of the analysis or the examination of such [article:] *pesticide for the institution of a criminal proceeding pursuant to section 14(b) or a civil proceeding under section 14(a), when the Administrator determines that such action will be sufficient to effectuate the purposes of this Act:*

(2) Notice not required.—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

(3) Warning Notices.—[Provided, That nothing] *Nothing* in this Act shall be construed as requiring the [Secretary] *Administrator* to [report for prosecution or for the institution of libel proceedings] *institute proceedings for prosecution of* minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

Comparison of sections 6 d and e of existing law with sections 15 (c) and (d) of the bill.

[d. It shall be the duty of each United States attorney, to whom the Secretary or his agents shall report any violation of this Act, to cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.]

(c) Jurisdiction of District Courts.—The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this Act.

[e.] (d) *Notice of Judgments.*—The [Secretary] *Administrator* shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

Comparison of section 7 of existing law with section 12(b) of the bill.

[EXEMPTIONS]

[SEC. 7.a.] (*b*) *Exemptions.*—The penalties provided for a violation of [section 3a of this Act] *paragraph (1) of subsection (a)* shall not apply to—

(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased [and] *or* received in good faith the [article] *pesticide* in the same unbroken package, to the effect that the [article] *pesticide* was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, [designating this Act. In] *and in* such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this Act;

(2) any carrier while lawfully [engaged in transporting an economic poison] *shipping, transporting, or delivering for shipment any pesticide* or device, if such carrier upon request [by a person] *of any officer or employee* duly designated by the [Secretary] *Administrator* shall permit such [person] *officer or employee* to copy all *of its* records [showing the transactions in and movement of the articles] *concerning such pesticide or device;*

(3) [to] *any* public [officials] *official* while engaged in the performance of [their] *his* official duties;

(4) [to the manufacturer or shipper of an economic poison for experimental use only by or under the supervision of any Federal or State agency authorized by law to conduct research in the field of economic poisons; or by others if a permit has been obtained before shipment in accordance with regulations promulgated by the Secretary] *any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or*

(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

Comparison of section 8 of existing law with section 14 of the bill.

[Penalties]

SEC. 14. PENALTIES.

(*a*) *CIVIL PENALTIES.*—

(1) IN GENERAL.—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

(2) PRIVATE PESTICIDE APPLICATOR.—Any private applicator or other person not included in paragraph (1) who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense.

(3) HEARING.—No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

(4) REFERENCES TO ATTORNEY GENERAL.—In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

(b) CRIMINAL PENALTIES.—

[SEC. 8. Any person violating section 3a(1) of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000.]

[b.] *(1) In General.*—Any [person violating] *registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates* any provision [other than section 3a(1)] of this Act shall be guilty of a misdemeanor and shall [upon] *on* conviction be fined not more than [$500 for the first offense, and on conviction for each subsequent offense be fined not more than $1,000] *$25,000,* or imprisoned for not more than one year, or both [such fine and imprisonment: *Provided,* That an offense committed more than five years after the last previous conviction shall be considered a first offense. An article the registration of which has been terminated may not again be registered unless the article, its labeling, and other material required to be submitted appear to the Secretary to comply with all the requirements of this Act].

(2) PRIVATE APPLICATOR.—Any private pesticide applicator or other person not included in paragraph (1) who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

[c.] *(3) DISCLOSURE OF INFORMATION.—*

[Notwithstanding any other provision of this section, in case any] *Any* person, *who,* with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section [4 of this Act]*3,*[he] shall be fined not more than $10,000, or imprisoned for not more than three years, or both [such fine and imprisonment].

[d.] *(4) Acts of Officers, Agents, Etc.*—When construing and enforcing the provisions of this Act, the act, omission, or failure [,] of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

Comparison of section 9 of existing law with section 13 of the bill.

[p. 63]

[SEIZURES]

SEC. 13. Stop Sale, Use, Removal and Seizure.

[Sec. 9.] (a) *STOP SALE, ETC., ORDERS.—Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide or device has been canceled by a final order or has been suspended, the Administrator may issue a written or printed "stop sale, use, or removal" order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.*

[a.] (b) *Seizure.*—Any [economic poison] *pesticide* or device that is being transported [from one State, Territory, or District to another,] or, having been transported, remains unsold or in orginal unbroken packages, or that is sold or offered for sale in [the District of Columbia or any Territory] *any State*, or that is imported from a foreign country, shall be liable to be proceeded against in any district court [of the United States] in the district where it is found and seized for confiscation by a process [of libel] *in rem* for condemnation *if*—

(1) in the case of [an economic poison] *a pesticide*—

[(a)] (*A*) [if] it is adulterated or misbranded;

[(b)] (*B*) [if] it is not registered pursuant to the provisions of section [4 of this Act] 3;

[(c)] (*C*) [if it fails to bear on its label] *its labeling fails to bear* the information required by this Act; [or]

[(d)] (*D*) [if] it is [a white powder economic poison and is] not colored *or discolored and such coloring or discoloring is* [as] required under this Act; or

(*E*) *any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;*

(2) in the case of a device [if], it is misbranded [.]; *or*

(*3*) *in the case of a pesticide or device, when used in accordance with the requirements imposed under this Act and as directed by the labeling, it nevertheless causes substantial adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.*

[b.] (c) *Disposition after Condemnation.*— If the [article] *pesticide or device* is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the [legal] *court* costs, shall be paid into the Treasury of the United States, but the [article] *pesticide or device* shall not be sold contrary to the provisions of this Act or [of] the laws of the jurisdiction in which it is sold: *Provided*, That upon the payment of the costs of the [libel] *condemnation* proceedings and the execution and delivery of a good and sufficient bond conditioned that the [article] *pesticide or device* shall not be sold or otherwise disposed of contrary to the provisions of [this] *the* Act or the laws of any [State, Territory,

or District] *jurisdiction* in which sold, the court may direct that such [articles] *pesticide or device* be delivered to the owner thereof. The proceedings of such [libel] *condemnation* cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

[c.] (*d*) *Court Costs, Etc.*—When a decree of condemnation is entered against the [article] *pesticide or device,* court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the [article] *pesticide or device.*

Comparison of section 10 of existing law with section 16 of the bill.

[IMPORTS]

SEC. 16. IMPORTS AND EXPORTS.

For a comparison of section 3b of existing law with section 16(a) of the bill, see section 3b, supra.

(*b*) *CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.—Whenever a cancellation of the registration of a pesticide becomes effective, the Administrator shall transmit through the State Department copies of each notice of cancellation of a registration of a pesticide to the governments of other countries and to appropriate international agencies.*

(*c*) *Importation of Pesticides and Devices.*—[SEC. 10.] The Secretary of the Treasury shall notify the [Secretary of Agriculture] *Administrator* of the arrival of [economic poisons] *pesticides* and devices [offered for importation] and shall deliver to the [Secretary of Agriculture] *Administrator,* upon his request, samples of [economic poisons] *pesticides* or devices which are being imported [or offered for import] into the United States, giving notice to the owner or consignee, who may appear before the [Secretary of Agriculture] *Administrator* and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the [prohibitions] *provisions* set forth in this Act, or is otherwise [dangerous to the health of the people of the United States, or is of a kind forbidden entry into or forbidden to be sold or restricted in sale in the country in which it is made or from which it is exported] *injurious to health or the environment,* the [said article] *pesticide or device* may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any [goods] *pesticide or device* refused delivery which shall not be exported by the consignee within [three months] *90 days* from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided,* That the Secretary of the Treasury may deliver to the consignee such [goods] *pesticide or device* pending examination and decision in the matter on execution of [penal] bond for the amount of the full invoice value of such [goods] *pesticide or device,* together with the duty thereon, and on refusal to return such [goods] *pesticide or device* for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other

purpose, said consignee shall forfeit the full amount of [the] *said* bond: *And provided further*, That all charges for storage, cartage, and labor on [goods] *pesticides or devices* which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

(d) Cooperation in International Efforts.—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

For comparison of section 6b of existing law with section 16(e) of the bill, see section 6b, supra.

Comparison of section 11 of existing law and section 21(a) of the bill.

[DELEGATION OF DUTIES]

SEC. 21. DELEGATION AND COOPERATION.

[SEC. 11.] *(a) Delegation.*—All authority vested in the [Secretary] *Administrator* by virtue of the provisions of this Act may with like force and effect be executed by such employees of the [United States Department of Agriculture] *Environmental Protection Agency* as the [Secretary] *Administrator* may designate for the purpose.

For comparison of section 13 of existing law with section 21(b) of the bill, see section 13, infra.

Comparison of section 12 of existing law with section 26 of the bill.

[AUTHORIZATION FOR APPROPRIATIONS AND EXPENDITURES]

SEC. 26. AUTHORIZATION FOR APPROPRIATIONS.

[SEC. 12.a.] There is [hereby] authorized to be appropriated [, out of any moneys in the Treasury not otherwise appropriated,] such sums as may be necessary [for] *to carry out* the [purposes] *provisions* [and administration] of this Act *for each fiscal year ending June 30, 1972, June 30, 1973, June 30, 1974, and June 30, 1975. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1975, shall be the sums hereafter provided by law' The expenses of the Federal Government in carrying out the provisions of this Act shall be paid solely out of funds so appropriated, and no fee other than reasonable fees for registration of pesticides under section 3 shall be required to be paid to the Federal Government in connection with any activity under this Act.* [In order to carry out the provisions of this Act, which take effect prior to the repeal of the Insecticide Act of 1910, appropriations available for the enforcement of such Act are authorized to be made available.]

[b. The Secretary is authorized from the funds appropriated for this Act to make such expenditures as he deems necessary, including rents, travel, supplies, books, samples, testing devices, furniture, equipment, and such other expenses as may be necessary to the administration of this Act.]

Comparison of section 13 of existing law with section 21(b) of the bill.

[COOPERATION]

[SEC. 13.] (*b*) *Cooperation.*—The [Secretary] *Administrator* [is authorized to] *shall* cooperate with *the Department of Agriculture*, any other [department or agency of the Federal Government and with the official agricultural or other regulatory agency of any State, or any State, Territory, District, possession,] *Federal agency, and any appropriate agency of any State* or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

Comparison of section 14 of existing law with section 25 of the bill.

[SEPARABILITY]

SEC. 25. Severability.

[SEC. 14.] If any provision of this Act [is declared unconstitutional,] or the [applicability] *application* thereof to any person or circumstance is held invalid, the [constitutionality of the remainder of this Act and the applicability thereof to other persons and circumstances shall not be affected thereby] *invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act are severable.*

[EFFECTIVE DATE

[SEC. 15. All provisions of this Act, except section 3, "Prohibited Acts"; section 8, "Penalties"; section 9, "Seizures"; and section 10, "Imports", shall take effect upon enactment, and sections 3, 8, 9, and 10 of this Act shall take effect as follows: (1) As to devices, upon enactment; (2) as to rodenticides and herbicides, six months after enactment; and (3) as to insecticides, fungicides, and all other economic poisons, one year after enactment: *Provided*, That the Secretary, upon application, may at any time within one year after sections 3, 8, 9, and 10 of this Act become applicable to devices, rodenticides and herbicides, and insecticides, fungicides, and other economic poisons, respectively, if he determines that such action will not be unduly detrimental to the public interest, and is necessary to avoid hardship, exempt, under such terms and conditions as he may prescribe, any economic poison from the provisions of this Act if such economic poison was labeled, shipped, and delivered by the manufacturer thereof prior to the time the sections of this Act referred to above become applicable to such economic poison and in case the economic poison is an insecticide or fungicide if its sale, delivery, or shipment has not been and will not be in violation of the provisions of the Insecticide Act of 1910.

[REPEALS

[SEC. 16. The Insecticide Act of 1910, approved April 26, 1910 (36 Stat. 331, 7 U.S.C. 121–134), is hereby repealed one year after the date of the enactment of this Act: *Provided*, That, with respect to violations, liabilities incurred, or appeals taken prior to said date, and with respect to sales, shipments, or deliveries of insecticides and fungicides under an exemption granted by the Secretary under section 15, all provisions of the Insecticide Act of 1910 shall be deemed to

remain in full force for the purpose of sustaining any proper suit, action, or other proceeding with respect to any such violations, liabilities, appeals, or to such sales, shipments or deliveries of insecticides and fungicides exempted by the Secretary under section 15.]

Section 9 (a) and (b) of the bill.

SEC. 9. INSPECTION OF ESTABLISHMENTS, ETC.

(a) IN GENERAL.—For purposes of enforcing the provisions of this Act, officers or employees duly designated by the Administrator are authorized—

(1) to enter, at reasonable times, any establishment or other place where pesticides or devices are held for distribution or sale; and

(2) to inspect and obtain samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(b) WARRANTS.—*For purposes of enforcing the provisions of this Act and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this Act have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—*

(1) entry for the purpose of this section;

(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any pesticide or device found in the establishment which is adulterated, misbranded, not registered (in the case of a pesticide, or otherwise in violation of this Act) and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

(3) the seizure of any pesticide or device which is in violation of this Act.

Section 9(c) of the bill is compared with section 6c of existing law, supra.

Section 10 of the bill.

SEC. 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.

(a) IN GENERAL.—In submitting data required by this Act, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information, and (2) submit such marked material separately from other material required to be submitted under this Act.

Compare subsection (b) with similar language in section 4c of existing law supra.

(b) DISCLOSURE.—Notwithstanding any other provision of this Act, the Administrator shall not make public information which contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act, information relating to formulas of products acquired by authorization of this Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

Section 11 of the bill.

SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS.

(a) IN GENERAL.—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private applicator to maintain any records or file any reports or other documents.

(b) SEPARATE STANDARDS.—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators.

Section 15(a) of the bill.

SEC. 15. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW.

(a) DISTRICT COURT REVIEW.—Except as is otherwise provided in this Act, Agency refusals to cancel or suspend registrations or change classifications not following a hearing and other final Agency actions not committed to Agency discretion by law are judicially reviewable in the district courts.

For sections 15 (b), (c), and (d) of the bill, see section 4d, supra.

Section 18 of the bill.

SEC. 17. EXEMPTION OF FEDERAL AGENCIES.

The Administrator may, at his discretion, exempt any Federal or State agency from any provision of this Act if he determines that such exemption would be consistent with the purposes of this Act and would be in the public interest.

Section 18 of the bill.

SEC. 18. DISPOSAL AND TRANSPORTATION.

(a) PROCEDURES.—The Administrator shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 6(c) if requested by the owner of the pesticide.

(b) ADVICE TO SECRETARY OF TRANSPORTATION.—*The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act (49 U.S.C. 1657), the Transportation of Explosives Act (18 U.S.C. 831–835), the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430, 1472 H), and the Hazardous Cargo Act (46 U.S.C. 170, 375, 416).*

Section 19 of the bill.

SEC. 19. RESEARCH AND MONITORING.

(a) RESEARCH.—*The Administrator shall undertake research, including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this Act, and he shall give priority to research to develop biologically integrated alternatives for pest control. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.*

(b) NATIONAL MONITORING PLAN.—*The Administrator shall formulate and periodically revise, in cooperation with other Federal, State, or local agencies, a national plan for monitoring pesticides.*

(c) MONITORING.—*The Administrator shall undertake such monitoring activities, including but not limited to monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. Such activites shall be carried out in cooperation with other Federal, State, and local agencies.*

Section 20 of the bill.

SEC. 20. SOLICITATION OF COMMENTS.

(a) *The Administrator, before publishing regulations under this Act, shall solicit the views of the Secretary of Agriculture.*

(b) *In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.*

Section 22 of the bill.

SEC. 22. STATE COOPERATION, AID, AND TRAINING.

(a) COOPERATIVE AGREEMENTS.—*The Administrator is authorized to enter into cooperative agreements with States—*

(1) to delegate to any State the authority to cooperate in the enforcement of the Act through the use of its personnel or facilities, to train personnel of the State to cooperate in the enforcement of this Act, and to assist States in implementing cooperative enforcement programs through grants-in-aid; and

(2) to assist State agencies in developing and administering State programs for training and certification of applicators consistent with the standards which he prescribes.

(b) CONTRACTS FOR TRAINING.—*In addition, the Administrator is authorized to enter into contracts with Federal or State agencies for the purpose of encouraging the training of certified applicators.*

[p. 70]

(c) The Administrator may utilize the services of the Cooperative State Extension Services for informing farmers of accepted uses and other regulations made pursuant to this Act.

Section 23 of the bill.

SEC. 23. AUTHORITY OF STATES.

(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act;

(b) such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required pursuant to this Act; and

(c) a State may provide registration for pesticides formulated for distribution and use within that State to meet specific local needs if that State is certified by the Administrator as capable of exercising adequate controls and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator. Such registration shall be deemed registration under section 3 for all purposes of this Act, but shall authorize distribution and use only within such State and shall not be effective for more than 90 days if disapproved by the Administrator within that period.

FEDERAL HAZARDOUS SUBSTANCES ACT

* * * * * * *

DEFINITIONS

SEC. 2. For the purposes of this Act—

(a) * * *

* * * * * * *

(f) The term "hazardous substance" means:

1. * * *

* * * * *

2. The term "hazardous substance" shall not apply to [economic poisons] *pesticides* subject to the Federal Insecticide, Fungicide, and Rodenticide Act, nor to foods, drugs, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house, but such term shall apply to any article which is not itself [an economic poison] *a pesticide* within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act but which is a hazardous substance within the meaning of subparagraph 1 of this paragraph by reason of bearing or containing such [an economic poison] *a pesticide*.

* * * * * * *

POISON PREVENTION PACKAGING ACT

* * * * * * *

SEC. 2. For the purpose of this Act—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(2) The term "household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is—

(A) a hazardous substance as that term is defined in section 2(f) of the Federal Hazardous Substances Act (15 U.S.C. 1261(f));

(B) [an economic poison] *a pesticide* as that term is defined in section 2a of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135(a));

* * * * * * *

FEDERAL FOOD, DRUG, AND COSMETIC ACT

* * * * * * *

CHAPTER II—DEFINITIONS

SEC. 201. For the purposes of this Act—

(a) * * *

* * * * * * *

(q) The term "pesticide chemical" means any substance which, alone, in chemical combination or in formulation with one or more other substances, is [an "economic poison"] *a "pesticide"* within the meaning of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135–135*k*) is now in force or as hereafter amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

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CHAPTER IV—FOOD

* * * * * * *

TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

SEC. 408. (a) * * *

* * * * * * *

(d)(1) Any person who has registered, or who has submitted an application for the registration of [an economic poison] *a pesticide* under the Federal Insecticide, Fungicide, and Rodenticide Act may file with the Secretary of Health, Education, and Welfare, a petition proposing the issuance of a regulation establishing a tolerance for a pesticide chemical which constitutes, or is an ingredient of such [economic poison] *pesticide*, or exempting the pesticide chemical from the requirement of a tolerance. The petition shall contain data showing—

[p. 72]

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(A) the name, chemical identity, and composition of the pesticide chemical: * * *

* * * * * * *

(e) The Secretary may at any time, upon his own initiative or upon the request of any interested person, propose the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance. Thirty days after publication of such a proposal, the Secretary may by order publish a regulation based upon the proposal which shall become effective upon publication unless within such thirty-day period a person who has registered, or who has submitted an application for the registration of, [an economic poison] *a pesticide* under the Federal Insecticide, Fungicide, and Rodenticide Act containing the pesticide chemical named in the proposal, requests that the proposal be referred to an advisory committee. In the event of such a request, the Secretary shall forthwith submit the proposal and other relevant data before him to an advisory committee to be appointed in accordance with subsection (g) of this section. As soon as practicable after such referral, but not later than sixty days thereafter, unless extended as hereinafter provided, the committee shall, after independent study of the data submitted to it by the Secretary and other data before it, certify to the Secretary a report and recommendations on the proposal together with all underlying data and a statement of the reasons or basis for the recommendations. The sixty-day period provided for herein may be extended by the advisory committee for an additional thirty days if the advisory committee deems this necessary. Within thirty days after such certification, the Secretary may, after giving due consideration to all data before him, including such report, recommendations, underlying data and statement, by order publish a regulation establishing a tolerance for the pesticide chemical named in the proposal or exempting it from the necessity of a tolerance which shall become effective upon publication. Regulations issued under this subsection shall upon publication be subject to paragraph (5) or subsection (d).

* * * * * * *

(l) The Secretary of Agriculture, upon request of any person who has registered, or who has submitted an application for the registration of, [an economic poison] *a pesticide* under the Federal Insecticide, Fungicide, and Rodenticide Act, and whose request is accompanied by a copy of a petition filed by such person under subsection (d)(1) with respect to a pesticide chemical which constitutes, or is an ingredient of, such [economic poison] *pesticide*, shall, within thirty days or within sixty days if upon notice prior to the termination of such thirty days the Secretary deems it necessary to postpone action for such period, on the basis of data before him, either—

(1) certify to the Secretary of Health, Education, and Welfare that such pesticide chemical is useful for the purpose for which a tolerance or exemption is sought; or

(2) notify the person requesting the certification of his proposal to certify that the pesticide chemical does not appear to be useful for the purpose for which a tolerance or exemption is sought, or appears to be useful for only some of the purposes for which a tolerance or exemption is sought.

In the event that the Secretary of Agriculture takes the action described in clause (2) of the preceding sentence, the person requesting the certification, within one week after receiving the proposed certification, may either (A) request the Secretary of Agriculture to certify to the Secretary of Health, Education, and Welfare on the basis of the proposed certification; (B) request a hearing on the proposed certification or the parts thereof objected to; or (C) request both such certification and such hearing. If no such action is taken, the Secretary may by order make the certification as proposed. In the event that the action described in clause (A) or (C) taken, the Secretary shall by order make the certification as proposed with respect to such parts thereof as are requested. In the event a hearing is requested, the Secretary of Agriculture shall provide opportunity for a prompt hearing. The certification of the Secretary of Agriculture as the result of such hearing shall be made by order and shall be based only on substantial evidence of record at the hearing and shall set forth detailed findings of fact. In no event shall the time elapsing between the making of a request for a certification under this subsection and final certification by the Secretary of Agriculture exceed one hundred and sixty days. The Secretary shall submit to the Secretary of Health, Education, and Welfare with any certification of usefulness under this subsection an opinion, based on the data before him, whether the tolerance or exemption proposed by the petitioner reasonably reflects the amount of residue likely to result when the pesticide chemical is used in the manner proposed for the purpose for which the certification is made. The Secretary of Agriculture, after due notice and opportunity for public hearing, is authorized to promulgate rules and regulations for carrying out the provisions of this subsection.

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PROTECTION OF MAN AND THE ENVIRONMENT

OCTOBER 3, 1972.—Ordered to be printed

Mr. ALLEN, from the Committee on Agriculture and Forestry, submitted the following

SUPPLEMENTAL REPORT

[To accompany H.R. 10729]

The Committee on Agriculture and Forestry, to which was referred the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, having considered the same, and having heretofore reported favorably thereon with an amendment, now files this supplemental report to set out the reasons for its opposition to the amendments to its amendment which have been recommended by the Committee on Commerce.

IN BRIEF

This committee is opposed to the amendments proposed by the Commerce Committee because they would—

1. Give Federal agents for the purpose of enforcing the act the right to enter private homes and other places where pesticides or devices are held or used without a warrant and without any suspicion that a crime has been committed (Amendment 14);
2. Restrict appropriations to carry out this law to an amount clearly below what is needed (Amendment 15);
3. Visit unnecessary losses on such American industries as Hawaiian sugar producers; Georgia pecan growers; Michigan producers of Christmas trees and strawberries; Washington oyster producers; and on the consumers served by these industries by limiting State registration to meet peculiar State needs to emergency situations (Amendment 12);
4. Discourage the development of new and safer pesticides by denying private researchers exclusive rights to the fruits of their labor (Amendment 2);

[p. 1]

5. Increase the maximum civil penalty for the least serious offense above that permitted for clearly more serious offenses (Amendment 4);

6. Require the expenditure of public and private funds for the dissemination to foreign governments of information which could be misleading and dangerous (Amendment 5);

7. Provide an empty form of justice under which one party is prohibited from offering evidence (Amendment 11);

8. Adopt language which EPA had advised would "literally" mean that "no pesticide would be registered" (Amendment 1);

9. Replace a conflict of interest rule which the Commerce Committee recognizes as "admirable policy" with one which is clearly ambiguous (Amendment 3);

10. Strike out the requirement that foreign governments be notified when a pesticide is banned in the United States (Amendment 5);

11. Deny the Administrator information essential to his decision as to whether a pesticide is safe and efficaceous (Amendment 6);

12. Possibly weigh registration decisions in favor of DDT as opposed to methyl parathion (Amendment 9); and

13. Introduce confusing surplus language and numerous errors into this law, which will tend to cripple its enforcement.

SUMMARY OF COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY CONCERNING THE AMENDMENTS PROPOSED BY THE COMMITTEE ON COMMERCE

Since the original report of this committee did not express its views with respect to the hundreds of amendments that were necessarily rejected by it, this supplemental report is being made so that the Senate may have the views and recommendations of this committee on the amendments which were rejected by it and subsequently recommended by the Committee on Commerce. Set out below is a brief statement concerning each of the 15 groups of amendments recommended by the Commerce Committee, showing the reasons for the rejection of it by this Comittee. A more detailed explanation of each amendment is set out thereafter in this report. In discussing each of these groups, this report uses the numbering system of the Commerce Committee report.

Position of Committee on Agriculture and Forestry	*Commerce Committee group of amendments number*
Registration criteria. This series of amendments makes nonsubstantive language changes in the bill that are incompatible with other provisions of the bill and introduces technical errors into the bill. The Committee on Agriculture and Forestry has no objection to language changes which do not damage the bill and suggests alternative amendments which would adopt words apparently preferred by the Committee on Commerce without doing violence to the bill	1
Use of test data. This amendment strikes out a provision giving an applicant exclusive rights in the test data developed and submitted by him. The Committee on Agriculture and Forestry believes that private research will be encouraged and better and safer pesticides will be developed if private researchers are protected in the fruits of their labors. The Agriculture Committee provision would not preclude other re-	

Position of Committee on Agriculture and Forestry	*Commerce Committee Group of amendments number*
searchers from making their own similar tests or sharing by agreement in the costs and results of research done by others.	2
Advisory committees. This amendment provides for a weak and ambiguous conflict of interest prohibition and does not appear to accomplish any reasonable objective	3
Penalties. This amendment provides for imposition of a maximum civil penalty ($10,000) for a violation by a householder or other person not in the pesticide business improperly using the safest pesticide which is 10 times as great as the maximum fine ($1,000) which could be imposed in criminal case against the same person, and twice as great as the civil penalty ($5,000) which could be imposed on a manufacturer and distributor of a dangerous unregistered pesticide, or on a professional applicator spreading the most dangerous kind of pesticide by airplane	4
Exports. This amendment is a wasteful and useless "junk mail" provision. It provides for sending possibly dangerous and misleading information to every country in the world without any request therefor or indication of interest therein. It evinces a "big brother" attitude and a belief that other sovereign nations can adequately govern their countries only with our help. Most important it (1) deletes the provision of the Agriculture Committee amendment which would require notice to foreign countries whenever a pesticide has its registration cancelled in the United States, and (2) prohibits the export of any pesticide unless the Administrator determines that its export will not result in unreasonable adverse effects on the environment of the United States. This preclearance requirement would make it difficult to sell completely harmless pesticides for export	5
Confidentiality. While the Commerce Committee report uses the title "Confidentiality" for this amendment, the amendment is actually more serious than that. It denies the Administrator the authority to obtain the information that is probably the most essential to proper administration of the act, to wit, the tests and results upon which the claims are based. He would be restricted in the important decision as to registration and classification of pesticides to those tests which the applicant chose to offer. This amendment would hamper administration in several other ways and remove some of the protection accorded trade secrets	6
Citizens suits. This amendment provides for citizens suits for injunctions, attorney and expert witness fees, and other costs of litigation. The Committee on Agriculture and Forestry believes that laws should be administered by the executive branch of the government. This amendment appears to have technical defects	7
Hearing structure. This amendment does not appear to do any good, and there is no need for it. It would give to the Administrator unwarranted authority to deny to a registrant the opportunity for a full hearing prior to cancellation of his registration	8

Position of Committee on Agriculture and Forestry	*Commerce Committee Group of amendments number*
Inclusion of farmworkers in term "man". This amendment specifies that the term "man" shall include farmworkers and others. This part of the amendment has no substantive effect, except that it possibly might be construed as requiring the Administrator to register a pesticide (such as DDT) which involves less risk for farmworkers in preference to one (such as methyl parathion) which involves more risk for farmworkers. This amendment would also prohibit the Administrator from relying on tests conducted in violation of local law (say on Sunday) or accidental and other "involuntary" tests which show a pesticide to be highly dangerous (or safe) in denying (or granting) registration	9
Authority of local governments to regulate the use of pesticides. This amendment would permit local governments in addition to the Federal and State governments to regulate the sale or use of a pesticide. The Committee on Agriculture and Forestry felt that regulation by the Federal Government and the 50 States should be sufficient and should preempt the field	10
Suspension. This amendment would deny a registrant the right to an administrative hearing in cases where there is no purpose to be served by such denial and where EPA has advised the Agriculture Committee it feels there should be such a right. It provides for a type of judicial review which denies a registrant the opportunity to present evidence in court	11
Authority of States to register pesticides. This amendment would impose needless loss on American industries and their consumers by denying them the use of pesticides they may have been using for years with the utmost safety, simply because their pesticide usage does not warrant the cost of regular Federal registration of the pesticide for that particular usage	12
Recordkeeping by private applicators. This amendment authorizes the Administrator to require farmers, farmworkers, and other private applicators to maintain records and file reports. The Committee on Agriculture and Forestry believes that such recordkeeping and reporting would constitute an undue burden in view of the minor benefits, if any that might result from it	13
Right of entry. This amendment would authorize Federal agents to enter private homes and other places where pesticides or devices are kept or used without a warrant and without any suspicion that any law had been violated. The Committee on Agriculture and Forestry feels that this authority is far broader than necessary to protect the public and that the amendment is unconstitutional	14
Specific authorization. This amendment would limit appropriations for the Federal Insecticide, Fungicide, and Rodenticide Act to not to exceed $15,000,000 for fiscal 1973, $25,000,000 for fiscal 1974, and $35,000,000 for fiscal 1975. The cost of administering this act in the fiscal year just closed is estimated by EPA at $18.3 million. With the new responsibilities imposed by the bill, EPA estimates the necessary cost of administering the act at $35 million for fiscal 1973, $44 million for fiscal 1974, and $55 million for fiscal 1975	15

DIFFICULTIES INVOLVED IN CONSIDERATION OF THE BILL

H.R. 10729 is an amendment to the Federal Insecticide, Fungicide, and Rodenticide Act. That entire act was enacted in 1947 and Senate consideration of it took just over 1 month. The bill which was enacted to become that act was referred to the Committee on Agriculture and Forestry on May 13, 1947. It was reported to the Senate on May 26, 1947, was passed by the Senate on June 16, 1947, and became public law on June 25, 1947. That law has served the country well with minor amendments over a span of 25 years. Under it, an order banning DDT has been issued, public spirited citizens have had their days in court, and much has been done to protect the environment. The United States has produced food and other agricultural commodities in abundance to feed and clothe itself and much of the world.

S. 660 was referred to this committee on February 8, 1971; S. 745 was referred to this committee on February 10, 1971. The bill to which this report relates, H.R. 10729, was referred to this committee on November 19, 1971. All of these bills would amend the Federal Insecticide, Fungicide, and Rodenticide Act. On December 16, 1971, the chairman of the Committee on Commerce wrote to the chairman of this committee acknowledging the paramount interest of this committee but expressing the feeling that the Commerce Committee had a subordinate interest because of its statutory jurisdiction over "fisheries and wildlife, including research * * * and conservation." He suggested re-referral of the bill to the Committee on Commerce if and when this committee chose to report a pesticide bill. The chairman of this committee replied that if at the time this committee reported such a bill it appeared that the Commerce Committee had any legitimate interest in the legislation, he would have no objection to it being rereferred. The correspondence referred to is as follows:

DECEMBER 16, 1971.

Hon. HERMAN E. TALMADGE,
Chairman, Agriculture and Forestry Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR TALMADGE: I am aware that your committee has been giving very thoughtful and thorough consideration to the pesticide legislation now before the Congress. Although the Agriculture Committee's interest in this legislation is certainly paramount, it is my feeling that the Commerce Committee also has a legitimate, if subordinate, jurisdictional interest. Our statutory jurisdiction over "fisheries and wildlife, including research * * * and conservation" has provided a basis for numerous hearings on effects of pesticides on the environment and for consideration of the Pesticides Research Act of 1958. That act directed the Secretary of the Interior to conduct research on the impact of pesticides in order to protect fish and wildlife resources from possible adverse effects.

Proper exercise of our jurisdictional responsibilities over those resources would appear to me to justify subsequent consideration by the Commerce Committee of the pesticide legislation now before you. If you are in agreement, our committee would appreciate receiving notification if and when you choose to report a pesticide bill next year. I would further appreciate your assurance that, if we request rereferral of the bill at that time, you would have no objection. I would

be willing to abide by any time limit for our consideration which you might find appropriate.

With all good wishes for the holiday season.

Sincerely yours,

WARREN G. MAGNUSON, *Chairman.*

DECEMBER 21, 1971.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MAGGIE: Thank you for your letter of December 16 with respect to pesticide legislation. This committee will probably consider and act on S. 1794, which provides for research into integrated methods of pest control, at our next regular meeting in January, but I do not believe that you have any interest in this bill. I understand that your letter relates to S. 660, S. 745, and H.R. 10729, each of which would generally revise the Federal Insecticide, Fungicide and Rodenticide Act, and I am asking the committee staff to notify the Commerce Committee staff whenever a bill similar to any of the bills just mentioned is reported. If, at that time, it appears that your committee has any legitimate interest in this legislation, I would have no objection to its being rereferred to your committee. However, since this committee has not yet fully considered this legislation, it is difficult to determine what form it will take and therefore difficult to determine whether it will involve matters in which your committee has an interest. After the bill is reported, we will be able to determine the nature of the interest of your committee, if any, and an appropriate time limitation for consideration by your committee.

With best wishes and warmest personal regards, I am

Sincerely,

HERMAN E. TALMADGE, *Chairman.*

This committee conducted extensive hearings in 1971 and in 1972 on these bills. All witnesses who desired to be heard were heard, hundreds of amendments were offered, and each amendment was carefully considered. Senators Hart and Nelson proposed a series of 11 amendments and because of the interest in these amendments, this committee gave them particularly extensive and careful consideration and asked the Environmental Protection Agency to provide the committee with its comments in writing on each of these amendments. Senator Nelson's prepared statement, which contains his explanation of the amendments and the amendments themselves, are set out beginning at page 75 of this committee's printed hearings on H.R. 10729. The comments of the Environmental Protection Agency on these amendments begin at page 82 of those hearings. All of these amendments received the most careful consideration possible by this committee.

This committee worked very closely with the Environmental Protection Agency and either adopted or worked out satisfactory alternatives for most of the amendments proposed by that Agency.

In accordance with the exchange of correspondence between the chairmen of this committee and the Committee on Commerce, this bill was referred to the Committee on Commerce on June 7, the day it was reported by this committee to the Senate. On July 19, 1972, the bill

was reported by the Committee on Commerce to the Senate with its recommendation for the adoption of approximately 65 amendments which are grouped by its report into 15 series of amendments. These amendments were generally similar to amendments which had been proposed by Senators Hart and Nelson or the Environmental Protection Agency before this committee and had been rejected by this committee. None of the amendments recommended by the Committee on Commerce deals specifically with "fisheries and wildlife, including research * * * and conservation," nor are any of them particularly related to that subject. Rather, they deal with farmworkers, appropriation authorizations to carry out the act, right of entry, recordkeeping by farmers and other private applicators, hearing structure, and other matters which fall within the general jurisdiction of the Committee on Agriculture and Forestry over this legislation. The paragraph headings of the report by the Committee on Commerce show the 15 areas covered by their amendments. Certain of the amendments recommended by the Committee on Commerce present substantive questions which ought to have the most careful study before they are decided by the Senate, more study than it has been possible to give them to date and more than can be given them as adjournment approaches. Certain of them represent changes in language which make no substantive change in the bill but do introduce technical defects. Since amendments of this type are the most difficult to explain or oppose, this committee in this report will discuss these amendments at considerable length for those who wish to go into detail.

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 1 OF THE COMMITTEE ON COMMERCE (REGISTRATION CRITERIA)

In brief, this amendment would have no discernible substantive effect, except to introduce errors into the bill.

This amendment would—

(1) substitute the defined term "unreasonable adverse effects on the environment" for the similarly defined term "substantial adverse effects on the environment" (page 77, lines 5 through 17 and elsewhere);

(2) strike out the direction that "The Administrator shall not make lack of essentiality a criterion for denying registration of any pesticide" (page 81, lines 13 thru 15); and

(3) make other nonsubstantive changes in language.

This amendment makes no change in substance. Since "unreasonable adverse effects on the environment", as defined, would have the same meaning as "substantial adverse effects on the environment", it makes no difference which term is used. The criteria for registration of pesticides is clearly spelled out in clauses (A), (B), and (C) of section 3(c)(5). Lack of essentiality is not one of the criteria and the Administrator has no authority to make it so without regard to whether the language proposed to be stricken is stricken.

With hundreds of amendments offered to a very technical bill, making language changes that are neither substantive nor technically necessary is likely to result in errors. The Committee on Agriculture and Forestry consequently rejected an earlier version of this amend-

ment. Some of the errors which would be introduced into the bill by the adoption of the current version are as follows:

(1) If the word "unreasonable" is to be substituted for "substantial" in the defined term, the substitution should be made in each place the defined term appears. The amendment fails to make such substitution on page 63 in the line beginning "(bb)".

(2) On page 77, line 13, the word "unreasonable" should be inserted before the word "risk." The amendment defines "unreasonable" adverse effects as "any risk." While it directs that costs and benefits be taken into account, "any risk" remains a risk no matter what the benefit to be derived from the action. As EPA commented in connection with a similar amendment (1013, below) "if read literally, no pesticide would be registered, because all present some risk." This completely excludes the effect of weighing benefits against risks, and defeats the purpose of the Committee on Commerce to "require that EPA make a full weighing of competing interests in making its determination." The Committee on Agriculture and Forestry does not know how to interpret the action of the Committee on Commerce in adopting the exact words which EPA had said would literally prohibit registration of any pesticide. If "unreasonable" were inserted before "risk," an "unreasonable" adverse effect would be a risk that was unreasonable, taking costs and benefits into account.

(3) The bill as passed by the House contains two defined terms which complement each other, to wit, "protect health and environment" and "substantial adverse effects on the environment." The former is defined as protection against the latter. In addition, it is somewhat redundant in providing for protection against "any injury to man" and for "taking into account" certain factors, both of which are already covered in the definition of "substantial adverse effects on the environment." The Committee on Agriculture and Forestry did not recommend changing the House bill in this regard because, while redundant, both definitions were consistent. The amendment of the Committee on Commerce, however, introduces a note of inconsistency between these definitions which, because of their importance in the misbranding, registration, and classification procedure, might cause serious difficulties. Under the Commerce Committee amendment, (i) the term "protect health and environment" would mean protection against "any injury to man" and against "any risk of injury to man" as that phrase is contained in the proposed definition of "unreasonable adverse effects on the environment"; and (ii) a different list of factors would be required to be taken into consideration in determining "unreasonable adverse effects on environmental values" as that term is used in the definition of "protect health and environment." The term "protect health and environment" could be made consistent with the proposed term "unreasonable adverse effects on the environment," by striking lines 18 through 21 on page 76 and inserting "unreasonable adverse effects on the environment."

Set out below are the comments of the Environmental Protection Agency on the similar amendment which was rejected by the Committee on Agriculture and Forestry:

[p. 8]

1. AMENDMENT NO. 1012

This amendment would add a new definition to the definitions section of the bill. The proposal is to add a term: "unreasonable adverse effects on the environment." In conjunction with this new definition, the same amendment would change the criteria for registration and classification. At present the Administrator is directed to register a pesticide if it will perform its impact without "substantial adverse effects on the environment." He shall not, moreover, make any lack of essentiality a criterion for denying registration of any pesticide. Amendment No. 1012 would make the pivotal criterion for registration the new term, "unreasonable adverse effects on the environment" and strike those references in section 3(b)(5) to essentiality.

The new term defined by the amendment does not, in our view, differ in substance from the present definition of "substantial adverse effects on the environment" now found in section 2(bb). The present subsection (bb) refers to "injury to man or substantial adverse effects on environmental values, taking into account the public interest and benefits . . ." The proposed subsection (dd) refers to "any risk to man or the environment, taking into account . . ." We do not believe the difference in language between the two sections amounts to one of substance. Both appear to adopt the present risk/benefits approach of the existing FIFRA and the Agency's present body of law. The difference between "any risk" and "any injury or substantial adverse effects" is slight. Perhaps, if read literally, no pesticide would be registered because all present some "risk." In applying a section like that proposed, we would in practice look at the likelihood of injury and the anticipated benefits, which is what subsection (bb) of H.R. 10729 seeks to achieve.

We note it might be desirable to strike section 2(bb) of the present bill, in the event Amendment No. 1012 is accepted. This would add clarity to the drafting in H.R. 10729. Section 3(d)(1)(C) makes "substantial adverse effects" on the environment" the linchpin of classification as well as registration. (Obviously the term means something different in section 3(d)(1)(C) from what it means in section 3(b)(5). If risks in use outweigh benefits, a product will not be registered under any classification. Where, on the other hand, a risk is apparent but acceptable because of countermaking benefits, the use based on the adverse impact will be restricted to minimize those risks).

Turning to that part of the amendment which would strike the reference to nonessentiality as a criterion for registration, we believe the present language of section 3(b) is preferable since it states agency policy. Where two products pose the same degree of risk and are equally necessary and effective, one should not be registered in preference to the other. Of course, where the same control can be achieved more

safely than with a product which is being examined, the definition of "substantial adverse effects" in section 2(bb) would itself mandate consideration of the alternative.

The report of the Committee on Commerce at page 10, stated:

> Under the definition of "unreasonable adverse effects on the environment" adopted by the Committee on Commerce, the bill on its face would require that EPA make a full weighing of competing interests in making its determinations. Thus, it is intended that any adverse effect ought not to be tolerated unless there are overriding benefits from the use of a pesticide.

If the objective of the Committee on Commerce is as described by it in the language just quoted, and if the Committee on Commerce prefers the term "unreasonable" to "substantial" as the governing criterion, its objectives could be easily accomplished without doing substantial injury to the bill by redefining "substantial adverse effects on the environment" to mean any "unreasonable" risk, and by making the corresponding necessary change in the definition of "protect health and environment" so that those terms would be defined as follows:

> (bb) Substantial Adverse Effects on the Environment.—The term 'substantial adverse effects on the environment' means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.
>
> (x) Protect Health and the Environment.—The term 'protect health and the environment' and 'protection of health and the environment' means protection against substantial adverse effects on the environment.

This would avoid the necessity of making numerous changes throughout the bill, which might result in errors in other provisions.

The language suggested above does not include the phrase "including the availability of alternative means of pest control" because the balancing of benefit against risk is supposed to take every relevant factor that the Administrator can conceive of into account. The question he must decide is "Is it better for man and the environment to register this pesticide, or is it better that this pesticide be banned?" He must consider hazards to farmworkers, hazards to birds and animals and children yet unborn. He must consider the need for food and clothing and forest products, forest and grassland cover to keep the rain where it falls, prevent floods, provide clear water. He must consider aesthetic values, the beauty and inspiration of nature, the comfort and health of man. All these factors he must consider, giving each its due. No one should be given undue consideration, no one should be singled out for special mention, no one should be considered a "vital" criterion.

For each pesticide the Administrator must ask the same question. There is no difference in this respect between general and restricted use pesticides. On a general use pesticide the restrictions that must be complied with are on the labeling. On a restricted use pesticide the restrictions are provided by regulation. In each case the Administrator must take into account all relevant factors and decide whether it is better for man and the environment that this product be registered.

[p. 10]

With respect to its amendment on page 81, lines 13 thru 15, striking "The Administrator shall not make any lack of essentiality a criterion for denying registration of a pesticide," the report of the Committee on Commerce states at page 11,

> The "doctrine of essentiality" has many meanings to many people. To some, it would forbid the registration of any pesticide if there exists an alternative which is just as safe and effective as that pesticide—since under those circumstances the pesticide is not "essential" for the well-being of society. Under another reading, the doctrine merely mandates consideration of the availability of less hazardous substitutes as one of the interests to be balanced in determining whether a consideration (sic) should be registered. *If the first of these readings were accepted universally, the committee would be willing to wipe out the doctrine and to accept the Agriculture Committee's language which would appear to do just that. If "pesticide A" and "pesticide B" are equally safe and effective it would be unfair to register one in preference to the other and absurd to reject both on the grounds that neither is "essential"*. Yet, since the second reading has been a popular one, and since the committee supports the doctrine as defined under that reading, the committee regards language which would reject the doctrine outright as dangerous. If "pesticide A" is safer than "pesticide B", this is certainly a relevant consideration in the evaluation of an application for the registration of "B". (italics added)

The sentence proposed to be stricken by the Commerce Committee did not originate with the Agriculture Committee, but is contained in the House bill. Since it was in accord with agency policy, and since its deletion would make no substantive change but might create the fear among those who accept the "first reading" that some change in registration criteria would result, the Committee on Agriculture and Forestry did not recommend its deletion.

The Committee on Commerce would thus give reassurance to those who accept the "second reading", while the Committee on Agriculture would reassure those who accept the "first reading". The two are by no means incompatible, and there would appear to be no reason why both groups on this very controversial matter should not be reassured by substituting the following for the sentence proposed to be stricken by the Commerce Committee: "Where two pesticides meet the requirements of this paragraph, one should not be registered in preference to the other." This would be completely in accord with the policy of EPA and both committees.

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 2 OF THE COMMITTEE ON COMMERCE (USE OF TEST DATA)

In brief, this amendment would discourage research into new and safer pesticides, by making the fruits of such research immediately available to competitors.

[p. 11]

This amendment (which strikes language on page 79, lines 2 through 6) would delete a provision prohibiting data submitted in support of one application for pesticide registration from being considered without the consent of the applicant in support of any other application for registration. The provision it would strike does not prevent other applicants from developing their own data and obtaining registration on the basis of that data, but it does assure each applicant of exclusive rights in the test data which are the fruits of his labor. It should be noted that this provision prohibits consideration of such data by the Administrator "in support" of another application. There is nothing to prevent use of such data in evaluating other test data or denying another application.

The purpose of the provision proposed to be deleted is to give manufacturers an incentive to undertake the research necessary to develop better and safer pesticides. The costs of testing a product to determine the pests for which it is effective, the commodities on which is can safely be used, and the proper method of application may be very great. If the product is not patentable or if the patent protection has expired, there is nothing to prevent a competitor from registering a similar product. Under such circumstances, the first applicant has no opportunity to recover his research costs and little incentive for undertaking that research. The provision proposed to be stricken by the Commerce Committee amendment is designed to provide the necessary incentive for the production of safer and better pesticides to protect health and the environment.

The Commerce Committee says at page 12 of its report:

> The prime reason stated for this provision in the Agriculture Committee bill is that without it the pesticides industry will lack incentives to develop new pesticides. Yet, by requiring manufacturers to duplicate test results, portions of the money now spent on developing new pesticides will undoubtedly be diverted to perform such duplicative testing. Consequently, this provision could stifle the very incentives it seeks to achieve.

The Committee on Agriculture and Forestry does not believe that there will be any great diversion of funds to duplicate testing. Rather this provision is likely to result in equitable sharing of research costs. There would be little reason for duplicate testing if a second registrant could share in the test data of the first by paying part of the cost. And there would be little reason for the first registrant not recouping a part of his cost in this manner, since if he does not the second registrant can do his own testing. The Committee on Agriculture and Forestry does not believe that this provision can do other than promote the development of safer and better pesticides.

Comments by the National Agricultural Chemicals Association in opposition to this amendment of the Commerce Committee and by the Environmental Protection Agency in support of it are as follows:

NACA Statement Relative to Exclusive Use of Data Provision of H.R. 10729

INTRODUCTION

NACA supports the exclusive use of data provision of H.R. 10729 as a means of encouraging research on pesticides.

The simple economic fact upon which the exclusive use of data provision is based is that no one is going to invest substantial amounts in research to meet today's stringent regulatory requirements for data if competitive companies can thereafter use that data to register and sell in competition the same product.

The purpose of this statement is to analyze the arguments which have been used to oppose the provisions and to discuss the reasons why NACA supports it.

SECTIONS OF H.R. 10729 INVOLVED

The exclusive use of data provision is necessitated by the establishment of a new policy in H.R. 10729, Section 3. Under Section 3(c)(4) the Administrator is required to publish in the Federal Register a notice of each application for registration of a pesticide if the application contains any new active ingredient or if the application would entail a new use pattern. Section 3(c)(1) requires the registrant to file a "registration statement" which would include, "if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based * * *" Section 3(c)(2) operatively establishes additional new policy as follows:

> * * * within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his discussion.

The proponents of this new policy of publication of information urged that the sole purpose of the policy was to make the data available to the scientific community for evaluation of its validity. While this seems a proper objective, making the data public would also mean that such data was available to competitors. To achieve the purpose of assuring the validity of data submitted by making it public without adversely altering the competitive situation in the industry and to assure continuing research and development, Section 3(c)(2)(d) was finally set forth as follows:

> (D) If requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, *except that data submitted in support of an application shall not, without permission of the*

applicant, be considered by the Administrator in support of any other application for registration.

(It is the italicized portion which has been denominated as the exclusive use of data provision.)

The intent and effect of the exclusive use of data provision is succinctly stated in the report of the Committee on Agriculture of the House of Representatives which explains the provision in these terms:

> Research data originated and submitted by an applicant for registration are not to be considered by the Administrator without permission of the applicant, in support of any other application for registration. (Report No. 92–511, 92d Cong., 1st sess., page 20.)

What these related provisions would do and would not do may be stated concisely:

1. They would make available for public inspection data submitted by an applicant for registration (except data which the Administrator considers to constitute a trade secret.)
2. They would not preclude any other person from registering the same pesticide.
3. They would, however, preclude the Administrator from considering *in support* of a second application for registration of a pesticide the research data originated and submitted by the original applicant, without the permission of the original applicant.
4. They would not preclude the Administrator from considering such research data in support of a decision to refuse another application.
5. They would not preclude the Administrator from considering any other data which he considered in registering the first pesticide—they would only preclude, without the first applicant's permission, consideration of the research data originated and submitted by the first applicant.

BASIS OF OPPOSITION

Opposition to this exclusive use of data provision developed when H.R. 10729 was pending in the House of Representatives. Reasons for this opposition as reflected both in informal conversations with the opponents and as reflected in discussion of this provision when H.R. 10729 was debated on the floor of the House of Representatives may be summarized as follows:

1. The provision subverts our patent laws by extending indefinitely the rights of exclusive production of a pesticide material. (Congressional Record, Vol. 117, No. 169, November 9, 1971, page H–10767.)
2. The provision makes it impossible for the Administrator in considering data originated by the first applicant to prove adverse effects from the pesticide of the second applicant. (Congressional Record, Vol. 117, No. 169, November 9, 1971, pages H–10742 and H–10760.)

[p. 14]

525-313 O - 73 - 14

3. The provision requires the Environmental Protection Agency to join with manufacturers in "restrictive trade and in violation of the Freedom of Information Act outside the bounds of patent protection." (Congressional Record, Vol. 117, No. 169, November 9, 1971, page H–10740.)

4. The provision would require needless duplication of research.

DISCUSSION

Analysis of these provisions of H.R. 10729 will demonstrate that these objections cannot be sustained.

I. The exclusive use of data provisions do not extend patent protection either directly or indirectly

Even the most cursory analysis of these provisions will demonstrate that they would not extend either directly or indirectly the protection received by a registrant under a patent.

During the life of a patent only the patent holder has the right to market the pesticide or to authorize others to do so. There is nothing in H.R. 10729 that would prevent any other person from registering the pesticide granted sufficient supporting data. No other person would, of course, have any reason to do so since after registration the pesticide could not be marketed due to patent protection. After the patent expires, a different situation would exist either under present law or under H.R. 10729. Any other person would have the right not only to register but to market the product. Any other person wishing to do so would be in exactly the same position as was the original registrant-patent holder.

Possibly the effect of this provision in actual operation can be illustrated succinctly by analyzing a hypothetical example.

For our hypothetical example let us assume the following:

1. Pesticide X was patented following a demonstration of its patentability as a contribution to the prior art. (A demonstration of the type of data which is required to establish the patentability of a new pesticide is attached as Appendix A–1.)

2. The patent holder did the necessary research work to demonstrate the eligibility of the pesticide for registration. (The type and extent of data required to support the registration under present law is attached as Appendix A–2. Appendix A–2 consists of an excerpt of pages 4–7 from *The Regulation of Pesticides in the United States* which was published by the U.S. Department of Agriculture and the U.S. Department of Health, Education, and Welfare in March, 1968. A summary of the general categories of data required for registration is attached as Appendix A–3.) A survey conducted by the National Agricultural Chemicals Association shows that the average cost of discovery, and meeting the regulatory requirements to the point of commercialization increased from $3,482,000 in 1967 to $5,493,000 in 1970.

3. The patent on Pesticide X in the United States will expire in aproximately 4 years. It previously has expired in

other countries, the laws of which provide a shorter patent life.

4. A foreign company, as a result of 3 above, is presently producing and marketing Pesticide X in portions of the world other than in the United States.

On these assumptions, the opponents of the exclusive use of data provision would point out that except for this provision, the foreign firm could promptly register and market Pesticide X in the United States following the expiration of the patent.

H.R. 10729 would not change this. The foreign firm would still have the right to register and market Pesticide X after the expiration of the patent. The exclusive use of data provisions of H.R. 10729 would require only that in registering the pesticide the foreign firm establish the safety and the efficacy of its product without the use of the original registrant's research data. This should impose no undue burden on the foreign firm. Presumably that firm has already done a substantial amount of research to establish the safety of its product prior to having marketed it outside of the United States.

Under existing law as reflected in the Federal Insecticide, Fungicide and Rodenticide Act, the research work which has been conducted by the original registrant and patent holder to establish the efficacy and the safety of Pesticide X has not been made available for public inspection. The provision of H.R. 10729 and the new Public Information Act requiring that such data be made available for public inspection is new. Accordingly, the foreign firm in marketing Pesticide X outside of the United States has not been able to rely upon research work that has been conducted by the original registrant-patent holder because these data have not been available to him.

Likewise, there is nothing to prevent the foreign firm from submitting its application for registration and thereby having its research data available to suport its application immediately upon the expiration of the patent. Furthermore, since tolerances for residues on food crops have already been established under the Federal Food, Drug and Cosmetic Act, the foreign firm would not be faced with the delay of 2 or 3 years now commonly experienced by original registrants in establishing tolerances.

Likewise, there would be no reason under H.R. 10729 why the foreign firm would not be able to negotiate with the original registrant an agreement which would authorize it to use the research work of the original registrant-patent holder. This might, for example, require only that it pay a portion of the expense of that research work. There can be no valid charge of monopoly or restrictive practices attributed to such negotiations. If the original registrant demanded an excessive price, the foreign firm, or any other proposed new registrant would always have the option of conducting the necessary research to establish the safety of its product. [p. 16]

We believe that the above analysis of this concrete example demonstrates the fallacy of the contention that this exclusive use of data provision extends in effect the life of a patent monopoly.

Actually, a situation somewhat comparable in result exists in Japan where one must submit (among other things) toxicity data generated by an "official laboratory" in Japan, even though the data are already available from a responsible laboratory outside of Japan. Thus, a firm foreign to Japan must either pay another firm for use of data already generated by an "official laboratory" or must pay for the data to be generated by an "official laboratory."

II. The exclusive use of data provision will make economically feasible research which will be required to keep on the market, or to bring on the market, many useful pesticides.

Initial registration of a pesticide does not assure continuing registration or the right to market a pesticide. A registration remains in effect only as long as the officials are convinced that the product when judged by the latest scientific standards and testing techniques, continues to meet the registration requirements.

During the last 5 years the only parts of the registration requirements as reflected in Appendices A–2 and A–3, which have not been strengthened, thereby requiring additional testing, is the information on the type of pesticide and the formulation. The survey conducted by the National Agricultural Chemicals Association established that in 1967 the reporting companies spent a total of $6,997,000 or 18.4 percent of total research and development expenditures for maintaining the registration of existing products. In 1971 the expenditures of these same companies for maintanining existing registrations had increased to $16,829,000 or 23.5 percent of their total research and development expenditures. This trend has been sharply demonstrated by the large number of cancellation and suspension notices which have been issued under the Federal Insecticide, Fungicide and Rodenticide Act in the past 2 to 3 years.

Frequently the requirement for additional research to maintain in effect a registration comes late in the patent life of a product. Frequently it applies to pesticides which are not patentable or on which the patent has already expired.

The economic facts of life dictate that a registrant cannot assume the expense of such research to continue in effect a registration and continue to sell his product in competition with others if his competitors can obtain the protection resulting from such research at no cost.

As a practical result, numerous pesticides have been removed from the market over the past few years because it was not economically feasible for the registrant to meet the demands for the additional research necessary to maintain the product on the market and, at the same time, have such research inure to the benefit of his competitors.

[p. 17]

The exclusive use of data provision of H.R. 10729 would make it feasible in many such instances for a registrant to undertake research necessary to maintain a product on the market or to put a nonpatentable pesticide on the market, if the registrant could be assured that such research expenditures would not make it possible for competitors to market the same product without the necessity of making such expenditures.

The significance of these research costs is apparent when it is considered that they constitute a substantial portion of the sales income of the pesticide involved.

Dr. Richard H. Wellman, vice president and general manager, process chemicals division, Union Carbide Corp., has recently made an analysis of the cost of developing a new pesticide and the number of marketing years which are required to recover the development costs. In this study he used a portion of the data produced by the National Agricultural Chemicals Association's "Cost of Research Survey." A copy of Dr. Wellman's analysis is attached as appendix B. His analyses of the cost of developing, producing, marketing and recovering investments for two typical pesticides are set forth in appendix A to his study. His hypotheses are stated at page 2 in paragraph 4. In example No. 1 he assumes that research started in 1963. He estimates that the costs of developing and putting the pesticide on the market would not have been recovered until 1980. In this case a patent probably would have been applied for in 1964 and issued in 1966 or 1967. By the time the costs were recovered there would remain only 3 or 4 years of the patent life. The executive committee on NACA has reviewed this study and believes that these two examples are typical for the industry.

From these data it should be apparent that it is not economically feasible for a registrant to make expenditures of this magnitude if such research is to become readily available to competitors. The effect of the deletion of the exclusive use of data provision from H.R. 10729 clearly would be to discourage research on the production of new pesticides and to sharply limit research whether original or defensive to products having a substantial remaining patent life.

Under the present law registration information submitted to the Administrator has not routinely been made available for public inspection. Such information has, however, as a matter of practice but without statutory authority, been considered by the Administrator to support the registration of the same or a similar product by another registrant. The result for the pesticide industry has been that each company engaged in research for new pesticides makes a very early determination of the likelihood of obtaining a valid and enforceable patent since only by obtaining a patent can the company protect its research investment. If the company determines that it cannot obtain a valid and enforceable patent, research and development of the pesticide is abandoned. The

result for the users and distributors of pesticides is that a potentially important pesticide is never developed.

The new policy of H.R. 10729 requiring publication substantially aggravates the situation by providing competitors with the basis for further analysis and development of similar products. The inevitable effect under either the present system or the system proposed in H.R. 10729 with the exclusive use of data provision deleted would be to remove or keep from the market pesticides which could make a substantial contribution to the production of our national requirements for food and fiber.

III. The exclusive use of data provision is administratively feasible and is compatible with the other regulator requirements of H.R. 10729

From the foregoing discussion we believe it to be clear that the remaining reasons which have been advanced in opposition to this provision are without merit.

In the discussion on the floor of the House of Representatives, one opponent stated that this provision would preclude the Administrator from considering data submitted by one registrant as support for a conclusion that the comparable product of a second registrant is not safe and thereby shift the burden of establishing lack of safety to the Administrator. The provision does not require or permit this conclusion. The only thing which it precludes the Administrator from doing, is considering research data originated by one applicant in support of the registration of the product of another applicant. It does not preclude the Administrator from relying upon such data to deny the application of another applicant. The provision has no relationship to the burden of proof.

The charge was made that the provision would violate the Freedom of Information Act. This allegation cannot be sustained. The only thing which the Freedom of Information Act requires is that data in the files of the Government (with certain exceptions) be made available for public inspection. The provisions of section 3(c) of H.R. 10729 requires that all data in support of an application which has been granted be made available for public inspection, except for certain limited exceptions. The data will be made available for public inspection. The data will be subject to appraisal by all interested parties as to its validity. This is a far different purpose and requirement than to make the data public property after it has been opened for public inspection.

IV. Additional research which would result from the exclusive use of data provision would be beneficial

Opponents have suggested that this provision would require a needless duplication of research. We do not believe this to be the case. The type of research to establish the safety of a pesticide and its effects on the environment is at the best imprecise. By necessity it generally is conducted on a limited number of laboratory animals. Replication of research conducted under these conditions can be quite beneficial.

[p. 19]

Experience has shown that impurities resulting from production processes may have substantial toxicological effects. Research conducted with a compound produced by one company may not be valid for the same compound produced by another company.

To the extent that this provision would result in a replication of research it would thereby further contribute to the public knowledge of the pesticide and the assurance of its safety.

V. The exclusive use of data provision has been practiced for many years under the Federal Food, Drug and Cosmetic Act

The concept of the exclusive use of data provision is not novel. The new drug provision of the Federal Food, Drug and Cosmetic Act requires that the marketer of any new drug establish its safety. The type of research through which this is established is comparable to that under the Federal Insecticide, Fungicide and Rodenticide Act. Title 21, Code of Federal Regulations, section 130.4(b) provides with reference to supporting data submitted to establish the safety of a new drug, as follows:

> (b) Pertinent information may be incorporated in, and will be considered as part of an application on the basis of specific reference to such information, including information submitted under the provisions of § 130.3, in the files of the Food and Drug Administration; however, any reference to information furnished by a person other than the applicant may not be considered unless use of such information is authorized in a written statement signed by the person who submitted it.

CONCLUSION

The foregoing discussion, we believe, demonstrates that the bases of opposition of the opponents of the exclusive use of data provision are without merit:

In no respect does the provision subvert our patent laws by extending indefinitely the right of exclusive protection of a pesticide material. The provision does not prevent any company from producing and marketing a pesticide after its patent has expired. It merely requires that the new marketer establish the safety and efficacy of the product which he now proposes to produce and market.

The exclusive use of data provision does not preclude the Administrator from considering data originated by one applicant to conclude that adverse effects might be expected to arise from the pesticide of the second applicant. It merely precludes the Administrator from using such data in support of the application to register another pesticide.

The provision in no way violates the Freedom of Information Act. The research data is made available for public inspection and appraisal.

[p. 20]

The provision would not require needless duplication of research. It merely would require that one company establish the safety and efficacy of the product which it proposes to market.

NOTE: For appendixes, see page 247 et seq. of hearings.

EPA Comments

3. AMENDMENT No. 1004

This amendment would delete from section 3(c)(1)(D) the provision which prohibits the Administrator from considering certain test data submitted in support of a registration; and would insert a provision which would explicitly state his authority to consider any test data submitted to determine the adequacy of an applicant's test data.

We agree that the present language in 3(c)(1)(D) should be deleted for a number of reasons already presented to the subcommittee in our testimony. We do not believe that it is necessary for the Administrator to have specific authority to use available data if there is no prohibition against his using it. Thus, deletion is sufficient and the grant of affirmative authority is unnecessary.

In making the recommendation, it is our understanding that where testing is specifically required by the Administrator a subsequent applicant is not relieved of his burden to test simply because another had previously conducted the same or similar tests. However, we feel the Administrator should be able to refer to any previously submitted test data when considering the test data of a subsequent applicant.

(EPA's testimony, referred to above, appears at page 95 of the Committee's hearings as follows:

("2. A second undesirable feature is the provision that test data submitted in support of a pesticide registration application cannot be considered by the administrator without permission of the originator of the data if such data tends to support another registration application.

("The effect of this provision is to afford additional economic protection, foster monopoly, and it may tend to restrict pesticide business to large manufacturers. In addition, it would increase not only Federal administrative cost but those of the manufacturer as well, aside from unnecessarily increasing the application processing time.")

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 3 OF THE COMMITTEE ON COMMERCE (ADVISORY COMMITTEES)

In brief, this amendment is ambiguous, so that its effect cannot be known. It would appear to substitute an ambiguous conflict of interest rule for one which the Committee on Commerce and the Committee on Agriculture and Forestry agree constitute an "admirable policy".

This amendment (which appears at the bottom of page 96 and top of page 97) would require any committee of the National Academy

of Sciences to which relevant questions of scientific fact might be referred under section 6(d) to include qualified scientists. Not more than one-third of such scientists could have an economic interest in the chemical industry, and none of the members could have an economic interest in the pesticide which is the subject of referral.

The reason for this amendment is not clear. A committee composed of two scientists who were not interested in the chemical industry and 23 nonscientists who were deeply economically involved in the chemical industry could meet the requirements of the Commerce Committee amendment. If the amendment is no more restrictive than that, it merely creates an illusion of avoiding conflicts of interest and would appear to condone conflicts that would not be countenanced in its absence. It seems unlikely that the amendment accomplishes whatever objective is intended. The Commerce Committee report in describing that committee's intention says at page 19,

> "The amendment specifies that not more than one-third of the members of an advisory committee may be composed of scientists with an economic interest in the chemical industry and * * *"

This explanation is at variance with the language of the amendment, compounding the difficulty of trying to find out what the Commerce Committee is trying to recommend. To take another example, if a committee with 27 members included 9 scientists, then under the language of the amendment not more than 3 of such 9 could have an interest in the chemical industry. Under the report language all of such 9 could be so interested.

To still further compound the problem the Commerce Committee cites a still different rule with approval as follows:

> "Current EPA policy prohibits representation on advisory committees of scientists with a conflict of interest in the pesticide under consideration. While this is an admirable policy, there is no assurance that it will remain intact under succeeding Administrators."

The Committee on Agriculture and Forestry agrees that this is admirable policy. It appears far better policy than any of the proposals of the Commerce Committee, and it hardly would be expected to be changed, since it is generally in line with similar policies throughout government.

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 4 OF THE COMMITTEE ON COMMERCE (PENALTIES)

In brief, this would increase the maximum civil penalty for a householder or other person not in the pesticide business above that for manufacturers, commercial applicators, and others in the pesticide business.

This amendment (which appears at page 116, line 2) would raise the allowable civil penalty from $1,000 to $10,000 for a violation of the act by a private certified applicator or other person not covered by section 14(a)(1). This would permit imposition of nearly the highest penalty for the least serious offense.

[p. 22]

The amendment of the Committee on Agriculture and Forestry provided for an orderly progression of penalties based on the seriousness of the offense. Thus, starting with the ordinary householder, private applicator, farmer, or other person not in the pesticide business committing an offense not deemed suitable for criminal prosecution the Committee on Agriculture provided for a maximum civil penalty of $1,000. For an offense by such a person deemed serious enough for criminal prosecution the maximum penalty would be $1,000 plus imprisonment for 30 days. The Committee on Agriculture and Forestry felt that an offense by a registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor should be treated more seriously than an offense by a householder. A registrant, for example, should have greater knowledge of the dangers of pesticides and greater familiarity with the law regulating their use. A violation by a registrant would be much more likely to have widespread and serious effects than a violation by a householder, home gardener, or farmer. Consequently, the amendment of the Committee on Agriculture and Forestry prescribed a civil penalty of not more than $5,000 for an offense by a person in the business of making, selling, or applying pesticides. An offense by such a person serious enough for criminal prosecution would be subject to a fine of up to $25,000 and imprisonment for up to 1 year.

The amendment proposed by the Commerce Committee would permit a householder who misuses a roach spray in his own house to be subjected to double the civil penalty which could be imposed on a commercial applicator spraying an entire forest by airplane. The Committee on Agriculture and Forestry recommends rejection of this amendment.

The report of the Committee on Commerce describes this amendment on page 19 of its report as follows:

> "(4) *Penalties*
>
> The amendment raises from $1,000 to $10,000 the civil penalty for violations of the Act by private certified applicators. Those pesticides which are classified for restricted use only might be required to be applied only by a certified applicator. The proposed legislation provides that commercial applicators are to be subject to penalties not to exceed $25,000 while private applicators are to be subject to penalties of not more than $1,000. As huge corporate farmers could be certified as private applicators, a $1,000 penalty will be an insufficient deterrent to prevent violations by such applicators. Consequently, the committee recommends that the maximum penalty be appropriately raised to $10,000."

The statement quoted above would certainly lead the reader to believe that this provision is applicable only to "private certified applicators". That is by no means the case. It is applicable as well (page 115, line 21) to any "other person not included in paragraph (1)", (i.e, anyone not in the pesticide business). Private certified applicators would constitute only a very small percentage of the persons subject to this penalty.

The third sentence of the statement quoted above would certainly lead the reader to believe that the Commerce Committee is comparing

the civil penalties for commercial applicators with the civil penalties for private applicators, and that the civil penalty for a commercial applicator is $25,000. That is by no means the case. The civil penalty for a commercial applicator (page 115, line 19) is $5,000, or one-half that provided by the Commerce Committee amendment for a private applicator. The number of "huge corporate farmers" mentioned above who apply their pesticides themselves is probably a very small number in relation to the number of (1) small farmers, gardeners, householders, and others who apply their own pesticides who would be made subject to a maximum civil penalty of $10,000, and (2) "huge corporate" manufacturers, distributors, merchandisers, and others who would continue to be subject to a maximum civil penalty of only $5,000.

The fourth sentence of the statement quoted above is also incorrect in stating that "huge corporate farmers could be certified as private applicators." Under section 2(e)(1) and (2) only an "individual" can be so certified.

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 5 OF THE COMMITTEE ON COMMERCE (EXPORTS)

In brief, the principal effect of this amendment is to strike out the requirement that foreign governments be notified when a pesticide is banned in the United States (page 123, lines 19 through 25).

This amendment would—

(1) require the filing of a statement similar to a registration statement for any pesticide intended solely for export and prepared or packed in accordance with the specifications of the foreign purchaser (page 123, lines 7 through 10);

(2) require records with respect to such exports to be maintained and to be open for inspection (page 123, lines 10 and 11);

(3) prohibit exportation of any pesticide unless the Administrator determines that such export will not result in unreasonable adverse effects on the environment of the United States (page 123, lines 11 through 18);

(4) require the Administrator to notify the government of the foreign nations to which any pesticide may be exported of the availability of (A) registration or similar statements filed under section 3(c)(1); (B) all labels "approved under section 3"; and (C) all orders of suspension and all notices of cancellation or changes in classification pursuant to section 6 (page 124, lines 1 through 9).

(5) strike out the Agriculture Committee provision requiring copies of cancellation notices to be sent to foreign governments whenever cancellation became effective (page 123, lines 19 through 25).

Cancellation notices are required by this law to be published in the Federal Register routinely for each pesticide each five years. Neither these nor cancellation notices issued at other times necessarily result in cancellation and there is no good reason for sending them to foreign governments as would be required by the Commerce Committee amendment, until it is known whether they will actually result in cancellation. Sending them prematurely gives the foreign government absolutely no information as to pesticides which are banned in the United States.

[p. 24]

This amendment is not necessary and does no good. It will unnecessarily increase the cost of administration and the amount of red tape to which industry is subjected. It fails to accord proper recognition that other soverign nations are fully capable of self-government.

Each country to which a pesticide may be exported is fully capable of deciding what information it desires in connection with pesticides, what pesticides are needed to meet its problems, and where the balance lies between risk and benefit within its borders. It would probably prefer to have that information submitted in its national language.

The possibility of the export of a pesticide resulting in unreasonable adverse effects on the environment of the United States is highly speculative. It is usually the use, rather than the export, that may result in adverse effects. Use abroad should not have adverse effects here, but in any event the amendment makes no attempt to prevent such use. Pesticides can be manufactured in any country of the world as easily as they can be manufactured here. A multinational company which is prohibited from exporting a pesticide to a country which desires to use that pesticide can move its production of that pesticide to a foreign country. The sole effect would be a loss of American jobs and an increase in our balance-of-payments problems.

Since the amendment provides for preclearance by the Administrator of pesticides prepared or packed for export according to the purchaser's specifications, even completely harmless pesticides would be purchased in other countries in preference to this country in order to avoid the delays and uncertainties involved in such preclearance.

There are a multitude of countries in the world. In some cases there may be disagreement as to the proper government of a particular country, or whether the country is one country or two.[1] The amendment would require the Administrator to determine these questions and send hundreds of pieces of paper to each of these governments, many of them (like routine cancellation notices) of no significance. The cost of these mailings, the cost of their translation into the languages of the countries to which they are being sent (if that is done), the damage to the ecology caused by the production and disposition of the

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[1] The following memorandum illustrates this problem:

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., August 7, 1972.

To: The Honorable James B. Allen, Chairman, Subcommittee on Agricultural Research and General Legislation, Senate Committee on Agriculture and Forestry.
From: Marjorie Ann Browne, analyst in international relations.
Via: Chief, Foreign Affairs Division.
Subject: The number of countries in the world.

One could estimate that there are 147 nations in the world today. The first element of this estimate is a number of 70 countries "generally accepted as independent in the world community" on the eve of World War II, a figure given in the August 1969 edition of "Status of the World's Nations," a publication prepared by the Geographer's Office at the Department of State (Bureau of Intelligence and Research; Geographic Bulletin No. 2, page 1). According to this source, "the concept of independence . . . means statehood without foreign jurisdiction" (page 1). This number of 70 is increased by the 72 new states which have achieved sovereignty since the early 1940's, according to a checklist published in the April 1972 issue of the Department of State Newsletter. Thus, the number of independent states provided by Department of State sources totals 142. This figure, however, does not include the German Democratic Republic (East Germany); the Democratic People's Republic of Vietnam (North Vietnam), the Democratic People's Republic of Korea (North Korea), the People's Republic of China and the Mongolian People's Republic. Add these five states and the total is 147.

Not included within the 147 number is Southern Rhodesia which, while declaring its independence unilaterally in November 1965, is still considered as being under the jurisdiction of the United Kingdom. A key element in national sovereignty is the concept of political independence. Thus, separate geographic entities which do not enjoy political independence—for example Mozambique is under the political authority of Portugal; Gibraltar is under the authority of the United Kingdom—are not included in the number of 147 independent nations of the world.

[p. 25]

amount of paper involved may not represent a significant social or economic cost, but it is waste and should not be countenanced.

The report of the Committee on Commerce does not give any clue as to the objectives sought to be obtained by the information requirements of this amendment. Portions of that report which might at first create an impression of pertinency are as follows:

First, that report says at page 19,

> The amendment of the Committee on Commerce would prohibit exportation if the use in a foreign country presents unreasonable risks to the environment (including man) of the United States. To enable EPA to make these determinations, test data would be supplied and pesticides would be subject to the reporting requirements.

The statement that "test data would be supplied" is not necessarily true. If the Commerce Committee amendment were adopted which requires the statement filed with the Administrator under section 3(c)(1)(D) to include only a full description of "any tests offered" in support of the application, the exporter might simply elect not to offer any tests in support of the application and leave this part of the application blank. If the language of the Committee on Agriculture and Forestry in section 3(c)(1)(D) which requires "a full description of the tests made and the results thereof upon which the claims are based" is adopted, no test data would be required if no claims were made. To take an example, let us assume that the foreign purchaser orders pesticide X in 55-gallon drums labeled only with the name of the pesticide and the name and address of the purchaser, since the purchaser intends to repackage the pesticide under his own label in the country to which exportation is being made. Since no claims are being made for the pesticide, there can be no description of the tests upon which the claims are based.

Second, the Commerce Committee report says at page 20,

> Recent experience has indicated a need for tightening our control over pesticides manufactured in this country for export. For example, in hearings before the Subcommittee on the Environment, Senator Gaylord Nelson described how mercury pesticides manufactured in this country were responsible for at least 400 deaths and many more injuries in Iraq.

The Commerce Committee report, it will be noted, does not state that its amendment would tighten our control over pesticides manufactured for export, nor does it say that the discussion of the unfortunate occurrence in Iraq is in any way relevant to the amendment proposed by the Committee on Commerce. If made, such a statement would have been misleading, for the Commerce Committee amendment does not tighten control over pesticides manufactured for export, nor is it in any way related to the occurrences in Iraq. (See paragraph (8) of the letter from EPA which appears at the end of the comment on this amendment.)

Third, the Commerce Committee report says at page 20,

> "To better enable foreign governments to make informed choices as to their use of a pesticide, the amendment requires that an adequate amount of data be made available to them."

[p. 26]

This statement appears to be based on a misunderstanding of the bill. To the extent that the Commerce Committee amendment is effective in this area at all, it would appear that its effects might be to provide foreign governments with misleading information. The following examples should illustrate how it would work.

Example 1. A U.S. manufacturer exports pesticide x for sale by it abroad. This pesticide has been registered under the law. It has been found by the Administrator to be effective and safe for the protection of man and the environment. It is labeled with appropriate directions, cautions, and warnings. Since the foreign purchaser is not yet known, the pesticide has neither been prepared nor packed according to the specifications of such purchaser. Under the bill as passed by the House and as recommended by the Committee on Agriculture and Forestry, this pesticide is not exempt from any provision of the act but must comply with all of them. The foreign purchaser is given all of the information and protection that would be given to a purchaser in the United States. The label is affixed to the pesticide container and is thus readily available to the foreign government. The Commerce Committee amendment would require in addition that a separate copy of the label identical to that placed on the exported product be sent to the government of the foreign country. This would not appear to provide the foreign purchaser with any greater protection than he would have in the absence of the Commerce Committee amendment.

Example 2. A foreign purchaser order Pesticide X for export from the United States. Because the method of applying the pesticide used in the country to which exportation is being made differs from that used in the United States, the foreign purchaser requests that the pesticide be diluted by double the quantity of inert ingredients used in packing the pesticide for use in this country. He furnishes a label which describes the pesticide as Pesticide X. His label is printed in the language of the country to which exportation is being made and complies in every way with the laws of that country. Because the pesticide is in dilute form, the directions on his label provide for application at double the rate provided when the pesticide is packed for use in the United States. In compliance with the Commerce Committee amendment, the U.S. exporter files this label and the other information required by the Commerce Committee amendment with the Administrator. Since the exporter is not applying for registration of this pesticide, the label is not required to be "approved under section 3" and is not so approved. It is simply filed. Since this label is not "approved under section 3" the Commerce Committee amendment does not require that it be sent to the government of the country to which exportation is being made. Since Pesticide X, however, has been registered in the United States, the Commerce Committee amendment requires that the label approved under section 3 for use in the United States be sent to the governments of foreign countries. The information received by this foreign country from the United States, therefore, is not in any way related to the product imported from the United States. The U.S. label may not meet the requirements of law of the foreign country, whereas the label on the imported product does comply with those requirements. The directions, cautions, and warnings will be different on the two labels. The information furnished by the United States in this example, to the extent that it has any effect,

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could only be to cause misunderstanding and confusion. If this misinformation were made available by the foreign government to the people using the pesticide, it might result in crop losses, starvation, financial ruin, and other disasters to the people of that country and embarrassment to the United States.

Example 3. Many other examples might be suggested. The foreign purchaser might order Pesticide X at double strength rather than half strength. In this case, use of the U.S. directions rather than the foreign purchaser's direction might result in pesticide deaths and injuries. The foreign purchaser might desire to have Pesticide X packaged under the name by which it is commonly know in the language of the country to which it is exported. He may wish to have it packaged differently with different directions because the laws of his country require such variations or because it is to be used on crops which are not produced in the United States or on pests which are not found in the United States or for many other reasons. The Committee on Agriculture, however, has been unable to find an example under which the information required to be furnished by the Commerce Committee amendment would be useful, and the report of the Commerce Committee does not suggest such an example.

The Commerce Committee report says at page 20,

> It is intended that all notices of intent to cancel will be furnished to foreign governments *as well as all final orders of cancellation.* (italics added)

The italicized part of the statement just quoted is the only part that would provide for relevant information. The intention of the Commerce Committee in this respect would be defeated by its amendment, since it strikes out the provision which would let foreign governments know when cancellation became effective. *The Commerce Committee amendment does not provide that any final orders of cancellation will be furnished to foreign governments.*

The Committee on Agriculture and Forestry rejected a similar amendment for the above reasons and on the basis of the following recommendation of the Environmenal Protection Agency:

11. Amendment No. 1013

> The amendment would impose 3 requirements on a pesticide intended solely for export: (1) a section 3(c)(1) statement would be required to be submitted to the Administrator for any export pesticide when such statement would be required if the pesticide were produced for domestic use, (2) the books and records provisions of section 8 are applicable to such a pesticide, and (3) the pesticide shall have no unreasonable adverse effects on the environment of the United States.
>
> We object to the proposed amendment unless certain language corrections are made. Any pesticide produced for domestic use would require a section 3(c)(1) statement for registration, so the effect of the proposed amendment is to require any export pesticide to have such a statement. Therefore, much of the amendment language is either unnecessary or unintentionally far too broad.

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In addition, the amendment is written so that pesticides are subject to section 8 when in fact pesticide producers, distributors, et cetera are so subject.

The amendment would also require the Administrator to furnish to foreign governments (1) notice of the availability of section 3(c)(1) statements, (2) all registered labels, and (3) all changes in classification, suspension, and cancellations.

We do not recommend enactment of the provision concerning material furnished to foreign governments. The administrative load of the provision would be immense and its benefits questionable. For example, given the above amendment concerning submission of 3(c)(1) statements, it could be presumed that a foreign government would know of their availability as long as it knows the provisions of the act. The bill already provides that notices of cancellation will be furnished and cancellation would occur upon any suspension. The need for foreign governments to know a change in classification is dubious; they would not have the particular use-control program of the bill, and would, on the other hand, have the expertise sufficient to judge the environmental effects of a pesticide pursuant to their own use-control programs. For the same reason the value of providing all labels approved under section 3 is questionable.

The following letter from the Environmental Protection Agency makes it clear that—

(1) Under the Commerce Committee amendment foreign governments would receive at least 6,000 cancellation notices annually and during a five-year period would receive a cancellation notice for each pesticide that had been registered in the United States at the beginning of that period. These notices would rarely result in cancellation and under the Commerce Committee amendment foreign governments would not be advised of those that did.

(2) No one is interested in receiving the information that the Commerce Committee amendment would require to be given.

(3) If foreign governments were to send us such information they would be sending us information which is of no use to us.

(4) The amendment would require extensive microfilming and shipment of useless data.

(5) None of the data would be translated into the language of the country to which it was sent.

(6) None of the export labels which appear in the language of the country to which exempt pesticides are to be exported would be translated into English when they were filed with the Administrator, since he is not required to do anything with respect to them other than to store them; and

(7) The Commerce Committee amendment would not, if it had been in effect, have averted the Iraq incident. Important statements in the July 25 letter (referred to in the following letter) which were omitted from the following letter are: "Despite the red dye, skull and crossbones on the bag, and warnings from the government, the farmers began feeding the grain to their poultry

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and cattle." and "Moreover, it was *not* the importation of a 'pesticide' as defined in H.R. 10729 that caused the incident and so we see no way that any restrictions on exports of pesticides could have influenced it. Short of a world-wide restriction on exports of highly dangerous pesticides by *all* nations we see no way to avoid Iraqi-type tragedies."

Also omitted from the following letter but contained in the July 25 letter was the fact that under existing law without the Commerce Committee amendment any information that may be useful to foreign governments is furnished to them. The pertinent paragraph of the July 25 letter is as follows: "(2) We would and do make available to any foreign governments all of the information they might specifically request except for trade secrets."

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., August 1, 1972.

Hon. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: This is to supplement our letter of July 25 [1] responding to your several requests for information.

1. There are approximately 30,000 registered products. By law we are required to cancel automatically each registration at the end of a five-year period.In any given year about one-fifth (or six thousand) automatic notices should be sent.[2] In addition, labeling deficiencies or requirement for additional data result in numerous notices of cancellation. It is rare that these five-year notices result in final order of cancellation; rather, renewal occurs after the file has been updated or appropriate label changes are made.

2. We have received no requests for the specific data which the proposed export amendment requires us to furnish to foreign governments. To reiterate our July 25 [1] letter, the only requests received, thus far, are for information concerning major actions on generic chemicals.

3. There would be no reason to receive specific label data about registered foreign pesticides. If it is shipped to this country for domestic use, the material must be registered pursuant to all requirements applicable to domestically used and produced pesticides. Data and labels received by a foreign government would not necessarily cover the precise formulation for the pests against which the product will be used in this country.

4. Under the proposed export amendment we would have to furnish data to all countries which receive pesticides exports.

Literal compliance with the amendment would require microfilming all labels for registered products (color reproductions) and the shipment of thousands of pages of registration data. There would be the additional cost of furnishing copies of five-year and other routine notices of cancellation.

5. To reiterate our 25 July [1] letter, we would not translate this data.

6. We see no reason for the U.S. to translate any of the registration material into other language unless the law requires it.

7. Again, we do not consider it appropriate to any part of any export label unless we are required by law to do so.

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See footnotes, pp. 31–33.

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8. To summarize our knowledge of the Iraqi incident as described in greater detail in our letter of July 25,[1] sometime during the spring of 1971, the Iraqi Government ordered 80,000 tons of barley and wheat seed from Mexico, and an unknown quantity from other countries. Apparently at Iraq's request, the seed was treated prior to shipment with a mercury fungicide, some of which was apparently purchased from American manufacturers. The seed was dyed bright red, in accordance with normal procedures, to warn users that it was highly toxic and not to be eaten.

For some reason, a considerable amount of seed shipment, not necessarily from the Western hemisphere, was not planted, probably because it arrived too late in the season. Apparently Iraqi citizens used the seed in their breakmaking, and marketed the meat of livestock fed with the mercury seed. Contaminated meat thus found its way to the market, despite the ban placed by the government on the sale of infected livestock.

We can see no way in which the proposed amendment by itself would have averted the Iraqi incident. We have been assured that the Iraqi Government was advised that such treated seed had been banned in this country because of the hazard but insisted that they wanted such treatment anyway.

Sincerely yours,

CHARLES FABRIKANT,
Special Assistant for
Regulatory Affairs.

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[1] The July 25 letter referred to herein is set out below, together with the letters requesting the information it was intended to supply. Because the July 25 letter showed a much smaller number of cancellation notices than the number which should have been sent, and because of inclusion of non-responsive material implying that the Commerce Committee amendment provided for exchange of information on "all major actions", informal meetings various countries, and other matters which the amendment does not provide for, the Committee asked the Environmental Protection Agency to provide a substitute letter which give the correct information and would not be misleading.

JULY 24, 1972.

"Hon. WILLIAM D. RUCKELSHAUS,
"Administrator, Environmental Protection Agency,
"Washington, D.C.

"DEAR MR. RUCKELSHAUS: Would you please advise me as to the number of cancellation notices issued under the Federal Insecticide, Fungicide, and Rodenticide Act during 1971 or any other year you think appropriate and the number of cancellation orders that were made effective during the same year.

"I would appreciate this information no later than 4:00 p.m. July 25.

"With every good wish, I am

"Sincerely,

"JAMES B. ALLEN."

"JULY 20, 1972.

"Hon. WILLIAM D. RUCKELSHAUS,
"Administrator, Environmental Protective Agency,
"Room 3104, Waterside Mall, Washington, D.C.

"DEAR MR. RUCKELSHAUS: The Committee on Commerce has recommended an amendment on H.R. 10729 which deals with exports of pesticides. It provides for filing certain information with you subjects exported pesticides to certain books and records requirements, prohibits exports in certain cases, and requires you to furnish each foreign government with (1) a notice of the availability of the statement required under sections 3(c)(1), (2) all labels approved under section 3, and (3) all orders of suspension and all notices of cancellation or change in classification issued pursuant to section 6.

"I have your comments on a similar amendment in which you pointed out technical deficiencies as well as substantive objections. It does not appear to me that the amendment proposed by the Commerce Committee corrects the deficiencies you pointed out, nor does it make any change in substance which would remove your substantive objections. If this is correct, please so advise me.

"I would appreciate it if you would further advise me on the following matters:

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"(1) Have any foreign governments shown any interest in receiving on a regular basis the type of information which would be required to be sent them without request under the Commerce Committee amendment?

"(2) Without the Commerce Committee amendment, would this information be made available upon request with respect to any pesticide registered by the United States if any foreign government should feel any need for this type of information?

"(3) In your administration of the Federal Insecticide, Fungicide, and Rodenticide Act, have you had any need to receive this type of information from other foreign governments? Would the receipt of such information from foreign governments provide you with any relevant information that you would not obtain from applicants for registration under the bill?

"(4) Since the required information would have to be sent to the government of the foreign nations to which any pesticide may be exported, and since any pesticide might be exported to any country in the world, I would like to know the number of countries to which each new label, each new order of suspension, and each notice of cancellation or change in classification would be required to be sent, the cost of each such mailing, and all other costs involved in administering this provision, exclusive of those required to be borne by pesticide manufacturers, exporters, and other citizens. If you have any views as to the costs to be borne by such other persons, I would appreciate that information.

"(5) In administering this provision, would it be your intention to translate all domestic labels into the language of each country to which they are required to be sent? If so, please include a cost estimate for that function.

"(6) In the case of pesticides intended solely for export and prepared or packed according to the specifications or directions of the foreign purchaser, would it be your intention to translate those labels into English? Since the amendment does not contemplate any action by you other than acceptance of the label when filed. I would assume that there would be no point in such translation.

"(7) Section 27 of the law as it would be amended by the bill permits the Environmental Protection Agency to charge a reasonable fee for registration. I assume that such fee would be based upon your costs. If that were the case, what would be your estimate as to the amount of the additional registration fee that would be required as a result of the provisions of Commerce Committee amendment relating to exports.

"(8) There were a number of people in Iraq that were killed or injured as a result of eating, or eating the meat from animals which had eaten, grain coated with a pesticide. Would you please furnish me with the details of that occurrence and your opinion as to whether the proposed amendment would be likely to prevent any such occurrence or otherwise serve any useful purpose.

"With every good wish, I am

"Sincerely,

"JAMES B. ALLEN,
"Chairman, Subcommittee on Agricultural
"Research and General Legislation."

"ENVIRONMENTAL PROTECTION AGENCY,
"Washington, D.C.

"Hon. JAMES B. ALLEN,
"U.S. Senate,
"Washington, D.C.

"DEAR SENATOR ALLEN: Mr. Ruckelshaus has asked me to reply to your letters of July 20 and 24 regarding the Commerce Committee amendment to H.R. 10729 which deals with export of pesticides and the number of cancellation actions taken by this Agency. We have tried to respond to the questions you posed in your letters to the best of our ability. Because we have had little experience with the kind of program envisioned by the Amendment which calls for international cooperation, accurate data, particularly as regards costs of the proposed amendment, are not available. Most of our figures should only be regarded at best as very rough estimates.

"To take your July 24 request first regarding the number of cancellation notices issued under the Federal Insecticide, Fungicide and Rodenticide Act during 1971, the Pesticide Registration Division cancelled registrations for upwards of 2000 products by "class action" PR notices. Included were products containing DDT, aldrin/dieldrin, and mirex.

"Furthermore, in 1971, 1347 specific notices of cancellation were sent out involving individual products, generally as a result, for example, of labeling deficiencies or a need for upgrading efficacy data. Final cancellation did not result in most cases.

"Unfortunately, we do not have an exact figure on the number of product registrations cancelled. With the installation of a new computerized data retrieval system, scheduled during 1972–73, we will be able to provide the more precise figures of the type you have requested.

"To respond to the specific questions concerning an international program:

"(1) The only requests from foreign governments that we know about are: (a) Organization of Economic Cooperative Development (OECD) has asked us (on a reciprocal basis) to advise member nations through OECD Secretariat of all major actions on regulation of pesticides as soon as we decide on them. The Department of Agriculture has been advising us which actions have a significant economic impact on foreign nations; (b) Great Britain, Canada, and this country have been having informal meetings to exchange current information and thinking on pesticide regulations; (c) we have also received scattered requests for summaries of registration and tolerance actions.

"(2) We would and do make available to any foreign governments all of the information they might specifically request except for trade secrets.

"(3) We have not felt the need to receive registration information from other govern-

ments. Occasionally such information might well supplement the information we receive from applicants. It is often difficult to evaluate such information without information on the research methods of foreign governments. We are trying to develop a basis for evaluation by a series of technical conferences with Russia which should give us a better basis for learning what they and other countries are doing as well as for evaluating their scientific literature. Much of this has already been done with Western nations. For instance, much of our background on mercury hazards and on PCB's came originally from other countries, but it came through multi-lateral conferences more than any other single channel.

"(4) Bureau of the Census Report FY 410 indicates that during 1970 U.S. companies exported pesticides to 132 countries. This should give a good estimate of the number of nations that would require each new label, order of suspension, notice of cancellation, or change in classification.

"We feel that the intent of the amendment could be complied with at a reasonable cost by making available the EPA Compendium of Registered Pesticides to any country requesting it. This five-volume publication, when completed, will provide information on all label uses and precautions for registered pesticide products, contents of the product, dosage and dose ranges, active ingredients, types of formulations, crops involved, and residue tolerances, when they are required.

"We are unable, however, to provide you with precise data on the cost of supplying specific registration data to other countries. Taken literally, the data to be furnished under the amendment could amount to as little as a single page or, in some instances, to hundreds of pages. Thus, the costs of administering a detailed information exchange program would be quite significant.

"(5) We see no reason for the U.S. to translate any of the registration material into other languages unless the law requires it. The recipient country should bear this responsibility.

"(6) Again, we see no point in our translating any part of any export label unless we are required to do so.

"(7) Inasmuch as Section 27 of H.R. 10729 limits fees to those required for registration under Section 3, it would not seem that any of the costs of providing information to foreign governments could be recovered by charges. These services would have to be supported by appropriated funds.

"(8) Sometime during the spring of 1971, the Iraqi Government ordered 80,000 tons of barley and wheat seed from Mexico, and an unknown quantity from other countries. Apparently at Iraq's request, the seed was treated prior to shipment with a mercury fungicide, some of which was apparently purchased from American manufacturers. The seen was dyed bright red, in accordance with normal procedures, to warn users that it was highly toxic and not to be eaten.

"For some reason, a considerable amount of seed shipment, not necessarily from the Western hemisphere, was not planted, probably because it arrived too late in the season. Nonetheless, the seed somehow entered the channels of commerce. Despite the red dye, skull and crossbones on the bags, and warnings from the government ,the farmers began feeding, the grain to their poultry and cattle. Apparently Iraqi citizens used the seed in their breadmaking, and marketed the meat of livestock fed with the mercury seed. Contaminated meat thus found its way to the market, despite the ban placed by the government on the sale of infected livestock.

"No precise account of the damage is available, but indications are that the 'known' death toll reached at least 400 and that 5,000 others were admitted to hospitals for treatment. Unofficial estimates indicate that at least 50,000 persons might have been afflicted, many of whom lived in remote areas out of hospital reach.

"We can see no way in which the proposed amendment could have averted the Iraqi incident. We have been assured that the Iraq Government was advised that such treated seed had been banned in this country because of the hazard but insisted that they wanted such treatment anyway. Moreover, it was not the importation of a "pesticide" as defined in H.R. 10729 that caused the incident and so we see no way that any restrictions on export of pesticides could have influenced it. Short of a world-wide rsetriction on exports of highly dangerous pesticides by *all* nations we see no way to avoid Iraqi-type tragedies.

"We do not believe it is necessary to *require* by legislation that all primary documents pertaining to registration information, labeling, cancellation and suspension be furnished to other nations. We believe, however, that the notion of international cooperation is important. Permissive language which endorsed our present policy of notifying interested nations about important pesticides actions and congressional blessing for furnishing, at cost, all requested non-privileged data pertaining to American registrations, would certainly be an appropriate expression of this country's desire to cooperate with other nations.

"H.R. 10729, as passed by your Committee, does not provide any mechanism for obtaining information concerning the extent of export activity or data concerning the nature of exported products. By setting up an export corporation, it is possible to insulate from section 8 inspection all books and records pertaining to export. We do not consider it necessary to furnish on a compulsory basis test data on all pesticides marketed solely for export. Discretionary authority to request such information and receive data concerning the extent of export activity would be more appropriate.

"Sincerely yours,

"DAVID D. DOMINICK."

[2] It is not clear to what extent there is overlapping in the 6,000 notices mentioned here, the 2,000 notices mentioned in the second paragraph of the July 25 letter, and the 1,347 notices mentioned in the third paragraph of the July 25 letter. If there were no overlapping and EPA did in 1971 what it says it should have done, this would mean that the total number of cancellation notices sent out in 1971 would have been 9,347.

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COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 6 OF THE COMMITTEE ON COMMERCE (CONFIDENTIALITY)

The principal effect of this amendment is to deny the Administrator information essential to his decision as to whether a pesticide is safe and efficacious.

This amendment would—

(1) delete the Administrator's authority to request and obtain a full description "of the tests made and the results thereof upon which the claims [for a pesticide] are based," and restricted him to "any tests offered" in support of the application (page 78, line 25, through page 79, line 11);

(2) delete the provision requiring the Administrator to make available to the public "within 30 days" after registration the data called for in the registration statement and other relevant scientific information, and require instead that he make available to the public "upon identifiable request" copies of any "communication, document, report or other information received by the Administrator from any manufacturer or sent by the Administrator to any manufacturer" (page 80, lines 4 through 9, and page 104, lines 3 through 9);

(3) change the language of the trade secrets provision, increasing the possibility that such secrets may be made public with consequent loss to the owner (page 104, line 15, through page 106, line 18, and page 107, lines 1 through 10); and

(4) require that any communication to any employee of the Environmental Protection Agency concerning a matter "presently" under consideration in a rulemaking or adjudicative proceeding be made part of the public file (page 106, lines 19 through 26).

This amendment would interfere with proper administration of the act. The major purpose of the act is to protect the public from pesticides which are not efficacious or which endanger health or the environment. The Administrator should be able to request and obtain a full description of the tests upon which claims for the pesticide are based. He should not be restricted to such tests as the applicant may choose to offer. There should be no question about this. The Administrator must make a decision, which is subject to judicial review, on the basis of the information available to him. For the protection of the public and as a simple matter of reasonable administration, all relevant information should be available to him. In this respect, this amendment differs from a generally similar amendment (Amendment No. 1003) which was considered and rejected by the Committee on Agriculture and Forestry and is discussed below by EPA.

In amendment No. 1003, all test information would have had to be filed even though the Administrator had no need for it and made no request for it. The proponents of these two amendments have gone to both extremes, but the Committee on Agriculture and Forestry believes the middle ground is correct; and its amendment provides the Administrator with all the information requested by him, but does not burden him with a mass of information for which he has no need.

The Commerce Committee report at page 20 describes the portion of its amendment discussed above as follows.

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> The amendment modifies section 3 of the Agricultural Committee bill by requiring, first of all, that each applicant will submit a full description of *any test offered* in support of an application and the results thereof. As specified in paragraph 2 of subsection (c), the Administrator will publish guidelines specifying the kinds of information which *will be required* to support the registration. What the amendment will do is require that this test data, whether favorable or unfavorable to the application, be submitted to the Administrator prior to registration. The Agriculture bill, on the other hand, would allow the manufacturer to perform his tests and then hold back on submission of shaky data until a specific request by the Administrator for such data, requires release to the public, prior to registration, of all non-trade secret data if requested by any person. (italics added)

The last sentence just quoted (disregarding the last 19 words, which appear garbled probably through typographical error) is a complete distortion of fact. There is nothing in the Agriculture bill which would allow the manufacturer to hold back on the submission of "shaky data" until a "specific request" is made, and this statement must be based on a misunderstanding of the bill. The Agriculture bill gives the Administrator the right to obtain all the data he needs to make his decision. The Commerce amendment limits him to "any test offered". Under the Commerce amendment the "manufacturer" (really applicant for registration) could "hold back on the submission of shaky data" because the amendment gives him that right, and all the "specific requests" in the world would not require him to "offer" it. The Agriculture bill does not contemplate a "specific request" except in unusual cases, but rather paragraph (2) of subsection (c) (page 79, line 22) requires the Administrator to publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide. It then goes on to provide for specific requests if he finds he needs additional information. Paragraph (2) is based on the right of the Administrator to obtain information which would be stricken by the Commerce amendment. Paragraph (2) tells how that right to obtain information is to be exercised. It would be an unthinkable dereliction of duty if an Administrator, given these powers would "allow the manufacturer" to hold back "shaky data". It would not be a dereliction of duty if the Commerce amendment were adopted and such shaky data were held back because the Administrator would not be given the power to obtain all data.

As pointed out above, this amendment appears to be a modification of Amendment No. 1003, which would have required all test information to be filed even though the Administrator had no need for it and did not request it. It may be that the Commerce Committee intended its current amendment to have the same, rather than an opposite effect. If so, it may be well to give an example to illustrate why the Agriculture Committee's provision provides only for the submission of information requested by the Administrator.

Let us assume that Pesticide X is currently registered for use in controlling 20 pests on 17 kinds of trees. Research has been conducted over a period of many years by government agencies, universities, and others. The registrant has conducted many tests and all tests show

that Pesticide X is one of the safest pesticides registered and has no substantial adverse effects on the environment. All of the registrant's test data has been submitted to EPA in connection with the existing registration. Now the registrant finds that Pesticide X is efficaceous on an additional pest or tree and applies for registration to cover the new use as well as the existing use. The Administrator has all data on the previous tests. He is interested only in determining whether Pesticide X is safe and efficaceous for the additional pest. To require the applicant to submit with the new application all of the data he submitted with earlier applications would be a needless expense to the applicant and make the Administrator's work more difficult. The test data to support a single application may be very heavy and voluminous. The Committee on Agriculture and Forestry has been advised that the material which was submitted with the application for registration of Baygon, which was described as a typical example, was 44 inches high, weighed 125 pounds and required postage in the amount of $70.44. This did not include costs of reproduction.

The imposition of needless costs of this sort make it uneconomic for manufacturers to register pesticides for use on minor crops or pests. This is a very serious matter for producers and consumers of these crops and persons who must combat these pests. A number of examples of this problem are set out in the discussion in this report of Commerce Committee Amendment No. 12.

Another way in which the amendment would hamper effective administration would be to subject each communication between the Administrator and a manufacturer to instant review by any self-appointed expert or competitor who desired a copy. The Committee on Agriculture and Forestry has no objection to proper surveillance by the public. The bill reported by that committee provides for administrative and judicial review at the initiative of any person adversely affected by the Administrator's decisions as to whether or not to register, cancel or suspend registration, change the use classification, or impose additional restrictions on the use of a pesticide. It also provides that all data called for in the registration statement and all other scientific information relevant to the Administrator's decision to register a pesticide must be made available to the public within 30 days after registration. This provides adequate public surveillance of the Administrator's action, but gives the Administrator an opportunity to carry out his responsibilities in a reasonable way without constant harassment from people who desire a copy of each telephone call or letter from the Administrator to any manufacturer or from any manufacturer to the Administrator on a day-to-day basis. The committee also does not understand why the amendment would subject in section 10(a) communications between the Administrator and manufacturers on any matter to instant publication, while leaving communications between the Administrator and others that are directly concerned with pesticide registration, efficacy, and dangers free from public scrutiny. Is one group of citizens thought to be more or less honest than another group?

With respect to disclosure of trade secrets, the amendment of the Committee on Agriculture and Forestry would permit such disclosure "when necessary to carry out the provisions of" the Act (page 104, lines

19 and 20). The amendment of the Committee on Commerce would greatly broaden the grounds for disclosure of trade secrets. Thus they might be disclosed to any Federal official requesting them for official use and having a "reasonable need" therefor, or to any committee of Congress having jurisdiction over the subject matter to which the information relates (page 105, lines 10 through 16). These trade secrets which now are protected and which may have great value, would have much less protection under the Commerce Committee amendment. These property rights should not be lightly disregarded, unless there is some compelling need for disclosure.

The amendment of the Committee on Commerce would require every communication from any person to any employee of the Environmental Protection Agency concerning a matter "presently under consideration" in a rulemaking or adjudicative proceeding to be made a part of the public file (page 106, lines 19 through 26). This would constitute an unnecessary burden on the files and on administration. For instance, in connection with the consideration of the pending bill, this committee requested an employee of EPA to furnish it with section 164.31(a) of the then proposed rules of procedure referred to on page 17 of this committee's original report on the bill. There was some discussion of the proposed rule at the time of the request. If "presently under consideration" is construed to mean "then under consideration," this communication would be required to be made a part of the public file, constituting a burden on the administrative process. If "presently under consideration" is literally construed to mean "under consideration on the date of enactment of the Federal Insecticide, Fungicide, and Rodenticide Act," this part of the amendment would probably be a nullity.

It should be noted that portions of the amendment would appear to extend to all operations of EPA and not to be limited to operations under this bill. EPA's comments on a somewhat similar amendment (which, however, provided for submission of all data instead of only that on "any tests offered" and which was considered and rejected by the Committee on Agriculture and Forestry) are as follows:

2. AMENDMENT NO. 1003

> The amendment would make submission to the Administrator of safety and effectiveness test data by every registration applicant mandatory; permit public access to non-trade secret data in support of a registration application once it has been submitted to the Administrator (and before he has made his determination) and could be interpreted to leave the determination of what constitutes a trade-secret with the applicant rather than with the judgment of the Administrator. The amendment also specifies those persons to whom a trade secret may be revealed.
>
> As drafted, this amendment would also require the holder of a registration to submit his entire file with a new application, even if his only point were to seek approval to use a registered product on a related crop or pest.

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Requiring the submission of test data with every registration application is unnecessary since this agency in many cases already has sufficient information to make a judgment consistent with the purposes of the act. We therefore do not recommend enactment of this provision, and endorse retention of the present concept in section 3(c)(1)(D).

We also do not concur with the amendment which would provide public access to registration application information before a registration decision by the Administrator. Since access could lead to interminable delay of the entire registration process.

We are promulgating new rules which establish procedures under which an interested person can seek review of a registration if new evidence bears on it or the registration is inconsistent with present agency policy and the chemical in question is a significant problem. We feel that the public under present law and the proposed bill would have, in accordance with those rules, all necessary and reasonable access to registration decisions.

We believe the language in section 10 of H.R. 10729 with regard to the protection of trade secrets and other information is preferable to that proposed by amendment No. 1003. The provisions of H.R. 10729 provide that in submitting data required by the act, the applicant may mark any portions of it which he believes are trade secrets or confidential commercial or financial information. It is treated as such if the Administrator in his judgment concurs with the opinion of the applicant.

The last part of amendment No. 1003 states the terms and conditions under which trade secrets may be disclosed. While data which is determined to be a trade secret may not be revealed on request, this amendment establishes six instances where trade secret information may be opened to public scrutiny. As drafted, we feel the amendment is too broad. We suggest the following language in lieu of the pertinent provision of the proposed amendment:

"(b) Disclosure.—If requested by a registrant or applicant for registration furnishing such information, the Administrator or any officer or employee of the Environmental Protection Agency shall not disclose any information which contains or might reveal information referred to in section 1905 of the title 18 of the United States Code, and is otherwise unavailable to the public, except that such information may be disclosed—

"(1) to other government officials;

"(2) to duly authorized committees of Congress;

"(3) *in camera* in any judicial proceedings if ordered by a court;

"(4) *in camera* if relevant in any proceeding under this Act to carry out the purposes of this Act; and

"(5) to offer officers and officials concerned with carrying out the Act."

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COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 7 OF THE COMMITTEE ON COMMERCE (CITIZENS SUITS)

In brief, this amendment (page 119, line 21 through 122) provides for citizens' suits in certain cases for injunctive relief, attorney and expert witness fees, and other costs of litigation. Such costs could be awarded to any party whenever the court deemed appropriate without regard to whether such party prevailed in the suit. Misuse of registered pesticides would not be enjoinable, although the Commerce Committee report would indicate that it was intended to be enjoinable.

This amendment may encourage suits by professional litigants and interfere with the orderly administration of the law. The Constitution provides that the executive power should be vested in the President. The courts are already overburdened with judicial responsibilities, so that criminals now go untried and unpunished for long periods. The courts should not be further burdened with suits by citizens who disagree with the manner in which the President is executing the laws.

The bill as recommended by the Committee on Agriculture and Forestry affords adversely affected parties with an opportunity for administrative and judicial review of decisions with respect to registration, cancellation, suspension, classification, and the imposition of additional restrictions. There is no need for the additional involvement of citizens in the administration of the law provided for by this amendment.

There is also considerable danger in this provision. The filing of baseless claims and harassing suits is not unknown. Unprincipled litigants might be given an opportunity to extort money from registrants through settlement of suits on payment of expert witness and attorneys fees, or through threats of such suits.

The Committee on Agriculture and Forestry believes that only very bad administration will result if every communication between the Administrator and a manufacturer must be immediately made public and if every citizen can harass the Administrator with suits for injunctions. The Agriculture Committee bill already permits any citizen to initiate cancellation proceedings, obtain judicial review of every action or inaction he disagrees with, and intervene in every proceedings; but the Administrator must be given some time to administer, the employees must be given some time to do their work. They should not be attending one court or another every day. Because of its complexity and the problems involved, the bill would be made effective gradually over a four year period. This provision would add to that complexity.

While the statement at page 41 of the Commerce Committee report would indicate an intention that citizens' suits could be brought to enjoin any violations of "(4) the prohibition against misuse of a pesticide" the amendment applies only to misuse of an experimental use pesticide under section 12(a)(2)(H). Misuse of registered pesticides, which is prohibited by sections 12(a)(2)(F) and 12(a)(2)(G) would not be subject to citizens' suits. The Commerce Committee report does not indicate on what basis it selected which violations should be subject to citizens' suits and why violations of the misuse of registered pesticides should be exempt from this provision.

EPA's comments on a similar amendment which was considered and rejected by the Committee on Agriculture and Forestry are as follows:

10. AMENDMENT NO. 1011

The amendment would insert a new section 17, "Citizen Civil Actions", which would provide for citizen suits against any person, including any Government agency, upon an alleged violation of the act; and against the Administrator upon his alleged failure to perform any required, nondiscretionary act or duty under the act.

While there was no provision for citizen suits in the Administration's bill, we would not object to such an authorization here under the following circumstances. We feel strongly that it should be limited to suits alleging violations only against users and producers. We also feel that such actions should be required to be brought initially where the alleged violation has occurred, and that express provision should be made for consolidation in appropriate circumstances. Language to accomplish this is set out in the enclosed marked-up version of Amendment No. 1011.

AMENDMENT NO. 1011

AMENDMENTS Intended to be proposed by Mr. Hart (for himself and Mr. Nelson) to H.R. 10729, an Act to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, viz.:

On page 50, between lines 15 and 16, insert a new section as follows:

"SEC. 17. CITIZENS CIVIL ACTIONS.

"(a) Except as provided in subsection (b), any person may commence a civil action for injunctive relief on his own behalf, whenever such action constitutes a case or controversy—

"(1) against any *producer or applicator of a pesticide* (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any regulation, order, condition of registration, or other requirement under this Act or,

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

Any action under paragraph (a) (1) of this subsection shall be brought in the district court for the district court for the district in which the alleged violation occurred any action brought under paragraph (a) (2) of this subsection shall be brought in the district court of the District of Columbia.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, over suits brought under this section.

"(b) No civil action may be commenced—

"(1) under subsection (a) (1)—

"(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator, and (ii) to any alleged violator of the regulation or order, or

"(B) if the *Attorney General* [Administrator] commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the regulation or order, [but in any such action any person may intervene as a matter of right,]

"(2) under subsection (a) (2) prior to sixty days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(c) In any action under this section, *to which the United States is* [the Administrator, if] not a party, *the Attorney General, at the request of the Administrator*, may intervene *on behalf of the United States* as a matter of right.

"(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

"(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any other statute or under common law to seek enforcement of any regulation or order or to seek any other relief.

"(f) For purposes of this section, the term 'person' means any individual, corporation, partnership, association, State, municipality, or political subdivision of a State."

"(*g*) *When any actions brought under this subsection involving the same defendant and the same issues of violations are pending in two or more jurisdictions, such pending proceedings, upon application of the defendant seasonably made to the court of one such jurisdiction, shall be consolidated for trial by order of such court, and tried in (1) any district selected by the defendant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the defendant may apply to the court of one such jurisdiction, and such court (after giving all parties reasonable notice and opportunity to be heard) shall by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the applicant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.*"

Renumber the remaining sections of the bill accordingly.

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COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 8 OF THE COMMITTEE ON COMMERCE (HEARING STRUCTURE)

In brief, this amendment would give to the Administrator unwarranted authority to deny a registrant the opportunity for a full hearing prior to cancellation of his registration.

There does not appear to be any particular need for this amendment (page 96, lines 1 through 20). The Commerce Committee report describes this amendment, which deals with cancellation hearings, as follows:

> The amendment of the Committee on Commerce would give the authority to the Administrator to structure such hearings in a matter (sic) he deems advisable. Thus, depending on the nature of the hearing, the hearing would be informal with presentation of oral and written statements only or the hearing could be formal with full rights of cross examination of witnesses and subpena power. The amendment also provides that any interested person may intervene in such proceeding and participate fully as a party.

The discussion in the Commerce Committee report (pages 23 through 26) concerning "rulemaking" procedures, the peanut butter proceeding, and the foods for special dietary uses proceeding is not relevant to its amendment, which deals with cancellation of a specific registration, rather than general rulemaking.

A somewhat similar amendment, which, however, differed in some respects, was rejected by the Committee on Agriculture and Forestry after reviewing the following comments of EPA.

5. AMENDMENT NO. 1006

> The proposed amendment would emphasize the right of any interested person to participate as a party to any hearing requested following an order of the Administrator cancelling a registration. The amendment would also authorize the Administrator to impose conditions or limitations on the hearing.
>
> We agree that any interested person should be able to intervene in a hearing. This is the practice under the present law and that practice is, we believe, carried forward by H.R. 10729 and no further language is necessary. The present section refers to "objections by applicants or other interested parties." Indeed, our proposed rules of practice make clear the rights and status of intervenors.
>
> The deletion by Amendment No. 1006 of the provision authorizing the Administrator to determine *sua sponte* that a hearing should be held is undesirable as is deletion of the provision governing issuance of subpoenas by the Hearing Examiner to compel testimony. We view both as important means for the resolution of issues involving pesticides.
>
> One further aspect of this amendment is undesirable. As drafted it might compel a hearing on *any finding* made by the Administrator. For the purpose of delay a party might seek to challenge immaterial findings.

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COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 9 OF THE COMMITTEE ON COMMERCE (INCLUSION OF FARMWORKERS IN TERM "MAN")

At best, this amendment is meaningless surplusage making it clear that farmers, farmworkers, and others coming into contact with pesticides and pesticides residues are included within the term "man". At worst, it would (1) prohibit reliance on certain test data to deny registration of dangerous pesticides, and (2) weight registration decisions in favor of DDT as opposed to methyl parathion.

This amendment would specifically require pesticide labeling to bear directions and warnings to protect farmers, farmworkers, and others coming into contact with pesticides or residues (page 72, lines 2 through 5 and 11 through 13); prohibit use of test data unless the tests were legal and the voluntary exercise of an informed choice (page 79, lines 11 through 17); specifically mention danger to farmers, farmworkers, and others coming in contact with pesticides or residues as a ground for restricted use classification (page 83, lines 21 through 23); and specifically require certified applicators to have the ability to guard against such danger (page 86, line 22, through page 87, line 2). The Committee on Agriculture and Forestry rejected this amendment as surplusage. The entire purpose of the bill is to protect man and the environment. There is no question but that farmers and others coming in contact with pesticides or residues fall within the category man. The Committee on Agriculture and Forestry, at page 14 of Report No. 92–838, took occasion to emphasize that the bill requires the Administrator to require that the labeling and classification of pesticides be such as to protect farmers, farmworkers, and others coming in contact with pesticides or pesticide residues as follows:

> 1. A number of witnesses recommended amendments to specifically require the labeling to bear directions and warnings to protect farmers and others coming into contact with pesticides or residues; prohibit use of test data unless the tests were legal and voluntary; specifically mention danger to farmers and others coming in contact with pesticides or residues as a ground for restricted use classification; and specifically require certified applicators to have the ability to guard against such danger. The bill, as reported by the committee, provides complete safeguards to protect farmers and others coming into contact with pesticides or residues. It does so in general terms that are very broad and cover much more than would be covered by the proposed amendments. The committee felt that by specifically mentioning particular areas protected by the general provisions, there might be some suggestion that the general provisions should be construed to cover less than actually intended. Section 2(j) of the bill defines "environment" to include all men, whether they come into contact with the pesticides or pesticide residues, or not. Section 2(q)(1) (F), (G), and (H), and 3(c)(6)(C) are designed to protect all men. The committee believes there can be no question about the matter, but takes this occasion to emphasize that the bill requires the Administrator to require that the labeling and

> classification of pesticides be such as to protect farmers, farmworkers, and others coming in contact with pesticides or pesticide residues.

The Committee on Commerce agrees with the Committee on Agriculture and Forestry that this amendment is surplusage when it says in its report at page 27:

> While the Committee on Commerce agrees with the Environmental Protection Agency and the Committee on Agriculture and Forestry that the health of farmworkers will be considered *without* the amending language, the Subcommittee on the Environment heard substantial testimony that the health of farmworkers might indeed not be fully protected *under existing law.*

The Committee on Commerce, the Committee on Agriculture and Forestry, and the Environmental Protection Agency are all, therefore, in agreement that under the Agriculture Committee amendment farmworkers will be protected. The fact that there was testimony they might not be protected *under existing law* is no reason for adding surplusage to the Agriculture Committee amendment.

The farmer and the farmworker are the persons most likely to be adversely and immediately affected by pesticides and they are the most obvious object of the bill's protection. If there is any question as to whether they are fully protected, we do not know what it could be. It may be that the Commerce Committee intends that farmers and farmworkers should be protected to a greater extent than other members of the family of man and the Commerce Committee report suggests at page 27 that this is the case when it says, "In adopting the proposed amendment, the committee intends to stress the health of farmworkers as a *vital criterion* in the actions of EPA under this act" (italics added).

What is meant by "vital criterion"? Mr. A. V. Krebs, who is cited at page 27 of the Commerce Committee report as its authority for this amendment tells us what this means at page 318 of the hearings before the Committee on Agriculture as follows:

> *It is imperative that no pesticide be certified by the Environmental Protection Agency unless it is absolutely safe for use by those who must work with or around it.* (Italics added.)

In looking for an example to see what the effect of making the farmworker's health a *vital criterion* might be, DDT immediately comes to mind as the classic example. DDT has not been shown to be especially harmful to farmers or farmworkers. It has been found to be toxic to fish and other lower animals and to build up in man. It is not known whether it is injurious to man or not. The Administrator has canceled the registration of DDT effective December 31, 1972, pointing out that methyl parathion presents an effective alternative manner of dealing with pests. But he has delayed cancellation until the end of the year because of the danger of methyl parathion to farmers and farmworkers. If the health of farmworkers is now to be made a vital criterion, that would appear to weight the scale in favor of registration of DDT in preference to registration of methyl parathion.

Further recognizing that this amendment is generally surplusage, the Commerce Committee report states at page 27:

> The Committee amendment makes one substantive change. The amendment provides that EPA shall not rely on any test results unless he determines that the tests were conducted in accordance with Federal, State, and local law and that the human participation in any such test was the result of a free, voluntary, and informed choice by each participant.

The Commerce Committee report does not say what the objective of this provision is. Involuntary tests would be violations of civil rights and the subject of protection under Federal and local law. It seems highly unlikely that involuntary tests would be conducted intentionally. However, data may be acquired as the result of accidental involuntary tests, resulting from climatic conditions, spillage, other accident, improper calibration of equipment, and otherwise. Thus, studies of hospital admissions for pesticide poisoning might contribute to the Administrator's knowledge of pesticide safety. If such accidental tests should show that a pesticide will not perform its intended function without substantial adverse effects on the environment or that it is actually misbranded, the Administrator should be able to rely on that information to deny registration of the pesticide.

This amendment was proposed to the Committee on Agriculture and Forestry, but no evidence was presented of any need therefor or to indicate that any involuntary tests had ever been conducted. One witness testified that, "Two major U.S. chemical companies performed pesticide experiments in California using farmworkers as 'human guinea pigs'." While this might suggest that they were involuntary guinea pigs, the same witness stated, "We were told that they were paid a fee of $3.50 for each blood test they took and also that they were instructed that they had to participate in all the tests to qualify for the blood bonus money." These statements appear at pages 318 and 319 of this committee's hearing on H.R. 10729. The same witness, Mr. A. V. Krebs, who is cited by the Commerce Committee report on page 27 as their authority on this amendment, inserted the following, at page 325, to show what is meant by "free, voluntary, and informed choice":

> 2. Potential participants should be free from even the hint of coercion, direct or implied, real or imagined. To the extent that subjects in the studies to date have received any orientation, it has been provided by Spanish-speaking intermediaries. Almost all participants have been natively Spanish-speaking. This is acceptable, in view of the fact that most farmworkers in California are of Mexican descent. But it becomes unacceptable when the intermediary who translates is not competent to explain technical concepts such as cholinesterase function, depression, and regeneration. And the practice is most unacceptable of all when this lay interpreter stands in an employer-employee relationship with the potential participants.
>
> It should be understood—although it is usually not understood—that the relationship of growers, contractors, foremen, and supervisors to Spanish-speaking farmworkers is not like

> that of any other labor relationship in this State, with the possible exception of garment factories in San Francisco's Chinatown. Mexican agricultural workers come from a cultural heritage in which the wishes of the patron are not to be questioned. It is widely assumed among these workers that if one displeases the crew leader in even the slightest particular, one can be discharged on the spot with no recourse. And, indeed, this often is true. Almost none of the workers in the crops we are concerned with here—the tree crops where pesticide problems usually occur—are effectively protected against the arbitrary exercise of power by supervisors. Under these circumstances, there cannot be true freedom of choice on the part of potential research subjects. If a crew leader says, "Well, boys, you don't have to do this, but it's something the boss is in favor of * * *," some of the members of the crew are going to assume that it is something they had better do if they wish to continue working on that particular job.

Many millions of dollars worth of test data will be disqualified if every participant must be free from "imagined" coercion and in fact the matter just quoted says that "there cannot be true freedom of choice on the part of potential research subjects" under present supervisor-worker relations in tree crop production. It is doubtful whether any member of the staff of the Committee on Agriculture and Forestry could qualify as a test participant if he had to understand "technical concepts such as cholinestrase function, depression, and regeneration." In fact, it is doubtful whether any English-speaking member of that staff could repeat the phrase just quoted. Officials of the chemical companies involved stated at page 346, "the workers who volunteered to participate * * * were interviewed by a physician * * *" and at page 347, "Additionally, each worker was given a written explanation of the procedure and his written consent and understanding obtained." One of these officials stated at page 346, "we voluntarily canceled our registrations of all ethion wetable powder products in California following our study because of the drop in pseudocholinesterase activity following their use." It would have been unfortunate if he had not been able to rely on these tests.

If the Administrator should learn from these tests or other tests that a product is dangerous to human beings to such an extent as to warrant denial of the registration, he should not be forced to close his eyes to that knowledge simply because some participant could not pronounce or did not fully understand pseudocholinesterase, or because the tests were conducted on Sunday or were otherwise conducted in violation of local law.

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 10 OF THE COMMITTEE ON COMMERCE (AUTHORITY OF LOCAL GOVERNMENTS TO REGULATE THE USE OF PESTICIDES)

In brief, this amendment (page 129, lines 14, 15, 16, and 18) would give local governments the authority to regulate the sale or use of a pesticide. Its purpose is to vitiate the language contained in the report

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of the Committee on Agriculture and Forestry, Report No. 92–838, at page 16 as follows:

> 4. The Senate Committee considered the decision of the House Committee to deprive political subdivisions of States and other local authorities of any authority or jurisdiction over pesticides and concurs with the decision of the House of Representatives. Clearly, the 50 States and the Federal Government provide sufficient jurisdictions to properly regulate pesticides. Moreover, few, if any, local authorities whether towns, counties, villages, or municipalities have the financial wherewithal to provide necessary expert regulation comparable with that provided by the State and Federal Governments. On this basis and on the basis that permitting such regulation would be an extreme burden on interstate commerce, it is the intent that section 24, by not providing any authority to political subdivisions and other local authorities of or in the States, should be understood as depriving such local authorities and political subdivisions of any and all jurisdiction and authority over pesticides and the regulation of pesticides.

COMMENTS OF THE COMMITTEE OF AGRICULTURE AND FORESTRY ON AMENDMENT NO. 11 OF THE COMMITTEE ON COMMERCE (SUSPENSION)

In brief, this would (1) provide for judicial review in appellate courts even where there had been no prior administrative hearing, and (2) preclude the registrant from presenting any evidence in his own behalf in certain cases.

This amendment would—

> (1) deprive a registrant of the right to an administrative hearing before suspension of registration which would be accorded to him by the Agriculture Committee bill in cases where there is no emergency which would require suspension without a hearing (page 93, lines 1 through 23);
>
> (2) give "any interested person" the right to intervene, participate fully as a party, and subpena documents if the Administrator should decide to conduct a hearing before suspending registration (page 94, lines 3 through 7, and page 92, lines 17 through 21);
>
> (3) provide in all cases for judicial review by an appellate court, even though there has been no prior hearing to determine the facts (page 94, line 23, and page 95, lines 3 through 15;
>
> (4) deprive a registrant of any opportunity to present evidence in a suspension proceeding (even on judicial review) where there has been no administrative hearings—by restricting the court to consideration of "the relevant documents of which his [the Administrator's] record is comprised" (page 118, lines 22 and 23).

The Commerce Committee amendment provides for an illusory type of review in the case of suspension proceedings in that it gives the registrant a right to judicial review but allows him to present no evidence in his behalf. Thus, the Administrator may suspend regis-

tration without a hearing. The registrant may appeal that suspension to the court of appeals. In deciding this appeal, the court may look only at the relevant documents of which the Administrator's record is comprised. This creates the appearance, but not the substance, of judicial review.

The Commerce Committee report, after pointing out that under the Agriculture Committee bill, "The Administrator might be forced to defend himself in court on the question of (1) emergency suspension, (2) suspension following a hearing, and (3) cancellation, all with respect to his efforts to remove one pesticide from the market," describes its amendment as follows at page 28:

> "The amendment gives EPA the authority, if necessary to prevent an imminent hazard, to suspend without a hearing or after an expedited hearing if more information needs to be gathered. However, the amendment provides for a single review of the suspension question. Thus, the number of decisions EPA may have to defend against proponents of a given pesticide registration is reduced from three to two."

This statement is not correct and is apparently based on misunderstanding by the Commerce Committee of its amendment. Its amendment does not provide for a single review of the suspension question, nor does it reduce the number of decisions EPA may be forced to defend. If anything, it does the exact opposite.

If registration were suspended without a hearing, then under either the Agriculture Committee bill or the Commerce Committee amendment the registrant could appeal. If his appeal were successful, then under either the Agriculture Committee bill or the Commerce Committee amendment the Administrator could proceed to a hearing to determine whether suspension was appropriate. If, as a result of that hearing, the Administrator decided to suspend registration then under either the Agriculture Committee bill or the Commerce Committee amendment the registrant could obtain judicial review. In the meantime, under both the Agriculture Committee bill and the Commerce Committee amendment the Administrator would be conducting cancellation proceedings. If at the end of those proceedings the Administrator decided to cancel registration then under either the Agriculture Committee bill or the Commerce Committee amendment the registrant could proceed to seek judicial review.

Actually, the Commerce Committee amendment provides for additional times in which judicial review could be sought which are not provided for by the agriculture bill. On page 95, line 11, the Agriculture bill provides in the case of judicial review of a suspension order entered without a hearing as follows: "The effect of any order of the court will be only to stay the effectiveness of the suspension order, pending hearing before the Administrator." This provision would be stricken by the Commerce Committee amendment so that innumerable reviews are possible under the Commerce Committee amendment but not under the Agriculture Committee bill. Thus, under the Commerce Committee amendment the Administrator could suspend registration without hearing. If the court found that the Administrator's file did not justify suspension, the Administrator could obtain additional information and again without a hearing suspend registration. The Commerce Committee amendment permits this without limitation. The

Agriculture Committee bill would permit only one suspension without a hearing. If that suspension were overruled, the effectiveness of the suspension would be stayed until a hearing was conducted by the Administrator.

The question of judicial review was a matter of great concern and study to the Committee on Agriculture and Forestry. The subcommittee that studied this matter at great length felt that it was a matter of such complexity that all the various proposals on the subject required the full deliberation of the full committee. It therefore passed this question, along with three other amendments, to the full committee for its determination. The matter was under constant study by the Environmental Protection Agency while the committee was examining it and finally a compromise proposal was worked out by the committee and the Environmental Protection Agency which the committee and EPA regard as fair to all.

The original report of the Committee on Agriculture and Forestry described the situation as follows at page 11:

> "Four amendments were passed for submission to the full Committee for its deliberation without subcommittee recommendation as follows:
>
> "Amendment 1, would authorize third parties to petition for cancellation or suspension and obtain judicial review. There were three alternative proposals:
>
> "(A) NACA proposal would make registration prima facie evidence of compliance for all purposes, provide for cancellation in contested cases only on the basis of scientific data not considered at time of registration, strike the provision for hearings intiated by the Administrator, and provide for judicial review in such cases in the district court;
>
> "(B) Hart-Nelson Amendment No. 1010 provided for review in such cases in the circuit court, prohibited stay of an agency action unless the party seeking the stay was likely to prevail and would suffer irreparable harm;
>
> "(C) EPA proposed appeal to the circuit court and indicated that the Hart-Nelson provision for a stay duplicated that already in the bill. EPA recommended an alternative version.

and at page 12:

> "With respect to Amendments No. 1 and No. 4 the full Committee adopted compromise proposals as follows:
>
> The compromise proposal for Amendment 1—
>
> "(a) makes registration prima facie evidence of compliance only as long as no cancellation proceedings are pending;
>
> "(b) continues the present clear criteria (compliance with the Act) for cancellation proceedings;
>
> "(c) provides for the initiation of cancellation proceedings either by notice of intent to cancel, or notice of intent to hold a hearing (so that the Administrator may have the benefit of more information before he decides to cancel);

[p. 49]

"(d) provides for hearings on suspensions except in emergency situations;

"(e) provides for judicial review by the court of appeals in all cases where there has been an administrative hearing and by the district court in all cases where there has not been an administrative hearing; and

"(f) makes it clear that any person who will be adversely affected by an order may obtain judicial review.

"Before adopting this compromise proposal, the Committee considered all of the numerous amendments submitted to clarify the procedure for judicial review, third-party participation in the administrative decision-making process, and the grounds which permit the Administrator to cancel a registration before a five-year period. The procedures adopted carry forward the language of present law by which the Administrator cancels where a substantial question exists. Under present practice third-parties may request the Administrator to review new data and determine whether formal proceedings should be commenced. The Committee action permits persons adversely affected to continue to be able to request review of the status of a registration and adversely affected persons, like users, also to participate in the administrative process. The language "adversely affected" is in present law and the Committee has rejected the House language which refers to 'interested persons' so as to avoid any implication of desiring to change present law.

"The Committee has determined that the Administrator should be able to call a hearing when he believes it useful rather than issue a notice of intent to cancel. Such a procedure permits the Administrator to initiate formal review without placing a stigma on a product when he is not convinced that the registration should be cancelled. It also permits the Administrator to proceed without automatically cancelling if no specific request for a hearing is received.

"After a hearing judicial review on petition by any person adversely affected is properly lodged in the courts of appeals, since an adequate record exists for such review. Where, however, the Administrator has determined no substantial question of safety exists which warrants formal review, and thus has refused to hold a hearing, review should be by a district court since there is no record for the court of appeals.

"The Committee has also provided for expedited hearings on questions of suspension so that the procedure will be analogous to cancellation. Where a suspension action is taken prior to a hearing, a district court could stay the suspension pending the Administrator's determination after a hearing except such stay shall be dissolved at the time the Administrator issues a decision. If, after the hearing, the Administrator determines to suspend, the order becomes effective and any district court restraining order is dissolved, and the power to stay the Agency's order shall rest with the court of appeals."

In short, the Committee on Agriculture and Forestry believes that matters which have not been heard before should go to courts of orig-

inal jurisdiction and appeals from cases which have already been administratively heard and decided should go to appellate courts. The question is really that simple. The Commerce Committee amendment upsets a compromise that had long been in development, and puts passage of this bill in jeopardy.

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 12 OF THE COMMITTEE ON COMMERCE (AUTHORITY OF STATES TO REGISTER PESTICIDES)

In effect, this amendment would deny States the right to register pesticides (with EPA approval) to meet peculiar State needs. Hawaii, Michigan, and Washington authorities have advised the Committee on Agriculture and Forestry of the "serious economic problem" they will be faced with if this amendment is adopted.

This amendment strikes out a provision (page 129, line 22, through page 130, line 6) of the Agriculture Committee bill which would permit a State to register pesticides formulated for distribution and use within that State to meet specific local needs if that State is certified by the Administrator as capable of exercising adequate controls and if registration for such use has not previously been denied, disapproved or canceled by the Administrator. Such registration would not be effective for more than 90 days if disapproved by the Administrator and the Administrator could suspend or cancel such registration in accordance with the provisions of the act. In lieu of this provision, the Commerce Committee would insert a substitute (page 130, lines 7 through 22) designed only to meet "emergency" needs. Such registration would not be effective for more than 90 days unless extended by the Administrator.

The provision of the Agriculture Committee bill was designed to take care of a problem which the Commerce Committee amendment would not take care of. The problem is this. Pesticides are registered for particular pests for which research has proved that they are efficacious. They are also registered for particular crops. At present there is no restriction on the use of pesticides. Consequently, for many years pesticides registered for use to combat one pest have also been used and found equally efficacious against other pests.

On the day that this bill is enacted it will become illegal to use any pesticide in a manner that is inconsistent with the labeling. The Committee on Agriculture and Forestry worked with the Environmental Protection Agency over a period of some weeks to see if there was not a better word than "inconsistent" but was unable to solve this problem. The original report of the Committee on Agriculture and Forestry discusses the problem of interpreting the word "inconsistent" at some length at pages 15 and 16. It states that it is not the intention of the committee to prohibit any use which is in no way harmful, and which has only beneficial effects on man and his environment and it expresses the hope that by proper administration of the labeling requirements and administrative interpretations of the law and the labels approved by him, the Administrator will be able to make it clear to users that such uses are not prohibited. However, this is not a very satisfactory way to take care of the problem, especially where an entire industry

within a single State may be plagued by a pest for which a perfectly adequate and safe remedy would be available but for the fact that the economic return from the pesticide for such use is not adequate to warrant the cost of Federal registration of the pesticide for such use.

VIEWS OF GOVERNOR BURNS OF HAWAII, MR. HENRY M. GOODYEAR, JR., DIRECTOR, FEDERATED PECAN GROWERS OF THE UNITED STATES, DR. DONALD ISLEIB, SCIENTIFIC ADVISER TO THE DIRECTOR, MICHIGAN DEPARTMENT OF AGRICULTURE, AND MR. ERRETT DECK, ASSISTANT DIRECTOR, WASHINGTON DEPARTMENT OF AGRICULTURE

The problem is well described in the following letters from the Governor of Hawaii to Senator Fong and from Mr. Henry M. Goodyear, Jr., to Senator Talmadge and in the following excerpts from the testimony of Dr. Donald R. Isleib, scientific adviser to the director, Michigan Department of Agriculture, and Mr. Errett Deck, assistant director, Washington Department of Agriculture (representing the National Association of State Departments of Agriculture and the Association of American Pesticide Officials):

EXECUTIVE CHAMBERS,
Honolulu, July 13, 1972.

Hon. HIRAM L. FONG,
U.S. Senate, New Senate Office Building, Washington, D.C.

DEAR HIRAM: It has been brought to my attention that H.R. 10729, Federal Environmental Pesticide Control Act of 1972, has been referred to the Committee on Commerce and several proposed amendments have been made.

One major proposed change which will have an adverse effect on Hawaiian agriculture is the deletion of State authority to register pesticides for intrastate use.

Section 23(c) "Authority of States" in H.R. 10729 prior to change by Commerce Committee reads as follows:

"(c) A State may provide registration for pesticides formulated for distribution and use within that State to meet specific local needs if that State is certified by the Administrator as capable of exercising adequate controls and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator. Such registration shall be deemed registration under section 3 for all purposes of this act, but shall authorize distribution and use only within such State and shall not be effective for more than 90 days if disapproved by the Administrator within that period."

If State's authority for registration of pesticides for intrastate use is denied, Hawaii will be faced with a serious economic problem because many of our crops are produced in very small quantities thus precluding chemical firms from clearing pesticides for use on minor crops.

Growers, when faced with pest problems in minor crops are tempted to use pesticides cleared for pest control on a related major crop. The consequences of the farmer failing to treat could be a serious economic loss. However, should he choose to treat without assurance of safety then the presence of illegal residues on crops could lead to legal action and losses where no such problem would result from application

of pesticides on major crops with similar characteristics. We recognize unwarranted and unapproved uses of pesticides can have adverse effects on the environment and human health.

The total minor crop acreage is about 1,100 acres, ranging from 8 acres of dasheen to 420 acres for taro. These minor crops generally are grown for local consumption and for use in ethnic dishes. Loss of these crops would necessitate resorting to costly alternatives of importing from the Orient or Polynesia similar crops with unknown or questionable history of pesticide usage.

Presently, very few pesticides are cleared for use on such minor crops because manufacturers will not expend the large sums of money required to register a pesticide for a limited-scale specific crop use.

Therefore, States should be given the authority to register pesticides for use on minor vegetable and fruit crops.

Because of Hawaii's year-round growing conditions there is a continuing buildup of agricultural and environmental pests including noxious weeds. Our sugar, pineapple, and beef cattle industries require additional pesticides and modified uses of clearer pesticides to combat pests, many of which are not common to continental United States. States should be given authority to register additional or modified uses of pesticides based on data supplied by applicant and review by State office of environmental quality control and other State agencies.

Your support and follow-through to provide for State authority to register pesticides for intrastate use would be appreciated.

Warmest personal regards. May the Almighty be with you and yours always.

Sincerely,

JOHN A. BURNS.

FEDERATED PECAN GROWERS' ASSOCIATIONS OF THE UNITED STATES,

Albany, Ga., January 18, 1972.

Hon. HERMAN TALMADGE,
U.S. Senator,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TALMADGE: In a recent meeting of plant pathologists at the University of Georgia, the proposed pesticide bill, which is bill H.R. 10729, was generally outlined. The effects of this law might be disastrous for pecans, or any other small economic crop today.

Pecans represent about $75 million crop nationally, and $25 million to Georgia. There are very few chemicals that are cleared for pecans, and no chemical companies, really, that are working specifically on pecan pesticide research. We have to use pesticides that are cleared for peaches, apples, citrus, and other major agricultural crops. Many of the chemical companies will not take the time even to try to get their product cleared for pecans, due to the expense and limited market.

If it could be a criminal offense to spray with a chemical that is not specifically named for pecans, we could not maintain our orchards in this area. We would have to let them revert back to what they were 10 years ago, and this would be economically catastrophic. For example, certain pesticides on the surface of an apple or peach could present

a much greater danger potential than on a pecan shuck, since the nut is never in contact with the pesticide itself.

I would certainly appreciate hearing from you on this, and what this industry might expect in the future. I realize this is controversial, and the ecologists are not very agribusiness minded. The whole farming community is indebted to you for your understanding of agriculture, and its place in Georgia as well as the United States.

Sincerely yours,

HENRY M. GOODYEAR, Jr.,
Director.

Dr. Isleib (at p. 17 of the hearings of the Committee on Agriculture and Forestry, et seq.):

> Regarding our third point, preemption of the registration field, we have no wish to share with EPA or any other of the Federal agencies in the evaluation or decision regarding human health, toxicology, pharmacology, persistance, or basic environmental evaluations, but we certainly feel that we have collective resources in our various State departments, the service of the State university, our health, natural resources, and water resources agencies which can adequately and well identify and judge the unanticipated or unique needs for pest control which occur in Michigan. We feel the authority assumed by the Federal Government in H.R. 10729 as proposed, is too restrictive and we are not confident that the Administrator will always be able to respond properly to localized pest problems.
>
> We have some local threats to agriculture. We feel they are particularly serious in border States and States close by waterways used in international shipping. We are very pleased, after having had an opportunity to review the Senate committee staff mark up, to see that a provision has been made to provide for the States for registrations of uses which are unique to their needs. My testimony includes a suggestion, to accomplish State registration but I am sure that my Director and the Commission of Agriculture would prefer the one suggested in the committee markup.
>
> I would like to bring your attention to a couple of unique situations which I think describe the point that I am making. We have in the Great Lakes a fishery that is being restored by massive efforts which include the control of the sea lamprey with a chemical, TFM.
>
> The successful restoration of lake trout and the introduction of salmon species were possible only when the Department of Interior, working closely with our State agencies, was able to arrive at a successful lamprey control chemical. Once found, these agencies requested registration from the Michigan Department of Agriculture for the use of this chemical and the remarkable success of this undertaking is now reflected in a major sport fishery where none had previously existed.
>
> We have the cereal leaf beatle, which is an invader from Europe first found in Michigan in 1962, and a vigorous chemi-

cal control program under the authority of the Michigan department delayed the spread of this pest while Michigan plant breeders embarked upon a program to find leaf beatle resistants.

However, termination of our chemical control program a few years ago was followed by a rapid spread of this pest to neighboring States as far west as Illinois and as far east as the Atlantic coast. The control program we used did not introduce new pesticide use patterns or food residues. It simply extrapolated well-known properties of existing pesticides to a new problem peculiar to us at that time. We feel that our response was correct and that we should continue to use our local expertise within the framework of the law proposed, H.R. 10729, to solve similar problems in the future.

Subsequent to the Commission's approval of that language, I have had a chance to study the language in the Committee print. If it means what I think it means, I prefer the language of the Committee print since it, in contradistinction to the proposed language I placed before you, would permit us to deal with the interesting cases of the swimmers' itch and the lamprey eel. Let me give you some examples of why we believe the Federal Government should not completely preempt the registration and regulation of restricted use pesticides.

Two unique situations of special interest come to mind. Our Great Lakes fishery is being restored by massive efforts which include control of the sea lamprey with the chemical 3-trifluoromethyl-4-nitrophenol, abbreviated TFM. The successful restoration of lake trout, and introduction of several salmon species were possible only when the parasitic sea lamprey could be controlled. The U.S. Department of Interior, Bureau of Sport Fisheries worked closely with the Michigan Department of Natural Resources to find a successful lamprey control chemical. Once found, these agencies requested registration from the Michigan Department of Agriculture, and the remarkable success of this undertaking is now reflected in a major sport fishery where none had previously existed.

The second unique situation involves control of swimmers' itch, a tiny water-living parasite which invades human skin and produces intense irritation. Water infested with swimmers' itch is not useful for any water-contact recreation. Through chemical control of a snail which is the alternate host of the parasite, this disease can be controlled and the waters restored to recreational use. Again, the U.S. Department of Interior and Michigan Department of Natural Resources combined with the Chemagro Corp. to find and use a safe, effective chemical for control of swimmers' itch. The Michigan Department of Agriculture and other Federal and State agencies pooled their resources to solve this unusual, local problem.

Let me cite the following examples of local problems for which solutions and decisions are best found in State technical resources:

[p. 55]

Cereal leaf beetle control on small grains. The cereal leaf beetle, *Oulema melanopa*, was found in Michigan in 1962. A vigorous chemical control program under the authority of the Michigan Department of Agriculture delayed the spread of this pest while Michigan plant breeders embarked on an effort to incorporate cereal leaf beetle resistance in commercial wheat varieties. These varieties will become available in 1974 or 1975, after more than 10 years of diligent effort. We are also introducing biological control agents—tiny wasps which parasitize the pest beetle. However, termination of the chemical control program a few years ago was accompanied by rapid spread of this pest to neighboring States to Illinois in the west and the Atlantic coast to the east. The control program did not introduce new use pattern or food residues; it simply extrapolated well-known properties and uses of existing, registered pesticides to a new and sinister problem peculiar to Michigan at the time. With the advantage of hindsight, we feel that our response was correct by all standards, and we feel that we should continue to use the technical expertise existing in Michigan to solve similar problems in the future.

The same pest, cereal leaf beetle, invades the bark of Christmas tree trunks. A quarantine prevents the spread of the pest to uninfested areas. We can sanitize these trees by using lindane as a postharvest spray—lindane is already registered for control of root collar weevil on Christmas trees. There is no national need for our local registration, but in Michigan—the No. 1 Christmas tree producing State in the Nation with a crop valued at $20 million annually—the need is acute. We think we should retain authority to extend an existing use to a new or unique problem.

Other examples of pests in Michigan on farm or forests crops include the strawberry sap beetle, the strawberry clipper, climbing cutworms, the white apple leafhopper, the plum curculio, the American plum borer, the red-humped oakworm, and the black vine weevil. Each of these presents a clear economic threat limited to Michigan. Our strawberry growers have lost up to 50 percent of their crops, at a cost of $2 to $5 million annually, due to ravages of insects for which no adequate, federally registered control now exists. We believe we have competence to solve these problems within the human health and environmental protection frameworks erected by FDA and EPA, but can do so only if we are given the authority.

We would not seek to perform registrations at variance philosophically, environmentally, or in terms of human health with those imposed by EPA and in the case at point, and I think it is typical of the cases we would like to make, there is a registration which exists for the same chemical on the same crop but for a different insect and we think that to require a national registration to meet a very local problem—and we have a number of these local problems—is restrictive. Some additional examples are included in my testimony.

[p. 56]

Mr. Deck at page 285:

> (4) Such local or minor uses as the control of mud shrimp for development of oyster beds in Washington, the control of an aquatic pest for swimmers in Michigan lakes, the control of honeybees infesting some buildings, the control of rattle snakes in a new irrigation district, the mixture of two herbicides for spinach seed, and control of pests on rhubarb will no doubt never justify Federal registrations. Without going into detail, State registration of intrastate labels has also allowed the control of pests under emergency situations. Unless there is a complete reorganization of Federal procedures adjusted to the local level, or States are allowed to cope with these needs, there will be either an undesirable "tolerance" enforcement policy or serious problems for the chemical industry and agriculture.

The examples given above are not necessarily emergency cases that could be cured in 90 days. The amendment of the Commerce Committee simply does not take care of this serious problem on which the Committee on Agriculture and Forestry received many communications from various States.

The problem of taking care of these minor local problems will be further compounded by the tremendous work load the bill will impose on EPA over the next four years. Citizen interest in administration, hearings, and judicial review can also be expected to slow up the registration process and increase the backlog.

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 13 OF THE COMMITTEE ON COMMERCE (RECORDKEEPING BY PRIVATE APPLICATORS)

In brief, this amendment (page 107, lines 13 through 16) authorizes the Administrator to require farmers, farmworkers and other private applicators to maintain records and file reports or other documents. The Commerce Committee amendment strikes out section 11(a) of the Agriculture Committee amendment which provides as follows:

> (a) IN GENERAL.—No regulations prescribed by the Administrator for carrying out the provision of this Act shall require any private applicator to maintain any records or file any reports or other documents.

A private applicator is defined by section 2(e)(2) of the Agriculture Committee bill as follows:

> (2) PRIVATE APPLICATOR.—The term "private applicator" means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

[p. 57]

In 1970 there were 2.9 million farms in the United States with an average realized net income of only $5,374, and there were 1.8 million farms with realized net of less than $3,500.

So the Committee on Agriculture felt that since there was no convincing evidence that there was any real need for the maintenance of such records or the making of such reports or the filing of such documents the requirement that they be kept and filed would be a burden beyond the capacity of most of the farmers and not commensurate with any slight benefit that might obtain.

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 14 OF THE COMMITTEE ON COMMERCE (RIGHT OF ENTRY)

In brief, this amendment (page 100, line 25, and page 101, lines 2, 3, and 8) is unconstitutional, since it would authorize officers or employees of the Environmental Protection Agency to enter private dwellings and other places where pesticides or devices are held or used, whereas the Agriculture Committee bill restricted such entry to places where pesticides or devices are held for distribution or sale. This amendment would further authorize such employees to inspect and obtain samples of any pesticides or devices, whereas the Agriculture Committee bill limited such inspection to pesticides or devices "packaged, labeled, and released for shipment."

Since pesticides are held or used in most homes, this amendment would authorize Federal agents to enter almost any home in the country without a warrant and without even a suspicion that there has been a violation of any law. The Committee on Agriculture and Forestry opposes the existence of such authority even though it were never used. Section 9(a) of the Agriculture Committee bill provides for entry of any place where pesticides or devices are held for distribution or sale without a warrant for a "sufficient reason," even though no violation is suspected. Section 9(b) provides additional authority for entry with a warrant, but only where there is reason to believe that the act has been violated. Entry of a commercial establishment is very different from entry into homes and other places.

With respect to the second part of this amendment, the Committee on Agriculture and Forestry felt that there was no reason whatsoever for authorizing the taking of samples of pesticides or devices until they were packaged, labeled, or released for shipment. Section 3 of the bill prohibits the distribution, sale, offer for sale, holding for sale, shipment, delivery for shipment, or receipt and delivery or offer of delivery of any unregistered pesticide. Up until the time that one of these actions is to be taken, the chemical composition of a pesticide is entirely irrelevant to any provision of the law. Thus, for example, let us suppose that a registered pesticide consists of one part chemical x and two parts chemical y. The fact that chemical x is found in the pure state in the plant or in some other combination with chemical y than that for the registered pesticide is of no interest in connection with the administration of this law. But when it is packed and labeled with the name of the registered pesticide, then the composition of the mixture becomes one that is of interest under the law.

[p. 58]

VIEWS OF SENATOR SAM J. ERVIN, JR., AMERICAN CIVIL LIBERTIES UNION, AND THE CONGRESSIONAL RESEARCH SERVICE

The Committee obtained the following views on the constitutionality of this amendment from Senator Sam J. Ervin, Jr., the American Civil Liberties Union, and the Congressional Research Service.

U.S. SENATE COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
Washington, D.C., July 26, 1972.

Hon. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR JIM: This is in response to your letter of July 20 on the amendments proposed by the Commerce Committee to Section 9 of H.R. 10729.

The provision in question would authorize administrative searches of private homes. Such administrative searches raise significant constitutional questions under the Fourth Amendment's ban on warrantless and unreasonable searches.

The constitutional infirmities of the Commerce Committee provision are strongly determined by the regulatory scheme contemplated by the remainder of the legislation. Under existing Supreme Court decisions, the most significant Fourth Amendment problems arise where a criminal sanction is part of the regulatory scheme and related to the search. For example, in the case of *Camara* v. *Municipal Court*, 87 S. Ct. 1727 (1967) the Supreme Court held that where failure to allow entry for an administrative search (housing code inspection) results in a criminal sanction, then a warrant is required. In another case handed down the same day, *See* v. *City of Seattle*, 87 S. Ct. 1737 (1967), the court held that even in an inspection of a commercial establishment, when the inspection moves into private areas of the establishment a warrant is necessary if failure to allow entry will result in a criminal sanction. Therefore, if failure to allow entry of Environmental Protection agents will result in criminal sanctions, a warrant would be required under H.R. 10729.

The only situation in which an administrative search can proceed without warrant is where it is not forced, the failure to consent results in no criminal penalty, the search serves a valid administrative purpose, and is conducted by a caseworker of the appropriate agency rather than by the police. *Wyman* v. *James*, 91 S. Ct. 381 (1971). Therefore, if no criminal sanction at all is attached to the search under H.R. 10729 then the Commerce Committee amendment may be constitutional.

[p. 59]

However, even if all of these factors exist, a warrant would still be required if possession of the illegal articles is itself a crime, because a search for those articles would not be an administrative search but treated as a traditional Fourth Amendment search. In other words, if under H.R. 10729 possession of the pesticides in question is a crime, then a warrantless search would be no more constitutional than a "no-knock" search for narcotics.

Even aside from the precise holdings in these Supreme Court cases, I am very troubled by the Commerce Committee's amendment. In substituting "or used" for the phrase "for distribution or sale" the Commerce Committee allows the invasion of private homes on a regular basis without search warrants. No longer would probable cause be required where a violation is suspected. Rather, the American people would come to expect warrantless searches on homes and farmhouses done in the guise of seeking out illegal pesticides. Under no circumstances, whether in the context of a criminal or administrative statute, should Congress sanction such a violation of the privacy guaranteed by the Fourth Amendment.

I hope my response is of help to you and the committee.

With kindest wishes,

Sincerely yours,

SAM J. ERVIN, Jr.,
Chairman.

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., July 26, 1972.

Hon. JAMES B. ALLEN,
New Senate Office Building,
Washington, D.C.

DEAR SENATOR ALLEN: Thank you for your inquiry regarding H.R. 10729. We concur in your judgment that the Committee on Commerce amendment to Section 9(a)(1) (authorizing "inspection" and sampling at the places where "pesticides or devices" are "held or used") intrudes on rights guaranteed by the Fourth Amendment.

The Supreme Court recently upheld warrantless searches of business premises. See *e.g.*, *Collanade Catering Corp.* v. *United States*, 397 U.S. 72 (1970) (liquor dealers), *United States* v. *Biswell*, 82 S.Ct. 1593 (1972) (gun dealers). But warrantless searches of private dwellings have not been sanctioned.

In *Camara* v. *Municipal Court*, 387 U.S. 523 (1967), the Supreme Court upheld the citizen's Fourth Amendment right to resist a warrantless search of his residence. *Wyman* v. *James*, 400 U.S. 309 (1971), in which A.F.D.C. "home visits" were sanctioned, did not involve a criminal sanction as is here the case.

In Section 9(a)(1) of H.R. 10729, as amended, the non-warrant inspection of private dwellings and sampling is authorized. This allows an impermissible invasion of the privacy rights of private citizens and we oppose it. We do not by specifically mentioning the amendment wish to intimate that we approve of the practice of nonwarrant inspections of business premises.

Sincerely,

CHARLES MORGAN, Jr.,
Director.

[p. 60]

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., July 27, 1972.

To: Honorable James B. Allen, Senate Committee on Agriculture and Forestry. Attention: Mr. Stanton.
From: American Law Division.
Subject: Constitutional Issues Presented by Administrative Inspections Authorized by H.R. 10729, Ninety-Second Congress, Second Session, as Reported by the Committee on Commerce on July 19, 1972.

This is in response to your question concerning what if any constitutional issues are raised by sec. 9(a) of H.R. 10729, Ninety-Second Congress, Second Session, (as reported by the Committee on Commerce), an Act to amend the Federal Insecticide Fungicide, and Rodenticide Act. Sec. 9(a) authorizes agents of the Environmental Protection Agency "to enter at reasonable times, any establishment or other place where pesticides or devices are held or used." Sec. 12(a)(2)(B) provides that it shall be unlawful "to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9." An establishment is defined in section 2(dd) as any place where a pesticide or device is produced, or held, for distribution or sale. Establishments in which pesticides are produced are required by section 7 to be registered with the Administrator of the Environmental Protection Agency.

Section 9(a) requires the inspection agents to present appropriate credentials and "a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected," but does not require the agent to first obtain a warrant.

While Sec. 9(b) empowers agents to obtain a warrant if there is reason to believe that the Act has been violated, the section does not require search warrants for all inspections.

There are two lines of cases relevant to whether Sec. 9(a) might in some cases constitute an "unreasonable search" within the meaning of the Fourth Amendment. In two 1967 decisions, *Camara* v. *Municipal Court*, 387 U.S. 523, and *See* v. *City of Seattle*, 387 U.S. 541, the Supreme Court held that warrants must be obtained prior to routine housing and fire code inspections. Exceptions have now been made for inspections of liquor establishments run by federally licensed dealers (*Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1970)), and for inspections of the premises of firearms dealers, *United States* v. *Biswell*, No. 71-81, May 15, 1972.

The *Camara* decision overruled the Court's earlier decision in *Frank* v. *Maryland*, 359 U.S. 560 (1959). In *Camara*, the Court held that a homeowner could not be held criminally liable for refusing to permit an inspection of his residence by a municipal housing inspector not having a search warrant. In *See* v. *Seattle*, decided the same day as *Camara*, the Court held that the owner of commercial property—in *See* a locked warehouse—could also refuse to open his property for a routine fire inspection by an inspector not holding a search warrant. Both decisions excepted emergency searches from the warrant requirement.

The Court derived the *Camara* and *See* holdings from its view of

"the basic purpose" of the Fourth Amendment "to safeguard the privacy and security of individuals against arbitrary invasions by government officials." Protection of that privacy and security requires that, "except in certain carefully defined classes of cases," the decision that privacy must yield to the right of search must be decided "by a judicial officer, not by a policeman or government enforcement agent."

"Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. These are questions which may be reviewed by a neutral magistrate without any reassessment of the basic agency decision to canvass an area." *Camara*, 387 U.S. at 532.

Because there was no indication that "the burden of obtaining a warrant is likely to frustrate the government purpose" behind routine health, fire, and housing code inspections, the Court found no reason to except such searches from the warrant requirement. The Court indicated that warrants might be issued for these routine administrative searches under conditions that would not justify issuance of a warrant to search for evidence of a crime. The need for inspection, "weighed in terms of . . . (the) reasonable goals of code enforcement" of "city-wide compliance with minimum physical standards for private property," (387 U.S. at 535) might justify periodic area-wide searches of a kind which would be clearly unreasonable in a search to obtain evidence of a crime, in which case there must be probable cause to believe that evidence will be uncovered in a particular dwelling. The Court in *Camara* indicated also that the administrative searches "involve a relatively limited invasion of the urban citizen's privacy," since "the inspections are neither personal in nature nor aimed at the discovery of evidence of crime." 387 U.S. at 537.

In *See* v. *City of Seattle*, *supra*, the Court relied on the same principles cited in *Camara*, and on analogy to the degree of particularity required in subpoenas of company records, to hold that "administrative entry, without consent, upon the portions of commercial premises which are not open to the public may only be compelled through prosecution or physical force within the framework of a warrant procedure." 387 U.S. at 545. The Court reserved judgment on whether warrantless searches could be authorized as part of a licensing scheme.

In *Colonnade Catering Corp.* v. *United States*, 397 U.S. 72 (1970), the Court held that federal excise tax regulation of retail liquor dealers did not authorize the use of "physical force" to gain entry for inspection purposes without a warrant; instead the law provided that refusal to allow an inspection would result in a fine. The rather narrow holding in *Colonnade* was probably less significant, however, than dictum indicating that *See* is inapplicable to federal regulation of the liquor industry.

"We deal here with the liquor industry long subject to close supervision and inspection. As respects that industry, and its various branches including retailers, Congress has broad authority to fashion standards of reasonableness for searches and seizures." 397 U.S. at 77.

[p. 62]

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Relying on that language in *Colonnade*, the Court in *United States* v. *Biswell*, No. 71–81, 1972, found that "a like result is required in the present case, which involves a similar inspection system aimed at federally licensed dealers in firearms." The Gun Control Act of 1968, 18 U.S.C. 923(g), authorized warrantless entry during business hours for the purpose of examining firearms, ammunition, and records required to be kept. The defendant's conviction for dealing in firearms without paying the required tax had been reversed by the Court of Appeals for the 10th Circuit, which rules that weapons used as evidence had been illegally seized. The Supreme Court reversed, upholding the warrantless search consented to by the defendant because of the investigator's assertion that the search was authorized by law.

Whether the Court would apply *Biswell* to warrantless inspections of places where pesticides are held or used is not clear, but the Court's rationale in *Biswell* can be stated. While recognizing that "federal regulation of the interstate traffic in firearms is not as deeply rooted in history as is governmental control of the liquor industry," the Court emphasized the importance of "close scrutiny of this traffic" through inspections. *See* was distinguished as involving a situation where warrantless searches were not important to the reasonable goals of enforcement. Housing conditions were "relatively difficult to conceal or to correct in a short time." In order for inspections to have a deterrent effect in controlling sale of weapons such as the sawed-off shotguns involved in *Biswell*, however, "unannounced, even frequent, inspections are essential." The Court also minimized the invasion of privacy involved in such searches.

"When a dealer chooses to engage in this pervasively regulated business and to accept a federal license, he does so with the knowledge that his business records, firearms and ammunition will be subject to effective inspection. Each licensee is annually furnished with a revised compilation of ordinances which describe his obligations and define the inspector's authority. 18 U.S.C. Sec. 921(a)(19). The dealer is not left to wonder about the purposes of the inspector or the limits of his task." Slip opinion, p. 6.

It may be that the registration of establishments as contemplated by H.R. 10729 is similar enough to federal regulation of liquor and firearms to fall within the *Colonnade-Biswell* rule permitting warrantless searches of producers' places of business. As the Court indicated in *See*, "challenge to such programs can only be resolved . . . on a case-by-case basis under the general Fourth Amendment standard of reasonableness." As to that aspect of H.R. 10729 which would establish a system of inspections of places where pesticides are actually *used* as well as offered for sale in accordance with applicable regulations, and if such inspections were to extend to private homes and unregistered commercial establishments, we see no support in the case law for a departure from the requirement that a search warrant be obtained. Also, it should be noted that as the bill is now drafted a homeowner would not be liable for prosecution under section 12 for failing to permit inspection of his home for pesticides, since that section applies only to records and establishments.

Copies of the decisions of the four cases discussed above are enclosed.

GEORGE COSTELLO,
Legislative Attorney.

[p. 63]

COMMENTS OF THE COMMITTEE ON AGRICULTURE AND FORESTRY ON AMENDMENT NO. 15 OF THE COMMITTEE ON COMMERCE (SPECIFIC AUTHORIZATION)

In brief, this amendment would deprive the Administrator of adequate funds to carry out the Act.

This amendment would limit appropriations to carry out the Federal Insecticide, Fungicide, and Rodenticide Act to not to exceed $15 million for the fiscal year ending June 30, 1973, not to exceed $25 million for the fiscal year ending June 30, 1974, and not to exceed $35 million for the fiscal year ending June 30, 1975.

The Committee on Agriculture and Forestry, the Committee on Commerce, and the Environmental Protection Agency estimated, as shown on page 17 of Report No. 92–838 of this committee and Report No. 92–970 of the Commerce Committee, that the costs of carrying out the new activities required by the bill would amount to approximately $15 million in fiscal year 1973, $22.3 million in fiscal year 1974, and $30.8 million in fiscal year 1975. If other amendments recommended by the Committee on Commerce were adopted, these costs would be higher. When these costs for the new activities required by the bill are added to the costs already required to carry out the existing provisions of the Federal Insecticide, Fungicide, and Rodenticide Act ($18.3 million in fiscal 1972, $20.3 million in fiscal 1973, $22.4 million in fiscal 1974, and $24.3 million in fiscal 1975), the total amount of costs for carrying out both the old and new activities under that act would be:

$35 million for the fiscal year ending June 30, 1973,
$44 million for the fiscal year ending June 30, 1974, and
$55 million for the fiscal year ending June 30, 1975.

The estimates upon which the Committee above estimates are based are set out in the following letter:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C.

Hon. JAMES B. ALLEN,
Chairman, Subcommittee on Agricultural Research and General Legislation, Committee on Agriculture and Forestry, Washington, D.C.

DEAR MR. CHAIRMAN: We are pleased to respond to your request for five year cost estimates for the implementation of the current Federal Insecticide, Fungicide and Rodenticide Act, and the amendments to that act proposed by the Committee on Agriculture and Forestry (Report Number 92–838) and the Committee on Commerce (Report Number 92–970). Separate cost estimates for these alternative bills are enclosed, together with brief description of the new activities which would be required by the proposed amendments.

The enclosures provide the estimated costs for these new legislative alternatives for Fiscal Years 1973 through 1977, assuming that the bill being estimated were to be enacted early in Fiscal Year 1973. The costs shown for the implementation of the current Federal Insecticide, Fungicide and Rodenticide Act are consistent with the Agency's Fiscal Year 1973 budget request, which is currently under consideration. *It should be noted that the funds which would be authorized by Section*

27 of the Commerce Committee version are less than the amount already committed in Fiscal Year 1972, and budgeted in Fiscal Year 1973, and only slightly larger than the estimated requirements for our current program in Fiscal Year 1974. This dollar limitation would not permit adequate expansion of our efforts to take on the new responsibilities imposed by the legislation. (Italics added)

The estimated costs for the new bills reflect the additional costs imposed by the legislation upon the Environmental Protection Agency. They do not include any estimates of the costs which might be incurred by other Federal Agencies, or the costs of related efforts currently being carried out under existing authorities.

These estimates do not reflect possible changes in the scope of the proposed efforts which might result in actual practice. Further, the resources which may be applied in future years will have to be balanced against the requirements of other programs, prevailing economic conditions, and other circumstances in reaching a firm funding level. The estimates provided, therefore, do not represent a commitment to be included in future budgets.

Sincerely yours,

WILLIAM D. RUCKELSHAUS,
Administrator.

Attachment.

Five Year Fiscal Projection of Costs—Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) (Current Law)

[In millions of dollars]

Gross costs:	
Fiscal year 1972	18.3
Fiscal year 1973	20.3
Fiscal year 1974	22.4
Fiscal year 1975	24.3
Fiscal year 1976	25.7
Fiscal year 1977	27.2

The funding requirements estimated above cover the direct and identifiable indirect costs of EPA's current pesticide programs. While FIFRA is the principal authorizing legislation for these activities, some of them are performed under other authorities such as the Public Health Service Act and the Federal Food Drug and Cosmetic Act. Included in the above figures are efforts in research, monitoring, enforcement, abatement and control, general assistance, training, and general supervision and support. Excluded are those indirect support costs borne by the Agency's Agency and Regional Management accounts, and other indirect costs not directly applicable to Pesticide efforts. EPA elements with a major involvement in the Pesticide program are the Office of Categorical Programs, Office of Research and Monitoring, Office of Enforcement and the ten Regional Offices.

These costs are the current estimates for EPA's basic Pesticides efforts. The cost estimates provided for the alternative versions of the proposed Federal Environmental Pesticide Control Act are additional costs imposed on the Agency by the various new provisions of the bills, and do not include the costs of continuing our basic efforts. Therefore, they should be added to the figures shown above in determining the total funding estimate for EPA's Pesticide programs under the various authorities. [p. 65]

5-YEAR FISCAL PROJECTION OF COSTS FOR IMPLEMENTING THE FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT (S. REPT. NO. 92-838, AGRICULTURE AND FORESTRY COMMITTEE)

[In millions of dollars]

	Fiscal year—				
	1973	1974	1975	1976	1977
Gross costs	15.1	23.0	31.9	33.5	33.0
Disposal	(1.8)	(1.7)	(7.6)	(6.6)	(5.0)

New Activities Required by the Act

5-YEAR FISCAL PROJECTION OF COSTS FOR IMPLEMENTING THE FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT (S. REPT. NO. 92-970, COMMERCE COMMITTEE)

[In millions of dollars]

	Fiscal year				
	1973	1974	1975	1976	1977
Gross costs	15.9	23.8	32.7	34.3	33.8
Disposal	(1.8)	(1.7)	(7.6)	(6.6)	(5.0)

New Activities Required by the Act

* * * * * * *

TECHNICAL CORRECTIONS TO AGRICULTURE COMMITTEE AMENDMENT

Since this bill was reported by the Committee on Agriculture and Forestry the following technical corrections have been found to be needed:

(1) When the House revised this bill, it omitted from the definition of device (section 2(h)) a provision exempting therefrom sprayers, spreaders, and other equipment used for the application of pesticides when sold separately therefrom. It now appears that this ommission was not intentional and was not favored by EPA. To restore this exemption, there should be inserted on page 68, line 12, after the parenthesis, a comma and the following: "but not including equipment used for the application of pesticides when sold separately therefrom."

(2) On page 113, line 2, the words "or device" should be stricken since this provision applies to a cancelled registration, and devices are not registered.

(3) On page 63, immediately beneath the line reading "(cc) Weed", insert "(dd) Establishment".

DEVELOPMENTS AS A RESULT OF THE PREPARATION OF THIS REPORT

The foregoing part of this report in substantially the same form as it appears herein was printed as a committee print and became available on July 27, six days after the bill as reported by the Commerce Committee became available to the general public.

As soon as the committee print had been completed, the Chairman of this Committee wrote to the Chairman of the Committee on Commerce as follows:

[p. 66]

U.S. SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
Washington, D.C., July 27, 1972.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

DEAR MAGGIE: In order to protect the jurisdiction of your Committee over "fisheries and wildlife, including research . . . and conservation" I acceded to your request of December 16, 1971, to have the pesticide bill, H.R. 10729, referred to your Committee after consideration by this Committee had been completed. Your Committee has now reported that bill with approximately sixty-three amendments divided into fifteen groups, which in no way deal with fisheries or wildlife, but which would—

(1) Give federal agents the right to enter private homes without a warrant and without any suspicion that a crime has been committed.

(2) Restrict appropriations to carry out this law to an amount clearly below what is needed.

(3) Visit unnecessary losses on such American industries as Hawaiian sugar producers; Georgia pecan growers; Michigan producers of Christmas trees and strawberries; Washington oyster producers; the Michigan recreation industry; and on the consumers served by these industries.

(4) Discourage the development of new and safer pesticides.

(5) Increase the penalty for the least serious offense above that permitted for clearly more serious offenses.

(6) Require the expenditure of public and private funds for the dissemination of dangerous and misleading information.

(7) Provide an empty form of justice under which one party is prohibited from offering evidence.

(8) Define "man" for the purposes of this law as including farmers and farmworkers.

(9) Introduce confusing surplusage and numerous errors into this law, which will tend to cripple its enforcement.

I am sure that when you wrote to me on December 16, 1971, it was not your intention to invade the jurisdiction of the Committee on Agriculture and Forestry. I know that your Committee did not have an adequate opportunity to consider this measure and did not hear many of the witnesses who asked to be heard in opposition to the amendments recommended by your Committee.

There is no question but that this bill, which amends the Federal Insecticide, Fungicide, and Rodenticide Act, properly falls within the jurisdiction of the Committee on Agriculture and Forestry. That Committee has had jurisdiction over all previous revisions of that Act and will undoubtedly have jurisdiction over all future amendments to it. It also has responsibility for legislative oversight over the administration of that law. The task of the Committee on Agriculture and Forestry in carrying out these responsibilities will be made most difficult in confusing surplusage, errors, and the other provisions described above are included in the law.

While almost all of the amendments recommended by your Committee had been carefully studied and rejected by the Committee on Ag-

riculture and Forestry, which at two seperate hearings heard all witnesses who desired to be heard, the fact that they now appear to be supported by your Committee makes it incumbent upon the Committee on Agriculture and Forestry to state its reasons for rejecting these amendments, and the Committee has ordered that a supplemental report be filed for that purpose. A committee print of such a report has been prepared and is attached for your information, but much more work will have to be done on it, as the Committee would like to be sure that the report is absolutely accurate and properly documented.

I am sorry that the Senate finds itself in this situation on this important legislation. All of the matters discussed in this letter are discussed in detail in the draft report. Where the Commerce Committee has recommended language changes which introduce errors into the bill but have no other effect, the report suggests ways in which the language preferred by the Committee on Commerce might be adopted without the errors.

I hope that you will study this matter and that together we may find some way out of this dilemma. Please let me have your views on this matter.

Sincerely,

HERMAN E. TALMADGE,
Chairman.

On August 1, the Chairman of this Committee received the following letter from the Chairman of the Commerce Committee and on the same day gave the following reply.

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., July 28, 1972.

Hon. HERMAN E. TALMADGE,
Chairman, Committee on Agriculture and Forestry, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I share your concern about the difficulties which confront us on the pesticide bill, and while I cannot concur with many of the statements in your letter, I sincerely sympathize with your frustration. The objectives of the Commerce Committee amendments do seem sensible to me, and I suspect that many of our conflicts are the result of misunderstandings. I have therefore instructed the Commerce Committee staff to meet with the staff of your Committee and attempt to iron out whatever differences between us are apparent rather than real.

With best wishes,

Sincerely yours,

WARREN G. MAGNUSON,
Chairman.

AUGUST 1, 1972.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
Washington, D.C.

DEAR MAGGIE: Thank you for your letter of July 28. I would be very happy to have the staff of the Committee on Agriculture and Forestry work with your Committee staff. However, I would under no circum-

stances want such collaboration to be used as a reason to delay action on this important bill.

I feel sure that several of the Commerce Committee amendments could be substantially revised to meet your objective, and that in such revised form they could be quickly approved by the Committee on Agriculture and Forestry next year. I would think that Commerce Committee amendment 1, revised as indicated in Senator Allen's letter to Senator Hart (attached), could be approved by the Committee on Agriculture and Forestry immediately if we could find a way of agreeing to Senator Allen's proposal. That revision represents many hours of work by the staff of the Committee on Agriculture and Forestry with environmentalists, EPA, pesticide manufacturers, and others.

There now probably remains less than two months to obtain final enactment of this important bill, and Congress will be in recess for the Republican Convention during part of that time, I earnestly ask for your cooperation.

Sincerely,

HERMAN E. TALMADGE,
Chairman.

The two committee staffs began meeting on August 1 and continued to meet until September 22, 1972, when an amendment in the nature of a substitute, which met essentially all of the objections raised in this report, was agreed upon.

EXPLANATION OF COMPROMISE AMENDMENT IN THE NATURE OF A SUBSTITUTE

The substitute consists of the amendment recommended by the Committee on Agriculture and Forestry, plus—

(1) Commerce Committee Amendment No. 1 (registration criteria) modified as suggested in this Committee's comments on that amendment. This amendment represents no change in substance, and, with the modifications recommended by this Committee, is technically correct and represents a slight clarification in language.

(2) a substitute for Commerce Committee Amendment No. 2. The substitute retains the exclusive use of data provision recommended by this Committee; but provides in addition for a mandatory licensing system under which permission to use test data in return for a reasonable share of the cost of producing the data would be required.

(3) a substitute for Commerce Committee Amendment No. 3. The substitute would prohibit any member of a scientific advisory committee from having a financial or other conflict of interest with respect to any matter considered by such committee. This appears to be in accord with existing general government policy.

(4) a substitute for Commerce Committee Amendment No. 5 (exports). The substitute would—

(A) make producers of pesticides and devices for export subject to section 8 (which authorize the prescription of books and records requirements), and

(B) prohibit the exportation of pesticides prepared for export in accordance with the foreign purchaser's directions

if such export would result in adverse effects on the environment of the United States.

Unlike the Commerce Committee amendment, this provision correctly makes the producers, rather than the pesticides, subject to the recordkeeping requirements; retains the Agriculture Committee provision requiring notice to foreign governments of pesticides banned in the United States; provides a penalty for exportation contrary to its provisions; would require the Administrator, in determining whether export of a pesticide should be banned, to consider whether such a ban would merely shift production to foreign countries (i.e., whether the ban would actually result in any protection to the environment of the United States); and would not require pre-clearance unless the pesticide was one which the Administrator by regulation had listed as one "likely to result in adverse effects on the environment of the United States". The Commerce Committee amendment would have prohibited exportation of even the most innocuous pesticide packed in accordance with the purchaser's directions until such export had been cleared by the Administrator. The listing of any pesticide as "likely to result in adverse effects" would be subject to judicial review.

(5) a substitute for Commerce Committee Amendment No. 5 (confidentiality). The substitute would—

(A) keep the Agriculture Committee provision requiring submission of all test data requested by the Administrator;

(B) delete the Agriculture Committee provision requiring the Administrator to make the data called for in the registration statement and other scientific information available to the public within thirty days after registration;

(C) prohibit the disclosure of information or data received or sent pertaining to applications for registration until thirty days prior to registration (or at registration if an emergency or the public health requires that registration not be delayed), and require such data to be made available to the public at that time. If the Administrator determined during such thirty day period on the basis of substantial new evidence or evaluations of data earlier received that the pesticide did not meet the requirements for registration he would have to give the applicant notice of that fact within such period, thereby initiating denial of registration proceedings.

(D) require written communications between the Administrator and any person to be made available to the public upon identifiable request and at reasonable cost; but only subject to such conditions as will not unreasonably interfere with administration of the Act, paragraph (C) above, or the prohibition against disclosure described in paragraph (E) below. The Commerce Committee amendment on this point would have required oral communications to have been made public, would have been limited to communications between the Administrator and "manufacturers", would not have been conditioned on non-interference with administration, and would not have been limited as described in (C) above.

(E) prohibit disclosure of trade secrets, confidential financial information, or commercial information the disclosure of

which may give a competitor a competitive advantage, except to other federal officials, in judicial proceedings, in proceedings under the Act, and to any other person in order to protect the public health. The Administrator's decision to release any information which the registrant or applicant believed to be protected from disclosure would be subject to judicial review by declaratory judgment.

(6) a substitute for Commerce Committee Amendment No. 7 (citizens' suits). The substitute would provide for citizens' suits only against the Administrator for failure to perform non-discretionary acts or failure to investigate and prosecute violations. Unlike the Commerce Committee amendment, citizens' suits would not be authorized against manufacturers, distributors, users, and other persons; and the amendment does not provide for the payment of attorney's and expert witness fees and other litigation costs.

(7) a substitute for Commerce Committee Amendment No. 9 (inclusion of farmworkers in term "man"). The substitute contains none of the Commerce Committee provisions, but instead makes it an unlawful act to use any pesticide in tests on human beings without disclosure of foreseeable consequences and voluntary participation.

(8) a substitute for Commerce Committee Amendment No. 11 (suspension). The substitute contains none of the Commerce Committee provisions, but instead (1) provides that a court stay of a suspension order issued without a hearing shall continue in effect until the Administrator's final decision with respect to cancellation or change in classification, instead of only until the Administrator's hearing on the suspension; and (2) permits participation by other parties (in addition to the Administrator and registrant) in a suspension hearing conducted prior to suspension of registration.

(9) a substitute for Commerce Committee Amendment No. 15 (specific authorization). The substitute would authorize appropriation for fiscal 1973, 1974, and 1975 not to exceed, respectively, $40 million, $52 million, and $64 million (in lieu of the Commerce Committee figures of $15 million, $25 million, and $35 million).

(10) the technical amendments described at page 66 of this supplemental report, and other minor amendments of a technical nature.

(11) a provision for screening imported agricultural commodities to determine pesticide residues that are excessive under the Federal Food, Drug, and Cosmetic Act.

Commerce Committee amendments 4 (penalties), 8 (hearing structure), 10 (authority of local governments to regulate the use of pesticides), 12 (authority of states to register pesticides), 13 (record-keeping by private applicators), and 14 (right of entry) are not included in the substitute.

As part of the agreement with respect to a substitute it was agreed that the following should be included in the legislative history of the bill:

[p. 71]

TRADE SECRETS

LEGISLATIVE HISTORY RE TRADE SECRETS APPROVED BY LEN BICKWIT SEPTEMBER 22, 1972, SUBJECT TO FINAL APPROVAL BY BERNIE NASH

(1) Information that constitutes a trade secret, financial information which is privileged or confidential, or commercial information the disclosure of which gives a competitor a competitive advantage with respect to the proprietor of the information should be protected from disclosure except under those circumstances enumerated in subsection (c)(1).

General approval is given to the definition of "trade secret" as incorporated in the RESTATEMENT OF TORTS.

In determining whether given matter constitutes a trade secret, consideration shall be given to—

(a) the extent to which the data is independently known to outsiders or is used by outsiders for similar purposes;

(b) the extent to which it is known by insiders;

(c) the extent of the measures taken by an owner to guard its secrecy;

(d) value of the data to the owner and others, including the extent to which, if used in conduct of a business, it would confer a competitive advantage on said owner;

(e) the amount of effort or money expended in developing the data; and

(f) the ease or difficulty with which the data could properly be acquired or duplicated by others.

Deliberation has been given to those circumstances under which it may be proper to release trade secrets. Those instances are set forth in subsection (c) of section 10. In all instances the disclosure shall be done in such a method as to guard the secrecy of the data as much as possible and insure it will not fall into the hands of a competitor.

Legislative intent with respect to section 3(c)(1)(D)

The change back to section 3(c)(1)(D) as reported by the Agriculture Committee with additions has essentially 2 purposes:

(1) To authorize the Administrator to require a description of *all* relevant tests and their results and

(2) To prevent unnecessary repetitive testing by subsequent applicants.

Thus, all data either voluntarily submitted hereunder or required to be submitted by the Administrator may be used by the Administrator in making determinations of the adequacy of the test data submitted in connection with other applications. As concerns use of such data in *support* of *another* application without permission of the originator of the test data, however, it is recognized that in certain circumstances it might be unfair or inequitable for government regulation to require a substantial testing expense to be borne by the first applicant, with subsequent applicants thereby gaining a free ride. On the other hand, unnecessary duplicative testing would represent a wasteful, time-consuming, and costly process resulting in a substantial misallocation of resources. Thus it was decided that fairness and equity require a shar-

ing of the governmentally required cost of producing the test data used in support of an application by an applicant other than the originator of such data. If no agreement can be reached, the Administrator is vested with authority to determine the reasonable share of the cost of the test data used, including subsequent reallocations upon requests for use of such data by additional applicants.

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1.1k(3) SENATE COMMITTEE ON COMMERCE
S. REP. No. 92-970, 92d Cong., 2d Sess. (1972)

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1972

JULY 19, 1972.—Ordered to be printed

Mr. HART, from the Committee on Commerce, submitted the following

REPORT

[To accompany H.R. 10729]

The Committee on Commerce, to which was referred the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

1. Registration Criteria

On page 69, line 6, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 72, lines 8 and 9, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 76, line 11, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 76, beginning with line 24, strike out all down through line 4 on page 77, and insert in lieu thereof the following:

> "(bb) UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT.—The term 'unreasonable adverse effects on the environment' means any risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide, including the availability of alternative means of pest control."

On page 80, line 13, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 80, strike out lines 14 and 15.

On page 82, line 9, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 82, line 20, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 83, line 13, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 84, line 2, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 88, line 10, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 88, line 17, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 89, line 17, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 90, line 1, strike out "substantial" and insert in lieu thereof "unreasonable".

On page 109, line 7, strike out "substantial" and insert in line thereof "unreasonable".

2. Use of Test Data

On page 78, beginning with the comma after "based" in line 13, strike out all down through "registration" in line 17.

3. Advisory Committees

On page 94, immediately after the period in line 19, insert the following: "Each such committee shall include qualified scientists not more than one-third of which shall have an economic interest in the chemical industry. None of the members of such committee shall have any economic interest in the pesticide which is the subject of referral."

4. Penalties

On page 111, line 2, strike "$1,000" and insert in lieu thereof "$10,000".

5. Exports

On page 114, line 21, strike out the period and insert in lieu thereof a comma and the following: "except that (1) a statement which complies with paragraphs (A) through (E) of section 3(c)(1) shall be submitted in support of any such pesticide to the Administrator, (2) such pesticide shall be subject to section 8, and (3) no pesticide may be exported unless the Administrator determines that the export of such pesticide will not result in unreasonable adverse effects on the environment of the United States. If the Administrator determines that such adverse effects will result, any person adversely affected by such determination shall have the same remedies as provided for registrants in section 6."

On page 114, beginning with line 22, strike out all down through line 3 on page 115 and insert in lieu thereof the following:

> "(b) NOTICES FURNISHED TO FOREIGN GOVERNMENTS.—Subject to section 10 of this Act, the Administrator shall furnish to the government of the foreign nations to which any pesticide may be exported (1) a notice of the availability of the statement required under sections 3(c)(1), (2) all labels approved under section 3, and (3) all orders of suspension and all notices of cancellation or change in classification issued pursuant to section 6."

6. Confidentiality

On page 78, beginning with line 11, strike out all down through "based" in line 13 and insert in lieu thereof the following:

"(D) a full description of any tests offered in support of the application and the results thereof."

On page 79, beginning with "Except" in line 6, strike out all down through line 11.

On page 101, line 15, immediately following "GENERAL.—" insert "Copies of any communication, document, report or other information received by the Administrator from any manufacturer or sent by the Administrator to any manufacturer shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released under the terms of subsection (b) of this section."

On page 101, beginning with line 21, strike out all down through line 5 on page 102 and insert in lieu thereof the following:

"(b) DISCLOSURE.—(1) The Administrator or any officer or employee of the Environmental Protection Agency or any committee referred to in subsection (d) of section 6 of this Act shall not disclose any information which the Administrator determines concerns or relates to a trade secret referred to in section 1905 of Title 18, United States Code, except that such information may be disclosed by the Administrator—

"(A) to any other Federal department, agency or official for official use if such department, agency, or official requests such information and has a reasonable need for such information;

"(B) to committees of Congress having jurisdiction over the subject matter to which the information relates:

"(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

"(D) if relevant in any proceeding under this Act, except that such disclosure shall preserve the confidentiality to the extent possible without impairing the proceeding; and

"(E) to the public in order to protect its health, after the manufacturer of any product to which the information pertains has been given notice and an opportunity, for a period of 15 days following such notice, to comment in writing or to discuss in closed session the matter relating to the disclosure of such information, if the delay resulting from such notice and opportunity for comment or discussion would not be detrimental to the public health.

In no event shall the names or other means of identification of injured persons be made without their express written consent.

"(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

[p. 3]

"(c) Any communication from a person to the Administrator or any other employee of the Environmental Protection Agency concerning a matter presently under consideration in a rulemaking or adjudicative proceeding in the Environmental Protection Agency shall be made a part of the public file of that proceeding unless it is a communication entitled to protection under subsection (b) of this section.

"(d) In the event of a dispute between any manufacturer who has submitted information in support of a registration and the Administrator as to whether such information constitutes a trade secret not subject to disclosure, then such dispute shall be submitted to the Attorney General of the United States for his determination which shall be final. In any such dispute, the determination of the Attorney General shall be rendered within 30 days of submission to him, and shall be communicated to the Administrator and to the manufacturer in writing."

7. Citizens Suits

On page 114, between lines 14 and 15, insert the following:

"SEC. 16. CITIZEN CIVIL ACTIONS.

"(a) Except as provided in subsection (b) of this section, any person may commence a civil action for injunctive relief on his own behalf whenever such action constitutes a case or controversy—

"(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (1) any requirement under section 3(a) of this Act, (2) any condition of registration imposed by the Administrator, (3) a suspension or cancellation order under section 6 of this Act, or (4) the prohibition against misuse of a pesticide under section 12(a)(2)(H) of this Act; or

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator. Any action brought against the Administrator under this paragraph shall be brought in the District Court of the District of Columbia.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, over suits brought under this section.

"(b) No civil action may be commenced—

"(1) under subsection (a)(1) of this section—

"(A) prior to sixty days after the plaintiff has given notice of the violation (i) to the Administrator, and (ii) to any alleged violator of the regulation or order, or

"(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the regulation or order, but in any such

action any person may intervene as a matter of right;

"(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

"(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

"(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any other statute or under common law to seek enforcement of any regulation or order or to seek any other relief.

"(f) For purposes of this section, the term "person" means an individual, corporation, partnership, association, State, municipality, or political subdivision of a State or any agency of the Federal government.

"(g) When any actions brought under this subsection involving the same defendant and the same issues of violations are pending in two or more jurisdictions, such pending proceedings, upon application of the defendant reasonably made to the court of one such jurisdiction, may, if the court in its discretion so decides, be consolidated for trial by order of such court, and tried in (1) any district selected by the defendant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the defendant may apply to the court of one such jurisdiction, and such court (after giving all parties reasonable notice and opportunity to be heard) may by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the applicant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby."

Renumber the remaining sections of the bill accordingly, and redesignate any internal cross-references affected thereby.

8. Hearing Structure

On page 94, beginning with "Upon" in line 2, strike out all down through the period in line 13, and insert in lieu thereof the following: "All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Administrator may make applicable thereto. The right to subpoena documents shall be granted to any party whenever the Administrator considers it appropriate. Any interested person may intervene in such proceedings and participate fully as a party." [p. 5]

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9. Protection of Farmworkers

On page 71, line 25, strike the semicolon and insert in lieu thereof a comma and the following: "including the protection of the health of farmers, farmworkers, and others who may come in contact with such pesticides or pesticide residues;"

On page 72, line 5, strike out the semicolon and the word "or" and insert in lieu thereof the following: ", including the protection of the health of farmers, farmworkers, and others who may come in contact with such pesticides or pesticide residues; or"

On page 78, line 20, strike the semicolon and insert in lieu thereof a colon and the following: "*Provided further*, That the Administrator shall not rely on test results submitted pursuant to this subsection unless he determines that (i) the tests were conducted in accordance with applicable Federal, State, or local law and (ii) participation in the tests was the result of a free, voluntary, and informed choice by each participant;".

On page 82, line 22, immediately following "applicator," insert "farmer, farmworker, or other person who may come in contact with the pesticide or pesticide residues."

On page 85, line 20, strike out the period and insert in lieu thereof a comma and the following: "and the competence of an individual shall include the ability to undertake such measures as the Administrator may by regulation require to protect the health of farmers, farmworkers, and others who may come into contact with such pesticides or pestieide residues.".

10. Authority of local governments to regulate the use of pesticides

On page 120, line 6, immediately following "State" insert "or local government"; and on line 7 strike "in the State" and insert in lieu thereof "within its jurisdiction".

On page 120, line 10, immediately following "State" insert "or local government".

11. Suspension

On page 91, line 10, immediately following "pesticide" insert "and has given notice of such suspension order to the registrant. Prior to issuing such suspension order, the Administrator, if necessary to determine if an imminent hazard exists, may conduct an expedited hearing in accordance with paragraph 2 of this subsection. Following any such suspension order, the procedures of subsection (d) of this section with respect to the Administrator's notice of his intention to cancel the registration or change the classification of a pesticide shall be held in an expeditious manner."

On page 91, strike all of lines 11 through 25, and on page 92 strike all of lines 1 through 7 and all through "rules." on line 8; and insert in lieu thereof the following:

> "(2) EXPEDITED HEARING.—Any expedited hearing held prior to a suspension order shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Administrator may make applicable thereto. The right to subpoena documents shall be granted to any party whenever the Administrator considers

it appropriate. Any interested person may intervene in such proceeding and participate fully as a party."

On page 92, strike all of lines 14 through 22, and renumber the following paragraph accordingly.

On page 92, line 24, strike "following a hearing".

On page 93, line 4, strike all following "appeals", strike all of lines 5 through 15, and all through "section" on line 16.

On page 112, line 23, strike all following "Act", strike line 24, and strike "hearing and other" on line 25.

On page 113, line 4, strike all following "of", and on line 5, strike all through "hearing,"; and insert in lieu thereof "(1) any cancellation order, suspension order, or order to change classifications, (2) any agency refusal to cancel or suspend registrations or change classifications, or (3) any other order issued by the Administrator following a public hearing,".

On page 113, line 6, immediately following "order", insert "or refusal".

On page 113, strike out line 10 and insert in lieu thereof "order or refusal, a petition praying that the order or refusal be set aside in whole".

On page 113, line 16, immediately following "Code" insert "or, if there were no proceedings, the relevant documents of which his record is comprised."

On page 113, line 15, immediately following "order" insert "or refusal".

On page 113, line 18, immediately following "order" insert "or refusal".

On page 113, line 20, immediately following "order" insert "or refusal".

On page 113, line 23, immediately following "order", insert "or refusal".

On page 114, line 4, immediately following "order" insert "or refusal".

12. Authority of the States to Register Pesticides

On page 120, strike out lines 13 through 22, and insert in lieu thereof the following:

"(c) A State may recommend registration for pesticides formulated for distribution and use within that State to meet specific local emergency needs. If such State is certified by the Administrator as capable of preventing unreasonable adverse effects on the environment from the use of such pesticides by adopting procedures similar to those contained in this Act, and if registration for such use has not previously been denied, disapproved, or cancelled by the Administrator, such recommendation shall be deemed registration under section 3 for all purposes of this Act consistent with this section. Copies of all data pertaining to registration shall be forwarded to the Administrator, but the registration under this section shall not be effective for more than 90 days unless extended by the Administrator or unless the pesticide is registered by him in accordance with section 3 of this Act."

[p. 7]

13. Recordkeeping by private applicators

On page 102, strike out lines 8 through 11, and strike out "(b)" in line 12.

14. EPA Right-of-Entry

On page 98, line 14, delete "for distribution or sale" and insert "or used."

On page 98, lines 16 and 17, delete "packaged, labeled, and released for shipment,".

On page 98, line 22, delete "for distribution or sale" and insert "or used."

15. Specific Authorization

On page 122, strike lines 22 through 24 and all through "1975" on line 25 inclusive and insert in lieu thereof the following:

> "There is authorized to be appropriated to carry out the provisions of this Act not to exceed $15,000,000 for the fiscal year ending June 30, 1972, not to exceed $15,000,000 for the fiscal year ending June 30, 1973, not to exceed $25,000,000 for the fiscal year ending June 30, 1974, and not to exceed $35,000,000 for the fiscal year ending June 30, 1975."

Summary of the Legislation

The proposed legislation revises the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA now requires that pesticides be registered by the Environmental Protection Agency before they may move in interstate commerce. In registering a pesticide, EPA must determine that they are safe and efficacious. Provision is made for removing a pesticide from the market following administrative proceedings or summarily if an imminent hazard exists. FIFRA does not prohibit the misuse of a pesticide, nor does it regulate pesticides moving solely in intrastate commerce.

As amended by the Committee on Commerce, the proposed legislation provides—

(1) that all pesticides moving in interstate or intrastate commerce be registered with EPA;

(2) that EPA may deny or remove a registration upon a showing of unreasonable risks to the environment (including man) in registering a pesticide;

(3) that EPA would be authorized to classify pesticides for general or restricted use depending upon the hazards;

(4) that EPA may cancel registrations following administrative review, and may summarily suspend registrations in the case of a imminent hazard;

(5) that establishments producing pesticides be registered with EPA;

(6) that the Administrator may issue stop-sale, use, removal, and seizure orders with respect to any pesticide in violation of the Act; and

(7) that citizens be authorized to bring injunctive suits against certain violators of the Act and against EPA for failing to perform mandatory duties. [p. 8]

NEED FOR THE LEGISLATION

As this country has grown and its standard of living increased, the need for more food and freedom from disease has increased dramatically. As a result, farm production has likewise increased and Americans have become less willing to tolerate insects and other disease-carrying organisms. As a means of meeting these needs, farmers and others have turned increasingly to the use of pesticides.

At the same time, society has become increasingly sensitive to the abuses certain pesticides have inflicted upon man and the environment. Past experience with pesticides like DDT, 2,4,5–T and other persistent or toxic pesticides have forced us to look closely not only at the mechanisms by which a pesticide is initially approved for use but also at the mechanisms by which a pesticide is removed from use. President Nixon outlined the problem in his February 8, 1971, environmental message:

> "Pesticides have provided important benefits by protecting man from disease and increasing his ability to produce food and fiber. However, the use and misuse of pesticides has become one of the major concerns of all who are interested in a better environment. The decline in numbers of several of our bird species is a signal of the potential hazards of pesticides to the environment. We are continuing a major research effort to develop non-chemical methods of pest control, for we must continue to rely on pesticides for the foreseeable future. The challenge is to institute the necessary mechanisms to prevent pesticides from harming human health and the environment.
>
> Currently, Federal controls over pesticides consist of the registration and labeling requirements of the Federal Insecticide, Fungicide and Rodenticide Act. The administrative processess contained in the law are inordinately cumbersome and time consuming, and there is no authority to deal with the actual use of pesticides. The labels approved under the Act specify the uses to which pesticide may be put, but there is no way to insure that the label will be read or obeyed. The comprehensive strengthening of our pesticide control laws is needed."

Recent experience under FIFRA amply illustrates the delays that EPA has encountered in removing a pesticide from the market. On June 2, 1972, Administrator Ruckelshaus signed an order which will remove DDT from the market for most uses. The original notice of intent to cancel was issued on January 15, 1971. Thus fifteen months were consumed by advisory committee referrals, public hearings, and decision-making by EPA. Other examples include: Amitrol, 2½ years; mercury algicide, fourteen months; and Mirex, thirteen months. The initial notice of cancellation of certain uses of the herbicide 2,4,5,-T was issued on May 1, 1970. Today, only advisory committee action is completed, with public hearings and final decision yet to come.

While a proper review of any intention to cancel a registration is an obvious necessity, delays of the sort encountered under current law are needless. [p. 9]

Legislative Background

On February 10, 1971, Administrator Ruckelshaus of the Environmental Protection Agency, transmitted by executive message a legislative proposal which was introduced by Senator Packwood as S. 745, the Federal Environmental Pesticide Control Act of 1971. The bill was referred to the Senate Committee on Agriculture and Forestry and its House counterpart (H.R. 4152) to the House Committee on Agriculture.

On November 9, 1971, the House passed a clean bill, H.R. 10729. The House-passed bill was subsequently referred to the Senate Committee on Agriculture and Forestry. On March 7, 1972, Senators Hart and Nelson introduced a series of amendments to H.R. 10729 (Amendment Nos. 1003 through 1013) and on March 8 Senator Stevenson introduced Amendment No. 1017 to that bill. On June 7, 1972, the Committee on Agriculture and Forestry reported H.R. 10729. The bill adopted two of the Hart-Nelson amendments but did not adopt the Stevenson amendment.

Following the Agriculture Committee action, the bill was subsequently re-referred to the Committee on Commerce for a period of 30 days, exclusive of recesses in excess of three days. The Subcommittee on the Environment held hearings on the proposed legislation on June 15 and 19, 1972. On June 23 the full committee ordered the legislation to be reported with amendments. These amendments include the Stevenson amendment, the substance of the remaining Hart-Nelson amendments, and some additional changes.

Explanation of Committee on Commerce Amendments

The Committee on Commerce adopted a series of 15 amendments to H.R. 10729 as reported by the Committee on Agriculture and Forestry. The following is a brief explanation of each of the proposed changes in the bill:

(*1*) *Registration Criteria*

The amendment substitutes the term "unreasonable adverse effects on the environment" for "substantial adverse effects on the environment". As this phrase forms the pivotal criterion for registration of a pesticide and other actions under the Act, the definition is of key importance. As defined in the Agriculture Committee bill, the term "substantial adverse effect on the environment" means "any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide". If this language were to remain intact, it is feared that the courts, in interpreting this term, would rule that a "substantial" level of adversity must be reached before the Environmental Protection Agency invokes the necessary balancing of risk versus benefit in determining whether a pesticide ought to be registered. In other words, if a pesticide poses "significant" but not "substantial" adverse effects and is of such low utility that its use would not be justified, EPA could be powerless to prevent the registration of that pesticide or to remove it once registered. Under the definition of "unreasonable adverse effects on the environment" adopted by the

Committee on Commerce, the bill on its face would require that EPA make a full weighing of competing interests in making its determinations. Thus, it is intended that any adverse effect ought not to be tolerated unless there are overriding benefits from the use of a pesticide.

In its remarks on the definition of "substantial adverse effects on the environment" the Environmental Protection Agency has indicated it would interpret the term "substantial adverse affects on the environment" in accordance with the intention of the amendment of the Committee on Commerce. As the Committee on Agriculture and Forestry has not rejected this interpretation, it is assumed that that committee agrees. However, to avoid any possible misinterpretation of the phrase, the Committee on Commerce recommends the revised language.

Additionally, the amendment eliminates language from the proposed legislation which states "The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide." The basis for the committee's action is that the meaning of the sentence in question is unclear. The "doctrine of essentiality" has many meanings to many people. To some, it would forbid the registration of any pesticide if there exists an alternative which is just as safe and effective as that pesticide—since under those circumstances the pesticide is not "essential" for the well-being of society. Under another reading, the doctrine merely mandates consideration of the availability of less hazardous substitutes as one of the interests to be balanced in determining whether a consideration should be registered. If the first of these readings were accepted universally, the committee would be willing to wipe out the doctrine and to accept the Agriculture Committee's language which would appear to do just that. If "pesticide A" and "pesticide B" are equally safe and effective it would be unfair to register one in preference to the other and absurd to reject both on the grounds that neither is "essential". Yet, since the second reading has been a popular one, and since the committee supports the doctrine as defined under that reading, the committee regards language which would reject the doctrine outright as dangerous. If "pesticide A" is safer than "pesticide B", this is certainly a relevant consideration in the evaluation of an application for the registration of "B". All things being equal, it argues forcefully against approval of the registration. Any language which could be constrained as removing that consideration from those which EPA might legitimately take into account should be eliminated. While the record indicates that neither EPA nor the Agriculture Committee would so construe it the Committee on Commerce avoids the danger of misconstruction by striking the language in question.

In deleting this provision, the committee does not intend that the availability of less hazardous substitutes will invariably be the controlling criterion for granting or denying registration. As the Committee on Agriculture report states on page 20, "pests may develop an immunity to one pesticide, or undesirable side effects or deficiencies of one pesticide may show up, making the existence of alternate pesticides desirable." The availability of less hazardous substitutes is but one of many factors that EPA should consider in making registration decisions. [p. 11]

(2) *Use of Test Data*

As reported by the Committee on Agriculture and Forestry, the proposed legislation prohibits the use of test data submitted in support of a registration application to be considered by the Administrator in support of any other application, except with the permission of the original applicant. The amendment of the Committee on Commerce strikes this language, and allows the use of such data. Without the proposed amendment, the committee feels that barriers to entry in the pesticides industry would result which go far beyond that envisioned by our patent system. In effect, whether or not a pesticide has patent protection, a manufacturer wishing to register a pesticide previously registered would have to duplicate the required test data. As patent protection is granted to a substantial number of pesticides, this provision of the bill imposes requirements on subsequent producers beyond the licensing fees that a patent-holder may receive. In the extreme, a monoply in the production of a pesticide could ensue if competitors are unable to afford the sometimes costly safety and efficacy tests.

The prime reason stated for this provision in the Agriculture Committee bill is that without it the pesticides industry will lack incentives to develop new pesticides. Yet, by requiring manufacturers to duplicate test results, portions of the money now spent on developing new pesticides will undoubtedly be diverted to perform such duplicative testing. Consequently, this provision could stifle the very incentives it seeks to achieve.

In response to requests by Senator Hart: the Department of Justice, Dr. John Stedman of the University of Wisconsin law school, and Dr. John Flynn of the University of Utah law school commented on this provision of the proposed legislation. The committee finds the arguments of each persuasive. The following are their replies.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C. April 28, 1972.

Hon. PHILIP A. HART,
Chairman, Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on H.R. 10729, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act.

We understand that you are particularly concerned about the exception added to section 3(c)(1)(D) (p. 17, lines 12–16). Section 3(c)(1)(D) permits the Administrator to require the applicant to submit test data in support of his application for registration of a pesticide. It then prohibits the Administrator from considering such data in support of any other application for registration without the permission of the originator of the data. Section 3(c)(2) provides that the Administrator shall make avaialble to the public within 30 days after registration the data called for in the registration statement, except for trade secrets, as provided under section 10, and subject to the limitations on the use of test data established by section 3(c)(1)(D).

In economic terms, requiring the submittal of test data imposes an expense on the first applicant to enable him to enter a given market. For others trying to enter the same market, repetition of the same

tests imposes a similar entry fee. Such an entry fee, moreover, acts regressively, for it is more of a burden to the small manufacturer. Duplication of such tests is a waste to the economy and a needless and undesirable burden on any subsequent applicant.

This limitation on the use of similar test data by the Administrator, therefore, does not further the remedial purposes of the bill; it serves rather to insulate the first applicant for registration from the competition of later applicants. The first applicant has no inherent right to exclude others from the use of this test data. According to the Supreme Court in *Sears, Roebuck & Co.* v. *Stiffel Co.*, 375 U.S. 225 (1964), and *Compco Corp.* v. *Day-Brite Lightning*, 376 U.S. 234 (1964), the one who develops such material has to look to the patent system for competitive protection, if any. If there should, however, be a genuine trade secret problem, the Administrator is otherwise able, of course, to protect trade secrets under section 10 of this bill. Section 3(c)(1)(D) in H.R. 10729 would, in effect, give trade-secret or patent-type protection to test data.

The first applicant, on the other hand, may have been required to make a substantial investment in tests to protect the needs of the public. However, even where there is no patent or trade secret protection, the applicant as first entrant still enjoys the benefit of lead time on the market.

It is therefore recommended that an applicant seeking to register the same compound as one already approved should not be required to repeat these tests, and that the exception to section 3(c)(1)(D) and the corresponding limitation in section 3(c)(2) be deleted.

If you determine that some recognition should be given to the first entrant's efforts, a provision could be made establishing a brief period of time (not more than 90 days) during which no registration application would be processed if that application seeks to rely on disclosed test data. Of course, such restriction would not apply if a registrant submits independent data.

Subject to the above recommendation, whether or not this legislation should be enacted involves questions in respect to which the Department of Justice defers to the Environmental Protection Agency.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Acting Attorney General.

MADISON, WIS.,
February 21, 1972.

Hon. PHILIP A. HART,
Chairman, Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR HART: This is in response to your February 3 letter asking for my comments on certain provisions in S. 10729, the proposed "Federal Environmental Pesticide Control Act of 1971," now pending in the Senate. Representative Kastenmeier, in a letter to you dated January 21, 1971, has expressed the fear that provisions belatedly inserted in Section 3(c)(1)(D) of that bill would have the

practical effect of extending quasi-patent protection to pesticide manufacturers beyond the traditional 17 years. The questioned provision consists of the italicized clause in subparagraph (c)(1)(D) reading as follows:

"(D) If requested by the Administrator, a full description of the tests made and the results thereof on which the claims are based, *except that data submitted in support of an application, shall not, without permission of the applicant, be considered by the Administrator in support of any other application or registration . . .*" (Italics added.)

I share Congressman Kastenmeier's concern regarding this italicized language, although my interpretation of the wording and analysis of its effects may be slightly different from his. Given the most favorable interpretation (to the Administrator and the public) of the provision, the clause appears to bar the Administrator from using any data submitted by any applicant, whether that applicant is successful or not, to support the grant of a registration to another applicant, unless the first applicant has given permission for such use. In short, the Administrator is compelled in effect to say to later applicants: "I have evidence that satisfies me that your pesticide is harmless, but I cannot grant you a registration, unless you come up with your own independent proof of this fact." Such a procedure makes a travesty of the regulatory process. Additionally, considering the cost (in terms of money, effort and time) often involved in developing such proof, this approach could seriously and substantially lessen effective competition in the field by preventing or delaying the entrance of qualified manufacturers because of their inability to come forth with the necessary evidence or their unwillingness to assume the expense and uncertainties of doing so. Even if one of two additional suppliers were successfully to break into the field, either through independent collection of the necessary data or because the earlier applicant for whatever reason had permitted his data to be used, the provision would still remain as a barrier to further entrants. The burdens of this arbitrary procedure would, of course, fall most heavily upon the smaller would-be entrant.

There is almost always, in the regulatory process, an on-going conflict between the salutary public purpose (in this case, protection of the environment against damaging pesticides) and the danger that the regulatory process will be misused by protecting those already in the field through denial to qualified competitors of the right to enter. The present proposal constitutes a real threat in the latter sense while serving no useful purpose in the former. The only conceivable legitimate purpose to be served by the proposal, as I see it, is the protection of equities in one who has pioneered in the development of a drug—and gone to considerable research effort and expense, especially with respect to its impact on the environment—by preventing others from getting a "free ride" on his experience with no cost to themselves. But the "free ride" is endemic in our society and something to be legislated against only occasionally (as in the patent system, the recent "tape piracy" legislation, etc.) and after careful attention to the countervailing adverse effects of such legislation.

This does not seem to be such a case, and certainly not one to be resolved in the broad, loose terms of the clause here in question. (1)

There is no necessary correlation between the advantages gained by the applicant whose data is withheld and the burdens he has borne in collecting the data. (2) The provision gives no attention to, and makes no allowance for, the offsetting advantages that applicant has enjoyed as a result of his "headstart" or his continuing benefits from the genuine trade secrets he may have developed (it should be emphasized that this provision is *not* needed to protect legitimate trade secrets—these are adequately protected by Section 10, and in any event the clause in question goes far beyond trade secret protection and prohibits the Administrator from even using the knowledge he possesses not just from publicly disclosing it). (3) The collection of his data may well have entered into, and been part of the consideration for, the grant of his pesticide patent (if he has one) in view of the "utility" requirement contained in our patent law. (4) It is quite possible that some or all of his expense may already have been paid for through Government funding (see, e.g., Section 20 of the bill). (5) Assuming, arguendo, that the data collector is entitled to some form of remuneration for his efforts, the proposal here picks one of the worst possible forms for achieving this, namely, protection against legitimate competition. (6) While the provision contains sufficient loopholes that a strongly public-interest-oriented Administrator could probably avoid the more serious impacts, it could easily become an instrument of obstruction in the hands of a timid Administrator or one more fully attuned to the interests of selected suppliers than to the interests of the public.

For the reasons given, I agree with Congressman Kastenmeier's recommendation that the underline clause be deleted. His three secondary alternatives, although improvements over the present language, seem to me to create many more problems than they solve, basically for reasons already expressed. At the minimum, no action other than outright deletion would seem warranted without first holding hearings that would put the burden on proponents to show why any such provisions are necessary and provide opponents opportunity to point out the objectionable features thereof. Such hearings became all the more essential, of course, in view of the fact that no opportunity to air these issues arose in the course of the bill's journey through the House.

In view of the conclusion indicated above, I have foregone any discussion of various ambiguities and difficulties of administration that the clause seems to give-rise to. There are several of these however, and I will be glad to comment on them if you wish.

As for other provisions of the bill, I do not have many comments. (1) If the clause in subsection (c)(1)(D) is deleted, the reference to it in Section 3(c)(2) should also be removed. (2) While Section 10 dealing with trade secrets could have an unnecessarily hampering effect if interpreted too generously in favor of the applicant, if properly interpreted it should be possible to keep it within the bounds of what an applicant is legitimately entitled to under trade secret law as presently construed. (3) Although the bill contains some provisions that may be objectionable to those concerned with the protection of the environment, I have limited my comments to its competition—patent aspects. [p. 15]

I hope the foregoing comments prove useful to you. If I can be of any further help, let me know.

With very best regards,

Sincerely yours,

JOHN C. STEDMAN,
Professor of Law, University of Wisconsin.

SALT LAKE CITY, UTAH,
February 9, 1972.

Hon. PHILIP A. HART,
Chairman, Subcommittee on Antitrust and Monopoly, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR SENATOR HART: The proposed bill amending the Federal Insecticide, Fungicide, and Rodenticide Act, H.R. 10729, does raise issues of the type suggested by Congressman Kastenmeier. The bill requires registration of pesticides before they may be distributed in commerce. The Administrator of the Environmental Protection Agency is required to register a pesticide upon finding that its composition is such as to warrant the proposed claims for the pesticide, its labeling complies with the Act, and it will perform its function without substantial adverse effects on the environment. The procedure for registration requires the applicant to file information with the Administrator, including the formula of the pesticide and a full description of tests made and their results if requested by the Administrator. Congressman Kastenmeier objects to the provision limiting the use of tests or the disclosure of tests without permission of an applicant in subsequent applications for registration of other pesticides. He is quite correct in asserting that this limitation is a substantial change from the previous Act, see 7 U.S.C. § 135b(a)(4).

Congressman Kastenmeier believes that vesting power in an applicant to withdraw test data from use in support of other applications would operate to perpetuate patent protection beyond 17 years. I do not believe that the bill does this, strictly speaking, but it does erect an unnecessary barrier to entry, whether a pesticide is patented or not, by imposing unnecessary testing costs upon subsequent applicants. In his discussion of the issue in the Congressional Record of November 9, 1971 (H. 10767), Congressman Kastenmeier suggests that the basic function of the patent law is to reward inventors for their ingenuity. This is not the case. Courts have long held that the basic function of the patent law is to promote science and arts by obtaining full disclosure of useful, novel, and inventive new ideas. The inventors' reward is secondary, and is allowed only insofar as it promotes the primary goal of the patent system—full disclosure of valuable new ideas. Consequently, when one applies for a patent, he is required to make a full disclosure of all elements, prior art, and so on dealing with the subject to be patented. Consequently, it would not be correct to say that Section 3(c)(1)(D) perpetuates patent protection beyond 17 years since anyone can copy and produce the patented idea upon the expiration of the 17 year period. What the section does do, however, is to erect an unnecessary and artificial barrier to subsequent applicants who may be copying the patented or unpatented idea, by imposing test costs upon them.

Moreover, the section vests power in the *applicant* to determine whether those costs shall be imposed. Thus, in a sense, the statute is creating a kind of exclusive right in applicants to the test data they have submitted in support of an application, even though the test data may not be patentable or subject to trade secret protection under existing law. The supporters of the provision claim that an applicant is entitled to protect his investment in tests and test results and "prevent the pirating" of this kind of information. That argument is totally specious.

The present Act, 7 U.S.C. § 135b(1)(4), contains no right in the applicant to require the Administrator to keep test data secret and to not use that data in support of subsequent applications. I could find nothing in the report supporting any claimed injury or abuse of the existing statute that would justify the language added by Section 3(c)(1)(D). Moreover, the following analysis would seem to be logical and appropriate: the registration requirements of the Act establish a government creater barrier to entry into the pesticide business; a major feature of that barrier to entry is the requirement of testing new pesticides, a cost which is to be borne by applicants; this cost can be assumed by some applicants better than others, but it is not a cost relating to economic efficiency; it is a cost that is government imposed and, as such, it is a cost which should not be imposed any further than is necessary. Vesting control over this cost in an applicant, so that he can use a government cost barrier to entry to hamper subsequent competitors is totally wrong. The information required is and should become public information, it should be freely used by the agency in the performance of its duties under the Act, and the provision as it now stands only serves the purpose of allowing applicants to hamper competition and efficient administration of the Act. Finally, in a sense it does create an exclusive domain of property rights in the test data that is inconsistent with the basic theory of our patent and copyright laws. In shorthand fashion: if it is not patentable, it is not protectable. This Act would clearly make the test data protectable from use by competitors and the Administrator even though it is not patentable or copyrightable and it is information developed for an important public purpose. One phase of competition is freedom to copy and we have only withdrawn that basic economic right in certain limited circumstances where some greater public good is sought. In this case, I can see no greater public good that is being served by allowing a successful applicant for a pesticide registration to be able to erect unnecessary barriers to subsequent registrations, efficient administration of the law by the Administrator, and the public benefit of a full utilization of resources devoted to test data. In this sense Congressman Kastenmeier is correct in that some kind of quasi-property right in the sense of a right to exclude others from information is created by subsection (D). It does not rise to the level of patent protection like the ill-fated Plant Variety Protection Act, S. 3070, which passed the last Congress over the strong objections of a lone staff member situated deep in the bowels of the Antitrust Subcommittee. On that occasion, the bill granted 17 years of protection in the form of a certificate giving a person who developed new seed varieties sexually the right to exclude others from copying the sexually reproduced plant varieties. As I recall, on that occasion, I suggested that: "A rose may not be a rose when it is changed by sexual or asexual plant research, but a patent

is still a patent even though its name is changed by routing the proposal through another committee." This case does not give the applicant a right to exclude others in an affirmative legal sense from the data submitted, but it does give the applicant a right to control the use made by the Administrator of the data submitted. In that sense, it creates a right in a property sense in an applicant and could be called some kind of patent right.

Consequently, I would suggest that sub-section (D) be changed back to the present language found in the Federal Insecticide Act: if requested by the [Administrator], a full description of the tests made and the results thereof upon which the claims are based." Consequently, I would simply strike the language beginning with except" on the ground that there is no justification for imposing this entry barrier upon applicants and that it will be unduly restrictive on competition efficient administration of the Act.

Although I have not had a full opportunity to study the bill, principally because of the pressure of my class schedule, I would suggest that you seriously consider proposing an amendment to Section 3(c)(5), the section which states when the Administrator shall register a pesticide. The Administrator is required to register a pesticide if he determines that . . . (C) it will perform its intended function without substantial adverse effects on the environment." This required places the burden upon the Administrator to measure adverse environmental effect of pesticides. In my opinion, the burden should be the other way. If it were, we would not be faced with the problem of producers of pesticides simply marketing their product without any concern for the environment, the efficacy of the product and its long range value to society. Given the level of funding for this type of program and the large number of pesticides that will probably be registered, it is my guess that we will not see the Administrator able to make a finding of substantial adverse effects on the environment or even seriously attempt to make such a study. The F.D.A. experience will be repeated. Consequently, I would amend Section 3(c)(5)(C) on page 19, in line 10, to read as follows: (C) the applicant for registration has demonstrated it will perform its intended function without substantial adverse effects on the environment." Given the definition of substantial adverse effects on the environment, Section 2(bb), page 15, line 24, I do not think the burden will be an exceptionally heavy one. In fact, it will be about as difficult a burden as the Administrator may wish to make it. Given the ecological dangers of pesticides, it does not seem unreasonable to require those who engage in profiting by the manufacture and sale of such products to insure to a limited degree that the product will perform its function without substantial adverse effects on the environment. In fact, the common law of negligence and warranty already imposes such a burden upon the manufacture of a product and it is about time we started to minimize the general damage done by preventing such products from getting on the market rather than trying to pick up the pieces after the damage is done through tort litigation.

I hope this letter is of assistance in evaluating Congressman Kastenmeir's letter. I think his objection is an important one even though it somewhat misses the mark. Although the section does not extend patent protection in a literal sense, it has the potential for extending

the effective monopoly granted by the patent because it places in the hands of a registered pesticide producer—patented or unpatented—the power to force the Administrator to make subsequent applicants pay the cost of testing.

If I may be of further assistance, please do not hesitate to write.

Sincerely,

JOHN J. FLYNN,
Professor of law, University of Utah.

(*3*) *Advisory Committees*

The amendment specifies that not more than one-third of the members of an advisory committee may be scientists with an economic interest in the chemical industry and that none of the members will have an economic interest in the pesticide under consideration.

The Agriculture Committee bill states that "an objective and competent scientific review" of questions presented to advisory committees will be sought. However, the bill is silent on how that objectivity will be assured. By eliminating any prospect of advisory committees consisting of members who have an economic interest in a pesticide under consideration, the amendment will help to ensure that end. To avoid representation on advisory committees of competitors who might have a stake in seeing a pesticide removed from the market, it is intended that the term "economic interest in the pesticide which is the subject of referral" should include the economic interests of competitors as well.

Current EPA policy prohibits representation on advisory committees of scientists with a conflict of interest in the pesticide under consideration. While this is an admirable policy, there is no assurance that it will remain intact under succeeding Administrators. To avoid that possibility, it is the view of the committee that ths policy should be made explcit in the proposed legislation.

(*4*) *Penalties*

The amendment raises from $1,000 to $10,000 the civil penalty for violations of the Act by private certified applicators. Those pesticides which are classified for restricted use only might be required to be applied only by a certified applicator. The proposed legislation provides that commercial applicators are to be subject to penalties not to exceed $25,000 while private applicators are to be subject to penalties of not more than $1,000. As huge corporate farmers could be certified as private applicators, a $1,000 penalty will be an insufficient deterrent to prevent violations by such applicators. Consequently, the committee recommends that the maximum penalty be appropriately raised to $10,000.

(*5*) *Exports*

Under the legislation proposed by the Committee on Agriculture, exports will not be subject to regulation. However, notices of cancellation will be furnished to foreign governments and international agencies when they become effective. The amendment of the Committee on Commerce prohibits exportation if the use in a foreign country presents unreasonable risks to the environment (including man) of the United States. To enable EPA to make these determinations, test data will be supplied and pesticides will be subject to the reporting requirements.

[p. 19]

Recent experience has indicated a need for tightening our control over pesticides manufactured in this country for export. For example, in hearings before the Subcommittee on the Environment, Senator Gaylord Nelson described how mercury pesticides manufactured in this country were responsible for at least 400 deaths and many more injuries in Iraq. In addition, the pervasiveness of pesticides like DDT worldwide indicates that despite prohibitions against its use in this country, ill effects to our environment will result from the export to other countries. The amendment ensures that a pesticide will not be exported if it presents an unreasonable adverse effect on the environment of the United States.

To better enable foreign governments to make informed choices as to their use of a pesticide, all suspension orders and notices of cancellation and labels approved under the Act will be furnished to the foreign governments along with a notice of the availability of test data furnished to EPA. It is intended that all notices of intend to cancel will be furnished to foreign governments as well as all final orders of cancellation.

(6) *Confidentiality*

The amendment modifies section 3 of the Agriculture Committee bill by requiring, first of all, that each applicant will submit a full description of any test offered in support of an application and the results thereof. As specified in paragraph 2 of subsection (c), the Administrator will publish guidelines specifying the kinds of information which will be required to support the registration. What the amendment will do is require that this test data, whether favorable or unfavorable to the application, be submitted to the Administrator prior to registration. The Agriculture bill, on the other hand, would allow the manufacturer to perform his tests and then hold back on submission of shaky data until a specific request by the Administrator for such data, requires release to the public, prior to registration, of all non-trade secret data if requested by any person.

The committee anticipates that a limited amount of data will be available to the public prior to registration, as trade secrets are prohibited from release. However, certain information could be released which would allow input to the Administrator from the scientific community. For example, much of the toxicity data submitted in support of a registration application could be released without disclosing the identity of the pesticide or other trade secret information. As the same toxicity tests will be required of a variety of pesticides and uses, the release of such test results by themselves will not inform competitors of the identity of the pesticide or the intended uses. Merely disclosing test results without identifying the pesticide will enable toxicologists and other scientists to evaluate the results that are claimed. Within the scientific community there is often legitimate question as to what is precisely a toxic effect. The input of interested scientists could prove to be very valuable.

In the event of a dispute between a manufacturer and the Administrator as to whether data submitted in support of a registration is a trade secret and thus not disclosable, such dispute will be submitted to the Attorney General for arbitration. The Attorney General's decision will be final. [p. 20]

In addition to the timing of disclosure, the amendment would affect the nature of the data which may be disclosed.

The amendment also revises section 10 of the Agriculture Committee bill relating to protection of trade secrets and other information. Under section 10(a) of the Agriculture Committee bill, the Administrator is not to make public any information which contains or relates to trade secrets or which is commercial or financial information obtained from a person in confidence or a privileged status. The amendment modifies subsection (a) to establish as a general principle that "Copies of any communications, documents, reports or other information received or sent by the Administrator shall be available to the public at a reasonable cost unless the information may not be released under the terms of subsection (b)."

The amendment would modify subsection (a) to establish as a general principle access of the public to information there will be no *legal requirement* to make information available if it is not required to be made available under the Freedom of Information Act (5 U.S.C. 552 (b)). Subsection (a) must be read in conjunction with paragraph 2 of subsection (b) which states: "Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552, Title 5, United States Code, or which is otherwise protected by law from disclosure to the public." Although nothing in the section "shall be deemed to require" release of any information, section 10, as amended, *authorizes* the Administrator or any officer or employee of the Agency to make public any communications, documents, reports or other information which are not trade secrets. It is not necessary to prevent the disclosure of commercial or financial information obtained from a manufacturer which is privileged or confidential as described in the Freedom of Information Act, if the disclosure will not injure the manufacturer competitively. Yet, if the disclosure would so injure the manufacturer, the Administrator would be expected to protect the information as he would a trade secret.

On the matter of trade secrets the Agriculture Committee bill authorizes the Administrator to reveal trade secret information to any Federal agency consulted, at public hearings, or in findings of fact issued by the Administrator. The amendment contains similar provisions. However, in the case of disclosure during a hearing on other proceedings under the Act, any such disclosure will preserve the confidentiality to the extent possible without impairing the proceeding. Thus, an additional safeguard is built in against competitive injury by such disclosure.

The amendment also adds three additional instances in which trade secret data could be released. First, trade secret data could be released to committees of Congress having jurisdiction over the subject matter. Secondly, trade secret data could be released in a judicial proceeding under a court order formulated to preserve the confidentiality of the information without impairing the proceeding. Thirdly, the amendment provides that trade secret information could be released to the public when necessary to protect health, but only after the manufacturer has been given notice and an opportunity to comment in writing or to discuss the matter in closed session with EPA. While the latter category of disclosure will rarely be used, there are instances where disclosure to the public would be in order. For example,

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if a given pesticide ingredient is found to be dangerous, a simultaneous sale or stop use order could reveal the nature of that ingredient. The Administrator will have many tools at his disposal under the proposed legislation to prevent such immediate endangerment to public health; but should those tools prove insufficient, the most proper safeguard may be direct public disclosure of confidential information.

Nothing in the amendment of the Committee on Commerce is intended to prejudice pending litigation such as *Morgan* v. *Food and Drug Administration* (Docket No. 71–1709, District of Columbia Court of Appeals) which may seek to define a trade secret or determine what information is entitled to protection by an existing Federal statute.

(7) *Citizen Suits*

As reported by the Committee on Agriculture and Forestry, the proposed legislation contains no provision for citizen's civil actions to enjoin certain violations of the Act or to require the performance of mandatory duties by EPA. The proposed amendment adds such a provision.

The amendment is patterned after the similar provisions of the Clean Air Act amendments of 1970, the Senate-passed Toxic Substances Control Act of 1972, and the Senate-passed Federal Water Pollution Control Act amendments now pending in conference.

The amendment is specific with respect to those violations for which a suit could be brought by a citizen. Included are violations of (1) a requirement of section 3(a), which deals with registration requirements, (2) any condition of registration imposed by the Administrator, (for example, labeling requirements), (3) suspension or cancellation orders with respect to a pesticide registration, or (4) prohibitions against the misuse of a pesticide.

For the purposes of this section, the term "person" is defined to include agencies of the Federal Government. Thus, EPA could initiate a suit to enjoin the specified violations of the Act.

A suit could also be brought against the Administrator where he has failed to perform a mandatory duty. For example, in registering a pesticide the Administrator will be required to classify a pesticide either for general use or restricted use, or both. If the Administrator fails to make such classification, he would be subject to a suit under the amendment. However, the decision of the Administrator as to *how* the pesticide shall be classified is a decision committed to agency discretion as part of the registration process, and thus would be subject to the specified administrative and judicial review procedures. In this respect, authorizing citizens to sue for the performance of a mandatory duty is similar to a mandamus action under existing common law. However, the amendment confers standing to bring an action on any person who can meet the constitutional test of standing; i.e., who can establish that he is a party to a case or controversy.

As with other areas of environmental concern, the aid of citizens in enforcing pesticide laws should prove to be a valuable tool to prevent violations of the Act. As the misuse of a pesticide will be prohibited by the proposed legislation, the threat of a citizen suit against such misuse should be a powerful deterrent. The ability of the Environ-

mental Protection Agency to properly enforce prohibitions against misuse will be supported by the help that citizens and citizens' groups will offer in support of EPA's enforcement effort.

As the Congress has seen fit to include provision for citizens suits in other recent environmental legislation, it would be inconsistent not to include such a provision with respect to pesticides. Consequently, the committee strongly recommends that the amendment be accepted.

(8) Hearing Structure

The Agriculture Committee bill requires formal rulemaking procedures to be used in every hearing held in response to a notice of cancellation of the registration of a pesticide. Except in the case of an imminent hazard, any such hearing and any scientific review by an advisory committee will be held prior to the final cancellation order removing the pesticide from the market. Thus, with respect to a normal cancellation proceeding, it may be in the interest of the registrant to continue the proceedings as long as is possible.

The number of hearings held by EPA and formerly USDA in response to a notice of intent to cancel has been small. However, as increasing numbers of pesticides continue to be developed, the number of cancellations can also be expected to increase. While past experience under FIFRA gives little insight as to what might happen if formal rulemaking hearings continue to be held in response to each cancellation notice, experience under other statutes is revealing. Under the Federal Food, Drug, and Cosmetic Act, the Food and Drug Administration is authorized to make rules with respect to foods following a formal adjudicative hearing. Two recent hearings conducted by FDA demonstrate the manner in which proceedings of this type can drag on and only serve to delay an administrative decision.

(1) The Peanut Butter proceeding

This proceeding resulted from an attempt by the FDA to set standards on the content of peanut butter over the objections of the industry. While the original proposal was published on July 2, 1959, the actual hearing began in September of 1965 due to a number of procedural delays and lawsuits. The following is a description of the hearing by Professor Robert W. Hamilton of the University of Texas School of Law.*

> "Illustrative is the testimony and cross examination of the first Government witness. He presented a survey of cook books, patent applications, and the like dealing with the historical composition of peanut butter. At best, the testimony was peripheral and of such a nature as to render extended oral examination unnecessary. On cross examination, the witness was asked about his own personal tastes in peanut butter as well as about omissions in his list of patents and cook book formulations of peanut butter which he did not refer to in his direct testimony. The first day of the hearing was devoted entirely to colloquy and the testimony of this witness, and developed practically nothing of value for the ultimate finder of fact and resolver of policy questions.

*Professor Hamilton's remarks appear in *Rulemaking on a Record by the Food and Drug Administration,* a report prepared for the Administrative Conference of the United States.

"The hearing in this proceeding continued until March 15, 1966, and the transcript ultimately reached 7,736 pages. Of this material, only a very small part is useful, and the balance appears to be simply a monument to the normal desire of attorneys to ask questions and force minor concessions which are more verbal than real. A more cynical, but not implausible, explanation is that the peanut butter industry did not desire the standard to go into effect, and its representatives were therefore encouraged to present a full airing of the issues."

(2) *The Foods for Special Dietary Uses proceeding*

This proposed rule sought to impose labeling requirements for vitamins, again against the wishes of the industry. The original notice of proposed rulemaking was published on June 30, 1962. The hearing did not commence until June 1968, again due to procedural delays and lawsuits. The following is Professor Hamilton's description of the hearing:

"As in the *Peanut Butter* hearing, the actual hearing commenced without any clear delineation of the issues in dispute. The notice of public hearing had set forth the 'issue' to be decided at the hearing in the general language of the statute: 'Whether it will promote honesty and fair dealing in the interest of consumers' to provide full information to consumers as to the value of foods for special dietary uses; whether the 'crepe label' is a 'necessary means of fully informing consumers of the value' of dietary supplements, and so forth. [31 Fed. Reg. 15730–31 (1966)] This lack of clearly defined issues materially lengthened the hearings. However, other factors contributed as well. The hearing examiner's inexperience, particularly during the early part of the hearing, resulted in a number of evidentiary rulings which invited numerous technical objections and considerable wrangling among the attorneys. These early rulings were based on an adversary or jury trial concept. Another factor that materially lengthened the hearing was the participation by a number of non-lawyers, particularly one medical doctor. The cross examination of Government witnesses by these persons tended to produce little, but involved a substantial expenditure of time.

"As the hearing progressed, procedural innovations were tried out which materially improved the conduct of the hearing, * * * though several attorneys have complained that they feel the rulings were prejudicial to them. These changes included: (1) submitting direct testimony in written form; (2) prohibiting cross examination on cross examination or on other participants' cross examination; (3) limiting the use of scientific texts and treatises to the contradiction of direct testimony, and requiring the cross examiner to specify precisely the testimony to be contradicted and the contradicting passage; (4) limiting colloquy of counsel and legal argument unless specifically requested; (5) striking or limiting cumulative testimony of experts, and (6) prohibiting parties (other

than the Government) from cross examining witnesses of other non-governmental parties unless a written statement was submitted showing that testimony, was adverse to the interest of the opponent. In connection with the limitation of cross examination referred to in point (6), the Examiner tended to treat all opponents to the proposed regulations as having parallel interests, and most requests to cross examine were denied, even in situations where the general positions of the two parties were antagonistic, e.g. producers of artificial sweeteners were not permitted to cross examine witnesses presented by sugar producers.

"Despite the restrictions on cross examination, most of the hearing time was devoted to cross examination of governmental witnesses. Because of the large number of industry participants, cross examination tended to be repetitious or cumulative. Scientists and professional witnesses were asked to return on numerous occasions for additional cross-examination. As a result, one physician flatly refused to return; others, sensing a difficult and prolonged examination, simply declined to testify. FLA does not possess the subpoena power and thus had to forego the desired testimony. The adverse effect of extensive and cumulative cross examination on the willingness of professional witnesses to testify is one of the unfortunate aspects of the trial type of hearing.

"In 1969, while the hearings were in progress, Congressional committees and the White House Conference on Food, Nutrition and Health conducted hearings and studies which indicated that a substantial part of the American public suffered from malnutrition and starvation. These studies appeared to conflict directly with the position maintained by FDA in the hearing that since the average American diet was satisfactory, there was not need for vitamin and mineral supplements. This apparent contradiction within the Government itself led to a considerable amount of bad publicity for the Food and Drug Administration. In addition, industry counsel attempted to introduce materials presented before the Congressional committees and the White House Conference; these attempts were vigorously opposed by counsel for FDA. Again the agency suffered adverse publicity, since it appeared that the agency attorney was less interested in developing truth than in preparing a partisan record to support preconceived and erroneous conclusions.

"The *Foods for Special Dietary Uses* hearing continued intermittently from June 1968 through May 1970. The transcript finally exceeded 32,000 pages exclusive of exhibits and written direct testimony. The Government produced the testimony of 32 witnesses, marked 1,161 pieces of documentary evidence for identification, and introduced 1,103 exhibits into evidence. The testimony and cross examination of Government witnesses comprise about 25,000 pages of transcript. Industry participants in the hearing produced the written testimony of 130 witnesses, and marked 927 documents for identification, and actually introduced into evidence 427 of

them. Proposed findings of fact were submitted in August 1970; eleven of the principal industry participants cooperated in the submission of a single set of "joint proposed findings of facts," though several participants in this cooperative effort also submitted individual proposed findings on certain areas. Twenty other participants also filed separate briefs and/or proposed findings. The proposed findings by Government and the cooperative proposed findings of industry ran close to 100 typewritten pages each.

"On August 26, 1970, the hearing examiner reported to the Commissioner on one phase of the proposed regulations, infant foods. A tentative order, proposed findings of facts and conclusions, limited to this single subject was released by the Commissioner on October 29, 1970. [35 Fed. Reg. 16737] The examiner's report on the balance of the hearing, running to about 200 pages, was filed at the end of January, 1971.

"The significance, length, and unprecedented number of problems created by this proceeding make it, along with the *Peanut Butter* hearing, a prime case study for improvements in the administrative processes of FDA."

On May 11, 1972, the Environmental Protection Agency proposed rules of practice with respect to the structure of hearings in response to a notice of cancellation. Under those rules, the hearing examiner may limit cross-examination of witnesses to the Environmental Protection Agency and one other party on each side of the issue. Provision is made for additional cross-examination if it can be demonstrated that the testimony will not be duplicative. While these limitations seem proper, future Administrators of the Environmental Protection Agency may interpret a requirement for a formal hearing in all instances as precluding any limitation on cross-examination or procedural delays.

While a formal hearing may be required in many cases, there are instances where an informal hearing without cross-examination may be entirely appropriate. For example, if the evidence in support of a cancellation notice is overwhelming, the mere presentation of written or oral views or arguments will be sufficient to form the record upon which EPA will make its decision. Cross-examination of witnesses in such a case would only serve to delay the proceedings without adding anything of value to the hearing record.

The amendment of the Committee on Commerce gives the Administrator the authority to structure hearings in a manner he deems advisable. Thus, depending on the nature of the hearing, the hearing could be informal with presentation of oral and written statements only or the hearing could be formal with full rights of cross-examination of witnesses and subpoena power. The amendment also provides that any interested person may intervene in such proceeding and participate fully as a party. The amendment will expedite the hearing procedures and thus allow EPA to reach a decision sooner on the fate of a pesticide. [p. 26]

(9) Protection of Farmworkers

The amendment insures that the health of farmworkers, farmers and others who may come in contact with pesticides and pesticide residues will be fully considered by the Administrator in registering and classifying pesticides. Additionally, the amendment provides that the pesticide will be deemed misbranded if it does not adequately protect the health of such farmers, farmworkers, and others. While the Committee on Commerce agrees with the Environmental Protection Agency and the Committee on Agriculture and Forestry that the health of farmworkers will be considered without the amending language, the Subcommittee on the Environment heard substantial testimony that the health of farmworkers might indeed not be fully protected under existing law. Mr. A. V. Krebs, testifying on behalf of the Agribusiness Accountability Project, presented data which showed substantial health problems among farmworkers in California from the use of the organophosphate pesticides, Guthion and Ethion. Mr. Krebs charged that the label instructions on these pesticides insufficiently took into account the health of migrant laborers. In addition, testimony before the Migratory Labor Subcommittee of the Senate Committee on Labor and Public Welfare in 1970 revealed that as many as 800 workers are killed each year and over 800,000 injured as a result of the unwise and improper use of pesticides. In adopting the proposed amendment, the committee intends to stress the health of farmworkers as a vital criterion in the actions of EPA under this Act.

The committee amendment makes one substantive change in the proposed legislation. The amendment provides that EPA shall not rely on any test results unless he determines that the tests were conducted in accordance with Federal, State and local law and that the human participation in any such test was the result of a free, voluntary, and informed choice by each participant.

(10) Authority of Local Governments to Regulate the Use of Pesticides

The amendment gives local governments the authority to regulate the sale or use of a pesticide beyond the requirements imposed by State and Federal authorities.

While the Agriculture Committee bill does not specifically prohibit local governments from regulating pesticides, the report of that committee states explicitly that local governments cannot regulate pesticides in any manner. Many local governments now regulate pesticides to meet their own specific needs which they are often better able to perceive than are State and Federal regulators. The amendment of the Committee on Commerce is intended to continue the authority of such local governments and allow them to protect their environment to a greater degree than would EPA.

The amended language would prohibit local governments from imposing requirements as to labeling and packaging which differ from those imposed by Federal and State authorities. Localities would therefore be preempted from regulating the composition of any pesticide. Local governments could, however, prohibit or restrict the sale or use of pesticides within their jurisdiction. As manufacturers will not be forced to formulate different variations of the same pesticide to meet

local needs, no unreasonable burdens on commerce are anticipated. Nor are burdens on the environment, since localities could not permit sales or uses prohibited by State and Federal authorities.

(11) Suspension

The Agriculture Committee bill establishes a procedure for canceling the registration of a pesticide following full administrative review and for suspension of a registration before such review in the case of an imminent hazard. If emergency conditions exist with respect to an imminent hazard, the suspension would be summary. If emergency conditions do not exist, the suspension order would follow an expedited hearing. In each of these three cases, judicial review of the Administrator's determination could result. Thus, the Administrator might be forced to defend himself in court on the question of (1) emergency suspension, (2) suspension following a hearing, and (3) cancellation, all with respect to his efforts to remove one pesticide from the market. It is feared that harassment could ensue and that EPA might hesitate to suspend without a hearing to avoid one such lawsuit.

The amendment gives EPA the authority, if necessary to prevent an imminent hazard, to suspend without a hearing or after an expedited hearing if more information needs to be gathered. However, the amendment provides for a single review of the suspension question. Thus, the number of decisions EPA may have to defend against proponents of a given pesticide registration is reduced from three to two. If EPA determines it necessary to suspend without a hearing, the Administrative procedures following the required cancellation notice will be conducted in an expeditious manner.

The amendment further provides for a court of appeals review of (1) all suspension orders, cancellation orders, and orders to change classification, (2) refusals of EPA to cancel, suspend, or change classification and (3) any order following a public hearing.

The Agriculture Committee bill provides for review of decisions concerning suspension, cancellation, or change in classification in the courts of appeals if a hearing has been held and in the district courts if a hearing has not been held. The existing FIFRA provides for review of all orders in the courts of appeals. It is intended to continue this practice under the proposed amendment.

While the Environmental Protection Agency apparently now accepts the judicial review provisions of the Agriculture Committee bill, on April 17, 1972, the following submission by EPA to Senator Allen, Chairman of the Subcommittee on Agricultural Research and General Legislation, made several comments in support of review in the courts of appeals:

> "We favor all review in the courts of appeals because district court proceedings are time-consuming. District court review, moreover, tends to create some confusion. Instead of coping with legal constructions reached by eleven circuits, and speedily resolved in the Supreme Court, we must administer a statute under the supervision of some one-hundred district courts. It is inevitable that the courts, in reviewing decisions to suspend or orders refusing not to cancel or suspend, will flesh out the substantive standards of the Act. Indeed, a district court in finding a refusal to cancel is ar-

> bitrary will announce the outer boundaries of legal criteria that the Administrator must apply at the hearing. That hearing record will then be reviewed in a circuit court, perhaps a circuit that does not supervise the district court that ordered cancellation. It would not be long before the annotated reports on this legislation are equal in length and complexity to those following the ICC's legislation."

As stated in the Agriculture Committee report, one of the prime reasons for providing judicial review in the district courts for those decisions not following a public hearing is that an adequate record would not exist for circuit court review. The April 17 letter to Senator Allen from EPA contains an explanation of how the circuit courts would obtain an adequate record for review even though a public hearing had not been held.

> "The last point of our amendment is to return to the courts of appeals the task of reviewing those decisions not to cancel taken because the Administrator finds that there is *no* new substantial questions of safety. The decision not to cancel is taken based on a compiled documentary record which includes the registration file, scientific documents which are exhibits and a published order with findings. Written petitions and comments are made part of a formal docket. This is, we believe, a sufficient record for review by a cir cuit court.

While the comments of the Environmental Protection Agency deal with refusals to cancel. their rationale with respect to all questions of suspension, cancellation or changes in classification not following a hearing should apply. The amendment of the Committee on Commerce explicitly provides that the documentation in support of the Administrator's decision be filed with the court when judicial review of that decision is sought.

While an appellate court review of administrative orders obviously should not be provided for in all statutes, it is felt that past experience under FIFRA and the reasons cited by EPA above strongly justify such a provision here.

(12) Authority of States to Register Pesticides

Under the Agriculture Committee bill, provision is made for a State to register pesticides formulated for distribution and use solely within that State to meet specific local needs. Any such State would be required to be certified by the Administrator as capable of exercising adequate controls over the pesticide. Registrations would be prohibited if EPA had previously denied, disapproved or canceled a registration for the use intended.

The amendment, which is similar to a provision recommended by the Environmental Protection Agency, would permit certification of a State only if it is capable of preventing unreasonable adverse effects on the environment by adopting procedures similar to those contained in this Act. In addition, State registrations would be for periods of ninety days only, each of which would be approved by the Administrator. Whereas the Agriculture Committee bill provides for State registrations to meet "specific local needs", the amendment provides that "local emergency needs" must exist.

The purpose of the amendment is to insure a procedure for State registrations which will provide a similar degree of protection to man and the environment as would be obtained had the registration been considered by the EPA. In effect, the States will act as agents for EPA in registering a pesticide to be used solely within that State. To insure that the State procedures are proper, EPA will certify the State procedures for each pesticide intended to be so registered. With respect to each such pesticide, it will have to be established that the procedures assure that the criteria for EPA registration are met. To insure that State procedures for enforcement remain adequate following registration, EPA will be required to renew its certification every ninety days. Consistent with the thrust of the legislation that Federal registration of all pesticides provides the greatest assurance of safety, the amendment will restrict departures from the requirement of actual EPA registration to emergency situations.

(*13*) *Recordkeeping by Private Applicators*

The Agriculture Committee bill prohibits EPA from requiring records or reports of private certified applicators. If a pesticide is registered for restricted use, the pesticide may be required to be applied by certified applicators. Private applicators would be those certified by the States which do not apply pesticides for hire. In most cases private applicators will be farmers applying pesticides on their land. As such applicators could include large corporate farmers, the Environmental Protection Agency has requested the authority to require records and reports of such applicators. The committee recommends that this authority be granted.

While EPA could require a full set of records and reports of large corporate private applicators, it is expected that most small private applicators will not be required to keep records or make reports. EPA will be expected to match its record-keeping and reporting requirements with the degree of abuse to the environment that could result from the misapplication of a pesticide by a private applicator.

(*14*) *EPA Right-of-Entry*

The Agriculture Committee bill restricts the right-of-entry and inspection authority of EPA inspectors to those establishments where pesticides or devices are held for distribution or sale. The amendment broadens this authority to include those establishments where pesticides or devices are "held or used". It will also enable EPA to make inspections and obtain samples prior to the time a pesticide is packaged, labeled, and released for shipment rather than after such release for shipment as provided by the Agriculture Committee bill.

The committee fears that EPA's enforcement effort would be severely curtailed by the language of H.R. 10729 as reported by the Agriculture Committee. Without the authority to inspect establishments where pesticides are used, misuse violations in such establishments will be difficult, if not impossible to detect. A great deal of pest control takes place within grain elevators, livestock feed mills, and a variety of other manufacturing plants. EPA should be given the authority to inspect such establishments for violations of the Act.

As the amendment gives EPA the authority to inspect and obtain samples of any pesticide or device at any stage of the manufactur-

ing process, EPA inspectors will be able to determine violations prior to the time a pesticide is completely prepared for shipment by a manufacturer. If violations could only be detected after preparation for shipment, EPA, the manufacturer, or the courts could be faced with huge problems of disposing of large stocks of a pesticide that contains, for example, a contaminant which may be impossible to detoxify. Such problems should be avoided by the proposed amendment.

(15) Specific Authorization

The Agriculture Committee bill provides an open amended authorization for the next three fiscal years. The amendment inserts a specific authorization of $15 million for the fiscal year ending June 30, 1973, $25 million for the fiscal year ending June 30, 1974, and $35 million for the fiscal year ending June 30, 1975.

Section-by-Section Analysis

Sections 1, 3, and 4 of H.R. 10729 deal with matters that do not directly amend the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

Section 1 of H.R. 10729 sets forth the popular Act citation of this bill as the "Federal Environmental Pesticide Control Act of 1971."

Section 3 of H.R. 10729 amends the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, and the Federal Food, Drug, and Cosmetic Act to change the term "economic poison" to the term "pesticide" in order to reflect the change in FIFRA.

Section 4 of H.R. 10729 deals with effective dates of various provisions.

This section provides that except as otherwise noted hereafter the amendments to the Act are effective upon enactment. If regulations are required prior to effectuation of an amendment they shall be prescribed within 90 days after enactment. Provisions of present law are in effect until superseded as provided above or hereafter, and all amendments are required to be effective within four years of enactment.

The following exceptions to immediate effectiveness of amendments enacted are made:

(1) All new registrations of pesticides after such regulations are promulgated shall be in accordance with regulations governing registration and classification promulgated within two years of enactment of this Act.

(2) All registrations existing prior to promulgation of the above regulations shall be re-registered and classified in accordance with those regulations after two years but within four years of enactment of the Act.

(3) Any requirements that a pesticide can be used only by a certified pesticide applicator shall not take effect until four years from enactment.

(4) Certification of applicators shall take place during a four year period from the date of enactment. Standards for certification shall have been prescribed one year from enactment. State plans for certification shall have been submitted to the Administrator within

three years from enactment. Within one year of such submission the Administrator must approve the State plan, or disapprove and state reasons.

(5) One year from enactment the Administrator is to have in effect regulations governing the registration of establishments, experimental use permits, and the keeping of books and records.

In addition to the foregoing, the Administrator shall publish in the Federal Register regulations relating to criminal and civil penalty, and no person shall be subject to such a penalty under the amendments of this Act until 60 days after the Administrator has published the final regulations and taken such other action as may be necessary to permit compliance.

The present FIFRA shall be treated as continuing in effect as if this Act had not been enacted where a question arises as to a criminal or civil penalty or liability to any third person in respect to any act or omission occurring before the expiration of the periods referred to in this section.

FEDERAL INSECTICIDE, FUNGICIDE, AND ROTENTICIDE ACT

Section 2 of H.R. 10729 rewrites FIFRA into the following 27 sections:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

This section provides that the Act may be cited as the "Federal Insecticide, Fungicide, and Rodenticide Act" and provides a detailed table of contents.

SECTION 2. DEFINITIONS

Section 2 includes many of the definitions in the present FIFRA, with several important changes or additions.

A "certified applicator" is one certified by the State or Federal government according to standards prescribed by the Administrator to use restricted use pesticides.

A "private applicator" is a certified applicator who uses restricted use pesticides only on his own or his employer's property, or on the property of another without compensation.

A "commercial applicator" is any certified applicator other than a private applicator.

A requirement imposed on the application of restricted use pesticides is clarified by the definition of "Under the direct supervision of a certified applicator," which can mean that the certified applicator does not have to be physically present at the site of application if the person applying the pesticide is competent and properly instructed. However, the Administrator may require the physical presence of the certified applicator if the pesticide poses a particular threat to heatlh or the environment which requires close supervision.

The definition of "ingredient statement" is amended to make one requirement applicable to all pesticides rather than making two alternatives available.

The definition of "misbranded" is amended to include requirements based on other provisions of the Act. For example, labels must bear an establishment registration number and use classification.

"Protect health and the environment" is defined, and includes the requirement to prevent unreasonable adverse effects on environmental values. "Unreasonable adverse effects on the environment" is also defined.

SECTION 3. REGISTRATION OF PESTICIDES

Subsection (a) requires that all pesticides in the channels of U.S. trade must be registered with the Administrator. Under present law only those pesticides in interstate commerce have to be so registered.

Subsection (b) exempts from registration pesticides which are transferred from one establishment to another operated by the same pesticide producer, and pesticides transferred in accordance with an experimental use permit.

Subsection (c) sets forth registration procedures. Each application for a registration must include the name and address of the applicant; the name of the pesticide; the labeling, claims, and directions for the pesticide; a description of tests made and results; the pesticide formula; and a request for classification.

This subsection requires the Administrator to publish guidelines concerning registration information he will require.

Under this subsection, the Administrator is required to approve or deny registration as expeditiously as possible. He is to publish in the Federal Register notice of applications received for the registration of those pesticides containing a new active ingredient or for which a changed use pattern is proposed.

The subsection provides that the Administrator shall approve a registration if he determines that, when considered with any section 3(d) restrictions, the pesticide warrants the claims made for it, its labeling complies with the Act, and it will not have unreasonable adverse effects on the environment. If such determination cannot be made the Administrator shall notify the applicant and state why the above requirements are not met. The applicant has thirty days to make necessary corrections. At the end of this period the Administrator may, if the corrections are not made, refuse to register the pesticide and publish the refusal in the Federal Register or allow the applicant more time. The applicant or another interested person then has recourse to the administrative remedies in section 6. Registration may be denied because the pesticide is not effective or because it is dangerous.

The burden of proof remains with the applicant (as in FIFRA) to substantiate the claims for the pesticide by test data and otherwise to support the registration of a pesticide. It is only after the Administrator has reviewed all of the test data and any other information he may require to support a registration and has found that its composition is such as to warrant the proposed claims for it, that the labeling and other material required to be submitted comply with the Act, and that it will not create unreasonable adverse effects on the environment that he may register a pesticide. If the applicant cannot satisfy the Administrator on the above requirements the pesticide will not be registered.

Subsection (d) provides authority for the classification of pesticides and where applicable the imposition of restrictions on their use.

Subparagraph (A) of Paragraph (1) states that a pesticide may be classified for general use, for restricted use, or both. In the case of a

pesticide for both general and restricted use the bill requires that directions for each be separate and distinguishable or, if the Administrator requires, that the packaging and labeling for each be separate and distinguishable. It is intended that separate packaging and labeling would be required if there is a significant threat of the inadvertent usage of a restricted use pesticide by other than a certified applicator if the pesticide is required to be applied only by such applicators.

Subparagraph (B) specifies that a general use pesticide is one which the Administrator has determined will not cause unreasonable adverse effects on the environment when applied in accordance with its directions for use and warning or caution statement, or in accordance with a commonly recognized practice.

Subparagraph (C) specifies that a restricted use pesticide is one which the Administrator has determined could cause unreasonable adverse effects on the environment without additional regulatory restrictions.

This subparagraph further provides that when the pesticide presents a hazard to the applicator or other persons, it must be used only by or under the supervision of a certified applicator. If the pesticide presents a hazard to the environment, it must be used by or under the direct supervision of a certified applicator, or be subject to other regulatory restrictions. Any such regulatory restriction (other than requirement of application by a certified applicator) would be subject to review in the appropriate court of appeals upon petition of any party adversely affected filed within 60 days after issuance of the regulation.

The foregoing classification and restriction provisions are not contained in present law and (together with the provisions prohibiting any use inconsistent with the labeling and prohibiting the making available for use, or using any pesticide other than in accordance with the provisions of this subsection) constitute entry of Federal regulation into a significantly unregulated area. General use pesticides will be regulated as to labeling as all pesticides under Federal jurisdiction are regulated at present, and, in addition, will be regulated as to use in accordance with the labeling. Registration for specific uses under specified conditions, as well as directions for use, warnings, and cautions constitute the major means to control pesticide use under present law. But there is nothing in the present law requiring that those directions, warnings, and cautions be followed. The provisions of the bill requiring compliance with the labeling, providing for classifying pesticides for restricted use, in some cases requiring that they be applied by or under the supervision of a certified applicator, and in other cases requiring them to be subject to different regulatory restrictions are the key new authorities of the bill. Such provisions enable the Environmental Protection Agency to impose a variety of restrictions as the nature and uses of the pesticide warrant in order to protect persons and the environment, while U.S. agriculture continues to derive the benefits of pesticides use.

The bill makes provisions for certifying pesticide applicators as competent to safely and properly use the pesticides they will apply, and provisions are made for requiring restricted use pesticides to be applied only by such a certified applicator (or a person under his direct supervision) or subject to such other restrictions as the Admin-

istrator may determine necessary. The flexibility of these provisions will allow the Administrator, in accordance with the guidelines in the Act, to establish restrictions which are suited to the degree of hazard and adverse environmental effects that could be caused by the misuse of the pesticide. For example, in some cases only the signing of a poison or pesticide register would be required while in other cases the purchaser or user might be required to certify that he has read the instructions and will apply it in accordance with such instructions. In other cases general or seasonal licenses, permits, or other forms of approval may be required.

Section 3(d)(1)(C)(ii) establishes a system to assure a full and fair consideration of alternative or additional restrictions which the Administrator may wish to impose. The Committee wishes to emphasize, however, that the language contained in this paragraph authorizing the Administrator to impose alternative restrictions does not constitute open-ended authorization for the Administrator. Specifically, the authorization to impose such restrictions does not constitute authorization to establish restrictions which would create a use-by-permit-only category or other restrictions such as were disapproved in Report No. 92-511 of the House Agriculture Committee, page 15, paragraph 7, or to impose any gallonage or poundage restrictions. This does not, however, preclude the Administrator from regulating the quantity to be applied for a given use for a particular application to a particular crop in a given area at a given time, from limiting the number of applications, or from prohibiting the use thereof; nor does it preclude the Administrator from enforcing such regulations, limitations, or prohibitions through such measures as certification, the signing of registers, or the regulation of appropriate outlets for distribution. The Administrator may, in determining such restrictions, take into account the overall effects on the environment of the probable amount of a chemical that will be used for a given purpose in a given area at a given time.

It is anticipated that the Administrator in determining such restrictions will coordinate them with controls which are imposed by the various States, and thus prevent conflicting or overlapping Federal and State controls.

The restrictions shall be adopted by regulation after affording interested and adversely affected parties an opportunity to comment. It is contemplated where hearings are appropriate the Administrator will afford the public a chance to present views in addition to the formal submission of written comment. In order to simplify the administration of this section, jurisdiction to review regulations issued under the authority in this section is vested in the courts of appeals. The classification of a particular pesticide for restricted use and the imposition of a particular restriction as part of its registration is, however, still subject to review under Section 6, except that no question as to the validity of regulations issued under this section shall be raised except by petitions to review in the courts of appeals filed within 60 days of the publication of the regulation.

Paragraph (2) requires the Administrator to notify the registrant 30 days before changing the classification of a pesticide, and to publish the proposed changes in the Federal Register. Remedies for such a registrant or other interested person are contained in Section 6.

Subsection (e) permits a registrant to register as a single pesticide products having the same formulation, claim, and identifying label designation.

Subsection (f) provides for minor changes to registrations, prohibits construing registration as a defense for any offense under the bill, and states that the Administrator may consult with other Federeal agencies on registration matters.

SECTION 4. USE OF RESTRICTED USE PESTICIDES; CERTIFIED APPLICATORS

This section provides for Federal or State certification of applicators of pesticides according to standards prescribed by the Administrator. A State may certify applicators if a plan submitted by the Governor is approved which designates a State agency to administer the plan; assures legal authority, adequate funds, and qualified personnel to execute the plan; provides for reports to the Administrator; and contains applicator certification standards at least equal to those prescribed by the Administrator. A State must be given due notice and opportunity for hearing if the Administrator rejects a pesticide applicator certification plan; and must maintain its certification program in accordance with the plan approved by the Administrator or approval could be withdrawn after opportunity for hearing.

The provisions for certification of applicators constitute new and important authorities for regulating pesticide use. Many restricted use pesticides would be restricted to use by certified applicators whose misuse of pesticides could result in withdrawal of certification. In the case of commercial applicators, such action would be extremely serious. In the case of private applicators such action would remove from them the opportunity to obtain and use restricted use pesticides so regulated. It is intended that if a person misuses a pesticide while under the supervision of a certified applicator, that the certified applicator would be subject to the loss of his certification.

Further, the educational process entailed by certification provides an opportunity not only to greatly diminish the possibility of injury to persons but also injury to the environment from both misuse and, more importantly, overuse.

SECTION 5 EXPERIMENTAL USE PERMITS

The Administrator may issue, under terms and conditions established by him, an experimental use permit if an applicant needs such a permit in order to accumulate information necessary to register a pesticide. Such a permit may be revoked if its terms or conditions are violated or are inadequate to avoid unreasonable adverse effects on the environment.

This section also provides that the Administrator may under such terms and conditions as he may by regulation prescribed authorize any State to issue an experimental use permit. The provisions relating to State plans under section 4 apply for the issuance of experimental use permits under section 5.

SECTION 6 ADMINISTRATIVE REVIEW; SUSPENSION

Subsection (a) provides that any registration terminates at the end of five years unless the registrant or another interested person, with

the concurrence of the registrant, requests continuation of the registration. The Administrator is authorized to permit the sale and use of pesticides whose registrations are canceled under this subsection or subsection (b) if such sale or use is not inconsistent with the purposes of the Act. The Administrator is required to publish in the Federal Register notice of registrations which will be canceled under this subsection. Paragraph (2) of subsection (a) requires a registrant to furnish information to the Administrator regarding unreasonable adverse effects on the environment after his pesticide is registered. While this provision allows the registrant to judge whether the information pertains to any unreasonable adverse effect, he will be subject to the penalties of section 14 should he possess such information and not make it available to the Administrator.

Subsection (b) authorizes the Administrator to issue a notice of intent to cancel a registration or change its classification or intent to hold a hearing on a registration or classification if it does not appear that a pesticide is in compliance with the Act. Unless the registrant makes the necessary corrections, or he or any other adversely affected person requests a hearing, in the case of notice of intent to cancel the notice of intent becomes a final order at the end of 30 days. In the case of notice of intent to hold a hearing, or if a hearing is requested after a notice of intent to cancel the decision reached after the hearing will be final. Subsection (c) authorizes the Administrator to issue an order of suspension if he (1) determines that an imminent hazard exists, (2) issues at the same time a notice of intent to cancel, and (3) has given prior notice to the registrant.

Prior to issuing a suspension order, the Administrator may conduct an expedited hearing if necessary to gather information to determine if an imminent hazard exists. If any such hearing is held, the Administrator may structure the hearing in accordance with such conditions or limitations as he may deem appropriate. Any interested person may intervene in such proceeding and participate fully as a party.

Suspension orders would be reviewable by a court of appeals under section 15.

Subsection (d) sets forth procedures for hearings pursuant to subsection (b) and provides for scientific review. When a public hearing is requested, any party (including the hearing officer) may refer questions of scientific fact to a Committee of the National Academy of Sciences. Such committee would be required to report in writing to the hearing officer within sixty days on these questions of scientific fact and the report would be made public and considered as part of the hearing record.

This language in the bill relating to scientific advice would maintain a role for scientific advisory committees of the National Academy of Sciences equivalent to that in the present provisions of FIFRA. The amended language would have the further benefit of allowing the advisory committee to consider questions of scientific fact while the public hearing is in process rather than in a completely separate administrative review process which causes long delays and division of responsibility for actions under the Act. However, the committee would meet outside of the public hearing so that the scientists who participate would not be subject to procedural strictures.

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As soon as practicable after completion of the public hearing but not later than 90 days thereafter the Administrator must evaluate the data and reports and issue a final order. Under section 6(d) the Administrator after completion of the administrative review proceedings is required to issue an order appropriate to the proceedings which have occurred. Thus, he may by order (1) revoke his notice of intention issued under section 6(b); (2) grant registration; (3) cancel registration, change the classification, or deny registration; or (4) require a modification of the labeling or packaging of the pesticide.

All final orders of the Administrator would be subject to judicial review pursuant to section 15 of the Act.

SECTION 7. REGISTRATION OF ESTABLISHMENTS

Products subject to registration under section 3 of the Act must be produced in establishments which are registered with the Administrator. The producer who operates an establishment must inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and, when required pursuant to section 25(c)(4), devices which he is currently producing, has produced during the past year, or which he has sold or distributed during the past year. Such information is required to be kept current and submitted to the Administrator annually. All such information would be considered confidential and subject to the provisions of section 10.

This section is not meant to include farming operations where a grower might mix two or more pesticides in a single container before applying them to his fields. The grower must comply with all requirements imposed on the use of pesticides through the registration process but would not be required to register his mixing operations under this section.

SECTION 8. BOOKS AND RECORDS

The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the products produced as are necessary for enforcement of the Act. Such records required would not extend to financial data, sales data other than shipment data, pricing data, personnel data, or research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

Any officer or employee of the Environmental Protection Agency or of any State or political subdivision duly designated by the Administrator shall at reasonable times have access to and may copy records showing the delivery, movement or holding of pesticides and devices, or related information if the above is not available. Such access does not extend to sales, financing, pricing and similar data.

SECTION 9. INSPECTION OF ESTABLISHMENTS

For purposes of enforcing the Act officers or employees duly designated by the Administrator are authorized to enter any establishment or other place where pesticides are held or used at reasonable times to inspect and obtain samples of any pesticides or devices, and samples of any containers or labeling for such products. Before an inspection

appropriate credentials and a written statement as to the reason for the inspection and whether a violation of law is suspected must be given. If samples are obtained an equal portion of such sample must be left with the establishment, and a copy of any analysis which may be made must be furnished. This section also authorizes officers or employees duly designated by the Administrator to obtain and execute a warrant for inspection and reproduction of certain records and for the seizure of products in violation of the Act.

If the examination of pesticides or devices indicates that they fail to comply with the Act, the Administrator must give notice to the person against whom proceedings are contemplated and provide an opportunity to present his views. If thereafter the Administrator believes the Act has been violated he shall certify the facts to the Attorney General for the institution of criminal proceedings, or shall institute civil proceedings if he believes that such action will be sufficient to effectuate the purposes of the Act. However, ths notice and opportunity to present views are not prerequisites to the institution of any proceeding by the Attorney General. This section also authorizes the Administrator to issue warning notices in lieu of prosecution for minor violations if the Administrator believes the public interest will be served.

SECTION 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION

Section 10 of the Act provides that an applicant for the registration of a pesticide may mark any part of the data submitted which in his opinion are trade secrets or commercial or financial information and submit such material separately from the other material required but at the same time establishes the principles of public disclosure of non-trade secret data.

The Administrator would not make public any such information which contains or relates to trade secrets obtained from a person except that, when necessary to carry out provisions of the Act, information relating to formulas or products acquired by authorization of the Act may be revealed to any Federal agency for official use; to committees of Congress having jurisdiction over the subject matter; in a judicial proceeding under a court order to preserve the confidentiality without impairing the proceeding; if relevant in nay proceeding under this Act, except that such disclosure shall preserve the confidentiality of the material without impairing the proceeding; and to the public in order to protect its health. In the latter instance, the manufacturer would be given opportunity, for a period of fifteen days, to comment in writing or discuss in closed session the matter relating to disclosure if the delay resulting from such notice and opportunity would not be detrimental to the public health.

If disputes arise between the manufacturer and the Administrator as to whether data submitted in support of a registration constitutes a trade secret, then such disputes will be arbitrated by the Attorney General.

This section also authorizes the disclosure of non-trade secret data covered by section 552 of title 5, United States Code.

SECTION 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS

This section requires the Administrator to establish separate standards for private and commercial certified applicators.

SECTION 12. UNLAWFUL ACTS

This section includes many prohibited acts from present law and is expanded to cover intrastate acts and to prohibit violations of the provisions of the Act. Among the new prohibitions is refusal to permit lawful inspection of an establishment or sampling of a pesticide; advertisement of a restricted use product not containing such classification; making available for use, or using, a restricted use pesticide other than is provided under the Act or inconsistent with its labeling; and violation of a "stop sale, use, or removal" order.

Violation of record-keeping and establishment registration provisions is also prohibited.

The section also provides exemption for certain persons dealing with pesticides.

SECTION 13. STOP SALE, USE, REMOVAL, AND SEIZURE

Subsection (a) of this section authorizes the Administrator to issue a "stop sale, use, or removal" order to any person possessing a pesticide or device if he believes that the pesticide or device is or will be sold in violation of the Act or if the registration has been suspended or is subject to a final cancellation order.

Subsection (b) authorizes condemnation and seizure of pesticides if they are adulterated, misbranded, not registered, improperly labeled, not colored or discolored as required, or falsely represented as to claims or directions for use. A misbranded device is liable to similar action, as are pesticides under the Act which, when used as directed on the label and as required under the Act, nevertheless cause unreasonable adverse effects on the environment.

Subsection (c) provides for the disposition of condemned and seized pesticides and devices by distribution, sale, or return to the owner under certain conditions and upon the posting of a bond.

Subsection (d) provides for awarding court costs and other expenses against the claimant of the pesticide or device subject to this section.

SECTION 14. PENALTIES

H.R. 10729 contains provisions for civil penalties. Such provisions are not included in the existing FIFRA. A registrant, commercial applicator, or dealer violating any provision of the Act would be subject to a civil penalty of not more than $5,000 for each offense, except that a private applicator or any other person would be subject to $10,000 penalty, and only after receiving a written warning or citation for a prior violation. No civil penalty could be assessed until the person charged has been given a notice and an opportunity for a hearing in the county, parish or city of his residence.

Civil penalty provisions are considered a necessary part of a regulatory program such as pesticides control. While the criminal provisions may be used where circumstances warrant, the flexibility of having civil remedies available provides an appropriate means of enforcement without subjecting a person to criminal sanctions. The alleged violator is always provided an opportunity for a hearing before any civil penalty may be assessed, and any misunderstanding as to what

constitutes compliance with the Act can be considered by the Administrator and the penalty dispensed with if warranted.

The bill also provides that any registrant, commercial applicator, or dealer who knowingly violates any provision of the Act shall be guilty of a misdemeanor and on conviction be fined not more than $25,000 or imprisoned for not more than one year or both, except that a private pesticide applicator or any other person could be fined not more than $1,000 or imprisoned not more than 30 days, or both.

SECTION 15. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW

Subsection (a) provides that, except as is otherwise provided in the Act, final EPA actions not committed to the discretion of the agency, are reviewable in the district courts.

Subsection (b) provides that most important actions of the Agency under the Act are reviewable in the courts of appeals. This subsection provides that in the case of actual controversy as to the validity of (1) any cancellation order, suspension order, or order to change the classifications, (2) any agency refusal to cancel or suspend registrations or change classification, or (3) any other order issued by the Administrator following a public hearing, any person who will be adversely affected by the order may obtain judicial review by filing in the U.S. Court of Appeals for the circuit where such person resides or has a place of business within 60 days a petition that the order or refusal be set aside in whole or in part. In its review the court shall consider all evidence of record and sustain the order or refusal of the Administrator if it is supported by substantial evidence when considered on the record as a whole. The commencement of proceedings under this section does not, unless the court specifically orders to the contrary, operate as a stay of any order. The court is required to expedite the disposition of cases filed under this section.

Subsection (c) provides that the district courts of the U.S. are vested with jurisdiction to enforce, and to prevent and restrain violations of the Act.

Subsection (d) provides that the Administrator must give notice by publication or otherwise of all judgments entered in actions under the Act.

SECTION 16. CITIZEN SUITS

This section is patterned after similar provisions of the Clean Air Amendments of 1970. Any person would have standing to bring a civil action for injunctive relief whenever that action constitutes a justifiable case or controversy. Actions could be brought against any person (including the United States or other governmental instrumentality or agency) who is alleged to be in violation of (1) any requirement for registration under section 3(a) of this Act. (2) any condition of registration imposed by the Administrator, (3) the suspension or cancellation order under section 6, or (4) the prohibition against misuse of a pesticide.

Suits could also be brought against the Administrator where there is an alleged failure by the Administrator to perform mandatory duties under this title.

Citizen civil actions under this section against private parties could not be commenced prior to Sixty days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator, or if the Administrator or Attorney General has commenced a civil action to require compliance with the regulation or order. Suits could not be brought against the Administrator prior to sixty days after the Administrator had been given notice by the plaintiff. In the case of an imminent hazard, however, such action could be brought ten days after such notification.

The court would have the authority to apportion the costs of litigation among the parties whenever appropriate.

A further provision gives the courts the discretionary authority, upon the application by the defendant, to consolidate cases involving the same issues of violation into a single district court. Any such consolidation order to be issued by the court should give due consideration to the convenience of all the parties and witnesses to the action.

SECTION 17. IMPORTS AND EXPORTS

Pesticides intended solely for export would not be subject to the Act except that (1) test data and other information required under paragraphs (A) through (E) section 3(c)(1) will be submitted to the Administrator, (2) such pesticide will be subject to the reporting requirements of section 8, and (3) no pesticide may be exported unless the Administrator determines that the export of the pesticide will not result in unreasonable adverse effects on the environment of the United States.

In addition the Administrator would be required to furnish to the government of foreign nations to which any pesticide may be exported (1) a notice of the availability of test data and other information required under section 3(C) (1), (2) all labels approved under section 3, and (3) all orders of suspension and all notices of cancellation or change in classification issued pursuant to section 6.

Subsection (c) provides for the inspection of samples of imported pesticides and devices provided by the Secretary of the Treasury to the Administrator, and for the refusal of admission of a pesticide or device upon a finding by the Administrator that it is in violation of the Act. Disposition of such products is provided as well as payment of expenses incurred by such finding and refusal of admission.

Subsection (d) requires the Administrator to participate in international efforts to develop improved pesticide research and regulations, and subsection (e) requires the Secretary of the Treasury to prescribe regulations under this section.

SECTION 18. EXEMPTION OF FEDERAL AGENCIES

This section authorizes the Administrator to exempt a Federal or State agency from any provision of the Act if he determines that exemption is consistent with the purposes of the Act and the public interest. The committee intends that exemptions would be granted only if unreasonable adverse effects on the environment would not result.

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SECTION 19. DISPOSAL AND TRANSPORTATION

Section 18 provides that the Administrator of the Environmental Protection Agency shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides. The Administrator would be also required to accept at convenient locations for safe disposal a pesticide the registration of which has been cancelled under section 6(c) if requested by the owner of the pesticide.

Section 6(c) of the Act provides for the suspension of a pesticide when such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings. This section also provides that a cancellation proceeding has to be initiated at the same time a registration is suspended so as to provide the affected party with an opportunity for a hearing. The Administrator would not, of course, be required to accept pesticides for disposal until any hearing and review procedures have been completed and a final order issued. Since this requirement to accept for disposal is keyed to suspensions under section 6(c) and not to all pesticide cancellations, such disposal by the government should not be required frequently.

The Administrator of EPA would also be required to advise the Secretary of Transportation with respect to the transportation of pesticides in light of the Secretary's responsibilities regarding hazardous materials.

SECTION 20. RESEARCH AND MONITORING

This section authorizes the Administrator to use necessary means to undertake pesticides research, giving priority to biologically integrated alternatives to chemicals for pest control; to establish and implement a national plan for monitoring pesticides, as well as undertake other monitoring activities necessitated by provisions of the Act.

SECTION 21. SOLICITATION OF PUBLIC COMMENTS

This section requires the Administrator to solicit the views of the Secretary of Agriculture before publishing regulations under this Act.

Section 21 also provides that in addition to any other authority relating to public hearings and solicitation of views in connection with the suspension or cancellation of a pesticide registration or other action under the Act, the Administrator may solicit views of all interested parties and seek such advice from farmers, farm organizations, and other qualified persons as he deems proper. Most importantly, the Administrator would be expected to solicit the views of the Secretary of Health, Education, and Welfare.

SECTION 22. DELEGATION AND COOPERATION

This section authorizes the delegation of authorities vested in the Administrator under the Act to his designees, and provides for cooperation by the Administrator with other Federal agencies and with agencies of State and local governments in carrying out the Act.

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SECTION 23. STATE COOPERATION, AID, AND TRAINING

This section authorizes the Administrator to enter into cooperative agreements with States for purposes of enforcement of the Act, including training of personnel and including grants for enforcement programs, and to assist States in establishing applicator certification programs. Further, he may enter into contracts with Federal and State agencies for the purpose of encouraging certified applicator training. The Administrator may also keep farmers informed on pesticide uses and regulations through the Cooperative State Extension Services.

SECTION 24. AUTHORITY OF STATES

This section specifies the authorities retained by the States and local governments under the Act. Generally, the intent of the provision is to leave to the States and local governments the authority to impose stricter regulations on pesticides use than that required under the Act.

Subsection (a) gives States and local governments the authority to regulate the sale or use of a pesticide or device so long as such regulation does not permit sale or use prohibited under the Act.

Subsection (b) preempts any State or local government labeling or packaging requirements differing from such requirements under the Act.

Subsection (c) provides the Administrator with authority to certify a State for the purpose of registering pesticides formulated for intrastate distribution to meet specific local emergency needs. Such registration would not be effective for more than 90 days unless approved by the Administrator within that period. The purpose of this subsection is to give a State the opportunity to allow a State, in an emergency situation, to register a pesticide which EPA, because of an excessive administrative burden, has not adequate time to evaluate.

SECTION 25. AUTHORITY OF THE ADMINISTRATOR

Subsection (a) of this section authorizes the Administrator to prescribe regulations to carry out the Act.

Subsection (b) provides for exemption of pesticides adequately regulated by another Federal agency or unnecessary to be subject to the Act.

Subsection (c) authorizes the Administrator, after notice and opportunity for hearing, to declare as pests certain forms of life, determine which pesticides are highly toxic to man, establish packaging standards, specify classes of devices subject to certain provisions of the Act, prescribe regulations for the discoloration or coloring of pesticides, and determine and establish suitable names to be used in ingredient statements.

SECTION 26. SEVERABILITY

This standard severability section states that the provisions of the Act are severable, and the invalidity of one does not affect the validity of the others.

SECTION 27. AUTHORIZATION FOR APPROPRIATIONS

This section authorizes appropriation of $15,000,000, $25,000,000, and $35,000,000 necessary to carry out the provisions of the Act for fiscal years 1973, 1974, and 1975 respectively. Thereafter new legislation will determine authorized appropriations. The section provides that the expenses of the Federal government in carrying out the Act are to be paid from general appropriations, not fees, except that reasonable registration fees may be charged.

Cost of the Legislation

The committee agrees with the cost estimates submitted by the Environmental Protection Agency for new activities required by the bill. Costs would amount to $15.0 million in FY 1973; $22.3 million in FY 1974; $30.8 million in FY 1975; $32.2 million in FY 1976; and $31.4 million in FY 1977.

Changes in Existing Law

Rule XXIX of the Standing Rules of the Senate requires each committee report to show the changes made in existing law by the proposed legislation. However, Rule XXIX provides that the requirement may be waived if the committee reporting the proposed legislation determines it necessary in order to expedite the business of the Senate.

The report of the Committee on Agriculture and Forestry contains the changes made in existing law by H.R. 10729. As the amendments recommended by the Committee on Commerce are described in detail elsewhere in this report, the committeee has determined that the changes made in existing law should not be shown in this report in order to expedite the business of the Senate.

Agency Comments

Washington, D.C., June 27, 1972.

Hon Warren G. Magnuson,
Chairman, Committee on Commerce, U.S. Senate,
Washington, D.C.

Dear Mr. Chairman: The proposed "Federal Environmental Pesticide Control Act of 1971", H.R. 10729, has recently come to our attention. Since enactment of the bill would necessitate some action by this Department, we would like to offer our views on it.

The bill would amend the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*), by expanding the comprehensive program for the control and use of pesticides, including Federal and State cooperation.

Section 2(aa) defines the term "State" as "a State, the District of Columbiaa, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa." This would extend the coverage of the Act to a geographical area greater than that comprising the Customs territory of the United States (the States, the District of Columbia and the Commonwealth of Puerto Rico). Therefore, we recommend that subsection 16(c) be amended to define "State" for the purposes of that subsection to include

the States, the District of Columbia, and the Commonwealth of Puerto Rico.

Section 16(c), like the existing law (7 U.S.C. 135th), provides that the Secretary of the Treasury shall notify the Administrator of the Environment Protection Agency of the arrival of pesticides and devices, and deliver samples to the Administrator, upon his request. Because acute dermal or inhalation toxicity of many of those substances may be hazardous to the persons handling them, we would expect to make regulations under the authority of section 16(e) to insure the safetv of Customs officers taking samples.

Section 16(c) would also provide that the Secretary of the Treasury may deliver a pesticide or device in violation of the provisions of the Act to the consignee pending examination and decision, on execution of a bond for the full amount of the invoice value plus duty. On refusal to return the pesticide or device to the custody of the Secretary of the Treasury, when demanded, the consignee shall forfieit the full amount of the bond. As worded, this provision would allow for no reduction of the claim or liquidated damages, such as presently provided for in section 1623(c), Tariff Act of 1930, under which the Secretary of the Treasury may cancel any charge against a bond upon payment of a lesser amount.

As primary administrative and enforcement responsibility properly is to be exercised under the bill by the Administrator, Environmental Protection Agency, it is suggested that section 16(e) be changed to read:

"(e) REGULATIONS.—The Administrator shall prescribe regulations for the enforcement of this section, and the Secretary of the Treasury, in consultation with the Administrator, shall prescribe conforming regulations for Customs enforcement and sampling procedures at ports of entry."

Since the Bureau of Customs does not have the expertise to determine if a pesticide or device complies with the requirements of the Environmental Protection Agency, you may wish to consider inclusion of a provision similar to the following:

"Every person importing a pesticide or device into the United States shall furnish Customs at the port of entry a certificate of compliance in the form prescribed by the Administrator, certifying that such pesticide or device conforms to all Federal requirements prescribed under this Act, or that nonconforming articles will be brought into compliance under procedures prescribed in regulations of the Administrator."

The Department defers to the Environmental Protection Agency, which has primary administrative and enforcement responsibilities, on the merits of the bill. The Department does not anticipate any unusual difficulties in carrying out at ports of entry its supporting enforcement responsibilities.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

SAMUEL R. PIERCE, Jr.,
General Counsel.

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1.1k(4) COMMITTEE OF CONFERENCE

S. REP. No. 92–1540, 92d Cong., 2d Sess. (1972)

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT

OCTOBER 5, 1972.—Ordered to be printed

Mr. POAGE, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 10729]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Federal Environmental Pesticide Control Act of 1972".

AMENDMENTS TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

SEC. 2. The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) is amended to read as follows;

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Federal Insecticide, Fungicide, and Rodenticide Act'.

"(b) TABLE OF CONTENTS.—

"Section 1. Short title and table of contents.
"(a) Short title.
"(b) Table of contents.

"*Sec. 2. Definitions.*
"*(a) Active ingredient.*
"*(b) Administrator.*
"*(c) Adulterated.*
"*(d) Animal.*
"*(e) Certified applicator, etc.*
"*(1) Certified applicator.*
"*(2) Private applicator.*
"*(3) Commercial applicator.*
"*(4) Under the direct supervision and control of a certified applicator.*
"*(f) Defoliant.*
"*(g) Desiccant.*
"*(h) Device.*
"*(i) District court.*
"*(j) Environment.*
"*(k) Fungus.*
"*(l) Imminent hazard.*
"*(m) Inert ingredient.*
"*(n) Ingredient statement.*
"*(o) Insect.*
"*(p) Label and labeling.*
"*(1) Label.*
"*(2) Labeling.*
"*(q) Misbranded.*
"*(r) Nematode.*
"*(s) Person.*
"*(t) Pest.*
"*(u) Pesticide.*
"*(v) Plant regulator.*
"*(w) Producer and produce.*
"*(x) Protect health and the environment.*
"*(y) Registrant.*
"*(z) Registration.*
"*(aa) State.*
"*(bb) Unreasonable adverse effects on the environment.*
"*(cc) Weed.*
"*(dd) Establishment.*
"*Sec. 3. Registration of pesticides.*
"*(a) Requirement.*
"*(b) Exemptions.*
"*(c) Procedure for registration.*
"*(1) Statement required.*
"*(2) Data in support of registration.*
"*(3) Time for acting with respect to application.*
"*(4) Notice of application.*
"*(5) Approval of registration.*
"*(6) Denial of registration.*
"*(d) Classification of pesticides.*
"*(1) Classification for general use, restricted use, or both.*
"*(2) Change in classification.*
"*(e) Products with same formulation and claims.*
"*(f) Miscellaneous.*
"*(1) Effect of change of labeling or formulation.*
"*(2) Registration not a defense.*
"*(3) Authority to consult other Federal agencies.*
"*Sec. 4. Use of restricted use pesticide; certified applicators.*
"*(a) Certification procedure.*
"*(1) Federal certification.*
"*(2) State certification.*
"*(b) State plans.*
"*Sec. 5. Experimental use permits.*
"*(a) Issuance.*
"*(b) Temporary tolerance level.*
"*(c) Use under permit.*
"*(d) Studies.*
"*(e) Revocation.*

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"*Sec. 6. Administrative review; suspension.*
"(a) *Cancellation after five years.*
"(1) *Procedure.*
"(2) *Information.*
"(b) *Cancellation and change in classification.*
"(c) *Suspension.*
"(1) *Order.*
"(2) *Expedite hearing.*
"(3) *Emergency order.*
"(4) *Judicial review.*
"(d) *Public hearings and scientific review.*
"(e) *Judicial review.*
"*Sec. 7. Registration of establishments.*
"(a) *Requirement.*
"(b) *Registration.*
"(c) *Information required.*
"(d) *Confidential records and information.*
"*Sec. 8. Books and records.*
"(a) *Requirement.*
"(b) *Inspection.*
"*Sec. 9. Inspection of establishments, etc.*
"(a) *In general.*
"(b) *Warrants.*
"(c) *Enforcement.*
"(1) *Certification of facts to Attorney General.*
"(2) *Notice not required.*
"(3) *Warning notices.*
"*Sec. 10. Protection of trade secrets, etc.*
"(a) *In general.*
"(b) *Disclosure.*
"*Sec. 11. Standards applicable to pesticide applicators.*
"(a) *In general.*
"(b) *Separate standards.*
"*Sec. 12. Unlawful acts.*
"(a) *In general.*
"(b) *Exemptions.*
"*Sec. 13. Stop sale, use, removal, and seizure,*
"(a) *Stop sale, etc., orders.*
"(b) *Seizure.*
"(c) *Disposition after condemnation.*
"(d) *Court costs, etc.*
"*Sec. 14. Penalties.*
"(a) *Civil penalties.*
"(1) *In general.*
"(2) *Private pesticide applicator.*
"(3) *Hearing.*
"(4) *References to Attorney General.*
"(b) *Criminal penalties.*
"(1) *In general.*
"(2) *Private pesticide applicator.*
"(3) *Disclosure of information.*
"(4) *Acts of officers, agents, etc.*
"*Sec. 15. Indemnities.*
"(a) *Requirement.*
"(b) *Amount of payment.*
"(1) *In general.*
"(2) *Special rule.*
"*Sec. 16. Administrative procedure; judicial review.*
"(a) *District court review.*
"(b) *Review by Court of Appeals.*
"(c) *Jurisdiction of district courts.*
"(d) *Notice of judgments.*

"*Sec. 17. Imports and exports.*
"*(a) Pesticides and devices intended for export.*
"*(b) Cancellation notices furnished to foreign governments.*
"*(c) Importation of pesticides and devices.*
"*(d) Cooperation in international efforts.*
"*(e) Regulations.*
"*Sec. 18. Exemption of Federal agencies.*
"*Sec. 19. Disposal and transportation.*
"*(a) Procedures.*
"*(b) Advice to Secretary of Transportation.*
"*Sec. 20. Research and monitoring.*
"*(a) Research.*
"*(b) National monitoring plan.*
"*(c) Monitoring.*
"*Sec. 21. Solicitation of public comments; notice of public hearings.*
"*Sec. 22. Delegation and cooperation.*
"*Sec. 23. State cooperation, aid, and training.*
"*(a) Cooperative agreements.*
"*(b) Contracts for training.*
"*Sec. 24. Authority of States.*
"*Sec. 25. Authority of Administrator.*
"*(a) Regulations.*
"*(b) Exemption of pesticides.*
"*(c) Other authority.*
"*Sec. 26. Severability.*
"*Sec. 27. Authorization for appropriations.*

"SEC. 2. DEFINITIONS.

"For purposes of this Act—

"(a) ACTIVE INGREDIENT.—The term 'active ingredient' means—

"(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

"(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

"(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

"(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

"(b) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(c) ADULTERATED.—The term 'adulterated' applies to any pesticide if:

"(1) its strength or purity falls below the professed standard of quality as expressed on its labeling under which it is sold;

"(2) any substance has been substituted wholly or in part for the pesticide; or

"(3) any valuable constituent of the pesticide has been wholly or in part abstracted.

"(d) ANIMAL.—The term 'animal' means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

"(e) CERTIFIED APPLICATOR, ETC.—

"(1) CERTIFIED APPLICATOR.—The term 'certified applicator' means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

"(2) PRIVATE APPLICATOR.—The term 'private applicator' means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

"(3) COMMERCIAL APPLICATOR.—The term 'commercial applicator' means a certified applicator (whether or not he is a private applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

"(4) UNDER THE DIRECT SUPERVISION OF A CERTIFIED APPLICATOR.—Unless otherwise prescribed by its labeling, a pesticide shall be considered to be applied under the direct supervision of a certified applicator if it is applied by a competent person acting under the instructions and control of a certified applicator who is available if and when needed, even though such certified applicator is not physically present at the time and place the pesticide is applied.

"(f) DEFOLIANT.—The term 'defoliant' means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"(g) DESICCANT.—The term 'desiccant' means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"(h) DEVICE.—The term 'device' means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganism on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"(i) DISTRICT COURT.—The term 'district court' means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

"(j) ENVIRONMENT.—The term 'environment' includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

"(k) FUNGUS.—The term 'fungus' means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

"(l) IMMINENT HAZARD.—The term 'imminent hazard' means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would be likely to result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangred by the Secretary of the Interior under Public Law 91-135.

"(m) INERT INGREDIENT.—The term 'inert ingredient' means an ingredient which is not active.

"(n) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement which contains—

"(1) the name and percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and

"(2) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elementary arsenic.

"(o) INSECT.—The term 'insect' means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

"(p) LABEL AND LABELING.—

"(1) LABEL.—The term 'label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

"(2) LABELING.—The term 'labeling' means all labels and all other written, printed, or graphic matter—

"(A) accompanying the pesticide or device at any time; or

"(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

"(q) MISBRANDED.—

"(1) A pesticide is misbranded if—

"(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

"(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25(c)(3);

"(C) it is an imitation of, or is offered for sale under the name of, another pesticide;

"(D) its label does not bear the registration number assigned under section 7 to each establishment in which it was produced;

"(E) any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

"(F) the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, are adequate to protect health and the environment;

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"(G) the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment.

"(2) A pesticide is misbranded if—

"(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper of the retail package, if there be one, through which the ingredient statement on the immediate container cannot be clearly read) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if:

"(i) the size of form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

"(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

"(B) the labeling does not contain a statement of the use classification under which the product is registered;

"(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

"(i) the name and address of the producer, registrant, or person for whom produced;

"(ii) the name, brand, or trademark under which the pesticide is sold;

"(iii) the net weight or measure of the content: Provided, That the Administrator may permit reasonable variations; and

"(v) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification; and

"(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this Act—

"(i) the skull and crossbones;

"(ii) the word 'poison' prominently in red on a background of distinctly contrasting color; and

"(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

"(r) NEMATODE.—The term 'nematode' means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

"(s) PERSON.—The term 'person' means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

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"(t) PEST.—The term 'pest' means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

"(u) PESTICIDE.—The term 'pesticide' means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

"(v) PLANT REGULATOR.—The term 'plant regulator' means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments. Also, the term 'plant regulator' shall not be required to include any of such of those nutrient mixtures or soil amendments as are commonly known as vitamin-hormone horticultural products, intended for improvement, maintenance, survival, health, and propagation of plants, and as are not for pest destruction and are nontoxic, nonpoisonous in the undiluted packaged concentration.

"(w) PRODUCER AND PRODUCE.—The term 'producer' means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term 'produce' means to manufacture, prepare, compound, propagate, or process any pesticide or device.

"(x) PROTECT HEALTH AND THE ENVIRONMENT.—The terms 'protect health and the environment' and 'protection of health and the environment' mean protection against any unreasonable adverse effects on the environment.

"(y) REGISTRANT.—The term 'registrant' means a person who has registered any pesticide pursuant to the provisions of this Act.

(z) REGISTRATION.—The term 'registration' includes reregistration.

"(aa) STATE.—The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

"(bb) UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT.—The term 'unreasonable adverse effects on the environment' means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.

"(cc) WEED.—The term 'weed' means any plant which grows where not wanted.

"(dd) ESTABLISHMENT.—The term 'establishment' means any place where a pesticide or device is produced, or held, for distribution or sale.

"SEC. 3. REGISTRATION OF PESTICIDES.

"(a) REQUIREMENT.—Except as otherwise provided by this Act, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person any pesticide which is not registered with the Administrator.

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"(b) *Exemptions.—A pesticide which is not registered with the Administrator may be transferred if—*

"(1) *the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or*

"(2) *the transfer is pursuant to and in accordance with the requirements of an experimental use permit.*

"(c) PROCEDURE FOR REGISTRATION.—

"(1) STATEMENT REQUIRED.—*Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—*

"(A) *the name and address of the applicant and of any other person whose name will appear on the labeling;*

"(B) *the name of the pesticide;*

"(C) *a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use;*

"(D) *if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration unless such other applicant shall have first offered to pay reasonable compensation for producing the test data to be relied upon and such data is not protected from disclosure by section 10(b). If the parties cannot agree on the amount and method of payment, the Administrator shall make such determination and may fix such other terms and conditions as may be reasonable under the circumstances. The Administrator's determination shall be made on the record after notice and opportunity for hearing. If the owner of the test data does not agree with said determination, he may, within thirty days, take an appeal to the federal district court for the district in which he resides with respect to either the amount of the payment or the terms of payment, or both. In no event shall the amount of payment determined by the court be less than that determined by the Administrator;*

"(E) *the complete formula of the pesticide; and*

"(F) *a request that the pesticide be classified for general use, for restricted use, or for both.*

"(2) DATA IN SUPPORT OF REGISTRATION.—*The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If thereafter he requires any additional kind of information he shall permit sufficient time for applicants to obtain such additional information. Except as provided by subsection (c)(1)(D) of this section and section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.*

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"(3) TIME FOR ACTING WITH RESPECT TO APPLICATION.—The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the Act in accordance with paragraph (6).

"(4) NOTICE OF APPLICATION.—The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs (1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

"(5) APPROVAL OF REGISTRATION.—The Administrator shall register a pesticide if he determines that, when considered with any restrictions imposed under subsection (d)—

"(A) its composition is such as to warrant the proposed claims for it;

"(B) its labeling and other material required to be submitted comply with the requirements of this Act;

"(C) it will perform its intended function without unreasonable adverse effects on the environment; and

"(D) when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide. Where two pesticides meet the requirements of this paragraph, one should not be registered in preference to the other.

"(6) DENIAL OF REGISTRATION.—If the Administrator determines that the requirements of paragraph (5) for registration are not satisfied, he shall notify the applicant for registration of his determination and of his reasons (including the factual basis) therefor, and that, unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator may refuse to register the pesticide. Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefor. The Administrator shall promptly publish in the Federal Register notice of such denial of registration and the reasons therefor. Upon such notification, the applicant for registration or other interested person with the concurrence of the applicant shall have the same remedies as provided for in section 6.

"(d) CLASSIFICATION OF PESTICIDES.—

"(1) CLASSIFICATION FOR GENERAL USE, RESTRICTED USE, OR BOTH.—

"(A) As a part of the registration of a pesticide the Administrator shall classify it as being for general use or for restricted use, provided that if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for

restricted use, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses: Provided, however, That the Administrator may require that its packaging and labeling for restricted uses shall be clearly distinguishable from its packaging and labeling for general uses.

"(B) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies, for general use.

"(C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use:

"(i) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that the acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified applicator.

"(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause unreasonable adverse effects on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may provide by regulation. Any such regulation shall be reviewable in the appropriate court of appeals upon petition of a person adversely affected filed within 60 days of the publication of the regulation in final form.

"(2) CHANGE IN CLASSIFICATION.—If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent unreasonable adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least 30 days before making the change and shall publish the proposed change in the Federal Register. The registrant, or other interested person with the concurrence of the registrant, may seek relief from such determination under section 6(b).

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"(e) PRODUCTS WITH SAME FORMULATION AND CLAIMS.—Products which have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added to the registration by supplemental statements.

"(f) MISCELLANEOUS.—

"(1) EFFECT OF CHANGE OF LABELING OR FORMULATION.—If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this Act.

"(2) REGISTRATION NOT A DEFENSE.—In no event shall registration of an article be construed as a defense for the commission of any offense under this Act: Provided, That as long as no cancellation proceedings are in effect registration of a pesticide shall be prima facie evidence that the presticide, its labeling and packaging comply with the registration provisions of the Act.

"(3) AUTHORITY TO CONSULT OTHER FEDERAL AGENCIES.—In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.

"SEC. 4. USE OF RESTRICTED USE PESTICIDES; CERTIFIED APPLICATORS.

"(a) CERTIFICATION PROCEDURE.—

"(1) FEDERAL CERTIFICATION.—Subject to paragraph (2), the Administrator shall prescribe standards for the certification of applicators of pesticides. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or to the use and handling of the pesticide or class of pesticides covered by such individual's certification.

"(2) STATE CERTIFICATION.—If any State, at any time, desires to certify applicators of pesticides, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—

"(A) designates a State agency as the agency responsible for administering the plan throughout the State;

"(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

"(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

"(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

"(E) contains satisfactory assurances that State standards for the certification of applicators of pesticides conform with those standards prescribed by the Administrator under paragraph (1).

Any State certification program under this section shall be maintained in accordance with the State plan approved under this section.

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"(b) STATE PLANS.—If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify applicators of pesticides with respect to such State. Whenever the Administrator determines that a State is not administering the certification program in accordance with the plan approved under this section, he shall so notify the State and provide for a hearing at the request of the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such plan.

"SEC. 5. EXPERIMENTAL USE PERMITS.

"(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

"(b) TEMPORARY TOLERANCE LEVEL.—If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

"(c) USE UNDER PERMIT.—Use of a pesticide under an experimental use permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

"(d) STUDIES.—When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause unreasonable adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

"(e) REVOCATION.—The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid unreasonable adverse effects on the environment.

"(f) STATE ISSUANCE OF PERMITS.—Notwithstanding the foregoing provisions of this section, the Administrator may, under such terms and conditions as he may by regulations prescribe, authorize any State to issue an experimental use permit for a pesticide. All provisions of section 4 relating to State plans shall apply with equal force to a State plan for the issuance of experimental use permits under this section.

"SEC. 6. ADMINISTRATIVE REVIEW; SUSPENSION.

"(a) CANCELLATION AFTER FIVE YEARS—

"(1) PROCEDURE.—The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date of its registration (or at the end of any five-year period thereafter) unless the registrant, or other interested person with the concurrence of the registrant, before the end of such period,

requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect: Provided, That the Administrator may permit the continued sale and use of existing stocks of a pesticide whose registration is canceled under this subsection or subsection (b) to such extent, under such conditions, and for such uses as he may specify if he determines that such sale or use is not inconsistent with the purposes of this Act and will not have unreasonable adverse effects on the environment. The Administrator shall publish in the Federal Register, at least 30 days prior to the expiration of such five-year period, notice that the registration will be canceled if the registrant or other interested person with the concurrence of the registrant does not request that the registration be continued in effect.

"(2) INFORMATION.—If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

"(b) CANCELLATION AND CHANGE IN CLASSIFICATION.—If it appears to the Administrator that a pesticide or its labeling or other material required to be submitted does not comply with the provisions of this Act or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment, the Administrator may issue a notice of his intent either—

"(1) to cancel its registration or to change its classification together with the reasons (including the factual basis) for his action, or

"(2) to hold a hearing to determine whether or not its registration should be canceled or its classification changed.

Such notice shall be sent to the registrant and made public. The proposed action shall become final and effective at the end of 30 days from receipt by the registrant, or publication, of a notice issued under paragraph (1), whichever occurs later, unless within that time either (i) the registrant makes the necessary corrections, if possible, or (ii) a request for a hearing is made by a person adversely affected by the notice. In the event a hearing is held pursuant to such a request or to the Administrator's determination under paragraph (2), a decision pertaining to registration or classification issued after completion of such hearing shall be final.

"(c) SUSPENSION.—

"(1) ORDER.—If the Administrator determines that action is necessary to prevent an imminent hazard during the time required for cancellation or change in classification proceedings, he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless the Administrator has issued or at the same time issues notice of his intention to cancel the registration or change the classification of the pesticide.

"Except as provided in paragraph (3), the Administrator shall notify the registrant prior to issuing any suspension order. Such notice shall include findings pertaining to the question of 'imminent hazard'. The registrant shall then have an opportunity, in accordance with the provisions of paragraph (2), for an expedited hearing before the Agency on the question of whether an imminent hazard exists.

"(2) EXPEDITE HEARING.—If no request for a hearing is submitted to the Agency within five days of the registrant's receipt of the notification provided for by paragraph (1), the suspension order may be issued and shall take effect and shall not be reviewable

by a court. If a hearing is requested, it shall commence within five days of the receipt of the request for such hearing unless the registrant and the Agency agree that it shall commence at a later time. The hearing shall be held in accordance with the provisions of subchapter II of title 5 of the United States Code, except that the presiding officer need not be a certified hearing examiner. The presiding officer shall have ten days from the conclusion of the presentation of evidence to submit recommended findings and conclusions to the Administrator, who shall then have seven days to render a final order on the issue of suspension.

"(3) EMERGENCY ORDER.—Whenever the Administrator determines that an emergency exists that does not permit him to hold a hearing before suspending, he may issue a suspension order in advance of notification to the registrant. In that case, paragraph (2) shall apply except that (i) the order of suspension shall be in effect pending the expeditious completion of the remedies provided by that paragraph and the issuance of a final order on suspension, and (ii) no party other than the registrant and the Agency shall participate except that any person adversely affected may file briefs within the time allotted by the Agency's rules. Any person so filing briefs shall be considered a party to such proceeding for the purposes of section 16(b).

"(4) JUDICIAL REVIEW.—A final order on the question of suspension following a hearing shall be reviewable in accordance with Section 16 of this Act, notwithstanding the fact that any related cancellation proceedings have not been completed. Petitions to review orders on the issue of suspension shall be advanced on the docket of the courts of appeals. Any order of suspension entered prior to a hearing before the Administrator shall be subject to immediate review in an action by the registrant or other interested person with the concurrence of the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. The effect of any order of the court will be only to stay the effectiveness of the suspension order, pending the Administrator's final decision with respect to cancellation or change in classification. This action may be maintained simultaneously with any administrative review proceeding under this section. The commencement of proceedings under this paragraph shall not operate as a stay of order, unless ordered by the court.

"(d) PUBLIC HEARINGS AND SCIENTIFIC REVIEW.—In the event a hearing is requested pursuant to subsection (b) or determined upon by the Administrator pursuant to subsection (b), such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the objections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpena to compel testimony or production of documents from any person. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of

documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness. On contest, the subpena may be enforced by an appropriate United States district court in accordance with the principles stated herein. Upon the request of any party to a public hearing and when in the Hearing Examiner's judgment it is necessary or desirable, the Hearing Examiner shall at any time before the hearing record is closed refer to a Committee of the National Academy of Sciences the relevant questions of scientific fact involved in the public hearing. No member of any committee of the National Academy of Sciences established to carry out the functions of this section shall have a financial or other conflict of interest with respect to any matter considered by such committee. The Committee of the National Academy of Sciences shall report in writing to the Hearing Examiner within 60 days after such referral on these questions of scientific fact. The report shall be made public and shall be considered as part of the hearing record. The Administrator shall enter into appropriate arrangements with the National Academy of Sciences to assure an objective and competent scientific review of the questions presented to Committees of the Academy and to provide such other scientific advisory services as may be required by the Administrator for carrying out the purposes of this Act. As soon as practicable after completion of the hearing (including the report of the Academy) but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or shall issue an order either canceling the registration, changing the classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantial evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

"(e) JUDICIAL REVIEW.—Final orders of the Administrator under this section shall be subject to judicial review pursuant to section 16.

"SEC. 7. REGISTRATION OF ESTABLISHMENTS.

"(a) REQUIREMENT.—No person shall produce any pesticide subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

"(b) REGISTRATION.—Whenever the Administrator receives an application under subsection (a), he shall register the establishment and assign it an establishment number.

"(c) INFORMATION REQUIRED.—

"(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of pesticides—

"(A) which he is currently producing;

"(B) which he has produced during the past year; and

"(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

"(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 13, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

"(d) CONFIDENTIAL RECORDS AND INFORMATION.—Any information submitted to the Administrator pursuant to subsection (c) shall be considered confidential and shall be subject to the provisions of section 10.

"SEC. 8. BOOKS AND RECORDS.

"(a) REQUIREMENT.—The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this Act. No records required under this subsection shall extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

"(b) INSPECTION.—For the purposes of enforcing the provisions of this Act, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this Act, shall, upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy: (1) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consigner and consignee; or (2) in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device. Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

"SEC. 9. INSPECTION OF ESTABLISHMENTS, ETC.

"(a) IN GENERAL.—For purposes of enforcing the provisions of this Act, officers or employees duly designated by the Administrator or authorized to enter at reasonable times, any establishment or other place where pesticides or devices are held for distribution or sale for the purpose of inspecting and obtaining samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment or other place where pesticides or devices are held for distribution or sale, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

"(b) WARRANTS.—For purposes of enforcing the provisions of this Act and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this Act have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

"(1) entry for the purpose of this section;

"(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any pesticide or device found in the establishment which is adulterated, misbranded, not registered (in the case of a pesticide), or otherwise in violation of this Act and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

"(3) the seizure of any pesticide or device which is in violation of this Act.

"(c) ENFORCEMENT.—

"(1) CERTIFICATION OF FACTS TO ATTORNEY GENERAL.—The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this Act. If it shall appear from any such examination that they fail to comply with the requirements of this Act, the Administrator shall cause notice to be given to the person against whom criminal or civil proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this Act have been violated by such person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 14(b) or a civil proceeding under section 14(a), when the Administrator determines that such action will be sufficient to effectuate the purposes of this Act.

"(2) NOTICE NOT REQUIRED.—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

"(3) WARNING NOTICES.—Nothing in this Act shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

"SEC. 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.

"(a) IN GENERAL.—In submitting data required by this Act, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information and (2) submit such marked material separately from other material required to be submitted under this Act.

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"(b) DISCLOSURE.—*Notwithstanding any other provision of this Act, the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act, information relating to formulas of products acquired by authorization of this Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.*

"(c) DISPUTES.—*If the Administrator proposes to release for inspection information which the applicant or registrant believes to be protected from disclosure under subsection (b), he shall notify the applicant or registrant, in writing, by certified mail. The Administrator shall not thereafter make available for inspection such data until thirty days after receipt of the notice by the applicant or registrant. During this period, the applicant or registrant may institute an action in an appropriate district court for a declaratory judgment as to whether such information is subject to protection under subsection (b).*

"SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS.

"(a) IN GENERAL.—*No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private applicator to maintain any records or file any reports or other documents.*

"(b) SEPARATE STANDARDS.—*When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators.*

"SEC. 12. UNLAWFUL ACTS.

"(a) IN GENERAL.—

"(1) *Except as provided by subsection (b), it shall be unlawful for any person in any State to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—*

"(A) *any pesticide which is not registered under section 3, except as provided by section 6(a)(1);*

"(B) *any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3;*

"(C) *any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3;*

"(D) *any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5);*

"(E) *any pesticide which is adulterated or misbranded; or*

"(F) *any device which is misbranded.*

"(2) *It shall be unlawful for any person—*

"(A) *to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act;*

"(B) *to refuse to keep any records required pursuant to section 8, or to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9, or to refuse to allow*

an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 9,

"(C) to give a guaranty or undertaking provided for in subsection (b) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name and address, the name and address of the person residing in the United States from whom he received the guaranty or undertaking,

"(D) to use for his own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this Act which is confidential under this Act;

"(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;

"(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder;

"(G) to use any registered pesticide in a manner inconsistent with its labeling;

"(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

"(I) to violate any order issued under section 13;

"(J) to violate any suspension order issued under section 6;

"(K) to violate any cancellation of registration of a pesticide under section 6, except as provided by section 6(a)(1);

"(L) who is a producer to violate any of the provisions of section 7;

"(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to section 8, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this Act;

"(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act;

"(O) to add any substance to, or take any substance from, any pesticide in a manner that may defeat the purpose of this Act; or

"(P) to use any pesticide in tests on human beings unless such human beings (i) are fully informed of the nature and purposes of the test and of any physical and mental health consequences which are reasonably foreseeable therefrom, and (ii) freely volunteer to participate in the test.

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"(b) EXEMPTIONS.—*The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—*

"*(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased or received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this Act;*

"*(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;*

"*(3) any public official while engaged in the performance of his official duties;*

"*(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or*

"*(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.*

"SEC. 13. STOP SALE, USE, REMOVAL, AND SEIZURE.

"(a) STOP SALE, ETC., ORDERS.—*Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide has been canceled by a final order or has been suspended, the Administrator may issue a written or printed 'stop sale, use, or removal' order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.*

"(b) SEIZURE.—*Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported from a foreign country, shall be liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if—*

"*(1) in the case of a pesticide—*

"*(A) it is adulterated or misbranded;*

"*(B) it is not registered pursuant to the provisions of section 3;*

"*(C) its labeling fails to bear the information required by this Act;*

"*(D) it is not colored or discolored and such coloring or discoloring is required under this Act; or*

"(E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

"(2) in the case of a device, it is misbranded; or

"(3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this Act and as directed by the labeling, it nevertheless causes unreasonable adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

"(c) DISPOSITION AFTER CONDEMNATION.—If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this Act or the laws of the jurisdiction in which it is sold: Provided, That upon payment of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws of any jurisdiction in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

"(d) COURT COSTS, ETC.—When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

"SEC. 14. PENALTIES.

"(a) CIVIL PENALTIES.—

"(1) IN GENERAL.—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

"(2) PRIVATE APPLICATOR.—Any private applicator or other person not included in paragraph (1) who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense.

"(3) HEARING.—No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

"(4) REFERENCES TO ATTORNEY GENERAL.—In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

"(b) CRIMINAL PENALTIES.—

"(1) IN GENERAL.—Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(2) PRIVATE APPLICATOR.—Any private applicator or other person not included in paragraph (1) who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

"(3) DISCLOSURE OF INFORMATION.—Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.

"(4) ACTS OF OFFICERS, AGENTS, ETC.—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

"SEC. 15. INDEMNITIES.

"(a) REQUIREMENT.—If—

"(1) the Administrator notifies a registrant that he has suspended the registration of a pesticide because such action is necessary to prevent an imminent hazard;

"(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

"(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration,

the Administrator shall make an indemnity payment to such person, unless the Administrator finds that such person (i) had knowledge of facts which, in themselves, would have shown that such pesticide did not meet the requirements of section 3(c)(5) for registration, and (ii) continued thereafter to produce such pesticide without giving timely notice of such facts to the Administrator.

"(b) AMOUNT OF PAYMENT.—

"(1) IN GENERAL.—The amount of the indemnity payment under subsection (a) to any person shall be determined on the basis of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a)(1); except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a)(1).

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"(2) SPECIAL RULE.—*Notwithstanding any other provision of this Act, the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner.*

"SEC. 16. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW.

"(a) DISTRICT COURT REVIEW.—*Except as is otherwise provided in this Act, Agency refusals to cancel or suspend registrations or change classifications not following a hearing and other final Agency actions not committed to Agency discretion by law are judicially reviewable in the district courts.*

"(b) REVIEW BY COURT OF APPEALS.—*In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any person who will be adversely affected by such order and who had been a party to the proceedings may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence, when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.*

"(c) JURISDICTION OF DISTRICT COURTS.—*The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this Act.*

"(d) NOTICE OF JUDGMENTS.—*The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.*

"SEC. 17. IMPORTS AND EXPORTS.

"(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—*Notwithstanding any other provision of this Act, no pesticide or device shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser, except that producers of such pesticides and devices shall be subject to section 8 of this Act.*

"(b) CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.—*Whenever a registration, or a cancellation or suspension of the*

registration of a pesticide becomes effective, or ceases to be effective, the Administrator shall transmit through the State Department notification thereof to the governments of other countries and to appropriate international agencies.

"(c) IMPORTATION OF PESTICIDES AND DEVICES.—The Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon his request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions set forth in this Act, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any pesticide or device refused delivery which shall not be exported by the consignee within 90 days from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: Provided, That the Secretary of the Treasury may deliver to the consignee such pesticide or device pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such pesticide or device, together with the duty thereon, and on refusal to return such pesticide or device for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: And provided further, That all charges for storage, cartage, and labor on pesticides or devices which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

"(e) REGULATIONS.—The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of subsection (c) of this section.

"SEC. 18. EXEMPTION OF FEDERAL AGENCIES.

"The Administrator may, at his discretion, exempt any Federal or State agency from any provision of this Act if he determines that emergency conditions exist which require such exemption.

"SEC. 19. DISPOSAL AND TRANSPORTATION.

"(a) PROCEDURES.—The Administrator shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 6(c) if requested by the owner of the pesticide.

"(b) ADVICE TO SECRETARY OF TRANSPORTATION.—The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act (49 U.S.C. 1657), the Transportation of Explosives Act (18 U.S.C. 831–835), the Federal

Aviation Act of 1958 (49 U.S.C. 1421–1430, 1472 H), and the Hazardous Cargo Act (46 U.S.C. 170, 375, 416).

"SEC. 20. RESEARCH AND MONITORING.

"(a) RESEARCH.—The Administrator shall undertake research, including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this Act, and he shall give priority to research to develop biologically integrated alternatives for pest control. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.

"(b) NATIONAL MONITORING PLAN.—The Administrator shall formulate and periodically revise, in cooperation with other Federal, State, or local agencies, a national plan for monitoring pesticides.

"(c) MONITORING.—The Administrator shall undertake such monitoring activities, including but not limited to monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.

"SEC. 21. SOLICITATION OF COMMENTS; NOTICE OF PUBLIC HEARINGS.

"(a) The Administrator, before publishing regulations under this Act, shall solicit the views of the Secretary of Agriculture.

"(b) In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

"(c) In connection with all public hearings under this Act the Administrator shall publish timely notice of such hearings in the Federal Register.

"SEC. 22. DELEGATION AND COOPERATION.

"(a) DELEGATION.—All authority vested in the Administrator by virtue of the provisions of this Act may with like force and effect be executed by such employees of the Environmental Protection Agency as the Administrator may designate for the purpose.

"(b) COOPERATION.—The Administrator shall cooperate with the Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

"SEC. 23. STATE COOPERATION, AID, AND TRAINING.

"(a) COOPERATIVE AGREEMENTS.—The Administrator is authorized to enter into cooperative agreements with States—

"(1) to delegate to any State the authority to cooperate in the enforcement of the Act through the use of its personnel or facilities, to train personnel of the State to cooperate in the enforcement of this Act, and to assist States in implementing cooperative enforcement programs through grants-in-aid; and

"(2) to assist State agencies in developing and administering State programs for training and certification of applicators consistent with the standards which he prescribes.

"(b) CONTRACTS FOR TRAINING.—In addition, the Administrator is authorized to enter into contracts with Federal or State agencies for the purpose of encouraging the training of certified applicators.

"(c) The Administrator may, in cooperation with the Secretary of Agriculture, utilize the services of the Cooperative State Extension Services for informing farmers of accepted uses and other regulations made pursuant to this Act.

"SEC. 24. AUTHORITY OF STATES.

"(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act;

"(b) such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required pursuant to this Act; and

"(c) a State may provide registration for pesticides formulated for distribution and use within that State to meet special local needs if that State is certified by the Administrator as capable of exercising adequate controls to assure that such registration will be in accord with the purposes of this Act and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator. Such registration shall be deemed registration under section 3 for all purposes of this Act, but shall authorize distribution and use only within such State and shall not be effective for more than 90 days if disapproved by the Administrator within that period.

"SEC. 25. AUTHORITY OF ADMINISTRATOR.

"(a) REGULATIONS.—The Administrator is authorized to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides.

"(b) EXEMPTION OF PESTICIDES.—The Administrator may exempt from the requirements of this Act by regulation any pesticide which he determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

"(c) OTHER AUTHORITY.—The Administrator, after notice and opportunity for hearing, is authorized—

"(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment;

"(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man;

"(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601)) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act;

"(4) to specify those classes of devices which shall be subject to any provision of paragraph 2(q)(1) or section 7 of this Act upon his determination that application of such provision is necessary to effectuate the purposes of this Act;

"(5) to prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment; and

"(6) to determine and establish suitable names to be used in the ingredient statement.

"SEC. 26. SEVERABILITY.

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act are severable.

"SEC. 27. AUTHORIZATION FOR APPROPRIATIONS.

"There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1975, shall be the sums hereafter provided by law.

AMENDMENTS TO OTHER ACTS

SEC. 3. The following Acts are amended by striking out the terms "economic poisons" and "an economic poison" wherever they appear and inserting in lieu thereof "pesticides" and "a pesticide" respectively:

(1) The Federal Hazardous Substances Act, as amended (15 U.S.C. 1261 et seq.);

(2) The Poison Prevention Packaging Act, as amended (15 U.S.C. 1471 et seq.); and

(3) The Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.).

EFFECTIVE DATES OF PROVISIONS OF ACT

SEC. 4. (a) Except as otherwise provided in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, and as otherwise provided by this section, the amendments made by this Act shall take effect at the close of the date of the enactment of this Act, provided if regulations are necessary for the implementation of any provision that becomes effective on the date of enactment, such regulations shall be promulgated and shall become effective within 90 days from the date of enactment of this Act.

(b) The provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations thereunder as such existed prior to the enactment of this Act shall remain in effect until superseded by the amendments made by this Act and regulations thereunder: Provided, That all provisions made by these amendments and all regulations thereunder shall be effective within four years after the enactment of this Act.

(c)(1) Two years after the enactment of this Act the Administrator shall have promulgated regulations providing for the registration and classification of pesticides under the provisions of this Act and thereafter shall register all new applications under such provisions.

(2) After two years but within four years after the enactment of this Act the Administrator shall register and reclassify pesticides registered under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act prior to the effective date of the regulations promulgated under subsection (c)(1).

(3) Any requirements that a pesticide be registered for use only by a certified applicator shall not be effective until four years from the date of enactment of this Act.

(4) A period of four years from date of enactment shall be provided for certification of applicators.

(A) One year after the enactment of this Act the Administrator shall have prescribed the standards for the certification of applicators.

(B) Within three years after the enactment of this Act each State desiring to certify applicators shall submit a State plan to the Administrator for the purpose provided by section 4(b).

(C) As promptly as possible but in no event more than one year after submission of a State plan, the Administrator shall approve the State plan or disapprove it and indicate the reasons for disapproval. Consideration of plans resubmitted by States shall be expedited.

(5) One year after the enactment of this Act the Administrator shall have promulgated and shall make effective regulations relating to the registration of establishments, permits for experimental use, and the keeping of books and records under the provisions of this Act.

(d) No person shall be subject to any criminal or civil penalty imposed by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, for any act (or failure to act) occurring before the expiration of 60 days after the Administrator has published effective regulations in the Federal Register and taken such other action as may be necessary to permit compliance with the provisions under which the penalty is to be imposed.

(e) For purposes of determining any criminal or civil penalty or liability to any third person in respect of any act or omission occurring before the expiration of the periods referred to in this section, the Federal Insecticide, Fungicide, and Rodenticide Act shall be treated as continuing in effect as if this Act had not been enacted.

And the Senate agree to the same.

W. R. POAGE,
W. M. ABBITT,
BERNIE SISK,
JOHN G. DOW,
PAGE BELCHER,
GEO. A. GOODLING,
JOHN KYL,
Managers on the Part of the House.

HERMAN E. TALMADGE,
JAMES B. ALLEN,
P. A. HART,
FRANK E. MOSS,
JACK MILLER,
ROBERT DOLE,
L. P. WEICKER, Jr.,
Managers on the Part of the Senate.

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JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report.

The Senate amendment struck all after the enacting clause of H.R. 10729. There were over 50 points of difference between the two versions and these differences were resolved in the conference substitute which makes the following changes in the House bill:

(1) It changes section 1 of FIFRA to conform the table of contents to the amended text.

(2) It changes section 2(c) to indent the numbered paragraphs.

(3) It deletes "pesticide" from "certified pesticide applicator" in section 2(e) and elsewhere (and similar titles) to avoid confusion with certified public accountants.

(4) It permits an employee to apply pesticides on his employer's land as a private applicator (section 2(e)(2)).

(5) It gives EPA discretion as to the necessity for the physical presence of a certified applicator (section 2(e)(4)).

(6) It gives the Administrator discretion as to which provisions of section 2(q)(1) [definition of misbranded] or section 7 [registration of establishments] shall be applicable to any class of device (sections 2(h), 2(q)(1), and 25(c)(4)).

(7) It clarifies the definition of the term "device" in section 2(h) by not including equipment used for the application of pesticides when sold separately therefrom.

(8) It changes the registration criteria from "substantial" to "unreasonable" adverse effects on the environment and changes the definition slightly, without making any change in substance. This change from the House language is a matter of clarification only. There is absolutely no difference in substance in this respect between the conference substitute and the House bill or the Senate amendment (sections 2(x) and 2(bb) and elsewhere throughout the bill).

(9) It defines "imminent hazard" to include a situation involving unreasonable hazard to survival of endangered species (section 2(l)).

(10) It defines "ingredient statement" to require all pesticides to show the name and percentage of each active ingredient and the total percentage of inert ingredients (section 2(n)).

(11) It requires the establishment registration number to be shown on the label [rather than on accompanying labeling] (section 2(q)(1)(D)).

(12) It deletes the Senate provision which would have classified a pesticide as misbranded if "when used in accordance with the require-

ments of the Act or commonly recognized practice" it causes unreasonable adverse effects on the environment and amends provisions dealing with the registration process instead. The conferees deleted section 2(q)(1)(H) of the Senate amendment, which defined a pesticide as "misbranded" if the product, when used in accordance with requirements imposed under the Act or with "commonly recognized practice", caused unreasonable adverse effects on the environment. The conferees do not believe that a manufacturer should be subjected to criminal penalties for a "misbranding" which is beyond his control. The conference substitute shifts this language to section 3 and section 6. Thus, although no criminal penalties are applicable, the Administrator will have the authority to deny registration or cancel where there is a widespread and commonly recognized practice of using a pesticide which generally causes unreasonable adverse effects on the environment.

(13) It excludes non-toxic, vitamin-hormone products not intended for pest destruction from the definition of "plant regulator" (section 2(v)).

(14) It defines "establishment" as a place where pesticides or devices are produced or held for distribution or sale. This provision is designed to make it clear that a farmer who mixed two or more pesticides in his spreader or sprayer would not be required to register as an establishment (section 2(dd)).

(15) It provides for mandatory licensing of test data. The conferees concluded that the Administrator is in the best position to determine the proper amount of reasonable compensation for producing the test data that should be accorded the originator of such data. It was consequently concluded that an appeal of such determination by the originator of such data to the District Court should not result in a lowering of the Administrator's determination. It was also concluded that the pendency of such proceeding before the Administrator or the Court should not stay or delay use of such data (section 3(c)(1)(D)).

(16) It keeps the prohibition against making lack of essentiality a criterion for registration as provided in the House bill and adds the Senate clarifying provision which states that "Where two pesticides meet the requirements of this paragraph, one should not be registered in preference to the other," thus reflecting the conferees' intent that no difference between these provisions exists. (Section 3(c)(5)(C).)

(17) It gives the Administrator discretion to give an applicant more than thirty days to make corrections (section 3(c)(6)).

(18) It permits "other interested persons with the concurrence of the registrant" to contest the denial, cancellation, or suspension of registration, or a change in classification, where the registrant fails to do so (sections 3(c)(6), 3(d)(2), 6(a)(1), and 6(c)(4)).

(19) It authorizes the Administrator to require pesticide packaging and labeling for restricted use to be clearly distinguishable from packaging and labeling for general use (section 3(d)(1)(A)).

(20) It makes restricted classification depend in part on the hazards involved in the use of a pesticide in accordance with "widespread and commonly recognized practice" (section 3(d)(1) (B) and (C)).

(21) It subjects restricted use regulations to judicial review (section 3(d)(1)(C)(ii)).

(22) It specifically subjects a change in classification to judicial review (section 3(d)(2)).

(23) It makes registration prima facie evidence of compliance as long as no cancellation proceedings are in effect (section 3(f)(2)).

(24) It makes clear that EPA can withdraw its approval of a State certification plan (section 4 (a) and (b)).

(25) It allows the Administrator to permit States to issue experimental use permits (section 5(f)).

(26) It allows the Administrator to permit continued sale or use of a pesticide whose registration is cancelled where not inconsistent with the purposes of the Act (sections 6(a)(1), 12(a)(1)(A), and 12(a)(2)(K)). Additional authority is provided in section 15(b)(2).

(27) It preserves cancellation criteria in existing law and permits the Administrator to initiate cancellation proceedings either by cancellation notice or hearing notice. Procedures for hearings and other matters would be in accord with chapter 5 of title 5 of the United States Code (formerly the Administrative Procedure Act) except as otherwise specifically provided (section 6(b)).

(28) It provides for initiation of change in classification proceedings as an alternative to cancellation proceedings when registration is suspended (section 6(c)(1)).

(29) It provides for hearings on suspensions except in emergency situations (section 6(c)).

(30) It provides for judicial review for suspensions [as generally in other cases] in the district court where there has been no hearing, in the court of appeals where there has been a hearing. The House bill did not provide for an administrative hearing on suspension and therefore provided for judicial review only in the district court. Under the conference substitute a court stay of a suspension order would be effective until final decision with respect to cancellation or change in classification (section 6(c)).

(31) It provides for the submission, but only with concurrence of the hearing examiner, of scientific questions at any time prior to the hearing record being closed (section 6(d)).

(32) It specifically prohibits any member of a scientific advisory committee from having a financial or other conflict of interest with respect to any matter considered by the committee (section 6(d)).

(33) It provides for entry by EPA of any place at reasonable times where pesticides or devices are held for distribution or sale [as well as manufacturing establishments]. Such entry may take place only for the purpose of inspection and obtaining samples (section 9(a)).

(34) It describes an illegal pesticide or device as one "which is adulterated, misbranded, not registered [in the case of a pesticide], or otherwise in violation of this Act" (section 9(b)(2)).

(35) It specifically provides for certification of facts to the Attorney General with respect to institution of proceedings for civil penalties (section 9(c)).

(36) It provides for judicial review of the Administrator's decision to release information which the applicant or registrant believes to be protected from disclosure (section 10(d)).

(37) It prohibits tests on human beings without adequately informing them and obtaining their voluntary participation (section 12(a)(2)(P)).

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(38) It clarifies provisions regarding both civil and criminal penalties for wrongdoers (sections 14(a)(2) and 14(b)(2)).

(39) It includes a provision for indemnities, except in the case of a manufacturer who (i) had knowledge of facts which, in themselves, would have shown that a pesticide did not meet the requirements of section 3(c)(5) for registration, and (ii) continued thereafter to produce a pesticide without giving timely notice of such facts to the Administrator (section 15).

(40) It provides judicial review of any order following a public hearing for "any person who will be adversely affected by such order and who had been a party to the proceedings." It is the intent of the conferees that anyone who intervenes in a public hearing under this Act shall be considered a party for purposes of this provision. Provision is made for publication of timely notice in the Federal Register of all public hearings under this Act. The conferees intend the words "adversely affected" to have the same meaning that they have under 5 U.S.C. 702. (Section 16).

(41) It provides for notice to foreign governments whenever a registration or suspension becomes effective or whenever a registration, cancellation, or suspension ceases to be effective. It should be noted that this provision provides for notification to "the governments of other countries". This would not necessarily mean all other countries, but it is expected that notification would be provided to all countries which desired such notification, or where some useful purpose would be served thereby (section 17(b)).

(42) It permits the Administrator under emergency conditions to exempt Federal or State agencies (section 18).

(43) It requires the Administrator to solicit the views of the Secretary of Agriculture before publishing regulations (section 21(a)).

(44) It authorizes the Administrator to utilize, in cooperation with the Secretary of Agriculture, the Cooperative State Extension Services in providing information to farmers (section 23(c)).

(45) It makes it clear that a State may provide registration to meet special local needs, subject to disapproval by the Administrator (section 24).

(46) It extends the appropriation authority for the Act to fiscal year 1975, but retains the "open-end" authorization in the House bill. The conferees have deleted the ceilings proposed in the Senate amendment, not in an effort to obtain greater appropriations but rather to reflect the level of appropriations estimated by EPA to be necessary to carry out the Act (section 27).

(47) It makes penalties effective only after the Administrator has taken such action as may be necessary to permit compliance [as well as having issued regulations] (section 4(d)). The conference substitute adopts the provision of the Senate amendment in section 4(d) of this bill which would make penalties effective only after the Administrator had taken such action as might be necessary to permit compliance (as well as having issued regulations). For example, failure to have a plant registration number on the label would not be subject to penalty until sixty days after the regulations had been published and the Administrator had issued the registration numbers on timely applications. Another example would be that of extension of the Act to intrastate commerce. Section 4(c)(1) of this bill gives the Administrator up to two years to promulgate regulations providing for regis-

tration of pesticides under the provisions of H.R. 10729. This provision of section 4(d) makes it clear that state registered pesticides moving only in intrastate commerce would be provided an opportunity to register under the federal law before their distribution would be prohibited.

(48) It make numerous technical and clerical changes.

In addition, the conferees have deleted several substantive provisions included in the Senate amendment as follows:

(1) Language which would have specifically required the Administrator to request all test data not in his possession that he needs to make his decision on registration.

(2) Provisions calling for more liberal disclosure policies with respect to trade secrets and other confidential information.

(3) Alternate language concerning the requirement for making data available to the public.

(4) A prohibition against the exportation of pesticides which would result in unreasonable adverse effects on the environment of the United States.

(5) A provision for quality control screening of imported agricultural commodities for pesticide residues.

(6) Authority for certain types of citizen suits against the Administrator.

(7) Language which would have prohibited the Environmental Protection Agency from charging fees, other than reasonable registration fees, in connection with any activity under this Act. The conference substitute omits this provision, and it is the intention of the conferees that no fees would be charged for registration or any other activity under the Act.

W. R. POAGE,
W. M. ABBITT,
BERNIE SISK,
JOHN G. DOW,
PAGE BELCHER,
GEO. A. GOODLING,
JOHN KYL,
Managers on the Part of the House.

HERMAN E. TALMADGE,
JAMES B. ALLEN,
P. A. HART,
FRANK E. MOSS,
JACK MILLER,
ROBERT DOLE,
L. P. WEICKER, Jr.,
Managers on the Part of the Senate.

[p. 34]

1.1k(5) CONGRESSIONAL RECORD

1.1k(5)(a) VOL. 117 (1971), Nov. 8, 9: Considered and passed House, pp. H10674–H10680, H10726–H10774

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1971

Mr. SISK. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 626 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 626

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Agriculture, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman is recognized for 1 hour.

Mr. SISK. Mr. Speaker, I yield 30 minutes to the gentleman from Ohio (Mr. LATTA), and pending that I yield myself such time as I may consume.

[Mr. SISK addressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. LATTA. Mr. Speaker, I yield myself such time as I may use.

(Mr. LATTA asked and was given permission to revise and extend his remarks.)

Mr. LATTA. Mr. Speaker, the purpose of Federal Environmental Pesticide Control Act of 1971 is to amend existing law—which is primarily a registration and labeling law—into a comprehensive regulatory statute for the control of both the manufacturing and use of pesticides under the recently created Environmental Protection Agency.

There are currently more than 60,000 products made from some 900 chemical compounds which are required to be registered under our present law. Over 1,000,000,000 pounds of registered pesticides were produced in the United States in 1970, and sales totaled some $870,000,000.

Products which are classified as pesticides and subject to registration under current law include all farm pesticides and herbicides, industrial products, sterilizing and disinfecting products, home cleaning products and lawn and garden insecticides and herbicides. All segments of the Nation use these products.

(Mr. SISK asked and was given permission to revise and extend his remarks.)

Mr. SISK. Mr. Speaker, House Resolution 626 provides an open rule with 2 hours of general debate for consideration of H.R. 10729, Federal Environmental Pesticide Control Act of 1971.

H.R. 10729 amends the present law for the purpose of providing more comprehensive regulation and control over the manufacture, distribution and use of pesticides.

Basically, all pesticides would be classified into two groups—"General Use" and "Restricted Use"—and the pesticides must be registered. If a pesticide is registered for restricted use only there are recordkeeping requirements as to who buys it, and so forth, so that sales can be followed up.

There would be two groups of applicators—"Commercial" and "Private"—most of whom would be farmers—and they must be licensed.

Civil and criminal penalties are provided for violations.

The program would be administered by the Environmental Protection Administration and should give us much better control over and protection from pesticides than we have had heretofore.

Mr. Speaker, I urge the adoption of the rule in order that the bill may be considered.

Current law—the Federal Insecticide, Rodenticide, and Fungicide Act—is a registration and labeling law. The proposed changes would redirect its thrust by providing for regulation through the Environmental Protection Agency of both the manufacture of pesticides and their use by individuals as well as commercial applicators. H.R. 10729 requires the registration of pesticide-producing firms. This registration will be in one of two categories, "general use" and "restricted use." A product registered in the general use category will be subject to labeling requirements, as now. All products or compounds in the restricted use category will have additional terms and conditions surrounding their use. Any application of such products must be certified by the Environmental Protection Agency. Such certification or licensing requires proof of knowledge in the application of dangerous chemical compounds.

All manufacturers of pesticides must accompany an application for registration of a particular compound with information concerning its effects on plants and animals, the production process and other pertinent information. Such information must be kept current and any adverse findings must be reported. To insure compliance the Environmental Protection Agency has authority to inspect the books and records which the act requires to be kept by all manufacturers.

The Environmental Protection Agency has wide powers. It may issue public

warnings, seek court injunctions to stop distribution and/or use, seize dangerous pesticides, impose civil penalties and bring criminal charges in appropriate cases.

The agency is also given authority, with respect to seizures of dangerous compounds, of indemnifying the owner for the value of the products seized.

Finally, judicial review of the agencies administrative decisions is provided. However, such review is limited in that only those "persons adversely affected" may complain. This would seemingly preclude persons not directly involved from seeking court action.

Criminal penalties are provided. A fine of $25,000 may be levied against any person other than private users of pesticides for failure to comply with the certification requirements or for the misuse of any pesticide. Private individuals may be fined up to $1,000 upon conviction. Civil penalties may be assessed by the Agency and range up to $5,000 per violation.

The committee report provides a cost estimate covering fiscal years 1973–1977 of $178,100,000.

The bill is supported by the administration as evidenced by a letter from the Environmental Protection Agency. An open rule, 2 hours of debate has been requested.

Mr. SISK. Mr. Speaker, I yield 5 minutes to the gentleman from New York (Mr. Dow).

Mr. DOW. Mr. Speaker, I have no objection to the rule.

As a member of the committee, I am deeply concerned with this bill, because

The SPEAKER. The question is on the motion offered by the gentleman from Texas.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 10729, with Mr. HUNGATE in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Texas (Mr. POAGE) will be recognized for 1 hour, and the gentleman from California (Mr. TEAGUE) will be recognized for 1 hour.

The Chair recognizes the gentleman from Texas.

(Mr. POAGE asked and was given permission to revise and extend his remarks.)

Mr. POAGE. Mr. Chairman, we on the Agricultural Committee bring before the House today a bill of far-reaching importance, one affecting every citizen in the Nation.

It is entitled the "Federal Environmental Pesticide Control Act of 1971," and it entails a complete revision and updating of the Federal Insecticide, Fungicide, and Rodenticide Act of 1947, sometimes called FIFRA. In view of the amazing developments in this area since the end of World War II, the committee feels that this basic law needs a thorough overhauling.

Fundamentally, the legislation we have reported changes FIFRA from a labeling to a regulatory program. For the first

mize the seriousness of these cases, I might say that in practically all instances where there was found to be an association between the use of pesticides and discoveries of dead birds and fish, the trouble apparently steemed from misuse or misapplication of the pesticides.

I want to emphasize that our committee is as interested as anyone in conservation of wildlife. Certainly farmers and ranchers, living closer to nature than the rest of our society, should be and are in the forefront of the battle for a better earth. We believe that in this pending bill the Environmental Protection Agency is given the authority, which it does not now have, to enforce regulations which should prevent a recurrence of these incidents where improper application of pesticides caused harm to the ecology.

Among our witnesses was EPA Administrator William D. Ruckelshaus, representing the public interests. The EPA will administer the new law. We had Agriculture Department officials, including scientists from the Agricultural Research Service who testified that a complete ban on pesticides would at least triple the cost of food and lower its quality. Your tomatoes and lettuce and other produce likely would be mottled, and when you bit into an apple you would almost certainly find a worm.

We had farm organization spokesmen testify as to the necessity for continued use of pesticides and fertilizers if they are to meet the requirements of an expanding population for food and fiber. Chemical company spokesmen told of their continuing research for new pesti-

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I think pesticides are a tremendous problem in this country. They are probably a blessing as well as a problem. The difficulty is to balance the two.

I took note of the remarks of the gentleman from Iowa that this rule permits wide open debate. I am taking full advantage of that. I am one member of the committee who has some disagreement with the bill as drawn. I will in general debate explain my position and the amendments to be offered.

I can generalize by saying that these amendments pretty much relate to my belief that the manufacturing industry is being favored in this bill and that the bill has been drawn to provide snares and pitfalls to bar the administrator of the Environmental Protection Agency from policing the bill in the manner in which it should be, considering the seriousness of the problem and the dangers that some pesticides present.

Therefore, I will have no objection to the rule whatsoever and look forward to the fact that we do have a wide open rule.

Mr. SISK. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. POAGE. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consolidation of the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

time, the Government is given controls over the manufacture, distribution and use of pesticides. Heretofore, the act has largely been restricted to enforcement of regulations requiring that labels on pesticides set forth the ingredients and instructions as to use.

The bill we have approved is a compromise—compromise legislation which is the product of many months of study and thought by the committee. First, we had several weeks of public hearings during which any one and every one interested in the legislation was given an opportunity to testify. Then followed a period of weeks in which the committee hammered out the bill you have before you today. Before it reached this form it went through three separate committee print versions, each of which was circulated among all interested parties for their comment.

The witnesses who came before the committee included the very top authorities throughout the country in the fields of science, agriculture and conservation—the last group including ecologists and environmentalists. I might point out that among these recognized experts there often were sharp differences of opinion. We had some testify that pesticides had caused the loss of birds and fish in particular instances, but we had equally authoritative witnesses emphatically testify that there was no positive proof that pesticides had caused these deaths. We on the committee do not claim that we know.

Without in any way trying to minicides which will achieve the results which are wanted and which are less hazardous to the environment.

Incidentally, I would like to quote here from a statement made earlier this year by Dr. Norman Bourloug, the Nobel Prize winner who developed the Mexican wheat strain which has increased yields per acre and alleviated hunger in much of the world.

This Nobel Prize winner said:

Today everybody talks about the environment.

He briefly reviewed his own work in the field of ecology, then added:

I'm horrified by what I read and listen to on the radio and television about some of the theories of the purists—who are suddenly going to shut off the use of chemical products that we need to continue the improvement of our agricultural production, and I say it broadly—fertilizers and pesticides. Sometimes we have had accidents with pesticides, but think of the good they have done. Without them where would our agricultural production be today?

We need common sense mixed with these things. But common sense seems to, all too often, go out the window.

Those are the words of a scientist whose standing cannot be questioned.

At this point let me briefly outline the major provisions in this legislation:

First. It establishes a coordinated Federal-State administrative system to carry out the new program. The States are given prime responsibility for the certification and supervision of pesticide applicators. The Federal Government sets the program standards the States must

meet. The new legislation authories the Federal law to preempt State and local laws in regard to all labeling and packaging requirements. However, the States may completely ban the use within their boundaries of restricted pesticides if they want to take such action.

Second. Under this bill, the National Academy of Sciences can be called upon by the EPA to render opinions on relevant scientific issues that arise in the hearing process. The applicant for a license may request the opinion of the Academy.

Third. Pesticides will be grouped into two categories—those for "general use" and those for "restricted use." The latter can be applied only by or under the direct supervision of licensed pesticide applicators.

Fourth. There will be two types of pesticide applicators—commercial and private. The bulk of the private applicators are expected to be farmers. The commercial will include not only agricultural but industrial and commercial types such as termite exterminators working at residences within cities.

Fifth. The EPA administrator may issue experimental permits for the safe testing of new compounds. He is given powers to examine books and records, and take samples of pesticides in the possession of persons covered by the act. The EPA is given enforcement powers to, first, issue warnings, second, bring court injunctions, third, seize pesticides or devices, fourth, impose civil penalties, and, fifth, bring criminal charges when such action is warranted.

Sixth. Indemnities must be paid by the

(Mr. TEAGUE of California asked and was given permission to revise and extend his remarks.)

Mr. TEAGUE of California. Mr. Chairman, I too support this bill. I think it is a remarkably good piece of work in my opinion on the part of the Committee on Agriculture by coming up with a well balanced piece of proposed legislation.

The chemical companies are not entirely happy with it, and every farmer is not entirely happy with it, and some of the environmentalists are somewhat unhappy, but as a whole I believe we compromised the varying points of view in a very satisfactory way.

I would like to take this time to commend our committee staff, I think in this case principally Mr. Hyde Murray, for having put together such a very clear committee report. There is no purpose in my reading that report into the RECORD, but to those of you who are interested in more details I would suggest that you can get most of them in the first five or six pages of the committee report.

I did not know that I was going to be handling this bill today. The gentleman from Oklahoma, (Mr. BELCHER), had expected to, but unfortunately he is out of town at the moment. So I request that any Members who are present who have technical questions should direct them to the gentleman from Texas (Mr. POAGE), or to our expert on this side of the aisle, the gentleman from Iowa (Mr. KYL).

Mr. POAGE. Mr. Chairman, I yield 20 minutes to the gentleman from New York (Mr. Dow).

(Mr. DOW asked and was given permission to revise and extend his remarks.)

us this afternoon is substantially weaker than the present law—the Federal Insecticide, Fungicide, and Rodenticide Act—commonly referred to as FIFRA: and must be amended in several key sections. To describe the problem in another way, the bill takes good aim, it does get the target into focus but, regrettably, it falls short of the mark.

The Dow substitute, so-called, strikes out language which was added in the committee and includes only two areas where I have changed the wording of the bill that came originally from the EPA. All of the amendments I have put in this package affect the administration of the bill and judicial requirements and interpretations. There is nothing in these limited amendments which relate to the user or would directly affect the farmer. The amendments are designed to:

First. Preserve to the States the authority to further restrict the use of general use pesticides. Several States have stricter laws which would be gutted.

Second. Continue the present application of law which allows individual States and persons adversely affected to challenge the Administrator's orders. The committee bill limits court challenges to manufacturers and bars individual States, organizations and others of the public who might be vitally concerned.

Third. Strike language permitting pesticide manufacturers application for registration, a section that is more restrictive than present law. My bill adds language requiring disclosure of data which tends to prove a substantial environmental effect or lack of effect. The committee bill omits this requirement

EPA when the use of a legally produced product is suddenly banned, and the holder of such product may at his option turn such condemned pesticides over to the EPA for disposition.

Seventh. Judicial review of administrative actions is guaranteed.

Eighth. The EPA is given authority to do expanded research and monitoring in order to find new and better methods and materials for controlling pests.

In submitting this bill, the committee is well aware of the fact that it does not entirely please everyone or anyone. There is no partisan division in the committee. Those in opposition base their stands on widely differing viewpoints. Some thought it was too restrictive and some thought it did not go far enough. We carefully weighed all the arguments. Amendments like those which may be offered here on the floor were considered by the committee and rejected.

In summary, may I reiterate that this bill is the product of long days and weeks of study. It represents the view of a majority of both parties on this committee. We feel it is a good bill and can be enacted into law. It will be a long advance in the regulation of toxic pesticides and at the same time should not hamstring the efforts of our producers to meet the needs of the people. It balances the good against the harm inherent in these aids to agriculture. I hope the measure will be approved as reported by the committee.

Mr. TEAGUE of California. Mr. Chairman, I yield myself such time as I may consume.

marks.)

Mr. DOW. Mr. Chairman, this is a quotation from the Washington Post of October 26:

> A heavy concentration of the toxic pesticide dieldrin has been pinpointed by the Patuxent Wildlife Research Center as the probable cause of death of a bald eagle found last year along the Potomac River. . . .

In this day of profound concern for our environment, our anxiety over mercury in fish, DDT in our birds and our bodies and phosphates in our water, protection of the people from economic poisons is a grave problem.

In passing the bill H.R. 10729 today we have a solemn responsibility to deal properly with the use of pesticides, which are sometimes referred to as economic poisons.

The committee's bill and none of my amendments designate or touch on specific poisons. These are left unnamed. The bill is one setting forth the administrative and legal procedures by which Federal oversight is maintained over the sale and use of pesticides so that our people are protected.

Virtually all of my amendments seek to remove from the committee bill the bias that has been woven into it, a bias to favor manufacturers and dealers in pesticides. The bias is evidenced by a series of legal snares set in the bill to hamper, if not actually block, the Administrator of the Environmental Protection Agency as he goes about his task of registering, suspending and approving economic poisons for use as pesticides.

I feel that the bill, H.R. 10729, before and, consequently, requires the Administrator, believe it or not, to assume the burden of proof in any denial of a pesticide application.

Fourth. Preserve the essentiality doctrine used by the Administrator to review registration of pesticides. The policy properly considers the need for the pesticide in the Agency analysis.

Fifth. Strike the section requiring the Federal examiner hearing pesticide suspension cases to submit all relevant questions of scientific fact to a scientific committee. The provision bottles up questions, delays procedure, and excludes the public. It was not in the original administration bill, H.R. 4152.

I want to state, as clearly as I can, that I am not interested in altering the committee language to change use on the farm or to change in any ways the committee procedures creating the machinery for pesticide applicators. I share the committee's concern for the farmer and I am not in the least interested in shutting off the use of chemical products which are needed for agricultural production.

My difficulties with the bill are with the administrative sections, the changes in procedure, and the changes in judicial review. I am joined in this view by a solid phalanx of national organizations which have gone to great lengths to advocate amendment at the points I have described.

These organizations are: Environmental Action, Friends of the Earth, Izaak Walton League, National Audubon Society, National Wildlife Federation,

Sierra Club, Sport Fishing Institute, Wilderness Society, Wildlife Management Institute, and International Association of Game, Fish and Conservation Commissioners.

I believe that the real question here is whether the changes in H.R. 10729 create a reasonable and effective law. With my limited amendments the bill should be supported.

The EPA supported and fought for most of the amendments I have incorporated in the Dow substitute.

I do want to commend the chairman on his very fair method of operating in the committee. All of us know of the several divergent forces at work when the bill was being written. The report, 92–511, acknowledges this on page 4 when it states:

> This bill is in part a result of the growing awareness of possible undesirable effects of pesticides and a realization of the necessity of considering these disadvantages along with the beneficial effects realized through protection of public health and enhancement of agricultural productivity.

The manufacturers have effectively carried the day on the bill as it is written.

To begin with; the data which is to be submitted in support of registration under the committee bill is subject to control by the applicant himself. He has the power to decide what parts of that data should be unavailable to the Administrator, when that official considers any other application for registration, and to the public. This language is seriously limiting on the Administrator and has been generally referred to as the feather-to "following a public hearing, any party at interest." I have stricken the new language and reverted back to the original wording. The change in the wording by the committee bill is clearly an attempt to narrow the scope of review to manufacturers applying for registration and to preclude the intervention of outside parties and even the individual States who have every reason to establish that they are adversely affected.

Arguments have been offered which would lead the layman to believe that the "any party at interest" language is not as narrow as it seems. The reason is based on the general concept of the public interest; I cannot accept this interpretation. Clearly, the precedents on the distinction between these phrases is clear. Standing would be granted to any person adversely affected if the burden could be carried to prove the adverse effect, *Environmental Defense Fund* v. *Hardin*, 428 F. 2d 1093. There are no precedents to give flexibility to the term "any party at interest." Litigation has already dealt directly with the interpretation. The intent of the committee is clear, to narrow the field of those who can challenge the manufacturer, particularly when it is noted that the words are further limited to action after a public hearing which may be sought by the applicant only.

Another section which favors the manufacturer is the change from present EPA doctrine which uses "essentiality" as a criteria when the registration of a pesticide is considered by the Agency. The present policy prescribes that when reregistration is required for persistent pesticides, argument must be included to tee bill requires that all relevant questions of scientific fact be referred to the scientific committee. This in effect subverts the public hearing process and further weakens the public's ability to participate by referring questions away from the hearing examiner. The examiner is nowhere barred from seeking scientific advice whenever it is needed.

I turn now to a very important section of the committee bill which I believe is a significant change from present law. In order to qualify a pesticide for registration it requires only a statement of—

First, the name and address;

Second, the name of the pesticide;

Third, a complete copy of the labeling, statement of all claims, directions for use;

Fourth, if requested—and I emphasize—a full description of tests;

Fifth, the complete formula; and

Sixth, a request that the pesticide be classified for general or restricted use. This procedure fails to sustain the burden of proof which should rest fully on the applicant to prove that the pesticide will perform without substantial adverse effect on the environment.

The consequent placement of this responsibility on the Administrator under section 3(c)(5), the approval mechanism on page 19 of the bill, gives the EPA the burden of finding that the product sought to be registered in environmentally unsound. The shoe should be on the other foot. The responsibility for the protection of our environment is as much a burden of the manufacturer as it is a function of the EPA.

Until proper requirements are spelled

bedding section. It has the effect of making a pesticide registration the equivalent of a patent. It can be argued also that it places the EPA in a restraint of trade action in conjunction with the manufacturer and in violation of the Freedom of Information Act outside the bounds of patent production.

The authority withheld from the States to further restrict the use of general use pesticides is another section in the bill which benefits pesticide manufacturers rather than the States, users, or consumers. Reading from the committee report on page 16 says in explaining this section of State authority that:

> The Committee also intends for the Federal law to preempt the States from restricting or licensing any "general use" pesticide.

I feel that this is a critical section of the bill to amend. Not only would the bill gut State laws such as we have in New York, or those which I understand obtain in other States as, for example, Michigan, Wisconsin, and Massachusetts, but the bill fails to recognize the importance of differing local conditions such as soil, climate, crops, and pest populations.

The narrowing of judicial review discriminates against States and other persons who seek to challenge the Administrator's orders. The original bill proposed by the Administration, H.R. 4152, used the classic words "any person adversely affected" when it designated those parties who would have standing to obtain review of the Administrator's order. In the committee these words were changed show the need for the chemical's use. This policy is valid and it should not be eliminated if the EPA is to be charged with providing some balance in this area. The policy incorporates the caution that scientific documentation is needed in reviewing the uses o fa specific group of chemicals. I can only read these words found in the committee bill to say that caution is unwarranted and that persistent pesticides do not merit special consideration with regard to use. My amendment would strike the "lack of essentiality" language from the bill. What shall EPA do when a suspect poison is offered to perform the same job as a less harmful one already serving the purpose? Shall the EPA play dead and ignore the essentiality?

Proceeding to still another issue, the section on scientific review is a compromise of the original requirements in FIFRA. It provides for the National Academy of Sciences to set up a scientific committee to rule on all relevant questions of scientific fact. This procedure was not in the recent new administration bill since the Administrator had the view that he more properly should be charged with the responsibility for the public hearing.

I have eliminated the section of scientific review to strengthen the hand of the Administrator. Neither the National Academy of Sciences or the Administrator sought this section. I feel that the public hearing should be conducted by the Administrator.

The hearing language in the committee report on page 17 says in explaining this section of State authority that:

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The narrowing of judicial review discriminates against States and other persons who seek to challenge the Administrator's orders. The original bill proposed by the Administration, H.R. 4152, used the classic words "any person adversely affected" when it designated those parties who would have standing to obtain review of the Administrator's order. In the committee these words were changed out in the registration process the burden will not rest on both parties as it must when such a critical factor as our environmental health is at stake.

It should be required in this section that all data which tends to prove a substantial adverse effect on the environment or a lack of any such effect should be submitted by the applicant. The onus should rest on the manufacturer, not be shifted to the Administrator. Because there is no requirement that such data be submitted by the manufacturer at the time of registration, I feel that the section is very weak and that the burden has deed been shifted.

Here I am only seeking to do for pesticide applicants what is already required under food and drug legislation. Under Title 21 of the U.S. Code, Sec. 355(6), new drug applicants must file "full reports of investigations which has been made to show whether or not such drug is safe for use and whether such drug is effective in use." In the same title, sec. 346(d), petitions filed by the applicant seeking a tolerance for pesticides or requesting an exemption must include full reports of investigations on the safety and on the results of tests on the residues. I feel that a similar requirement for pesticide applicants is axiomatic.

There is every reason to require the full disclosure of data on the proposed pesticide at the time of registration in order to give the Administrator of the EPA complete information on which to base his decisions.

The Dow substitute is only aimed at

those critical provisions I feel must be altered if the bill is to have the requisite teeth to be an improvement over present law instead of a retreat. United States production of pesticides and related products last year was 1,034 million pounds. Sales in that year were 881 million pounds, valued at $870 million. This is a tremendous production and demonstrates the very great need for full power to regulate and to disclose information. Pesticide use is on a slight decline, partly because of the generally increased knowledge of some of the effects which usage has on humans, on crops and on the environment. It is reported that about half of U.S. pesticide production was insecticides, among them chlorinated hydrocarbons like DDT, dieldrin, Mirex, organophosphates, carbamates, botanicals, and inorganics like lead arsenate.

The trend is toward using less persistent but more toxic pesticide according to the Environmental Quality Second Annual Report, August 1971. These changes require strong legislation designed to require the fullest participation of the manufacturers in the registration process and the public in the area of public hearings and judicial review. I believe my amendments recognize the basic failings of the bill and provide the House with an opportunity to pass a bill containing stronger language which would be a substantial improvement over FIFRA, and to perform a critical service for our Nation.

Mr. Chairman, I yield back the balance of my time.

Mr. POAGE. Mr. Chairman, I yield 5 minutes to the gentleman from Iowa

the environment is concerned and so far as the health of our people is concerned.

The Chairman mentioned that this bill is in the way of a compromise. I would rather not use the word "compromise" because of the kind of misinterpretations that might be placed on it. The gentleman from New York perhaps suggested one of those connotations. This is a bill which seeks not compromise, but which seeks to give science the time and the tools to seek the truth and the time for us to seek some alternatives to present controls of insect population. This is a balanced thing. It is not a compromise. For example, in one of the matters mentioned by the gentleman from New York we have to give this consideration. It costs $12 to $14 million to perfect, synthesize and test any single pesticide product on the market.

If we make it impossible or totally inadvisable in an economic sense for any manufacturer to do the research which is necessary to find the alternatives, then we have killed the goose that lays the golden egg.

So when we try to preserve a climate in which these manufacturers, who have done most of the research and almost all the research in the past, can operate, we are not operating for the benefit of the manufacturers, but for the benefit of citizens all over this world who stand to profit by the new discoveries and new tests which these manufacturers come forward with in the future.

It is essential that we do try to find some language which will permit the use of chemicals until we find alternate chemicals.

icals—the fungicides, the herbicides, the pesticides—then the cost to the consumer overall would go up dramatically.

So when we say that, as we were not considering the benefit of the manufacturers in seeking new products for control here, so we are not considering the benefit of the farm only when we talk about pesticides and herbicides, but we are also talking about the benefit to the consumers who will be ultimately paying for that which is produced.

I feel these amendments which have been offered by the gentleman from New York are either a case of misconstruing the committee bill or oversimplifying it, and certainly I say again I do not want the implication to stand to any degree that this committee or any Member thereof attempted to produce a bill which was in favor of the chemical manufacturers and to some degree detrimental to the people of the United States otherwise.

Mr. Chairman, here are some basic background facts. About 900,000 species of insects have been classified. The insect population at any given time is probably a billion billion. They have been here for probably 370 million years—100 million years before the earliest mammals. Because insects have jointed, articulated limbs, they are classified technically in the phylum Arthropoda and thus are related to crustaceans—crabs and lobsters—to centipedes and millipedes. Insects have an external skeleton—a body divided into head, thorax, and abdomen—and normally have six legs.

Of interest here is the insect's acute sense of smell. It has been proved that

(Mr. KYL).

(Mr. KYL asked and was given permission to revise and extend his remarks.)

Mr. KYL. Mr. Chairman, in this brief period I would like to give some background of this legislation so that it might appear in the RECORD today. Before I do so, I want to absolutely and totally deny that this committee or the individual speaking, or the Chairman of the committee, or anybody else exhibited any bias favoring the manufacturer of chemicals in the consideration of this language. I do not know how this committee or any committee could have operated more openly, more fairly, more considerably than they did on this piece of legislation.

This is what the committee has tried to do. Mr. Chairman, we do not bring this legislation here permitting some regulated use of pesticides because we hate worms. We bring it to you because we like the people of the United States like to eat apples without worms. They want good products and they want them at a price they can pay. We recognized when we started to write this legislation that all chemicals involved some danger, and that there are relatively safe ways of using those chemicals. This is, after all, a matter of science. We tend to forget that ecological and environmental matters are matters of science. Science does not seek to compromise. What we seek to do in this bill is to provide legal language for our statutes which will permit science to find the truth insofar as

I am indebted to the National Geographic Society for this statement of fact, and it is a very significant statement. That organization says that one-third of all the products being grown or those which have been harvested all over the world are today destroyed by insects of various kinds. That is one-third of all the production and the storage of that which is produced, which is destroyed by insects.

The Department of Agriculture did some figuring for us. They estimate if we did not use herbicides—and this is the other side of this operation—to maintain current agricultural production, farmers would have to expand an additional $209 million to produce the same as we are producing. They would have an added cost of $4.64 per acre treated.

We would have to have 20 million more man-hours to produce the same crops we are producing in the United States and we would have to bring new land into production.

Here is where we get the environmental elements into conflict. Those of us who lived through the Dust Bowl days, when we put into production land which never should have been put into production, know it was one of the really serious environmental factors of all our national life, and if we had to put all this additional land into production to get the same kind of production we get today, we would have an environmental loss.

We go one step further with this consideration. If we did not use these chem-

the male silkworm moth can detect the female's sex attractant at 6.8 miles.

About one-tenth of 1 percent of all insect species are considered harmful to man. Man and insect compete for food. The desert locust, in a very brief period, will accumulate about a million individuals in a medium-size swarm. Since this insect consumes its own weight of vegetation daily, a medium swarm consumes 3,000 tons of food a day. The largest swarm recorded was an 1899 Red Sea invasion. It covered an area of 2,000 square miles and the insects weighed 450,000 tons. Lest you think this is an exaggeration, 1,300 tons of locust eggs were collected, weighed and destroyed on the island of Cyprus. In one summer in Ethiopia, 107,000 tons of cereal crops were consumed by locusts.

INSECT CONTROL

Diversionary tactics have been utilized by primitive and modern civilizations, such tactics including erecting of screens, digging fire trenches, and the use of noise, as well as flooding and baiting. Some civilizations eat the locusts. Locusts are consumed whole, or as flour. Insects can increase rapidly. The Japanese beetle does not cause much harm in its native habitat. A few of the insects came to the United States in 1917 accidentally. The next year it had spread to 3 square miles. The following year 6 square miles, and the following 48 square miles. By that time it was too widespread to be controlled. They became so widespread that use of poisons is impossible. Biological controls were attempted. Every

known natural competitor was imported. However, the Japanese beetle thrives in the United States and its enemies do not.

We have produced insect-resistant crops with some notable success as well as some frustrating failures.

Simple sanitation and the cleaning up of rubbish is an aid to control. Some physical means of control have been developed—again with some success. The yellow "buglites" are an example. More sophisticated means involve use of ultraviolet lights.

One of the most widely heralded controls is sterilization by gamma rays, particularly on the screw-worm and, to a lesser degree, with pink boll-worms. This process has been greatly oversimplified. Dr. Morton Grosser reports the staggering logistics of irradiation:

In California, twin-engined planes cover 125,000 acres of the San Joaquin Valley eight times a month from April to November; in the Southwest program, 150 million male screwworm flies must be raised, sterilized, and released every week.

Chemicals offer the most common control, with insecticides divided most commonly into stomach poisons and contact poisons.

You are familiar wtih the old paris green—arsenic trioxide and copper acetate—and also arsenious oxide, calcium arsenate, lead arsenate, sodium arsenate, and fluorine compound. Contact insecticides are of several varieties:

First. Natural organics such as nicotine, pyrethrum and rotenone.

Second. Inorganics—such as sulfur and lime.

caterpillar. Kopec reasoned that the ligature had prevented the transmission of something from the front end of the caterpillar to the rear, thus blocking normal development. In a series of microsurgical experiments during which he excised and later reimplanted the caterpillar's minute brain, Kopec proved that his hypothesis was correct. He identified the blocked substance as a brain-controlled hormone, a substance secreted by the ductless glands in the anterior part of the catepillar and transmitted through the bloodstream to control the functioning of cells distributed throughout the animal.

Following Kopec's work, Soichi Fukuda, a Japanese biologist, discovered a second hormone, also secreted in the caterpillar's anterior end. Fukuda found that if this hormone was absent the larvae neither molted nor pupated. He named it ecdysone or molting-hormone, after the Greek ekdysis: an escape.

What proved to be the last member of an interacting trio of hormones was detected by V. B. Wigglesworth, a distinguished physiologist working at Cambridge University. The third hormone was present during all immature larval stages, but absent when the insect pupated and metamorphosed into an adult. Wigglesworth traced the hormone to the corpora allata, two tiny glands located near the insect's brain; it was named the juvenile hormone. . . .

Once the natural substance had been analyzed, laboratories began to try developing synthetic hormones. The first stages of this work have shown exceptional promise. The substance must be developed for each insect. The process has the obvious advantage of great specificity. I believe scientists are well agreed that it will take some time to achieve a full-scale commercial application of these apparently nontoxic hormonal insect controls. (The word hormone has its

outright) any "restricted use" (more dangerous) pesticide.

The bill also leaves unchanged any "burden of proof" that chemical companies must meet to satisfy EPA that a new pesticide is both safe and useful.

The committee has recommended limited indemnification for the loss sustained by owners of pesticides registered by the government as being proper and then later banned by the government as being a hazard. We think common justice calls for reimbursement to those persons, such as housewives, farmers and small businesses as well as manufacturers, who acquired or produced these materials in good faith.

In regard to the availability of information, this provision was drafted with the explicit intention of preventing the original research of one company from being pirated by another company. Without such safeguard a company would be reluctant to invest hundreds of thousands or millions of dollars in research to find new and better pesticides, only to have this costly data made available to a competitive company.

Also, the committee bill clearly recognizes the need for an expanded effort to find alternative methods of control. It provides the authority to move as rapidly as possible to an integrated system of biological, cultural, genetic and improved chemical controls.

In summary, H.R. 10729 is not a "farmer's bill." It is not a "manufacturer's bill." Neither is it an "environmentalist's bill." It is rather a mixture of each, a composite of all, and the manifestation of a sincere effort by the Committee on Agriculture to meet the need for reasoned progress in this important area of public concern.

W. R. POAGE,
Chairman, House Committee on Agriculture.

Mr. DOW. Mr. Chairman, will the gentleman yield?

Third. Oils—like kerosene.

Fourth. Fumigants—very dangerous chemical insecticides—which are usually more toxic to man than to insects.

Dichloropropane and dichloroprlopene—soil fumigants.

Hydrogen cyanide, methyl bromide, naphthalene, and paradichlorobenzene—the latter two, types of "mothballs."

Fifth. Repellents—such as creosote.

Sixth. And the one we are most concerned with in this bill—synthetic organic insecticides, with an output of $750 million a year.

Organo phosphates; for example: malathion, parathion, demeton, tetraethyl, pyrophosphate, diazinon, dichlorvos, ronnel, and dicapthon.

Hydrochlorinated carbons; examples: benzene hexachloride, lindane, aldrin, chlordane, dieldrin, endrin, heptachlor, toxaphene.

About 350 million pounds of pesticides are sold annually in the United States. Production in agriculture reportedly increased by 25 percent because of their use and, of course, in some cases complete crop losses are prevented.

Sex attractants are getting serious study, with limited success to date. The newest technique getting significant research is hormonal control. Because this application is fascinating, I quote from the report by Dr. Grosser as follows:

In 1920 the Polish biologist, Stefan Kopec, decided to investigate insect metamorphosis. In one experiment he tied a thin cord tightly around the middle of a Porthetria caterpillar. The caterpillar continued to function, but while its head section molted and pupated normally, its hind end remained an unaltered root in a Greek word, meaning to stir up or set in motion. A hormone is a specific organic product of living cells that, transported by body fluids, produces a specific effect on the activity of cells remote from its point of origin, exerting a stimulatory or excitatory effect on a cellular activity.

Mr. Chairman, I include with my remarks here an excerpt from the Evening Star, Wednesday, November 3, 1971:

FLAWED PESTICIDE BILL

SIR, It has been my observation that The Star does not "go off the deep end" very often. But, in my opinion, that's where you went in your editorial "Flawed Pesticide Bill."

The bill reported by the House Agriculture Committee with solid bipartisan support and the endorsement of the administration is a strong and effective bill.

Certainly the administrator of the Environmental Protection Agency would not have written us that "I believe that all will agree that the sweeping and highly desirable new authorities of the bill will permit a great advance in our efforts to protect health and the environment" if the bill showed "only a token concern for environmental protection" as your editorial suggested.

This bill was developed after extensive public hearings and very thorough committee consideration. During this entire process the views of the environmental community were solicited, heard, debated and in many instances adopted. In several of the points you raised these views were not embraced for what the committee felt were good reasons.

While the limits of time and space do not permit as thorough a rebuttal of the views you have reflected as will be the case during the debate in the House of Representatives, I would like to make it clear that our bill does give states the authority to regulate more strictly (or for that matter to prohibit

Mr. KYL. I yield to the gentleman from New York.

Mr. DOW. Mr. Chairman, in the gentleman's presentation, it seemed to me, he suggested either one of two alternatives, either an extensive use of pesticides or the absence of pesticides. I should like to make it clear to the gentleman that in the amendments I offer, there is no thought that pestcides should be abolished, and I think to pose this as a completely black-and-white situation is possibly misleading.

I am very much in favor of the use of pesticides. The one theme of the amendments I will offer will be to oversee the use of pesticides in a manner that will not be in favor of any group but will be prompt, effective, and in the interest of the farmer and producers as well as the consuming public.

Mr. KYL. Mr. Chairman, if the gentleman had been listening carefully, he would have heard me say that we recognized in the beginning that all chemicals involve some danger, that there are relatively safe ways of using them, and what the committee had to do was to find some means of permitting science to function, while at the same time trying to develop the alternative controls.

(Mr. KYL asked and was given permission to revise and extend his remarks.)

Mr. TEAGUE of California. Mr. Chairman, I yield myself such time as I may consume.

Briefly, Mr. Chairman, I am indebted to the gentleman from Iowa (Mr. KYL) and I am sure the gentleman from Texas

(Mr. POAGE) and other members of the committee also are, for pointing out that this is truly a balanced bill. It is not weighted in any way in favor of the manufacturing chemical companies.

I am one of the ranking members of the committee, and I honestly do not recall ever even being contacted by a chemical company. I do not know how any committee could possibly have worked more fairly and impartially in producing the results we did.

Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

Mr. POAGE. Mr. Chairman, I have no further requests for time, and I yield back the remainder of my time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

H.R. 10729

Be it enacted by the Senate and House of Representatvies of the United States of America in Congress assembled, That this Act may be cited as the "Federal Environmental Pesticide Control Act of 1971".

Mr. POAGE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose, and the Speaker pro tempore (Mr. BOGGS) having assumed the chair, Mr. HUNGATE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 10729) to amend the Federal Insecticde, Fungicide, and Rodenticide Act, and for other purposes, had come to no resolution thereon.

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FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1971

Mr. POAGE. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from Texas.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill H.R. 10729, with Mr. HUNGATE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. When the Committee rose on yesterday, the Clerk had read through the first section, ending on page 1, line 4 of the bill.

The Clerk will read.

The Clerk read as follows:

AMENDMENTS TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

SECTION 2. The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) is amended to read as follows:

"SEC. 1. SHORT TITLE AND TABLE OF CONTENTS.

"(a) SHORT TITLE.—This Act may be cited as the 'Federal Insecticide, Fungicide, and Rodenticide Act'.

"(b) TABLE OF CONTENTS.—

"SECTION 1. Short title and table of contents.

"(a) Short title.
"(b) Table of contents.
"SEC. 2. Definitions.
"(a) Active ingredient.
"(b) Administrator.
"(c) Adulterated.
"(d) Animal.
"(e) Certified pesticide applicator, etc.
"(1) Certified pesticide applicator.
"(2) Private pesticide applicator.
"(3) Commercial pesticide applicator.
"(f) Defoliant.
"(g) Desiccant.
"(h) Device.
"(i) District court.
"(j) Environment.
"(k) Fungus.
"(l) Imminent hazard.
"(m) Inert ingredient.
"(n) Ingredient statement.
"(o) Insect.
"(p) Label and labeling.
"(1) Label.
"(2) Labeling.
"(q) Misbranded.
"(r) Nematode.
"(s) Person.
"(t) Pest.
"(u) Pesticide.
"(v) Plant regulator.
"(w) Producer and produce.
"(x) Protect health and the environment.
"(y) Registrant.
"(z) Registration.
"(aa) State.
"(bb) Substantial adverse effects on the environment.
"(cc) Weed.
"SEC. 3. Registration of pesticides.
"(a) Requirement.
"(b) Exemptions.
"(c) Procedure for registration.
"(1) Statement required.
"(2) Data in support of registration.
"(3) Time for acting with respect to application.
"(4) Notice of application.
"(5) Approval of registration.
"(6) Denial of registration.
"(d) Classification of pesticides.
"(1) Classification for general use, restricted use, or both.
"(2) Change in classification.
"(e) Products with same formulation and claims.
"(f) Miscellaneous.
"(1) Effect of change of labeling or formulation.
"(2) Registration not a defense.
"(3) Authority to consult other Federal agencies.
"Sec. 4. Use of restricted use pesticide; certified applicators.
"(a) Certification procedure.
"(1) Federal certification.
"(2) State certification.
"(b) State plans.
"Sec. 5. Experimental use permits.
"(a) Issuance.
"(b) Temporary tolerance level.
"(c) Use under permit.
"(d) Studies.
"(e) Revocation.
"Sec. 6. Administrative review; suspension.
"(a) Cancellation after five years.
"(1) Procedure.
"(2) Information.
"(b) Cancellation and change in classification.
"(c) Suspension.
"(1) Order.
"(2) Duration of order.
"(3) Judicial review.
"(d) Public hearings and scientific review.
"(e) Judicial review.
"Sec. 7. Registration of establishments.
"(a) Requirement.
"(b) Registration.
"(c) Information required.
"(d) Confidential records and information.
"Sec. 8. Books and records.
"(a) Requirement.
"(b) Inspection.
"Sec. 9. Inspection of establishments, etc.
"(a) In general.
"(b) Warrants.
"(c) Enforcement.
"(1) Certification of facts to Attorney General.
"(2) Notice not required.
"(3) Warning notices.
"Sec. 10. Protection of trade secrets, etc.
"(a) In general.
"(b) Disclosure.

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"Sec. 11. Standards applicable to pesticide applicators.
"(a) In general.
"(b) Separate standards.
"Sec. 12. Unlawful acts.
"(a) In general.
"(b) Exemptions.
"Sec. 13. Stop sale, use, removal, and seizure.
"(a) Stop sale, etc., orders.
"(b) Seizure.
"(c) Disposition after condemnation.
"(d) Court costs, etc.
"Sec. 14. Penalties.
"(a) Civil penalties.
"(1) In general.
"(2) Private pesticide applicator.
"(3) Hearing.
"(4) References to Attorney General.
"(b) Criminal penalties.
"(1) In general.
"(2) Private pesticide applicator.
"(3) Disclosure of information.
"(4) Act of officers, agents, etc.
"Sec. 15. Indemnities.
"(a) Requirement.
"(b) Amount of payment.
"(1) In general.
"(2) Special rule.
"Sec. 16. Administrative procedure; judicial review.
"(a) Application of Administrative Procedure Act.
"(b) Judicial review.
"(c) Jurisdiction of district courts.
"(d) Notice of judgments.
"Sec. 17. Imports and exports.
"(a) Pesticides and devices intended for export.
"(b) Cancellation notices furnished to foreign governments.
"(c) Importation of pesticides and devices.
"(d) Cooperation in international efforts.
"(e) Regulations.
"Sec. 18. Exemption of Federal agencies.
"Sec. 19. Disposal and transportation.
"(a) Procedures.

"(1) its strength or purity falls below the professed standard or quality as expressed on its labeling under which it is sold;

"(2) any substance has been substituted wholly or in part for the pesticide; or

"(3) any valuable constituent of the pesticide has been wholly or in part abstracted.

"(d) ANIMAL.—The term 'animal' means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

"(e) CERTIFIED PESTICIDE APPLICATOR, ETC.—

"(1) CERTIFIED PESTICIDE APPLICATOR.—The term 'certified pesticide applicator' means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

"(2) PRIVATE PESTICIDE APPLICATOR.—The term 'private pesticide applicator' means a certified pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

"(3) COMMERCIAL PESTICIDE APPLICATOR.—The term 'commercial pesticide applicator' means a certified pesticide applicator (whether or not he is a private pesticide applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

"(f) DEFOLIANT.—The term 'defoliant' means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"(g) DESICCANT.—The term 'desiccant' means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"(2) if all the uses of the pesticide are classified for general use, then either—

"(i) the total percentage of all inert ingredients, and of all active ingredients, in the pesticide; or

"(ii) the percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and if all the uses of the pesticide are not classified for general use, then the information required under (ii); and

"(3) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

"(o) INSECT.—The term 'insect' means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders mites, ticks, centipedes, and wood lice.

"(p) LABEL AND LABELING.—

"(1) LABEL.—The term 'label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

"(2) LABELING.—The term 'labeling' means all labels and all other written, printed, or graphic matter—

"(A) accompanying the pesticide or device at any time; or

"(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

"(b) Advice to Secretary of Transportation.
"Sec. 20. Research and monitoring.
"(a) Research.
"(b) National monitoring plan.
"(c) Monitoring.
"Sec. 21. Solicitation of public comments.
"Sec. 22. Delegation and cooperation.
"Sec. 23. State cooperation, aid, and training.
"Sec. 24. Authority of States and political subdivisions.
"(a) Cooperative agreements.
"(b) Contracts for training.
"Sec. 25. Authority of Administrator.
"(a) Regulations.
"(b) Exemption of pesticides.
"(c) Other authority.
"Sec. 26. Severability.
"Sec. 27. Authorization for appropriation.

"SEC. 2. DEFINITIONS.

"For purposes of this Act—

"(a) ACTIVE INGREDIENT.—The term 'active ingredient' means—

"(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

"(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

"(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

"(4) in the case of a desicoant, an ingredient which will artificially accelerate the drying of plant tissue.

"(b) ADMINISTRATOR.—The term "Administrator' means the Administrator of the Environmental Protection Agency.

"(c) ADULTERATED.—The term 'adulterated' applies to any pesticide if:

"(h) DEVICE.—The term 'device' means any instrument or contrivance (other than a firearm) which (1) is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals), and (2) is within a class of devices in respect of which the Administrator has made the determination referred to in section 25(c)(4).

"(i) DISTRICT COURT.—The term 'district court' means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

"(j) ENVIRONMENT.—The term 'environment' includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

"(k) FUNGUS.—The term 'fungus' means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

"(l) IMMINENT HAZARD.—The term 'imminent hazard' means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would likely result in substantial adverse effects on the environment.

"(m) INERT INGREDIENT.—The term 'inert ingredient' means an ingredient which is not active.

"(n) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement which contains—

"(1) the name of each active ingredient in the pesticide;

"(q) MISBRANDED.—

"(1) A pesticide or device subject to this Act is misbranded if—

"(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

"(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to seciton 25(c)(3);

"(C) it is an imitation of, or is offered for sale under the name of, another pesticide or device;

"(D) its labeling does not bear the registration number assigned under section 7 to each establishment in which it was produced;

"(E) any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

"(F) if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment; or

"(G) if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment.

"(2) A pesticide is misbranded if—

"(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside con-

tainer or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if:

"(i) the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

"(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

"(B) the labeling does not contain a statement of the use classification under which the product is registered;

"(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

("i) the name and address of the producer, registrant, or person for whom produced;

"(ii) the name, brand, or trademark under which the pesticide is sold;

"(iii) the net weight or measure of the content: *Provided*, That the Administrator may permit reasonable variations; and

"(iv) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification; and

"(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this Act—

"(i) the skull and crossbones;

"(ii) the word 'poison' prominently in red

'producer' means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term 'produce' means to manufacture, prepare, compound, propagate, or process any pesticide or device.

"(x) PROTECT HEALTH AND THE ENVIRONMENT.—The terms 'protect health and the environment' and 'protection of health and the environment' means protection against any injury to man and protection against any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

"(y) REGISTRANT.—The term 'registrant' means a person who has registered any pesticade pursuant to the provisions of this Act.

"(z) REGISTRATION.—The term 'registration' includes reregistration.

"(aa) STATE.—The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

"(bb) SUBSTANTIAL ADVERSE EFFECTS ON THE ENVIRONMENT.—The term 'substantial adverse effects on the environment' means any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

"(cc) WEED.—The term 'weed' means any plant which grows where not wanted.

"SEC. 3. REGISTRATION OF PESTICIDES.

"(a) REQUIREMENT.—Except as otherwise provided by this Act, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person any pesticide which is not registered with the Administrator.

"(b) EXEMPTIONS.—A pesticide which is not registered with the Administrator may be transferred if—

as provided by subsection (c)(1)(D) of this section and section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.

"(3) TIME FOR ACTING WITH RESPECT TO APPLICATION.—The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the Act in accordance with paragraph (6).

"(4) NOTICE OF APPLICATION.—The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs (1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

"(5) APPROVAL OF REGISTRATION.—The Administrator shall register a pesticide if he determines that, when considered with any restrictions imposed under subsection (d)—

"(A) its composition is such as to warrant the proposed claims for it;

"(B) its labeling and other material required to be submitted comply with the requirements of this Act; and

"(C) it will perform its intended function without substantial adverse effects on the environment.

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide.

"(6) DENIAL OF REGISTRATION.—If the Administrator determines that the requirements

on a background of distinctly contrasting color; and

"(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

"(r) NEMATODE.—The term 'nematode' means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

"(s) PERSON.—The term 'person' means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

"(t) PEST.—The term 'pest' means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plan or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

"(u) PESTICIDE.—The term 'pesticide' means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.".

"(v) PLANT REGULATOR.—The term 'plant regulator' means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

"(w) PRODUCER AND PRODUCE.—The term

"(1) the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or

"(2) the transfer is pursuant to and in accordance with the requirements of an experimental use permit.

"(c) PROCEDURE FOR REGISTRATION.—

"(1) STATEMENT REQUIRED.—Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—

"(A) the name and address of the applicant and of any other person whose name will appear on the labeling;

"(B) the name of the pesticide;

"(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use;

"(D) if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration;

"(E) the complete formula of the pesticide; and

"(F) a request that the pesticide be classified for general use, for restricted use, or for both.

"(2) DATA IN SUPPORT OF REGISTRATION.—The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If thereafter he requires any additional kind of information he shall permit sufficient time for applicants to obtain such additional information. Except of paragraph (5) for registration are not satisfied, he shall notify the applicant for registration of his determination and of his reasons (including the factual basis) therefor, and that, unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator will refuse to register the pesticide. Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefor. Upon such notification, the applicant for registration shall have the same remedies as provided for the registrant in section 6.

"(d) CLASSIFICATION OF PESTICIDES.—

"(1) CLASSIFICATION FOR GENERAL USE, RESTRICTED USE, OR BOTH.—

"(A) As a part of the registration of a pesticide the Administrator shall classify it as being for general use or for restricted use, provided that if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for restricted use, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses.

"(B) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, will not cause substantial adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies for general use.

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"(C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, may cause, without additional regulatory restrictions, substantial adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use.

(i) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified pesticide applicator.

(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause substantial adverse effect on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified pesticide applicator, or subject to such other restrictions as the Administrator may determine.

"(2) CHANGE IN CLASSIFICATION.—If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent substantial adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least 30 days before making the change and shall publish the proposed change in the Federal Register.

"(e) PRODUCTS WITH SAME FORMULATION AND CLAIMS.—Products which have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a

"(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

"(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

"(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

"(E) contains satisfactory assurances that State standards for the certification of pesticide applicators conform with those standards prescribed by the Administrator under paragraph (1).

"(b) STATE PLANS.—If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify pesticide applicators with respect to such State.

"SEC. 5. EXPERIMENTAL USE PERMITS.

"(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

"(b) TEMPORARY TOLERANCE LEVEL.—If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

"(c) USE UNDER PERMIT.—Use of a pesticide under an experimental use permit shall

cide should be changed, he shall notify the registrant of such notice, the registrant may, within 30 days (A) registration or change the classification and of his reasons (including the factual basis) therefor in writing. Upon receipt of such notice, the registrant may, within 30 days (A) make the necessary corrections and so notify the Administrator, or (B) file objections and request a public hearing. If the registrant does not take any such action, the notice shall, at the end of 30 days from its receipt by the registrant, constitute a final order of cancellation or change in classification. If the registrant files objections and requests a public hearing, the order of cancellation or change in classification may only be issued after completion of such proceeding.

"(c) SUSPENSION.—

"(1) ORDER.—If the Administrator determines that such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings, he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless at the same time the Administrator issues notices of his intention to cancel the registration of the pesticide. Any remedy elected by the registrant under section 6(a) shall be held as expeditiously as possible.

"(2) DURATION OF ORDER.—Any suspension order shall remain in effect only until 90 days after the completion of the administrative remedies provided for under section 6(a) or until the Administrator issues his final order either canceling or denying cancellation of the registration, whichever is sooner.

"(3) JUDICIAL REVIEW.—Any order of suspension shall be subject to immediate review in any actions by the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. This action may be maintained simulta-

designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added by supplemental statements.

"(f) MISCELLANEOUS.—

"(1) EFFECT OF CHANGE OF LABELING OR FORMULATION.—If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this Act.

"(2) REGISTRATION NOT A DEFENSE.—In no event shall registration of an article be construed as a defense for the commission of any offense under this Act.

"(3) AUTHORITY TO CONSULT OTHER FEDERAL AGENCIES.—In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.

"SEC. 4. USE OF RESTRICTED USE PESTICIDE; CERTIFIED APPLICATORS.

"(a) CERTIFICATION PROCEDURE.—

"(1) FEDERAL CERTIFICATION.—Subject to paragraph (2), the Administrator shall prescribe standards for the certification of pesticide applicators. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or of the use and handling of the pesticide or class of pesticides covered by such individual's certification.

"(2) STATE CERTIFICATION.—If any State, at any time, desires to certify pesticide applicators, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—

"(A) designates a State agency as the agency responsible for administering the plan throughout the State;

be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

"(d) STUDIES.—When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause substantial adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

"(e) REVOCATION.—The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid substantial adverse effects on the environment.

"SEC. 6. ADMINISTRATIVE REVIEW; SUSPENSION

"(a) CANCELLATION AFTER FIVE YEARS.—

"(1) PROCEDURE.—The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date of its registration (or at the end of any five-year period thereafter) unless the registrant, before the end of such period, requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect.

"(2) INFORMATION.—If at any time after the registration of a pesticide the registrant has additional factual information regarding substantial adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

"(b) CANCELLATION AND CHANGE IN CLASSIFICATION.—If the Administrator determines that registration of a pesticide should be canceled or that the classification of a pesti-

neously with any administrative review proceeding under section 6.

"(d) SCIENTIFIC REVIEW.—Whenever application for registration is refused or a registration is cancelled or suspended, the registrant within 30 days after service of notice of such action may file a petition requesting that the matter

"(d) PUBLIC HEARING AND SCIENTIFIC REVIEW.—In the event a hearing is requested pursuant to subsection (a) or (d) or determined upon by the Administrator pursuant to subsection (d), such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the objections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upoon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpena to compel testimony from any person. Upon the request of any party or when in the hearing officer's judgment it is necessary or desirable, the hearing officer shall refer to a Committee of the National Academy of Sciences all relevant questions of scientific fact arising in the course of the public hearing. The Committee of the National Academy of Sciences shall report in writing to the officer within 60 days on these questions of sicentific fact. The report shall be made public and shall be considered as part of the hearing record. The Administrator shall enter into appropriate arrangements with the National Academy of Sciences to assure an objective and competent scientific review of the questions presented to Committees of the Academy and to provide such other scientific advisory services as may be required by the Administrator for carrying out the purposes of this Act. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civic Pro-

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cedure in making any order for the protection of the witness and shall order the payment of reasonable fees and expenses as a condition to requiring his testimony. On contest, the subpena may be enforced by an appropriate United States District Court in accordance with the principles stated herein and the Administrative Procedure Act. As soon as practicable after completion of the hearing but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or shall issue an order either cancelling the registration, changing the classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantal evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

"(e) JUDICIAL REVIEW.—Final orders of the Administrator under this section shall be subject to judicial review pursuant to section 16.

"SEC. 7. REGISTRATION OF ESTABLISHMENTS.

"(a) REQUIREMENT.—No person shall produce any pesticide or device subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

"(b) REGISTRATION.—Whenever the Administrator receives an application under subsection (a), he shall register the establishment and assign it an establishment number.

"(c) INFORMATION REQUIRED.—

"(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy: (1) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; or (2) in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or devices. Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

"SEC. 9. INSPECTION OF ESTABLISHMENTS, ETC.

"(a) IN GENERAL.—For purposes of enforcing the provisions of this Act, officers or employees duly designated by the Administrator are authorized—

"(1) to enter, at reasonable times, any establishment; and

"(2) to inspect and obtain samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this Act have been violated by such person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 16, when the Administrator determines that such action will be sufficient to effectuate the purposes of this Act.

"(2) NOTICE NOT REQUIRED.—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

"(3) WARNING NOTICES.—Nothing in this Act shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

"SEC. 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.

"(a) IN GENERAL.—In submitting data required by this Act, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information, and (2) submit such marked material separately from other material required to be submitted under this Act.

"(b) DISCLOSURE.—Notwithstanding any other provision of this Act, the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that when necessary to carry out the provisions of this Act, in-

of pesticides and devices—

"(A) which he is currently producing;

"(B) which he has produced during the past year; and

"(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

"(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 13, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

"(d) CONFIDENTIAL RECORDS AND INFORMATION.—Any information submitted to the Administrator pursuant to subsection (c) shall be considered confidential and shall be subject to the provisions of section 10.

"SEC. 8. BOOKS AND RECORDS.

"(a) REQUIREMENT.—The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this Act. No records required under this subsection shall extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

"(b) INSPECTION.—For the purposes of enforcing the provisions of this Act, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this Act, shall, upon request If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

"(b) WARRANTS.—For purposes of enforcing the provisions of this Act and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this Act have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

"(1) entry for the purpose of this section;

"(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any illegal pesticide or device found in the establishment and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

"(3) the seizure of any pesticide or device which is in violation of this Act.

"(c) ENFORCEMENT.—

"(1) CERTIFICATION OF FACTS TO ATTORNEY GENERAL.—The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this Act. If it shall appear from any such examination that they fail to comply with the requirements of this Act, the Administrator shall cause notice to be given

formation relating to formulas of products acquired by authorization of this Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

"SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS.

"(a) IN GENERAL.—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private pesticide applicator to maintain any records or file any reports or other documents.

"(b) SEPARATE STANDARDS.—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators.

"SEC. 12. UNLAWFUL ACTS.

"(a) IN GENERAL.—

"(1) Except as provided by subsection (b), it shall be unlawful for any person in any State to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—

"(A) any pesticide which is not registered under section 3;

"(B) any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3;

"(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3;

"(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5);

"(E) any pesticide which is adulterated or misbranded; or

"(F) any device which is misbranded.

"(2) It shall be unlawful for any person—

"(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act;

"(B) to refuse to keep any records required pursuant to section 8, or to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 9;

"(C) to give a guaranty or understanding provided for in subsection (b) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name and address, the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

"(D) to use for his own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this Act which is confidential under this Act;

"(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;

"(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder;

"(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

"(3) any public official while engaged in the performance of his official duties;

"(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

"(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to receive any benefit in pest control from its use.

"SEC. 13. STOP SALE, USE, REMOVAL AND SEIZURE.

"(a) STOP SALE, ETC., ORDERS.—Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that suh cpesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide or device has been canceled by a final order or has been suspended, the Administrator may issue a written or printed 'stop sale, use, or removal' order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use, or remove the pesticide or device described in the order except in accordance with the provisions of the order.

"(b) SEIZURE.—Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws of any State in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

"(d) COURT COSTS, ETC.—When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

"SEC. 14. PENALTIES.

"(a) CIVIL PENALTIES.—

"(1) IN GENERAL.—Any registrant, commercial pesticide applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

"(2) PRIVATE PESTICIDE APPLICATOR.—Any private pesticide applicator who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense.

"(3) HEARING.—No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the

"(G) to use any registered pesticide in a manner inconsistent with its labeling;

"(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

"(I) to violate any order issued under section 13;

"(J) to violate any suspension order issued under section 6;

"(K) to violate any cancellation of registration of a pesticide under section 6;

"(L) who is a producer to violate any of the provisions of section 7;

"(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to section 8, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this Act;

"(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act; or

"(O) to add any substance to, or take any substance from any pesticide in a manner that may defeat the purpose of this Act.

"(b) EXEMPTIONS.—The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—

"(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provision of this Act;

from a foreign country, shall be liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if—

"(1) in the case of a pesticide—

"(A) it is adulterated or misbranded;

"(B) it is not registered pursuant to the provisions of section 3;

"(C) its labeling fails to bear the information required by this Act;

"(D) it is not colored or discolored and such coloring or discoloring is required under this Act; or

"(E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

"(2) in the case of a device, it is misbranded; or

"(3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this Act and as directed by the labeling, it nevertheless causes substantial adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

"(c) DISPOSITION AFTER CONDEMNATION.—If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this Act or the laws of the jurisdiction in which it is sold: *Provided,* That upon the payments of the costs of the condemnation

violation.

"(4) REFERENCES TO ATTORNEY GENERAL.—In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

"(b) CRIMINAL PENALTIES.—

"(1) IN GENERAL.—Any registrant, commercial pesticide applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(2) PRIVATE PESTICIDE APPLICATOR.—Any private pesticide applicator who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

"(3) DISCLOSURE OF INFORMATION.—Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.

"(4) ACTS OF OFFICERS, AGENTS, ETC.—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

"SEC. 15. INDEMNITIES

"(a) REQUIREMENT.—If—

"(1) the Administrator notifies a registrant that he has suspended the registration

of a pesticide because such action is necessary to prevent an imminent hazard;

"(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

"(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration,

the Administrator shall make an indemnity payment to such person.

"(b) AMOUNT OF PAYMENT.—

"(1) IN GENERAL.—The amount of the indemnity payment under subsection (a) to any person shall be determined on the basis of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a)(1); except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a)(1).

"(2) SPECIAL RULE.—Notwithstanding any other provision of this Act, the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner.

"SEC. 16. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW.

"(a) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—Except as provided by subsection (b), subchapter II of chapter 5 of title 5 of the United States Code (sec. 551 and following, relating to administrative procedure), and chapter 7 of title 5 of the United States Code (sec. 701 and following, relating to judicial review) apply in respect of rules, rule making, orders, adjudication, licensing, enforce, and to prevent and restrain violations of, this Act.

"(d) NOTICE OF JUDGMENTS.—The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

"SEC. 17. IMPORTS AND EXPORTS

"(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—Notwithstanding any other provision of this Act, no pesticide or device shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

"(b) CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.—Whenever a cancellation of the registration of a pesticide becomes effective, the Administrator shall transmit through the State Department copies of each notice of cancellation of a registration of a pesticide to the governments of other countries and to appropriate international agencies.

"(c) IMPORTATION OF PESTICIDES AND DEVICES.—The Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon his request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions set forth in this Act, or is otherwise injurious to health or the environment, the pesticide or device may be refused delivery to the consignee and shall cause the destruction of any pestciide or device refused delivery which shall not be exported by the consignee within 90 days form the date of notice of such refusal under such regulations as the Secretary of and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 6(c) if requested by the owner of the pesticide.

"(b) ADVICE TO SECRETARY OF TRANSPORTATION.—The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his function relating to the transportation of hazardous materials under the Department of Transportation Act (49 U.S.C. 1657), the Transportation of Explosives Act (18 U.S.C. 831–835), the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430, 1472 H), and the Hazardous Cargo Act (46 U.S.C. 170, 375, 416).

"SEC. 20. RESEARCH AND MONITORING.

"(a) RESEARCH.—The Administrator shall undertake research, including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this Act, and he shall give priority to research to develop biologically integrated alternatives for pest control. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.

"(b) NATIONAL MONITORING PLAN.—The Administrator shall formulate and periodically revise, in cooperation with other Federal, State, or local agencies, a national plan for monitoring pesticides.

"(c) MONITORING.—The Administrator shall undertake such monitoring activities, including but not limited to monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.

"SEC. 21. SOLICITATION OF PUBLIC COMMENTS.

"In addition to any other authority relat-

sanctions, agency proceedings, and agency actions (as such terms are used in subchapter II of chapter 5 and in chapter 7 of title 5 of the United States Code).

"(b) JUDICIAL REVIEW.—In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any party at interest may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.

"(c) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States are vested with jurisdiction specifically to the Treasury may prescribe: *Provided,* That the Secretary of the Treasury may deliver to the consignee such pesticide or device pending examination and decision in the of the full invoice value of such pesticide or matter on execution of bond for the amount device, together with the duty thereon, and on refusal to return such pesticide or device for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further,* That all charges for storage, cartage, and labor on pesticide or device which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

"(e) REGULATIONS.—The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of this section.

"SEC. 18. EXEMPTION OF FEDERAL AGENCIES.

"The President by executive order may exempt any Federal Agency from any provision or all provisions of this Act if he determines that emergency conditions exist which require such exemption.

"SEC. 19. DISPOSAL AND TRANSPORTATION.

"(a) PROCEDURES.—The Administrator shall after consultation with other interested Federal agencies, establish procedures and reguations for the disposal or storage of packages ing to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

"SEC. 22. DELEGATION AND COOPERATION.

"(a) DELEGATION.—All authority vested in the Administrator by virtue of the provisions of this Act may with like force and effect be executed by such employees of the Environmental Protection Agency as the Administrator may designate for the purpose.

"(b) COOPERATION.—The Administrator shall cooperate with the Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof in carrying out the provisions of this Act, and in securing uniformity of regulations.

"SEC. 23. STATE COOPERATION, AID, AND TRAINING.

"(a) COOPERATIVE AGREEMENTS.—The Administrator is authorized to enter into cooperative agreements with States—

"(1) to delegate to any State the authority to cooperate in the enforcement of the Act through the use of its personnel or facilities, to train personnel of the State to cooperate in the enforcement of this Act, and to assist States in implementing cooperative enforcement programs through grants-in-aid; and

"(2) to assist State agencies in developing and administering State programs for training and certification of pesticide applicators consistent with the standards which he prescribes.

"(b) CONTRACTS FOR TRAINING.—In addition, the Administrator is authorized to en-

ter into contracts with Federal or State agencies for the purpose of encouraging the training of certified pesticide applicators.

"SEC. 24. AUTHORITY OF STATES.

"(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act or restrict by license or permit the use of a pesticide registered for general use;

"(b) such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required pursuant to this Act; and

"(c) a State may assist the Administrator in the registration of pesticides formulated for intrastate distribution to meet specific local needs if that State is certified by the Administrator as capable of exercising adequate control.

"SEC. 25. AUTHORITY OF ADMINISTRATOR.

"(a) REGULATIONS.—The Administrator is authorized to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides.

"(b) EXEMPTION OF PESTICIDES.—The Administrator may exempt from the requirements of this Act by regulation any pesticide which he determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

"(c) OTHER AUTHORITY.—The Administrator, after notice and opportunity for hearing, is authorized—

"(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other microorganisms on or in living man or other living animals) which is injurious to health or the environment;

"(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man, which determination shall take into account the scientific evidence available to him concerning such factors as the acute, chronic, delayed, and synergistic effects on man and environment of such substance or substances and the nature and quantity of the carrier and other ingredients of the pesticide concerned; and

"(3) to determine whether pesticides are being advertised, sold, or distributed contrary to the provisions of this Act, together with recommendations to the Attorney General as to the pesticides with respect to which proceedings for the institution of penalties or seizures should be instituted and the reasons for his recommendations.

"SEC. 26. AUTHORIZATION FOR APPROPRIATIONS.

"There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1976, and the fiscal year ending June 30, 1977. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1978, and the fiscal year ending June 30, 1979. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1980, and the fiscal year ending June 30, 1981. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1982, and the fiscal year ending June 30, 1983. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1984, and the fiscal year ending June 30, 1985. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1986, and the fiscal year ending June 30, 1987. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1988, and the fiscal year ending June 30, 1989. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1990, and the fiscal year ending June 30, 1991. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1992, and the fiscal year ending June 30, 1993. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1994, and the fiscal year ending June 30, 1995. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1996, and the fiscal year ending June 30, 1997. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 1998, and the fiscal year ending June 30, 1999. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2000, and the fiscal year ending June 30, 2001. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2002, and the fiscal year ending June 30, 2003. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2004, and the fiscal year ending June 30, 2005. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2006, and the fiscal year ending June 30, 2007. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2008, and the fiscal year ending June 30, 2009. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2010, and the fiscal year ending June 30, 2011. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2012, and the fiscal year ending June 30, 2013. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2014, and the fiscal year ending June 30, 2015. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2016, and the fiscal year ending June 30, 2017. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2018, and the fiscal year ending June 30, 2019. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2020, and the fiscal year ending June 30, 2021. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2022, and the fiscal year ending June 30, 2023. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2024, and the fiscal year ending June 30, 2025. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2026, and the fiscal year ending June 30, 2027. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2028, and the fiscal year ending June 30, 2029. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2030, and the fiscal year ending June 30, 2031. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2032, and the fiscal year ending June 30, 2033. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2034, and the fiscal year ending June 30, 2035. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2036, and the fiscal year ending June 30, 2037. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2038, and the fiscal year ending June 30, 2039. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2040, and the fiscal year ending June 30, 2041. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2042, and the fiscal year ending June 30, 2043. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2044, and the fiscal year ending June 30, 2045. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2046, and the fiscal year ending June 30, 2047. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2048, and the fiscal year ending June 30, 2049. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2050, and the fiscal year ending June 30, 2051. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2052, and the fiscal year ending June 30, 2053. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2054, and the fiscal year ending June 30, 2055. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2056, and the fiscal year ending June 30, 2057. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2058, and the fiscal year ending June 30, 2059. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2060, and the fiscal year ending June 30, 2061. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2062, and the fiscal year ending June 30, 2063. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2064, and the fiscal year ending June 30, 2065. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2066, and the fiscal year ending June 30, 2067. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2068, and the fiscal year ending June 30, 2069. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2070, and the fiscal year ending June 30, 2071. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2072, and the fiscal year ending June 30, 2073. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2074, and the fiscal year ending June 30, 2075. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2076, and the fiscal year ending June 30, 2077. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2078, and the fiscal year ending June 30, 2079. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2080, and the fiscal year ending June 30, 2081. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2082, and the fiscal year ending June 30, 2083. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2084, and the fiscal year ending June 30, 2085. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2086, and the fiscal year ending June 30, 2087. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2088, and the fiscal year ending June 30, 2089. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2090, and the fiscal year ending June 30, 2091. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2092, and the fiscal year ending June 30, 2093. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2094, and the fiscal year ending June 30, 2095. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2096, and the fiscal year ending June 30, 2097. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2098, and the fiscal year ending June 30, 2099. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2100, and the fiscal year ending June 30, 2101. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2102, and the fiscal year ending June 30, 2103. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2104, and the fiscal year ending June 30, 2105. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2106, and the fiscal year ending June 30, 2107. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2108, and the fiscal year ending June 30, 2109. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2110, and the fiscal year ending June 30, 2111. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2112, and the fiscal year ending June 30, 2113. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2114, and the fiscal year ending June 30, 2115. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2116, and the fiscal year ending June 30, 2117. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2118, and the fiscal year ending June 30, 2119. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2120, and the fiscal year ending June 30, 2121. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2122, and the fiscal year ending June 30, 2123. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2124, and the fiscal year ending June 30, 2125. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2126, and the fiscal year ending June 30, 2127. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2128, and the fiscal year ending June 30, 2129. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2130, and the fiscal year ending June 30, 2131. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2132, and the fiscal year ending June 30, 2133. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2134, and the fiscal year ending June 30, 2135. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2136, and the fiscal year ending June 30, 2137. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2138, and the fiscal year ending June 30, 2139. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2140, and the fiscal year ending June 30, 2141. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2142, and the fiscal year ending June 30, 2143. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2144, and the fiscal year ending June 30, 2145. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2146, and the fiscal year ending June 30, 2147. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2148, and the fiscal year ending June 30, 2149. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2150, and the fiscal year ending June 30, 2151. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2152, and the fiscal year ending June 30, 2153. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2154, and the fiscal year ending June 30, 2155. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2156, and the fiscal year ending June 30, 2157. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2158, and the fiscal year ending June 30, 2159. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2160, and the fiscal year ending June 30, 2161. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2162, and the fiscal year ending June 30, 2163. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2164, and the fiscal year ending June 30, 2165. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2166, and the fiscal year ending June 30, 2167. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2168, and the fiscal year ending June 30, 2169. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2170, and the fiscal year ending June 30, 2171. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2172, and the fiscal year ending June 30, 2173. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2174, and the fiscal year ending June 30, 2175. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2176, and the fiscal year ending June 30, 2177. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2178, and the fiscal year ending June 30, 2179. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2180, and the fiscal year ending June 30, 2181. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2182, and the fiscal year ending June 30, 2183. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2184, and the fiscal year ending June 30, 2185. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2186, and the fiscal year ending June 30, 2187. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2188, and the fiscal year ending June 30, 2189. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2190, and the fiscal year ending June 30, 2191. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2192, and the fiscal year ending June 30, 2193. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2194, and the fiscal year ending June 30, 2195. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2196, and the fiscal year ending June 30, 2197. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2198, and the fiscal year ending June 30, 2199. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2200, and the fiscal year ending June 30, 2201. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2202, and the fiscal year ending June 30, 2203. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2204, and the fiscal year ending June 30, 2205. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2206, and the fiscal year ending June 30, 2207. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2208, and the fiscal year ending June 30, 2209. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2210, and the fiscal year ending June 30, 2211. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2212, and the fiscal year ending June 30, 2213. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2214, and the fiscal year ending June 30, 2215. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2216, and the fiscal year ending June 30, 2217. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2218, and the fiscal year ending June 30, 2219. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2220, and the fiscal year ending June 30, 2221. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2222, and the fiscal year ending June 30, 2223. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2224, and the fiscal year ending June 30, 2225. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2226, and the fiscal year ending June 30, 2227. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2228, and the fiscal year ending June 30, 2229. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2230, and the fiscal year ending June 30, 2231. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2232, and the fiscal year ending June 30, 2233. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2234, and the fiscal year ending June 30, 2235. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2236, and the fiscal year ending June 30, 2237. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2238, and the fiscal year ending June 30, 2239. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2240, and the fiscal year ending June 30, 2241. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2242, and the fiscal year ending June 30, 2243. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2244, and the fiscal year ending June 30, 2245. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2246, and the fiscal year ending June 30, 2247. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2248, and the fiscal year ending June 30, 2249. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2250, and the fiscal year ending June 30, 2251. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2252, and the fiscal year ending June 30, 2253. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2254, and the fiscal year ending June 30, 2255. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2256, and the fiscal year ending June 30, 2257. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2258, and the fiscal year ending June 30, 2259. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2260, and the fiscal year ending June 30, 2261. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2262, and the fiscal year ending June 30, 2263. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2264, and the fiscal year ending June 30, 2265. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2266, and the fiscal year ending June 30, 2267. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2268, and the fiscal year ending June 30, 2269. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2270, and the fiscal year ending June 30, 2271. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2272, and the fiscal year ending June 30, 2273. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2274, and the fiscal year ending June 30, 2275. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2276, and the fiscal year ending June 30, 2277. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2278, and the fiscal year ending June 30, 2279. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2280, and the fiscal year ending June 30, 2281. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2282, and the fiscal year ending June 30, 2283. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2284, and the fiscal year ending June 30, 2285. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2286, and the fiscal year ending June 30, 2287. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2288, and the fiscal year ending June 30, 2289. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2290, and the fiscal year ending June 30, 2291. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2292, and the fiscal year ending June 30, 2293. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2294, and the fiscal year ending June 30, 2295. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2296, and the fiscal year ending June 30, 2297. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2298, and the fiscal year ending June 30, 2299. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2300, and the fiscal year ending June 30, 2301. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2302, and the fiscal year ending June 30, 2303. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2304, and the fiscal year ending June 30, 2305. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2306, and the fiscal year ending June 30, 2307. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2308, and the fiscal year ending June 30, 2309. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2310, and the fiscal year ending June 30, 2311. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2312, and the fiscal year ending June 30, 2313. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2314, and the fiscal year ending June 30, 2315. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2316, and the fiscal year ending June 30, 2317. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2318, and the fiscal year ending June 30, 2319. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2320, and the fiscal year ending June 30, 2321. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2322, and the fiscal year ending June 30, 2323. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2324, and the fiscal year ending June 30, 2325. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2326, and the fiscal year ending June 30, 2327. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2328, and the fiscal year ending June 30, 2329. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2330, and the fiscal year ending June 30, 2331. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2332, and the fiscal year ending June 30, 2333. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2334, and the fiscal year ending June 30, 2335. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2336, and the fiscal year ending June 30, 2337. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2338, and the fiscal year ending June 30, 2339. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2340, and the fiscal year ending June 30, 2341. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2342, and the fiscal year ending June 30, 2343. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2344, and the fiscal year ending June 30, 2345. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2346, and the fiscal year ending June 30, 2347. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2348, and the fiscal year ending June 30, 2349. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2350, and the fiscal year ending June 30, 2351. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2352, and the fiscal year ending June 30, 2353. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2354, and the fiscal year ending June 30, 2355. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2356, and the fiscal year ending June 30, 2357. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2358, and the fiscal year ending June 30, 2359. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2360, and the fiscal year ending June 30, 2361. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2362, and the fiscal year ending June 30, 2363. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2364, and the fiscal year ending June 30, 2365. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2366, and the fiscal year ending June 30, 2367. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2368, and the fiscal year ending June 30, 2369. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2370, and the fiscal year ending June 30, 2371. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2372, and the fiscal year ending June 30, 2373. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2374, and the fiscal year ending June 30, 2375. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2376, and the fiscal year ending June 30, 2377. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2378, and the fiscal year ending June 30, 2379. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2380, and the fiscal year ending June 30, 2381. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2382, and the fiscal year ending June 30, 2383. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2384, and the fiscal year ending June 30, 2385. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2386, and the fiscal year ending June 30, 2387. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2388, and the fiscal year ending June 30, 2389. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2390, and the fiscal year ending June 30, 2391. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2392, and the fiscal year ending June 30, 2393. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2394, and the fiscal year ending June 30, 2395. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2396, and the fiscal year ending June 30, 2397. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2398, and the fiscal year ending June 30, 2399. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2400, and the fiscal year ending June 30, 2401. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2402, and the fiscal year ending June 30, 2403. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2404, and the fiscal year ending June 30, 2405. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2406, and the fiscal year ending June 30, 2407. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2408, and the fiscal year ending June 30, 2409. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2410, and the fiscal year ending June 30, 2411. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2412, and the fiscal year ending June 30, 2413. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2414, and the fiscal year ending June 30, 2415. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2416, and the fiscal year ending June 30, 2417. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2418, and the fiscal year ending June 30, 2419. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2420, and the fiscal year ending June 30, 2421. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2422, and the fiscal year ending June 30, 2423. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2424, and the fiscal year ending June 30, 2425. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2426, and the fiscal year ending June 30, 2427. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30, 2428, and the fiscal year ending June 30, 2429. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for the fiscal year ending June 30,

tains any substance or substances in quantities highly toxic to man;

"(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601)) with respect to the package, container, or wrapping in wh h a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act;

"(4) to specify that any class of devices shall be subject to this Act if he determines that the application of this Act in respect of such class is necessary to effectuate the purposes of this Act;

"(5) to prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment; and

"(6) to determine and establish suitable names to be used in the ingredient statement.

"SEC. 26. SEVERABILITY

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act are severable.

"SEC. 27. AUTHORIZATION FOR APPROPRIATIONS

"There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each fiscal year ending June 30, 1972, June 30, 1973, and June 30, 1974. The amounts authorized to be appropriated for any fiscal year ending after

"(2) Private pesticide applicator.
"(3) Commercial pesticide applicator.
"(f) Defoliant.
"(g) Desiccant.
"(h) Device.
"(i) District court.
"(j) Environment.
"(k) Fungus.
"(l) Imminent hazard.
"(m) Inert ingredient.
"(n) Ingredient statement.
"(o) Insect.
"(p) Label and labeling.
"(1) Label.
"(2) Labeling.
"(q) Misbranded.
"(r) Nematode.
"(s) Person.
"(t) Pest.
"(u) Pesticide.
"(v) Plant regulator.
"(w) Producer and produce.
"(x) Protect health and the environment.
"(y) Registrant.
"(z) Registration.
"(aa) State.
"(bb) Substantial adverse effects on the environment.
"(cc) Weed.
"Sec. 3. Registration of pesticides.
"(a) Requirement.
"(b) Exemptions.
"(c) Procedure for registration.
"(1) Statement required.
"(2) Data in support of registration.
"(3) Time for acting with respect to application.
"(4) Notice of application.
"(5) Approval of registration.
"(6) Denial of registration.
"(d) Classification of pesticides.
"(1) Classification for general use, restricted use, or both.
"(2) Change in classification.
"(3) Warning notices.
"Sec. 10. Protection of trade secrets, etc.
"(a) In general.
"(b) Disclosure.
"Sec. 11. Standards applicable to pesticide applicators.
"(a) In general.
"(b) Separate standards.
"Sec. 12. Unlawful acts.
"(a) In general.
"(b) Exemptions.
"Sec. 13. Stop sale, use, removal, and seizure.
"(a) Stop sale, etc., orders.
"(b) Seizure.
"(c) Disposition after condemnation.
"(d) Court costs, etc.
"Sec. 14. Penalties.
"(a) Civil penalties.
"(1) In general.
"(2) Private pesticide applicator.
"(3) Hearing.
"(4) References to Attorney General.
"(b) Criminal penalties.
"(1) In general.
"(2) Private pesticide applicator.
"(3) Disclosure of information.
"(4) Act of officers, agents, etc.
"Sec. 15. Indemnities.
"(a) Requirement.
"(b) Amount of payment.
"(1) In general.
"(2) Special rule.
"Sec. 16. Administrative procedure; judicial review.
"(a) Application of Administrative Procedure Act.
"(b) Judicial review.
"(c) Jurisdiction of district courts.
"(d) Notice of judgments.
"Sec. 17. Imports and exports.
"(a) Pesticides and devices intended for export.
"(b) Cancellation notices furnished to foreign governments.

"(c) Importation of pesticides and devices.
"(d) Cooperation in international efforts.
"(e) Regulations.
"Sec. 18. Exemption of Federal agencies.
"Sec. 19. Disposal and transportation.
"(a) Procedures.
"(b) Advice to Secretary of Transportation.
"Sec. 20. Research and monitoring.
"(a) Research.
"(b) National monitoring plan.
"(c) Monitoring.
"Sec. 21. Solicitation of public comments.
"Sec. 22. Delegation and cooperation.
"Sec. 23. State cooperation, aid, and training.
"Sec. 24. Authority of States and political subdivisions.
"(a) Cooperative agreements.
"(b) Contracts for training.
"Sec. 25. Authority of Administrator.
"(a) Regulations.
"(b) Exemption of pesticides.
"(c) Other authority
"Sec. 26. Severability.
"Sec. 27. Authorization for appropriations.

"SEC. 2. DEFINITIONS

"For purposes of this Act—

"(a) ACTIVE INGREDIENT.—The term 'active ingredient' means—

"(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

"(2) in the case of a plant regulator, an ingredient which through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

"(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

"(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

"(b) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(c) ANTIDOTE.—The term 'antidote' means a practical immediate treatment in case of poisoning and includes first aid treatment.

"(d) DEFOLIANT.—The term 'defoliant' means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"(e) DESICCANT.—The term 'desiccant' means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"(f) DEVICE.—The term 'device' means any instrument or contrivance (other than a firearm) which (1) is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other micro-organism on or in living man or other living animals), and (2) is within a class of devices in respect of which the Administrator has made the determination referred to in section 25(c)(4).

"(g) DISTRICT COURT.—The term 'district court' means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

"(h) ENVIRONMENT.—The term 'environment' includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

"(i) FUNGUS.—The term 'fungus' means any non-chlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

"(j) IMMINENT HAZARD.—The term 'imminent hazard' means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would likely result in substantial adverse effects on the environment.

"(k) INERT INGREDIENT.—The term "inert ingredient' means an ingredient which is not active.

"(l) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement of the name and percentage of each active ingredient, and the total percentage of the inert ingredients, in the pesticide, and if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

"(m) LABEL AND LABELING.—The terms 'label' and 'labeling' mean all labels and other written, printed, or graphic matter—

"(1) upon the pesticide or any of its containers or wrappers,

"(2) accompanying the pesticide or device at any time, or

"(3) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

"(n) MISBRANDED.—

"(1) A pesticide or device subject to this Act is misbranded if—

"(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

"(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25(e)(3);

"(C) it is an imitation of, or is offered for sale under the name of, another pesticide or device;

"(D) its labeling does not bear the registration number assigned under section 7 to each establishment in which it was produced;

"(E) any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

"(F) if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment; or

"(G) if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section

"(b) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(c) ADULTERATED.—The term 'adulterated' applies to any pesticide if:

"(1) its strength of purity falls below the professed standard or quality as expressed on its labeling under which it is sold;

"(2) any substance has been substituted wholly or in part for the pesticide; or

"(3) any valuable constituent of the pesticide has been wholly or in part abstracted.

"(d) ANIMAL.—The term 'animal' means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish.

"(e) CERTIFIED PESTICIDE APPLICATOR, ETC.—

"(1) CERTIFIED PESTICIDE APPLICATOR.—The term 'certified pesticide applicator' means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

"(2) PRIVATE PESTICIDE APPLICATOR.—The term 'private pesticide applicator' means a certified pesticide applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

"(3) COMMERCIAL PESTICIDE APPLICATOR.—The term 'commercial pesticide applicator' means a certified pesticide applicator (whether or not he is a private pesticide applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

"(f) DEFOLIANT.—The term 'defoliant' means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"(g) DESICCANT.—The term 'desiccant' means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"(h) DEVICE.—The term 'device' means any instrument or contrivance (other than a firearm) which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other microorganisms on or in living man or other living animals); but not including equipment used for the application of pesticides when sold separately therefrom.

"(i) DISTRICT COURT.—The term 'district court' means a court of the United States, including courts of the Territories and possessions, and the Commonwealth of Puerto Rico.

"(j) EFFECTIVE DISINFECTANT.—The term 'effective disinfectant' means any pesticide which is a germicide, sanitizer, deodorizer, or virucide.

"(k) ENVIRONMENT.—The term 'environment' includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

"(l) FIFRA.—The term 'FIFRA' means the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

"(m) FUNGUS.—The term 'fungus' means any nonchlorophyll-bearing thallophyte (that is, any nonchlorophyll-bearing plant of a type lower than the angiosperms); for example, rust, smut, mushroom, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food or processed animal feed, beverages, drugs (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act), and cosmetics (as defined in section 201(i) of the Federal Food, Drug, and Cosmetic Act).

"(n) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement which contains—

"(1) the name of each active ingredient in the pesticide;

"(2) if all the uses of the pesticide are classified for general use, then either—

"(i) the total percentage of all inert ingredients, and of all active ingredients, in the pesticide; or

"(ii) the percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and if all the uses of the pesticide are not classified for general use, then the information required under (ii); and

"(3) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

"(o) INSECT.—The term 'insect' means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

"(p) LABEL AND LABELING.—

"(1) LABEL.—The term 'label' means the written, printed, or graphic matter on, or attached to, the pesticide or device or any of its containers or wrappers.

"(2) LABELING.—The term 'labeling' means all labels and all other written, printed, or graphic matter—

"(A) accompanying the pesticide or device at any time; or

"(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the Department of Agriculture, the Department of Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

"(q) MISBRANDED.—

"(1) A pesticide is misbranded if its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular, including both pesticides and devices, and including the following:

"(A) if the pesticide is an imitation of another pesticide;

"(B) if the pesticide is offered for sale under the name of another pesticide;

"(C) if it is labeled so as to resemble a pesticide issued by a governmental agency for use in the performance of its official duty;

"(D) if it is not adequately labeled under section 3(d) of this Act, is adequate to protect health and the environment.

"(2) A pesticide is misbranded if—

"(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if:

"(i) the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the part which is presented or displayed under customary conditions of purchase; and

"(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

"(B) the labeling does not contain a statement of the use classification under which the product is registered;

"(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

"(i) the name and address of the producer, registrant, or person for whom produced;

"(ii) the name, brand, or trademark under which the pesticide is sold;

"(iii) the net weight or measure of the content: *Provided,* That the Administrator may permit reasonable variations; and

"(iv) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification; and

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"(B) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this Act—

"(i) the skull and crossbones;

"(ii) the word 'poison' prominently in red on a background of distinctly contrasting color; and

"(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

"(r) NEMATODE.—The term 'nematode' means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

"(s) PERSON.—The term 'person' means any individual partnership, association, corporation, or any organized group of persons whether incorporated or not.

"(t) PEST.—The term 'pest' means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

"(u) PESTICIDE.—The term 'pesticide' means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

"(v) PLANT REGULATOR.—The term 'plant regulator' means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended for use as a fertilizer or plant nutrient, trace elements, nutritional chemicals, plant inoculants, and soil conditioners.

"(w) SOIL CONDITIONER.—The term 'soil conditioner' means any substance or mixture of substances intended, through physical action, to maintain or improve the condition of soil.

"(x) WEED.—The term 'weed' means any plant which grows where not wanted.

"(y) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(z) FUNGUS.—The term 'fungus' means any nonchlorophyll-bearing thallophyte (that is, any nonchlorophyll-bearing plant of a lower order than mosses and liverworts), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food or beverages.

"(aa) ANTIMICROBIAL AGENT.—The term 'antimicrobial agent' means (1) a substance or mixture of substances which destroys microorganisms which are harmful to man, or (2) a substance or mixture of substances which is used to sanitize or disinfect inanimate objects.

"(bb) MINISTER.—The term 'Minister' means the Minister of National Health and Welfare.

"(cc) DEPARTMENT.—The term 'Department' means the Department of National Health and Welfare.

"(dd) DEPARTMENTAL REGULATIONS.—The term 'departmental regulations' means regulations made by the Minister under section 30.

"(ee) REGISTRATION.—The term 'registration' includes reregistration.

"(ff) ESTABLISHMENT.—The term 'establishment' means any place where a pesticide is manufactured, processed, stored or distributed.

"(gg) DISTRIBUTE.—The term 'distribute' means to sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver, to any person any pesticide which is not registered with the Administrator.

"(b) EXEMPTIONS.—A pesticide which is not registered with the Administrator may be transferred if—

"(1) the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or

"(2) the transfer is pursuant to and in accordance with the requirements of an experimental use permit.

"(c) PROCEDURE FOR REGISTRATION.—

"(1) STATEMENT REQUIRED.—Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—

"(A) the name and address of the applicant and of any other person whose name will appear on the labeling;

"(B) the name of the pesticide;

"(C) a complete copy of the labeling of the pesticide, a statement of all claims to be made for it, and any directions for its use;

"(D) if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based;

"(E) the complete formula of the pesticide;

"(F) a request that the pesticide be classified for general use, ror restricted use, or for both; and

"(G) any data in the possession, custody, or control of the applicant which may tend to indicate any substantial adverse effects on the environment, or lack of any such effects, which may be caused by such pesticide when used for any intended use.

"(2) DATA IN SUPPORT OF REGISTRATION.—The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If the Administrator determines that the requirements of paragraph (5) for registration are not satisfied, he shall notify the applicant for registration of his determination and of his reasons (including the factual basis) therefor, and that, unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator will refuse to register the pesticide. Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefore. Upon such notification, the applicant for registration shall have the same remedies as provided for the registrant in section 6.

"(d) CLASSIFICATION OF PESTICIDES.—

"(1) CLASSIFICATION FOR GENERAL USE, RESTRICTED USE, OR BOTH.—

"(A) As a part of the registration of a pesticide the Administrator shall classify it as being for general use or for restricted use: *Provided,* That if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for restricted use, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses.

"(B) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, will not cause substantial adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies for general use.

stances to the extent that they are intended as plant nutrients, race elements, nutrilional chemicals, plan inoculants, and soil amendments.

"(w) PRODUCER AND PRODUCE.—The term 'producer' means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term 'produce' means to manufacture, prepare, compound, propagate, or process any pesticide or device.

"(x) PROTECT HEALTH AND THE ENVIRONMENT.—The terms 'protect health and the environment' and 'protection of health and the environment' means protection against any injury to man and protection against any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

"(y) REGISTRANT.—The term 'registrant' means a person who has registered any pesticide pursuant to the provisions of this Act.

"(z) REGISTRATION.—The term 'registration' includes reregistration.

"(aa) STATE.—The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

"(bb) SUBSTANTIAL ADVERSE EFFECTS ON THE ENVIRONMENT.—The term 'substantial adverse effects on the environment' means any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

"(cc) WEED.—The term 'weed' means any plant which grows where not wanted.

"SEC. 3. REGISTRATION OF PESTICIDES.

"(a) REQUIREMENT.—Except as otherwise provided by this Act, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to from time to time. If thereafter he requires any additional kind of information he shall permit sufficient time for applicants to obtain such additional information. Except as provided by subsection (c) (1) (D) of this section and section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.

"(3) TIME FOR ACTING WITH RESPECT TO APPLICATION.—The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the Act in accordance with paragraph (6).

"(4) NOTICE OF APPLICATION.—The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs (1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

"(5) APPROVAL OF REGISTRATION.—The Administrator shall register a pesticide if he determines that when considered with any restrictions imposed under subsection (d)—

"(A) its composition is such as to warrant the proposed claims for it;

"(B) its labeling and other material required to be submitted comply with the requirements of this Act; and

"(C) it will perform its intended function without substantial adverse effects on the environment.

"(6) DENIAL OF REGISTRATION.—If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses of which it is registered, or for one or more of such uses, may cause, without additional regulatory restrictions, substantial adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use.

"(i) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified pesticide applicator.

"(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause substantial adverse effect on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified pesticide applicator, or subject to such other restricitions as the Administrator may determine.

"(2) CHANGES IN CLASSIFICATION.—If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent substantial adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least 30 days before making the change and shall publish the proposed change in the Federal Register.

"(e) PRODUCTS WITH SAME FORMULATION AND CLAIMS.—Products which have the same formulation, are manufactured by the same

person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added by supplemental statements.

"(f) MISCELLANEOUS.—

"(1) EFFECT OF CHANGE OF LABELING OR FORMULATION.—If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this Act.

"(2) REGISTRATION NOT A DEFENSE.—In no event shall registration of an article be construed as a defense for the commission of any offense under this Act.

"(3) AUTHORITY TO CONSULT OTHER FEDERAL AGENCIES.—In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.

"SEC. 4. USE OF RESTRICTED USE PESTICIDE; CERTIFIED APPLICATORS

"(a) CERTIFICATION PROCEDURE.—

"(1) FEDERAL CERTIFICATION.—Subject to paragraph (2), the Administrator shall prescribe standards for the certification of pesticide applicators. Such standards shall provide that, to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or of the use and handling of the pesticide or class of pesticides covered by such individual's certification.

"(2) STATE CERTIFICATION.—If any State, at any time, desires to certify pesticide applicators, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—

"(A) designates a State agency as the agency responsible for administering the plan throughout the State;

"(B) contains satisfactory assurances that under an experimental use permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

"(d) STUDIES.—When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause substantial adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

"(e) REVOCATION.—The Administrator may revoke any experimental use permit, at any time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid substantial adverse effects on the environment.

"SEC. 6. ADMINISTRATIVE REVIEW; SUSPENSION

"(a) CANCELLATION AFTER FIVE YEARS.—

"(1) PROCEDURE.—The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date if its registration (or at the end of any five-year period thereafter) unless the registrant, before the end of such period, requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect.

"(2) INFORMATION.—If at any time after the registration of a pesticide the registrant has additional factual information regarding substantial adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

"(b) CANCELLATION AND CHANGE IN CLASSIFICATION.—If the Administrator determines that registration of a pesticide should be canceled or that the classification of a pesticide should be changed, he shall notify the jections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpena to compel testimony from any person. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness and shall order the payment of reasonable fees and expenses as a condition to requiring his testimony. On contest, the subpena may be enforced by an appropriate United States District Court in accordance with the principles stated herein and the Administrative Procedure Act. As soon as practicable after completion of the hearing but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or shall issue an order either canceling the registration, changing the classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantial evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

"(e) JUDICIAL REVIEW.—Final orders of the Administrator under this section shall be subject to judicial review pursuant to section 16.

"SEC. 7. REGISTRATION OF ESTABLISHMENTS

"(a) REQUIREMENT.—No person shall produce any pesticide or device subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establish-

such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

"(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

"(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

"(E) contains satisfactory assurances that State standards for the certification of pesticide applicators conform with those standards prescribed by the Administrator under paragraph (1).

"(b) STATE PLANS.—If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due notice and opportunity for hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify pesticide applicators with respect to such State.

"SEC. 5. EXPERIMENTAL USE PERMITS

"(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

"(b) TEMPORARY TOLERANCE LEVEL.—If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

"(c) USE UNDER PERMIT.—Use of a pesticide registrant of his intention and of whether he intends to cancel the registration or change the classification and of his reasons (including the factual basis) therefor in writing. Upon receipt of such notice, the registrant may, within 30 days (A) make the necessary corrections and so notify the Administrator, or (B) file objections and request a public hearing. If the registrant does not take any such action, the notice shall, at the end of 30 days from its receipt by the registrant, constitute a final order of cancellation or change in classification. If the registrant files objections and requests a public hearing, the order of cancellation or change in classification may only be issued after completion of such proceeding.

"(c) SUSPENSION.—

"(1) ORDER.—If the Administrator determines that such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings, he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless at the same time the Administrator issues notices of his intention to cancel the registration of the pesticide. Any remedy elected by the registrant under section 6(a) shall be held as expeditiously as possible.

"(2) DURATION OF ORDER.—Any suspension order shall remain in effect only until 90 days after the completion of the administrative remedies provided for under section 6(a) or until the Administrator issues his final order either canceling or denying cancellation of the registration, whichever is sooner.

"(d) PUBLIC HEARINGS.—In the event a hearing is requested pursuant to subsection (a) or (b) or determined upon by the Administrator pursuant to subsection (d), such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the obment.

"(b) REGISTRATION.—Whenever the Administrator receives an application under subsection (a), he shall register the establishment and assign it an establishment number.

"(c) INFORMATION REQUIRED.—

"(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and devices—

"(A) which he is currently producing;

"(B) which he has produced during the past year; and

"(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

"(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 13, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

"(d) CONFIDENTIAL RECORDS AND INFORMATION.—Any information submitted to the Administrator pursuant to subsection (c) shall be considered confidential and shall be subject to the provisions of section 10.

"SEC. 8. BOOKS AND RECORDS

"(a) REQUIREMENT.—The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this Act. No records required under this subsection shall extend to financial data, sales data

other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

"(b) INSPECTION.—For the purposes of enforcing the provisions of this Act, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this Act, shall, upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy: (1) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; or (2) in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or devices. Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

"SEC. 9. INSPECTIONS OF ESTABLISHMENTS, ETC.

(a) IN GENERAL.—For purposes of enforcing the provisions of this Act, officers or employees duly designated by the Administrator are authorized—

"(1) to enter, at reasonable times, any establishment; and

"(2) to inspect and obtain samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

GENERAL.—The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this Act. If it shall appear from any such examination that they fail to comply with the requirements of this Act, the Administrator shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this Act have been violated by such person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 16, when the Administrator determines that such action will be sufficient to effectuate the purposes of this Act.

"(2) NOTICE NOT REQUIRED.—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institutions of any proceeding by the Attorney General.

"(3) WARNING NOTICES.—Nothing in this Act shall be construed as requiring the Administrator to institute proceedings for prosecution of minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

"SEC. 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION

"(a) IN GENERAL.—In submitting data required by this Act, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information, and (2) submit such marked material separately from other material required in connection with its registration under section 3;

"(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3;

"(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5);

"(E) any pesticide which is adulterated or misbranded; or

"(F) any device which is misbranded.

"(2) It shall be unlawful for any person—

"(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act;

"(B) to refuse to keep any records required pursuant to section 8, or to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 9;

"(C) to give a guaranty or undertaking provided for in subsection (b) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name and address, the name and address of the person residing in the United States from whom he received the guaranty or undertaking;

"(D) to use for his own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this Act which is confidential

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Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

"(b) WARRANTS.—For purposes of enforcing the provisions of this Act and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this Act have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

"(1) entry for the purpose of this section;

"(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any illegal pesticide or device found in the establishment and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

"(3) the seizure of any pesticide or device which is in violation of this Act.

"(c) ENFORCEMENT.—

"(1) CERTIFICATION OF FACTS TO ATTORNEY

terial required to be submitted under this Act.

"(b) DISCLOSURE.—Notwithstanding any other provision of this Act, the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act, information relating to formulas of products acquired by authorization of this Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

"SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS

"(a) IN GENERAL.—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private pesticide applicator to maintain any records or file any reports or other documents.

"(b) SEPARATE STANDARDS.—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators.

"SEC. 12. UNLAWFUL ACTS

"(a) IN GENERAL.—

"(1) Except as provided by subsection (b), it shall be unlawful for any person in any State to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—

"(A) any pesticide which is not registered under section 3;

"(B) any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required under this Act;

"(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;

"(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder;

"(G) to use any registered pesticide in a manner inconsistent with its labeling;

"(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

"(I) to violate any order issued under section 13;

"(J) to violate any suspension order issued under section 6;

"(K) to violate any cancellation of registration of a pesticide under section 6;

"(L) who is a producer to violate any of the provisions of section 7;

"(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to section 8, any report filed under this Act, or any information marked as confidential and submitted to the Administrator under any provision of this Act;

"(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act; or

"(O) to add any substance to, or take any substance from any pesticide in a manner that may defeat the purpose of this Act.

"(b) EXEMPTIONS.—The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—

"(1) any person who establishes a guaranty signed by, and containing the name and

address of, the registrant or person residing in the United States from whom he purchased and received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provision of this Act;

"(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

"(3) any public official while engaged in the performance of his official duties;

"(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

"(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties from which the user does not expect to receive any benefit in pest control from its use.

"SEC. 13. STOP SALE, USE, REMOVAL AND SEIZURE.

"(a) STOP SALE, ETC., ORDERS.—Whenever any pesticide or device is found by the Administrator in any State and there is reason to believe on the basis of inspection or tests that such pesticide or device is in violation of any of the provisions of this Act, or that such pesticide or device has been or is intended to be distributed or sold in violation of any such provisions, or when the registration of the pesticide or device has been canceled by a final order or has been suspended, the Administrator may issue a written or printed 'stop sal, use, or removal'

"(c) DISPOSITION AFTER CONDEMNATION.—If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this Act or the laws of the jurisdiction in which it is sold: *Provided,* That upon the payments of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws of any State in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

"(d) COURT COSTS, ETC.—When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

"SEC. 14. PENALTIES

"(a) CIVIL PENALTIES

"(1) IN GENERAL.—Any registrant, commercial pesticide applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this Act may be assessed a civil penalty by the Administrator of not more than $5,000 for each offense.

"(2) PRIVATE PESTICIDE APPLICATOR.—Any private pesticide applicator who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be assessed a civil penalty by the Administrator of not more than $1,000 for each

this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

"SEC. 15. INDEMNITIES.

"(a) REQUIREMENT.—If—

"(1) the Administrator notifies a registrant that he has suspended the registration of a pesticide because such action is necessary to prevent an imminent hazard;

"(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

"(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration,

the Administrator shall make an indemnity payment to such person.

"(b) AMOUNT OF PAYMENT.—

"(1) IN GENERAL.—The amount of the indemnity payment under subsection (a) to any person shall be determined on the basis of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a)(1); except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a)(1).

"(2) SPECIAL RULE.—Notwithstanding any other provision of this Act, the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner.

"SEC. 16. ADMINISTRATIVE PROCEDURE; JUDICIAL

order to any person who owns, controls, or has custody of such pesticide or device, and after receipt of such order no person shall sell, use or remove the pesticide or device described in the order except in accordance with the provisions of the order.

"(b) SEIZURE.—Any pesticide or device that is being transported or, having been transported, remains unsold or in original unbroken packages, or that is sold or offered for sale in any State, or that is imported from a foreign country, shall be liable to be proceeded against in any district court in the district where it is found and seized for confiscation by a process in rem for condemnation if—

"(1) in the case of a pesticide—

"(A) it is adulterated or misbranded;

"(B) it is not registered pursuant to the provisions of section 3;

"(C) its labeling fails to bear the information required by this Act;

"(D) it is not colored or discolored and such coloring or discoloring is required under this Act; or

"(E) any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration;

"(2) in the case of a device, it is misbranded; or

"(3) in the case of a pesticide or device, when used in accordance with the requirements imposed under this Act and as directed by the labeling, it nevertheless causes substantial adverse effects on the environment. In the case of a plant regulator, defoliant, or desiccant, used in accordance with the label claims and recommendations, physical or physiological effects on plants or parts thereof shall not be deemed to be injury, when such effects are the purpose for which the plant regulator, defoliant, or desiccant was applied.

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"(3) HEARING.—No civil penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation.

"(4) REFERENCES TO ATTORNEY GENERAL.—In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

"(b) CRIMINAL PENALTIES.—

"(1) IN GENERAL.—Any registrant, commercial pesticide applicator, wholesaler, dealer, retailer, or other distributor who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(2) PRIVATE PESTICIDE APPLICATOR.—Any private pesticide applicator who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

"(3) DISCLOSURE OF INFORMATION.—Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.

"(4) ACTS OF OFFICERS, AGENTS, ETC.—When construing and enforcing the provisions of

REVIEW.

"(a) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—Except as provided by subsection (b), subchapter II of chapter 5 of title 5 of the United States Code (sec. 551 and following, relating to administrative procedure) and chapter 7 of title 5 of the United States Code (sec. 701 and following, relating to judicial review) apply in respect of rules, rule making, orders, adjudication, licensing, sanctions, agency proceedings, and agency actions (as such terms are used in subchapter II of chapter 5 and in chapter 7 of title 5 of the United States Code).

"(b) JUDICIAL REVIEW.—In the case of actual controversy as to the validity of any order issued by the Administrator, any person adversely affected may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by susbtantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be, final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The

commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.

"(c) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this Act.

"(d) NOTICE OF JUDGMENTS.—The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

"SEC. 17. IMPORTS AND EXPORTS

"(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—Notwithstanding any other provision of this Act, no pesticide or device shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

"(b) CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.—Whenever a cancellation of the registration of a pesticide becomes effective, the Administrator shall transmit through the State Department copies of each notice of cancellation of a registration of a pesticide to the governments of other countries and to appropriate international agencies.

"(c) IMPORTATION OF PESTICIDES AND DEVICES.—The Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon his request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise vio-

"SEC. 18. EXEMPTION OF FEDERAL AGENCIES

"The President by executive order may exempt any Federal Agency from any provision or all provisions of this Act if he determines that emergency conditions exist which require such exemption.

"SEC. 19. DISPOSAL AND TRANSPORTATION

"(a) PROCEDURES.—The Administrator shall after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 6(c) if requested by the owner of the pesticide.

"(b) ADVICE TO SECRETARY OF TRANSPORTATION.—The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act (49 (U.S.C. 1657), the Transportation of Explosives Act (18 U.S.C. 831–835), the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430, 1472 H), and the Hazardous Cargo Act (46 U.S.C. 170, 375, 416).

"SEC. 20. RESEARCH AND MONITORING.

"(a) RESEARCH.—The Administrator shall undertake research, including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this Act, and he shall give priority to research to develop biologically integrated alternatives for pest control. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.

"(b) NATIONAL MONITORING PLAN.—The Administrator shall formulate and periodically revise, in cooperation with other Federal State, or local agencies, a national plan for monitoring pesticides.

"(1) to delegate to any State the authority to cooperate in the enforcement of the Act through the use of its personnel or facilities, to train personnel of the State to cooperate in the enforcement of this Act, and to assist States in implementing cooperative enforcement programs through grants-in-aid; and

"(2) to assist State agencies in developing and administering State programs for training and certification of pesticide applicators consistent with the standards which he prescribes.

"(b) CONTRACTS FOR TRAINING.—In addition, the Administrator is authorized to enter into contracts with Federal or State agencies for the purpose of encouraging the training of certified pesticide applicators.

"SEC. 24. AUTHORITY OF STATES

"(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulations does not permit any sale or use prohibited by this Act;

"(b) Such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or different from those required pursuant to this Act; and

"(c) A State may assist the Administrator in the registration of pesticides formulated for intrastate distribution to meet specific local needs if that State is certified by the Administrator as capable of exercising adequate controls.

"SEC. 25. AUTHORITY OF ADMINISTRATOR

"(a) REGULATIONS.—The Administrator is authorized to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides.

"(b) EXEMPTION OF PESTICIDES.—The Administrator may exempt from the requirements of this Act by regulation any pesticide which he determines either (1) to be

lates the provisions set forth in this Act, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any pesticide or device refused delivery which shall not be exported by the consignee within 90 days from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided*, That the Secretary of the Treasury may deliver to the consignee such pesticide or device pending examination and decision in the matter or execution of bond for the amount of the full invoice value of such pesticide or device, together with the duty thereon, and on refusal to return such pesticide or device for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further*, That all charges for storage, cartage, and labor on pesticide or device which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

"(e) REGULATIONS.—The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of this section.

"(c) MONITORING.—The Administrator shall undertake such monitoring activities, including but not limited to monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.

"SEC. 21. SOLICITATION OF PUBLIC COMMENTS.

"In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

"SEC. 22. DELEGATION AND COOPERATION.

"(a) DELEGATION.—All authority vested in the Administrator by virtue of the provisions of this Act may with like force and effect be executed by such employees of the Environmental Protection Agency as the Administrator may designate for the purpose.

"(b) COOPERATION.—The Administrator shall cooperate with the Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

"SEC. 23. STATE COOPERATION, AID, AND TRAINING

"(a) COOPERATIVE AGREEMENT.—The Administrator is authorized to enter into cooperative agreements with States—

adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

"(c) OTHER AUTHORITY.—The Administrator, after notice and opportunity for hearing, is authorized—

"(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment;

"(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man;

"(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601)) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act;

"(4) to specify that any class of devices shall be subject to this Act if he determines that the application of this Act in respect of such class is necessary to effectuate the purposes of this Act;

"(5) to prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment; and

"(6) to determine and establish suitable names to be used in the ingredient statement.

"SEC. 26. SEVERABILITY

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act are severable.

"SEC. 27. AUTHORIZATION FOR APPROPRIATIONS

"There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each fiscal year ending June 30, 1972, June 30, 1973, and June 30, 1974. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1974, shall be the sums hereafter provided by law."

Mr. DOW (during the reading). Mr. Chairman, I have sent copies of the amendment to the desk. I ask unanimous consent that the amendment be considered as read and printed in the RECORD, inasmuch as I have made copies available.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. DOW asked and was given permission to revise and extend his remarks.)

Mr. DOW. Mr. Chairman, I offer an amendment to the bill H.R. 1072 seeking to amend the Federal Insecticide, Fungicide, and Rodenticide Act.

For the convenience of Members this substitute embodies six individual amendments that I am convinced we must adopt in order to perfect this pesticide legislation. It should be easier to

Third. The third amendment, on page 19, strikes out a clause new in the committee bill which makes any lack of essentiality irrelevant for denying registration to a pesticide. Heretofore, the Administrator of the Environmental Protection Agency has developed a doctrine of essentiality, that is, the need for the pesticide in the Agency analysis of applications for registrations. My amendment restores this instrument to his use.

Fourth. The fourth amendment, on page 28, would strike the section requiring the Federal examiner hearing pesticide cases to submit questions of scientific fact to a scientific committee. The provision bottles up questions, delays procedures, excludes the public and was not in the original Administration proposal.

Fifth. My fifth amendment, page 49, would continue the present application of law which allows persons adversely affected to challenge the Administrator's orders in the U.S. Court of Appeals. The new committee bill limits court challenge to manufacturers, and bars States which wish to intervene and other groups who might be vitally concerned. The National Governors Conference has been particularly concerned because this section restricts State intervention.

Sixth. My sixth amendment, page 56, is one that has enlisted support from a number of commissioners of conservation in a number of States. It would strike from the committee bill the new proviso that would bar a State from restricting in its own way the use of pesticides registered for general use. This would gut the laws of such States where and States are prohibited from regulating them more strictly than the Federal Government does.

Mr. Chairman, no one knows which pesticides will be classified by the EPA for "general use" or for "restricted use" or for both. Additionally, the definition upon which such classification is based—"substantial adverse effects on the environment"—is vague and weak. Thus, States may find that a pesticide which EPA classifies for "general use" actually requires stricter regulation. But, under this bill, the States will have their hands tied and may go no further in pesticide regulation that the EPA allows.

On the basis of the Federal Government's past performance in pesticide regulation, many people are skeptical of how tough EPA will be in drawing up its restricted list. In addition, the possibility of dual classification fuzzes the meaning and purpose of the two categories. As noted by the Agricultural Extension Service entomologist at North Carolina State University:

Enforcement of any restrictions on users will be difficult at best, but enforcement of a dual classification at the user level in my opinion will be impossible.

Richard J. Sullivan, commissioner of the New Jersey Department of Environmental Protection, commented:

Pesticides are to be classified as "restricted use" under this bill only if they are acutely toxic or if they may cause substantial adverse effects on the environment. We simply are not always aware of the vast dangers which can be caused by pesticides over the long term, and thus many dangerous substances may be included in the general use

perfect the bill by one amendment than by six put individually to this House. In the general debate of this bill before us, I covered the essentials of all the amendments I believe to be necessary. These have the support of at least seven of the national organizations and the International Association of Game, Fish, and Conservation Commissioners which are dedicated to preserving our environment and preventing the excesses in usage of pesticides that becomes more alarming all the time.

For the benefit of those Members who did not hear the general debate, I will summarize the six component amendments that make my substitute different from, and I believe preferable to, the committee bill:

First. The first amendment, on page 17, would strike language permitting pesticide manufacturers to restrict the use of data submitted in support of an application for registration—a procedure that is more restrictive than present law. The objectionable provision would require, in effect, that the environmental protection agency join with manufacturers in restrictive trade and in violation of the Freedom of Information Act outside the bounds of patent protection.

Second. My second amendment, on page 17, adds language requiring the manufacturer to disclose data which tends to prove an environmental effect of lack of effect. The committee bill omits such requirement and leaves the Administrator, believe it or not, to assume the burden of proof in any denial of pesticide application.

such laws are stricter than the Federal registration. I can see no good purpose served by preventing States from running their own affairs in a tidy fashion where they deem it essential.

Accordingly, Mr. Chairman, the Members have an opportunity in supporting this comprehensive amendment to strike from the bill all those legal snares and pitfalls that would trap the Administrator of the Environmental Protection Agency and tie his hands as regards regulation in the public interest. I urge the passage of my amendment as a substitute for the bill.

Mr. HELSTOSKI. Mr. Chairman, I shall address myself to the preemption of State authority authorized by lines 5 and 6 of section 24 of the bill before us this afternoon. In my opinion, this section constitutes a crippling blow to pesticide control programs underway in a number of States, including my own, New Jersey.

The language of these lines "or restrict by license or permit the use of a pesticide registered for general use" sounds harmless enough until we examine its impact on existing State laws. We would also do well to consider this language in the context of the evolution of this legislation from a strong proposal to the weak, watered-down bill before us today.

Under H.R. 10729, in the words of the committee report, "State authority to change Federal labelling and packaging is completely preempted." Also, pesticides classified for "general use" by the Environmental Protection Agency are presumed by the committee bill to be safe category of registration since a clear case of substantial immediate environmental damage will not be apparent. For over 25 years states have restricted such general use pesticides. These restrictions are important because varying crop, soil, or climatic conditions can affect the severity of the environmental impact of pesticides.

Another crucial problem with the preemption of State authority in section 24 is the specific reference to licenses and permits, which the States are forbidden to use on "general use" pesticides.

As a matter of fact, a great many States do use a permit system to control pesticides. According to the National Association of State Departments of Agriculture, 23 States have already taken steps to develop lists of restricted pesticides and to allow their use by permit only.[1]

For example, New York State has 15,000 outstanding permits issued to major users of pesticides. New York totally bans several pesticides and sharply restricts some 60 others which are considered to be highly toxic or potential environmental contaminants, according to Henry Diamond, commissioner of the New York Department of Environmental Conservation.

The preemption of State authority in section 24 seems to be clearly aimed at the heart of these strong State programs.

If one examines the history of this bill as it moved through markup in commit-

[1] Testimony in House Ag. Committee hearing, page 480, by Dr. Charles P. Ellington, Director, Maryland State Board of Agriculture, representing the NASDA.

tee, it seems apparent that this gutting of strong State programs is intentional.

Initially, the administration proposed in H.R. 4152 a system of classifying pesticides into three categories in order to control their use. Simply stated, the three categories were:

First. General use—for those pesticides which can be used safely by following the label;

Second. Restricted use—those which required some special precautions and could only be applied by an "approved pesticide applicator," who could be anyone who could pass a State test established in cooperation with EPA;

Third. Use by permit only—this would be for pesticides highly dangerous—toxic—to people or hazardous to the environment. These could only be used with written approval of an "approved pest management consultant" who would be a highly qualified specialist. This category would be akin to a prescription system.

During the House hearings, some users and manufacturers objected strongly to the "use by permit" category, and during markup this category was promptly dropped by the committee.

Having thus prevented EPA from setting up a use by permit system, the committee ultimately limited the States' right to do so in section 24. The specific preemption in lines 5 and 6 did not appear in the legislation until the committee reported out the clean bill, H.R. 10729. This preemption had not been in the administration's proposal and, in fact, the administration testified strongly in favor of retention of State authority.

Already, State officials from New Jersey, New York, Massachusetts, Connecticut, California, Utah, Missouri, Michigan, Colorado, and Minnesota have expressed opposition to the preemption of State authority authorized by section 24. Officials from other jurisdictions may have done so as well, and, doubtless, many more would do so if all States had the opportunity to review and comment on this language.

Mr. Chairman, lines 5 and 6 of section 24 of this bill must be deleted.

Under unanimous consent I include at this point in the RECORD, several letters and a telegram relevant to section 24.

STATE OF NEW YORK, DEPARTMENT OF ENVIRONMENTAL CONSERVATION,

Albany, September 30, 1971.

DEAR CONGRESSMAN DOW: It has come to my attention that the House Committee on Agriculture has completed deliberations on HR 10729 (a bill to amend the Federal Insecticide, Fungicide and Rodenticide Act, by Mr. Poage). Indications are that the bill will be reported out in the very near future.

We generally agree with the intent of the legislation and are particularly encouraged by the prospect that it holds out for eventual federal funding to assist in our pesticide control program. However, there is one provision of the bill which could gut the outstanding work New York State is accomplishing to restrict pesticides within the states. Section 24 will undercut our existing, effective pesticide program and preclude needed local authority for all states. I therefore urge HR 10729 be amended to delete Section 24.

In the 1970 session of the Legislature, Governor Rockefeller signed a bill which gave the Department of Environmental Conservation the authority to ban completely or restrict the use of pesticides in New York State. amendment which authorizes the States to regulate the sale or use of any pesticide or device within the State if such State regulation does not permit a sale or use prohibited by the act. The same amendment also forbids the state to "restrict by license or permit the use of a pesticide registered for general use."

Pesticides are to be classified as "restricted use" under this bill only if they are acutely toxic or if they may cause substantial adverse effects on the environment. We simply are not always aware of the vast dangers which can be caused by pesticides over the long term, and thus many dangerous substances may be included in the general use category of registration since a clear case of substantial immediate environmental damage will not be apparent. For over 25 years states have restricted such general use pesticides. These restrictions are important because varying crop, soil, or climatic conditions can affect the severity of the environmental impact of pesticides.

If this bill is passed as presently drafted it will cripple New Jersey's pesticide regulations, and not allow any state to draw up regulations which fit its own particular needs. I therefore strongly urge that you work to amend HR 10729 by deleting line 5 following the word "act" and all of line 6 on page 56 in Section 24. If so amended the State of New Jersey can continue to exercise the controls needed over pesticides.

Very truly yours,

RICHARD J. SULLIVAN,
Commissioner.

TELEGRAM FROM DANIEL W. LUFKIN TO ALL CONNECTICUT CONGRESSMEN:

As Connecticut Commissioner of Environmental Protection I request your vigorous opposition to HR 10729 because it removes from Connecticut and other States the power to regulate pesticides more stringently than the Federal Government. The States have pri-

During the House committee hearings, John Quarles, General Counsel and Assistant Administrator for Standards and Enforcement of EPA, said:

I would like to emphasize that the States have played a major role in pesticides regulation. To date, 48 states have programs covering the registration and/or use of pesticides. We wish to encourage and not supplant these efforts by providing that States may prohibit the use of a particular pesticide within their jurisdiction even if the pesticide is registered under the Federal authority. States are not precluded from imposing stricter standards or added requirements, but they may not permit any sale or use of a pesticide which is prohibited under the authority of this Act.

Apparently in order to insure that EPA and the States would not use another method of establishing permit systems, the committee report states:

The legislation grants no authority for a third classification nor does it grant any authority to the Administrator to establish by regulation or agreement with a state the position or similar function of a licensed or approved pest management consultant.

By forbidding the States to have pest management consultants, who are the people who give out permits, the committee has further threatened the whole permit concept.

If the language of section 24 of this bill is adopted, then passage of H.R. 10729 will represent a step backward in pesticide regulation for many States. It will punish States which have had the wisdom and courage to set up their own pesticide regulatory programs.

Under this authority the Department held hearings in the fall of 1970 and, following those hearings, promulgated a series of regulations which prohibit entirely the use of such devastating environmental contaminants as DDT, Endrin and BHC. It also restricts sharply the use of some 60 other pesticides which are considered to be highly toxic or potential environmental contaminants.

Our restricted pesticide program now has 15,000 outstanding permits issued to major uses of pesticides. We have found that generally the agricultural and chemical industries are in favor of this program and have cooperated fully since its inception on January 1 of this year.

I believe that Congressional action, which would destroy this outstanding program and replace it with a federal program which might be unsuited to the needs of New York State, would be most unfortunate and an environmental step backwards.

Sincerely,

HENRY L. DIAMOND,
Commissioner.

STATE OF NEW JERSEY,
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
Trenton, October 7, 1971.

Hon. HENRY HELSTOSKI,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN HELSTOSKI: On September 25 the House Agriculture Committee reported out a bill, HR 10729 which provides for Federal regulation of pesticides. While I have not completely reviewed the bill, one section of it seems to me to be particularly ill-conceived and in need of amendment.

The section I refer to is Section 24 on page 56 of the bill. When the Committee was considering the bill, it accepted an amendment which would prohibit the use of any pesticide which is prohibited under the authority of this Act.

sulted in undesirable effects on human health. In 1970 the production of pesticides in the United States totaled 1.03 million pounds. Currently 60,000 chemical products are registered with the Federal Government.

Such extensive use of pesticides with weak controls and potential hazardous effects has caused widespread concern. According to the National Product Safety Commission, 75,000 acute pesticide poisonings occur each year. Eight hundred to 1,000 people die each year and another 80,000 to 90,000 people are injured from pesticide poisonings according to the Food and Drug Administration. DDT presents long-term hazards to the environment. It remains in the air, in the soil, and in the water for 50 years. DDT thus enters the food chain, accumulates in human tissue and has the potential to cause liver damage or possibly even cancer. Because of exposure to pesticides, many species of wildlife are endangered.

In the report by the Committee on Agriculture the need for new control measures and procedures was noted:

> Pesticides are valuable to our naton's agricultural production . . . but it is essential to the public health and welfare that they be regulated closely to prevent adverse effects on human life and the environment.

The committee bill, in its attempt to prevent these adverse effects, rewrites the Federal Insecticide, Fungicide, and Rodenticide Act of 1947 which regulates the labeling and sale—but not the use of pesticides in interstate commerce. However, the committee bill fails to provide the sufficient controls or the "close" regulation which it promised to do and an-

is under section 6, administrative review, (c)(3) and (d), scientific review. In the past the referral of questions of a scientific nature has been used as a delaying tactic. It could continue to serve that purpose. However, the Dow substitute eliminates the section on scientific review, thus strengthening the power of the Administrator. The Administrator may seek outside advice for a public hearing when and if he feels this essential need. Delaying manipulations are thus eliminated in the Dow substitute.

A third weakness of the committee bill concerns the sections on judicial review. The committee bill would prevent public-interest law firms and environmental and consumer groups from bringing suits to ban dangerous pesticides and herbicides. The Dow substitutes would put back into the judicial review section on page 49 the words "any person adversely affected" which appeared in the original administration bill, H.R. 4152.

A fourth weakness of the committee bill concerns the authority of the States under section 24(a) page 56. States which have stricter requirements than Federal regulations are prohibited from enforcing anything stricter than the Federal regulations for general use pesticides. New York, Michigan, and Wisconsin, among other States, have effective State pesticide programs that could be jeopardized. The Dow substitute changes this to permit States to further regulate general use pesticides.

Four failings of the committee bill have been discussed—although other additional weakenesses exist. These failings are of such magnitude so as to nullify

as allowing challenge and input by environmental groups. Some major pesticide protection victories in the last decade—including Wellford against Ruckelshaus, Environmental Defense Fund against Ruckelshaus, and EDF against Hardin—have come in lawsuits initiated by environmental groups and other citizens concerned about their health. The pending bill would halt all such input, leaving the Administrator with no point of view but that of industry. It would be inexcusable, in this day of increasing danger from pesticides, for us to narrow the standing criteria.

The bill prohibits the Administrator, when deciding whether to register a pesticide, from consulting toxicity data he has received in connection with the registration of other pesticides. In making a decision on a subject as important as entrance of a pesticide into our environment, he may not even use all the scientific information in his file cabinet. He would be limited to the data that the pesticide manufacturer submits to him, plus whatever data, of a general nature, he happens to have at hand. Existing law, on the other hand, allows the Administrator to use whatever data he has or can obtain. This is indisputably better for the public health, and I could not support a bill which would do what this one does.

The pending bill would put the burden of disallowing a pesticide registration on the Administrator, if he determined that a pesticide was unsafe. That is, he would have to make a determination that the pesticide had a substantial adverse effect on the environment before he could refuse registration. The stand-

nounced as its goal. Without such controls we will continue to endanger both human life and the total environment.

The committee bill, in attempting to be a composite of a farmer's bill, a manufacturer's bill, and an environmentalist's bill, becomes in effect, nobody's bill. The primary value that must be given priority is the health of all of the American people, both now and for the future. A substitute bill, H.R. 11169, offered by Representative JOHN G. DOW, reflects this concern for health.

There are several serious weaknesses in H.R. 10729 concerning, first, registration of a pesticide, second, administration and scientific review, third, judicial review, and fourth, the authority of the States. Congressman Dow's substitute bill seeks to correct these failings.

One of the weaknesses of the committee bill concerns the provisions for registration of pesticides. In the committee bill the applicant is given power to classify information—section 3(c)(1)(D)—page 17. The Dow substitute would correct this by striking the data restriction language. Thus the burden of proof is not shifted to the Administrator. The Dow substitute also requires that data in the possession of the applicant which would indicate a substantial adverse effect on the environment or the lack of such an effect should be available to the Administrator of the Environmental Protection Agency. Thus the Administrator would have sufficient information on which to base his decisions.

A second major weakness of H.R. 10729 the progress that has been made to protect the health and indeed the survival of the human being. Congressman Dow's substitute bill seeks to correct the failings of the committee bill. It clearly places the value of health and survival of all of us on a top priority level.

I recently signed a letter urging Members of Congress to be present on the floor, to vote for the Dow substitute bill.

I reiterate that statement. We owe the consumer, the farmer, and the American public a decent pesticide control bill. Mr. Dow's bill gives us the opportunity to pay that debt.

Mrs. ABZUG. Mr. Chairman, H.R. 10729 is entitled the "Federal Environmental Pesticide Control Act," but this label is a false one, for it neither controls pesticides nor protects the environment. It should be called the "Federal Pesticide Promotion Act." The act by any name makes no contribution to protecting us from the hazards of pesticide misuse. In fact, it increases the risk of pesticide poisoning. Some of its provisions set environmental protection back at least 10 years.

The pending bill effectively prohibits citizen input into environmental decisionmaking. It limits standing to challenge a decision on pesticide licensing to those whose economic interests are directly affected by the decision, that is, the pesticide manufacturer. The law presently in effect, allows parties "adversely affected" to challenge the validity of pesticide registration. This standing requirement has been interpreted by the courts ard of "substantial adverse effect" is a heavy burden to meet. The burden of proof on this issue should rest not with the Administrator, whose aim is to protect the public, but with the manufacturer, whose aim is to make a pecuniary profit. Under present law, the manufacturer bears the burden of proof. He must show that he has a product that can be used safely within the limits of the instructions on the label. The pending bill would require the administrator to prove nonsafety and I cannot endorse it in that form.

The pending bill prohibits the Administrator from using the criterion of "essentiality" in determining whether a pesticide should be registered. The doctrine of "essentiality" means that the Administrator may consider whether the pesticide is essential—that is, whether other, less toxic pesticides are already available to perform the same function—in determining registration. The essentiality standard has been one of the major victories won by environmentalists' lawsuits. It is crucial in deciding whether or not the environment and the public are to have yet another pesticide. Without the essentiality doctrine, the sole criterion will be the persuasiveness of the pesticide manufacturer in marketing it to the farmer. This, too, is unacceptable.

The bill before us commands the Administrator to keep data relating to toxicity of pesticide products secret until after the decision on registration is made. It also grants the pesticide industry the right to decide what data will or

will not ultimately be available, since it lets the industry decide which portion of its data is to remain secret. The result is that even when the Administrator releases the toxicity data—he cannot release data which the registrant has determined should be secret. Existing law does not give the manufacturer the right to determine what the public should know, but that places that decision under the terms of the Freedom of Information Act. Until recently, some toxicity data has been secreted under the trade secrets exception, that act, but recently, the Environmental Protection Agency has determined that toxicity data does fall within this exception, and that it will be available to the public as an aid in poison protection. The bill before us would overrule that wise decision, and bind the Administrator to shield toxicity data from the public eye on a permanent basis.

The pending bill sets up a balancing test when temporary suspension of a harmful pesticide is considered. The administrator would have to balance the potential injury to the public against the potential benefit. Such a test may be acceptable in a leisurely, full-dress consideration, but not in an emergency.

Further, the bill would indemnify manufacturers whose pesticide is removed from the market because it is unsafe. Do we indemnify a bank robber if we catch him and take away his ill-gotten loot? If not, then why should we indemnify a manufacturer when we catch him with his ill-gotten "loot"?

In all these cases, the pending bill is regressive. It denies protections which cide poisonings in that year. The Food and Drug Administration estimates that 800 to 1,000 people die every year from pesticide poisoning and that 80,000 to 90,000 are injured by pesticides, not to mention injuries to wildlife populations and to domestic animals.

Pesticides are useful to man only when they are applied with utmost caution. The bill discourages such application. It promotes the expansion of pesticide use by these whose seek short-run gain—the chemical companies who sell pesticides. The bill seeks to obscure the dangers of poisons, minimizing the need for care and judiciousness in their use. We are dealing here with poisons, and this bill increases our chance of being poisoned.

I support the Dow substitute. It erases the clause which would preempt stronger state pesticide legislation. It speeds up agency action by erasing immediate, interim appeal to the district court and automatic appeal to the National Academy of Sciences. It changes the standing requirement for initiating judicial review of agency registration decisions to parties adversely affected, which would allow people other than chemical companies to go into court. It would allow the administrator to use all data in his files when he makes safety decisions.

This substitute makes some contribution toward protecting the public, the farmer, the farmworker, and the consumer, from misuse of economic poisons. I urge its adoption.

Mr. ROSTENKOWSKI. Mr Chairman, I rise in strong support of the amendment in the form of a substitute offered by the this bill could serve a valuable purpose of strengthening what is now a weak and easily avoided statute. It is agreed by most that the bill's effect on the individual small farmer would not differ if the Dow amendment was accepted. Major effects of the Dow amendment would fall upon the manufacturers of the chemical pesticides. It would make them prove that a new product is safe and useful before it is allowed on the market for public consumption. This is not, in my opinion, too great a burden for the chemical manufacturers to bear in light of the alarming increase in chemical-related poisonings in recent years.

I shall, Mr. Chairman, support the Dow amendment as a constructive alternative to the committee bill and hope that my colleagues will do likewise.

Mr. ANDERSON of California. Mr. Chairman, I rise in support of the amendments offered by the gentleman from New York (Mr. Dow).

The committee bill does not correct the current situation regarding the use and control of pesticides. Instead, the bill, as reported by the Agriculture Committee, restricts the authority of the Environmental Protection Agency. In addition, and most objectionable to me, the committee bill severely restricts the authority of the States to take the necessary action to protect its local environment.

The Dow substitute would correct the deficiencies in the committee bill by, first, placing the protection of the environment as a priority coequal to the production of food and fiber and, second, the substitute would permit the States to

the public now enjoys. The public deserves better than this.

We need stronger legislation, not weaker.

We need an administrative procedure which is fully open to public scrutiny and which operates with sufficient speed to protect the public against newly-discovered dangers.

We need legislation which does not give unbridled discretion to the administrator, making him constantly vulnerable to the army of industry lobbyists who infest the halls of Government agencies.

We need legislation which assures the public that it is not the guinea pig in safety experiments for pesticides.

We need a standard for removing dangerous pesticides from the market which protects the public while scientific data is being reviewed in the agency.

We need a category of pesticide use which allows use by license only, as the original administration bill prescribed.

We need stringent qualifications for pesticide applicators.

We will get none of these things with this bill. This bill encourages thoughtless pesticide use. It is riddled with lowered standards, wider discretion, and gaping loopholes.

Pesticides are poisons. They are designed to kill living things. They require the utmost care at all levels, lest they kill the wrong things.

In 1970, the production of pesticides totalled over 1 million pounds. The National Product Safety Commission estimates that there were 75,000 acute pesti-

gentleman from New York (Mr. Dow). This amendment is a much needed attempt to rectify some of the many faults present in the bill reported by the Agriculture Committee.

As the committee bill presently stands, the Environmental Protection Agency would be virtually powerless to carry out its task of regulating the manufacture, distribution and use of pesticides. For, as drafted by the committee, H.R. 10729 would be no better than the old Federal Insecticide, Fungicide, and Rodenticide Act. In fact, it would provide even weaker protection of the environment and the public than does the present law, while strengthening the hands of the makers and users of harmful chemical poisons.

When we consider that under the present system of controls, it is estimated that 800 to 1,000 people died each year and 10 times that number are acutely poisoned from intake of chemical pesticides, we must strive for more stringent regulations of these potentially harmful products and not accept weaker conditions as provided for in the current bill.

Provisions incorporated in the committee bill such as "no State could impose stricter regulations than those approved at the Federal level" and "the burden of proof of the safety of a chemical falls on the Government, rather than on the company promoting the product" are just two examples of how this bill would in fact promote less control of pesticides rather than the stricter supervision that is needed.

With the Dow amendment, however, set higher standards for pesticides than those set by the Environmental Protection Agency.

Often, we witness a Federal law superseding a State law. In California, we are all too familiar with Federal laws and practices that invalidate our State laws—laws designed to meet the special needs of the community.

The Federal Government—the Government of all the States—must consider the problems of Cold Bay, Alaska, or Summit Point, W. Va. In doing so, the Federal Government must enact a law which is acceptable to the people in Alaska as well as West Virginia.

In many instances, the law which would eliminate say—a pollution problem in Los Angeles—might be too stringent for the people in Alaska, a State which may not have our complex problems. Thus, in order to reach a compromise, the Federal laws, in some instances, have not met the requirements of those of us from States such as California.

Instead, Federal laws, such as the Clean Air Act of 1970, have invalidated certain provisions of California's more restrictive laws. In those cases, we have fought to preserve our stronger local laws.

Mr. Chairman, the Federal law must establish a floor. That is to say, California and Alaska must meet certain minimum Federal standards, but if the situation exists, the State and local governments may enact more stringent requirements.

At this point, Mr. Chairman, I would

like to insert a telegram that I received from Mr. Ray Arnett, the director of the California Fish and Game Department:

The Calif. Dept. of Agriculture is opposed to wording in H.R. 10729 under section 24 (a), p. 56 of committee bill which would prevent the State from adopting more restrictive measures than those adopted by the Administrator of EPA as "pesticides classified for general use". Since the Dept. of Fish and Game depends on the regulatory authority of the State Dept. of Agriculture for quick action to control and alleviate pesticide problems involving significant conflicts between pesticides and fish and wildlife, we strongly support the retention of the State's rights concept as recommended by the Calif. Dept. of Agriculture and as reflected in the alternative amendments of Rep. Dow's proposed H.R. 11169.

In 1970, production of pesticides in the United States totaled over 1 billion pounds. The National Product Safety Commission estimates that 75,000 acute pesticide poisonings occur each year. The Food and Drug Administration estimates that 800 to 1,000 people die each year from pesticide poisons.

We know that some persistent pesticides have taken their toll among such wildlife as eagles, pelicans, and falcons.

We know that most of the world's production of DDT ends up in the ocean where it has contaminated fish and, as a result, the FDA has removed those fish from the market.

Mr. Chairman, I favor the substitute amendments which would, first, allow the EPA to stringently control the use of pesticides and, second, allow the more stringent State laws, which are designed to meet the local needs, to remain in effect.

and thorough product research before a compound is placed on the market.

I think none of us would dispute the importance and the need for careful regulation of pesticides. Time and again we are told of the dangers inherent in these poisons when used improperly. In a larger sense, we are likewise concerned with any substance that has the potential to alter the basic structure of the ecology, and as we hear of wild animals being poisoned to death, of insects growing immune to the effects of the chemicals we use to protect our crops, and of accumulations of the various substances in the human body, we cannot help but wonder what long-term effects these pesticides might have on the environment.

Therefore, I again urge my colleagues to give careful consideration to the provisions contained in this amendment, provisions which would only strengthen and in no way diminish the effectiveness of this legislation, and to join in support of this substitute measure.

Substitute amendment offered by Mr. KYL for the amendment in the nature of a substitute offered by Mr. Dow.

Mr. KYL. Mr. Chairman, I offer a substitute amendment for the amendment offered by the gentleman from New York (Mr. Dow).

The Clerk read as follows:

Substitute amendment offered by Mr. KYL for the amendment offered by Mr. Dow: In lieu of the matter proposed in the amendment insert the following:

AMENDMENTS TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

SEC. 2. The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.) is amended to read as follows:

"(cc) Weed.
"Sec. 3. Registration of pesticides.
"(a) Requirement.
"(b) Exemptions.
"(c) Procedure for registration.
"(1) Statement required.
"(2) Data in support of registration.
"(3) Time for acting with respect to application.
"(4) Notice of application.
"(5) Approval of registration.
"(6) Denial of registration.
"(d) Classification of pesticides.
"(1) Classification for general use, restricted use, or both.
"(2) Change in classification.
"(e) Products with same formulation and claims.
"(f) Miscellaneous.
"(1) Effect of change of labeling or formulation.
"(2) Registration not a defense.
"(3) Authority to consult other Federal agencies.
"Sec. 4. Use of restricted use pesticide; certified applicators.
"(a) Certification procedure.
"(1) Federal certification.
"(2) State certification.
"(b) State plans.
"Sec. 5. Experimental use permits.
"(a) Issuance.
"(b) Temporary tolerance level.
"(c) Use under permit.
"(d) Studies.
"(e) Revocation.
"Sec. 6. Administrative review; suspension.
"(a) Cancellation after five years.
"(1) Procedure.
"(2) Information.
"(b) Cancellation and change in classification.
"(c) Suspension.
"(1) Order.
"(2) Duration of order.
"(3) Judicial review.
"(d) Public hearings and scientific review.

Mr. WOLFF. Mr. Chairman, I rise today in support of an amendment to H.R. 10729, the Federal Environmental Pesticide Control Act of 1971, which is being offered by my distinguished New York colleague (Mr. Dow). I urge my colleagues in the House to give careful consideration to the merits of this amendment and to join with me in supporting this measure.

H.R. 10729, as reported from committee, substantially weakens the straightforward provisions of the present law without offering adequate safeguards in return. For example, the bill will preempt the setting of stronger requirements and safeguards by the individual States. I point to my own State of New York as a case in point.

In addition, the Pesticide Act as it now stands would require the Administrator of the Environmental Protection Agency to prove that a pesticide product is environmentally unsound. The burden of proof to demonstrate that the pesticide will not adversely affect the environment, I think, rightfully belongs with the manufacturer. The amendment before us today would make this necessary change.

This amendment would also remove from the present bill some of the procedural obstacles that could prevent the Environmental Protection Agency from acting most effectively in the public interest, and it would remove the requirement that indemnities be paid to manufacturers, thus encouraging more careful

"SEC. 1. SHORT TITLE AND TABLE OF CONTENTS

"(a) SHORT TITLE.—This Act may be cited as the 'Federal Insecticide, Fungicide, and Rodenticide Act'.

"(b) TABLE OF CONTENTS.—

"Section 1. Short title and table of contents.
"(a) Short title.
"(b) Table of contents.
"Sec. 2. Definitions.
"(a) Active ingredient.
"(b) Administrator.
"(c) Adulterated.
"(d) Animal.
"(e) Certified pesticide applicator, etc.
"(1) Certified pesticide applicator.
"(2) Private pesticide applicator.
"(3) Commercial pesticide applicator.
"(f) Defoliant.
"(g) Desiccant.
"(h) Device.
"(i) District court.
"(j) Environment.
"(k) Fungus.
"(l) Imminent hazard.
"(m) Inert ingredient.
"(n) Ingredient statement.
"(o) Insect.
"(p) Label and labeling.
"(1) Label.
"(2) Labeling.
"(q) Misbranded.
"(r)) Nematode.
"(s) Person.
"(t) Pest.
"(u) Pesticide.
"(v) Plant regulator.
"(w) Producer and produce.
"(x) Protect health and the environment.
"(y) Registrant.
"(z) Registration.
"(aa) State.
"(bb) Substantial adverse effects on the environment.
"(e) Judicial review.
"Sec. 7. Registration of establishments.
"(a) Requirement.
"(b) Registration.
"(c) Information required.
"(d) Confidential records and information.
"Sec. 8. Books and records.
"(a) Requirement.
"(b) Inspection.
"Sec. 9. Inspection of establishments, etc.
"(a) In general.
"(b) Warrants.
"(c) Enforcement.
"(1) Certification of facts to Attorney General..
"(2) Notice not required.
"(3) Warning notices.
"Sec. 10. Protection of trade secrets, etc.
"(a) In general.
"(b) Disclosure.
"Sec. 11. Standards applicable to pesticide applicators.
"(a) In general.
"(b) Separate standards.
"Sec. 12. Unlawful acts.
"(a) In general.
"(b) Exemptions.
"Sec. 13. Stop sale, use, removal, and seizure.
"(a) Stop sale, etc., orders.
"(b) Seizure.
"(c) Disposition after condemnation.
"(d) Court costs, etc.
"Sec. 14. Penalties.
"(a) Civil penalties.
"(1) In general.
"(2) Private pesticide applicator.
"(3) Hearing.
"(4) References to Attorney General.
"(b) Criminal penalties.
"(1) In general.
"(2) Private pesticide applicator.
"(3) Disclosure of information.
"(4) Act of officers, agents, etc.

"Sec. 15. Indemnities.
"(a) Requirement.
"(b) Amount of payment.
"(1) In general.
"(2) Special rule.
"Sec. 16. Administrative procedure; judicial review.
"(a) Application of Administrative Procedure Act.
"(b) Judicial reviews.
"(c) Jurisdiction of district courts.
"(d) Notice of judgments.
"Sec. 17. Imports and exports.
"(a) Pesticides and devices intended for export.
"(b) Cancellation notices furnished to foreign governments.
"(c) Importation of pesticides and devices.
"(d) Cooperation in international efforts.
"(e) Regulations.
"Sec. 18. Exemption of Federal agencies.
"Sec. 19. Disposal and transportation.
"(a) Procedures.
"(b) Advice to Secretary of Transportation.
"Sec. 20. Research and monitoring.
"(a) Research.
"(b) National monitoring plan.
"(c) Monitoring.
"Sec. 21. Solicitation of public comments.
"Sec. 22. Delegation and cooperation.
"Sec. 23. State cooperation, aid, and training.
"Sec. 24. Authority of States and political subdivisions.
"(a) Cooperative agreements.
"(b) Contracts for training.
"Sec. 25. Authority of Administrator.
"(a) Regulations.
"(b) Exemption of pesticides.
"(c) Other authority.
"Sec. 26. Severability.
"Sec. 27. Authorization for appropriations.

"SEC. 2. DEFINITIONS

"For purposes of this Act—

"(a) ACTIVE INGREDIENT.—The term 'active ingredient' means—

"(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate insects, nematodes, fungi, weeds, rodents, or microorganisms which the Administrator declares to be pests,

"(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof,

"(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant, with or without causing abscission, and

"(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

"(b) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(c) ADVISORY COMMITTEE.—The term 'Advisory Committee' means the Scientific Advisory Committee established by section 25(d).

"(d) ANTIMICROBIAL PESTICIDE.—The term 'antimicrobial pesticide' means a pesticide that is a germicide, an antibiotic, an antifouling agent, an industrial microbiocide, a fungicide used on inanimate objects, or a slimicide.

"(e) APPLY.—The term 'apply' means, when used in connection with the use of a pesticide, any action taken intentionally by any person to distribute a pesticide into the environment, but does not include the movement of a pesticide by a person who did not intend that the pesticide be moved.

"(f) ARTHROPOD.—The term 'arthropod' means any member of the largest group of animals comprising those that have jointed appendages and segmented bodies and that include classes of arthropods whose members are wingless and usually have more than six legs, as for example, spiders, mites, ticks, centipedes, and wood lice.

"(g) BEEHIVE.—The term 'beehive' means a structure in which a honeybee colony normally lives.

"(h) CERTIFIED APPLICATOR.—The term 'certified applicator' means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

"(i) CERTIFIED PRIVATE APPLICATOR.—The term 'certified private applicator' means a certified applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person.

"(j) COMMERCIAL PESTICIDE APPLICATOR.—The term 'commercial pesticide applicator' means a certified pesticide applicator (whether or not he is a private pesticide applicator with respect to some uses) who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than as provided by paragraph (2).

"(k) DEFOLIANT.—The term 'defoliant' means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission.

"(l) DESICCANT.—The term 'desiccant' means any substance or mixture of substances intended for artificially accelerating the drying of plant tissue.

"(m) DEVICE.—The term 'device' means any instrument or contrivance (other than a firearm) which (1) is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life (other than man and other than bacteria, virus, or other micro-organisms on or in living man or other living animals), and (2) is within a class of devices in respect of which the Administrator has made the determination referred to in section 25(c)(4).

"(n) DISTRICT COURT.—The term 'district court' means a United States district court, the District Court of Guam, the District Court of the Virgin Islands, and the highest court of American Samoa.

"(o) ENVIRONMENT.—The term 'environment' includes water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these.

"(p) FUNGUS.—The term 'fungus' means any nonchlorophyll-bearing thallophyte (that is, any nonchlorophyll-bearing plant of a type lower than the bryophytes), as for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those on or in living man or other living animals and those on processed food or processed animal feed, beverages, drugs (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act), or cosmetics (as defined in section 201(i) of such Act).

"(q) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement of the name and percentage of each active ingredient and the total percentage of the inert ingredients in the pesticide, and, if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

"(r) INGREDIENTS.—The term 'ingredients' means any active ingredient and any inert ingredient.

"(s) INERT INGREDIENT.—The term 'inert ingredient' means an ingredient which is not an active ingredient.

"(t) INSECT.—The term 'insect' means any of the class of insects comprising those that have six legs as adults, as for example, beetles, flies, bees, wasps, moths, butterflies, and ants.

"(u) LABEL AND LABELING.—

"(1) LABEL.—The term 'label' means the written, printed, or graphic matter on, or attached to, the pesticide, or device or any of its containers or wrappers.

"(2) LABELING.—The term 'labeling' means all labels and all other written, printed, or graphic matter—

"(A) accompanying the pesticide or device at any time; or

"(B) to which reference is made on the label or in literature accompanying the pesticide or device, except to current official publications of the Environmental Protection Agency, the United States Departments of Agriculture and Interior, the Department of Health, Education, and Welfare, State experiment stations, State agricultural colleges, and other similar Federal or State institutions or agencies authorized by law to conduct research in the field of pesticides.

"(v) MISBRANDED.—

"(1) A pesticide or device subject to this Act is misbranded if—

"(A) its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;

"(B) it is contained in a package or other container or wrapping which does not conform to the standards established by the Administrator pursuant to section 25(c)(3);

"(C) it is an imitation of, or is offered for sale under the name of, another pesticide or device;

"(D) its labeling does not bear the registration number assigned under section 7 to each establishment in which it was produced;

"(E) any word, statement, or other information required by or under authority of this Act to appear on the label or labeling is not prominently placed thereon with such

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ingredient' means—

"(1) in the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, or mitigate any pest;

"(2) in the case of a plant regulator, an ingredient which, through physiological action, will accelerate or retard the rate of growth or rate of maturation or otherwise alter the behavior of ornamental or crop plants or the product thereof;

"(3) in the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant; and

"(4) in the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

"(b) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(c) ADULTERATED.—The term 'adulterated' applies to any pesticide if:

"(1) its strength or purity falls below the professed standard or quality as expressed on its labeling under which it is sold;

"(2) Any substance has been substituted wholly or in part for the pesticide; or

"(3) any valuable constituent of the pesticide has been wholly or in part abstracted.

"(d) ANIMAL.—The term 'animal' means all vertebrate and invertebrate species, including but not limited to man and other *mammals, birds, fish, and shellfish.*

"(e) CERTIFIED PESTICIDE APPLICATOR, ETC.—

"(1) CERTIFIED PESTICIDE APPLICATOR.—The term 'certified pesticide applicator' means any individual who is certified under section 4 as authorized to use or supervise the use of any pesticide which is classified for restricted use.

"(2) PRIVATE PESTICIDE APPLICATOR.—The term 'private pesticide applicator' means a certified pesticide applicator who uses or supervises the use of any pesticide which is any nonchlorophyll-bearing thallophyte (that is, any non-chlorophyll-bearing plant *of a lower order than mosses and liverworts*), as for example, rust, smut, mildew, mold, yeast, and bacteria, except those on or in living man or other animals and those on or in processed food, beverages, or pharmaceuticals.

"(l) IMMINENT HAZARD.—The term 'imminent hazard' means a situation which exists when the continued use of a pesticide during the time required for cancellation proceeding would likely result in substantial adverse effects on the environment.

"(m) INERT INGREDIENT.—The term 'inert ingredient' means an ingredient which is not active.

"(n) INGREDIENT STATEMENT.—The term 'ingredient statement' means a statement which contains—

"(1) the name of each active ingredient in the pesticide;

"(2) if all the uses of the pesticide are classified for general use, then either—

"(i) the total percentage of all inert ingredients, and of all active ingredients, in the pesticide; or

"(ii) the percentage of each active ingredient, and the total percentage of all inert ingredients, in the pesticide; and if all the uses of the pesticide are not classified for general use, then the information required under (ii); and

"(3) if the pesticide contains arsenic in any form, a statement of the percentages of total and water soluble arsenic, calculated as elemental arsenic.

"(o) INSECT.—*The term 'insect' means any* of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied *conspicuousness (as compared with other* words, statements, designs, or graphic matter in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

"(F) if the labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment; or

"(G) if the label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of this Act, is adequate to protect health and the environment.

"(2) A pesticide is misbranded if—

"(A) the label does not bear an ingredient statement on that part of the immediate container (and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package) which is presented or displayed under customary conditions of purchase, except that a pesticide is not misbranded under this subparagraph if:

"(i) the size or form of the immediate container, or the outside container or wrapper of the retail package, makes it impracticable to place the ingredient statement on the *part which is presented or* displayed under customary conditions of purchase; and

"(ii) the ingredient statement appears prominently on another part of the immediate container, or outside container or wrapper, permitted by the Administrator;

"(B) the labeling does not contain a statement of the use classification under which the product is registered;

"(C) there is not affixed to its container, and to the outside container or wrapper of the retail package, if there be one, through which the required information on the immediate container cannot be clearly read, a label bearing—

"(i) the name and address of the producer, registrant, or person for whom produced;

"(ii) the name, brand, or trademark under which the pesticide is sold;

'(iii) the net weight or measure of the content: *Provided,* That the Administrator may permit reasonable variations; and

"(iv) when required by regulation of the Administrator to effectuate the purposes of this Act, the registration number assigned to the pesticide under this Act, and the use classification; and

"(D) the pesticide contains any substance or substances in quantities highly toxic to man, unless the label shall bear, in addition to any other matter required by this Act—

"(i) the skull and crossbones;

"(ii) the word 'poison' prominently in red on a background of distinctly contrasting color; and

"(iii) a statement of a practical treatment (first aid or otherwise) in case of poisoning by the pesticide.

"(r) NEMATODE.—The term 'nematode' means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or saclike bodies covered with cuticle, and inhabiting soil, water, plants, or plant parts; may also be called nemas or eelworms.

"(s) PERSON.—The term 'person' means any individual, partnership, association, corporation, or any organized group of persons whether incorporated or not.

"(t) PEST.—The term 'pest' means (1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life of virus, bacteria, or

"(aa) STATE.—The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa.

"(bb) SUBSTANTIAL ADVERSE EFFECTS ON THE ENVIRONMENT.—The term 'substantial adverse effects on the environment' means any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

"(cc) WEED.—The term 'weed' means any plant which grows where not wanted.

"SEC. 3. REGISTRATION OF PESTICIDES

"(a) REQUIREMENT.—Except as otherwise provided by this Act, no person in any State may distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person any pesticide which is not registered with the Administrator.

"(b) EXEMPTIONS.—A pesticide which is not registered with the Administrator may be transferred if—

"(1) the transfer is from one registered establishment to another registered establishment operated by the same producer solely for packaging at the second establishment or for use as a constituent part of another pesticide produced at the second establishment; or

"(2) the transfer is pursuant to and in accordance with the requirements of an experimental use permit.

"(c) PROCEDURE FOR REGISTRATION.—

"(1) STATEMENT REQUIRED.—Each applicant for registration of a pesticide shall file with the Administrator a statement which includes—

"(A) the name and address of the applicant and of any other person whose name will appear on the labeling;

"(B) the name of the pesticide;

"(C) a complete copy of the labeling of the

(1) and (2), a notice of each application for registration of any pesticide if it contains any new active ingredient or if it would entail a changed use pattern. The notice shall provide for a period of 30 days in which any Federal agency or any other interested person may comment.

"(5) APPROVAL OF REGISTRATION.—The Administrator shall register a pesticide if he determines that, when considered with any restrictions imposed under subsection (d)—

"(A) its composition is such as to warrant the proposed claims for it;

"(B) its labeling and other material required to be submitted comply with the requirements of this Act; and

"(C) it will perform its intended function without substantial adverse effects on the environment.

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide.

"(6) DENIAL OF REGISTRATION.—If the Administrator determines that the requirements of paragraph (5) for registration are not satisfied, he shall notify the applicant for registration of his determination and of his reasons (including the factual basis) therefor, and that, unless the applicant corrects the conditions and notifies the Administrator thereof during the 30-day period beginning with the day after the date on which the applicant receives the notice, the Administrator will refuse to register the pesticide. Whenever the Administrator refuses to register a pesticide, he shall notify the applicant of his decision and of his reasons (including the factual basis) therefor. Upon such notification, the applicant for registration shall have the same remedies as provided for the registrant in section 6.

"(d) CLASSIFICATION OF PESTICIDES.—

"(1) CLASSIFICATION FOR GENERAL USE, RESTRICTED USE, OR BOTH.—

"(A) As a part of the registration of a pesticide the Administrator shall classify it

other micro-organism (except viruses, bacteria, or other micro-organisms on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

"(u) PESTICIDE.—The term 'pesticide' means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and (2) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.".

"(v) PLANT REGULATOR.—The term 'plant regulator' means any substance or mixture of substances, intended through physiological action, for accelerating or retarding the rate of growth or rate of maturation, or for otherwise altering the behavior of plants or the produce thereof, but shall not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plan inoculants, and soil amendments.

"(w) PRODUCER AND PRODUCE.—The term 'producer' means the person who manufactures, prepares, compounds, propagates, or processes any pesticide or device. The term 'produce' means to manufacture, prepare, compound, propagate, or process any pesticide or device.

"(x) PROTECT HEALTH AND THE ENVIRONMENT.—The terms 'protect health and the environment' and 'protection of health and the environment' means protection against any injury to man and protection against any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

"(y) REGISTRANT.—The term 'registrant' means a person who has registered any pesticide pursuant to the provisions of this Act.

"(z) REGISTRATION.—The term 'registration' includes reregistration.

pesticide, a statement of all claims to be made for it, and any directions for its use;

"(D) if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration;

"(E) the complete formula of the pesticide; and

"(F) a request that the pesticide be classified for general use, for restricted use, or for both.

"(2) DATA IN SUPPORT OF REGISTRATION.—The Administrator shall publish guidelines specifying the kinds of information which will be required to support the registration of a pesticide and shall revise such guidelines from time to time. If thereafter he requires any additional kind of information he shall permit sufficient time for applicants to obtain such additional information. Except as provided by subsection (c)(1)(D) of this section and section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision.

(3) TIME FOR ACTING WITH RESPECT TO APPLICATION.—The Administrator shall review the data after receipt of the application and shall, as expeditiously as possible, either register the pesticide in accordance with paragraph (5), or notify the applicant of his determination that it does not comply with the provisions of the Act in accordance with paragraph (6).

"(4) NOTICE OF APPLICATION.—The Administrator shall publish in the Federal Register, promptly after receipt of the statement and other data required pursuant to paragraphs as being for general use or for restricted use, provided that if the Administrator determines that some of the uses for which the pesticide is registered should be for general use and that other uses for which it is registered should be for restricted use, he shall classify it for both general use and restricted use. If some of the uses of the pesticide are classified for general use and other uses are classified for restricted use, the directions relating to its general uses shall be clearly separated and distinguished from those directions relating to its restricted uses.

"(B) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, will not cause substantial adverse effects on the environment, he will classify the pesticide, or the particular use or uses of the pesticide to which the determination applies for general use.

"(C) If the Administrator determines that the pesticide, when applied in accordance with its directions for use, warnings and cautions and for the uses for which it is registered, or for one or more of such uses, may cause, without additional regulatory restrictions, substantial adverse effects on the environment, including injury to the applicator, he shall classify the pesticide, or the particular use or uses to which the determination applies, for restricted use.

(i) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons, the pesticide shall be applied for any use to which the restricted classification applies only by or under the direct supervision of a certified pesticide applicator.

(ii) If the Administrator classifies a pesticide, or one or more uses of such pesticide, for restricted use because of a determination that its use without additional regulatory restriction may cause substantial adverse effect on the environment, the pesticide shall be applied for any use to which the determination applies only by or under the direct supervision of a certified pesticide applicator, or subject to such other restrictions as the Administrator may determine.

"(2) CHANGE IN CLASSIFICATION.—If the Administrator determines that a change in the classification of any use of a pesticide from general use to restricted use is necessary to prevent substantial adverse effects on the environment, he shall notify the registrant of such pesticide of such determination at least 30 days before making the change and shall publish the proposed change in the Federal Register.

"(e) PRODUCTS WITH SAME FORMULATION AND CLAIMS.—Products which have the same formulation, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same pesticide may be registered as a single pesticide; and additional names and labels shall be added by supplemental statements.

"(f) MISCELLANEOUS.—

"(1) EFFECT OF CHANGE OF LABELING OR FORMULATION.—If the labeling or formulation for a pesticide is changed, the registration shall be amended to reflect such change if the Administrator determines that the change will not violate any provision of this Act.

"(2) REGISTRATION NOT A DEFENSE.—In no event shall registration of an article be construed as a defense for the commission of any offense under this Act.

"(3) AUTHORITY TO CONSULT OTHER FEDERAL AGENCIES.—In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency.

hearing before so doing. If the Administrator approves a plan submitted under this paragraph, then such State shall certify pesticide applicators with respect to such State.

"SEC. 5. EXPERIMENTAL USE PERMITS.

"(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator may issue an experimental use permit if he determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3. An application for an experimental use permit may be filed at the time of or before or after an application for registration is filed.

"(b) TEMPORARY TOLERANCE LEVEL.—If the Administrator determines that the use of a pesticide may reasonably be expected to result in any residue on or in food or feed, he may establish a temporary tolerance level for the residue of the pesticide before issuing the experimental use permit.

"(c) USE UNDER PERMIT.—Use of a pesticide under an experimental use permit shall be under the supervision of the Administrator, and shall be subject to such terms and conditions and be for such period of time as the Administrator may prescribe in the permit.

"(d) STUDIES.—When any experimental use permit is issued for a pesticide containing any chemical or combination of chemicals which has not been included in any previously registered pesticide, the Administrator may specify that studies be conducted to detect whether the use of the pesticide under the permit may cause substantial adverse effects on the environment. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

"(e) REVOCATION.—The Administrator may revoke any experimental use permit, at any

"(1) ORDER.—If the Administrator determines that such action is necessary to prevent an imminent hazard during the time required for cancellation proceedings, he may, by order, suspend the registration of the pesticide immediately. No order of suspension may be issued unless at the same time the Administrator issues notices of his intention to cancel the registration of the pesticide. Any remedy elected by the registrant under section 6(a) shall be held as expeditiously as possible.

"(2) DURATION OF ORDER.—Any suspension order shall remain in effect only until 90 days after the completion of the administrative remedies provided for under section 6 (a) or until the Administrator issues his final order either canceling or denying cancellation of the registration, whichever is sooner.

"(3) JUDICIAL REVIEW.—Any order of suspension shall be subject to immediate review in all actions by the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capicious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. This action may be maintained simultaneously with any administrative review proceeding under section 6.

"(d) PUBLIC HEARINGS AND SCIENTIFIC REVIEW.—In the event a hearing is requested pursuant to subsection (a) or (d) or determined upon by the Administrator pursuant to subsection (d), such hearing shall be held after due notice for the purpose of receiving evidence relevant and material to the issues raised by the objections filed by the applicant or other interested parties, or to the issues stated by the Administrator, if the hearing is called by the Administrator rather than by the filing of objections. Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpena to compel testimony from any per-

"SEC. 4. USE OF RESTRICTED USE PESTICIDE; CERTIFIED APPLICATORS.

"(a) CERTIFICATION PROCEDURE.—

"(1) FEDERAL CERTIFICATION.—Subject to paragraph (2), the Administrator shall prescribe standards for the certification of pesticide applicators. Such standards shall provide that to be certified, an individual must be determined to be competent with respect to the use and handling of pesticides, or of the use and handling of the pesticide or class of pesticides covered by such individual's certification.

"(2) STATE CERTIFICATION.—If any State, at any time, desires to certify pesticide applicators, the Governor of such State shall submit a State plan for such purpose. The Administrator shall approve the plan submitted by any State, or any modification thereof, if such plan in his judgment—

"(A) designates a State agency as the agency responsible for administering the plan throughout the State;

"(B) contains satisfactory assurances that such agency has or will have the legal authority and qualified personnel necessary to carry out the plan;

"(C) gives satisfactory assurances that the State will devote adequate funds to the administration of the plan;

"(D) provides that the State agency will make such reports to the Administrator in such form and containing such information as the Administrator may from time to time require; and

"(E) contains satisfactory assurances that State standards for the certification of pesticide applicators conform with those standards prescribed by the Administrator under paragraph (1).

"(b) STATE PLANS.—If the Administrator rejects a plan submitted under this paragraph, he shall afford the State submitting the plan due notice and opportunity for time, if he finds that its terms or conditions are being violated, or that its terms and conditions are inadequate to avoid substantial adverse effects on the environment.

"SEC. 6. ADMINISTRATIVE REVIEW; SUSPENSION

"(a) CANCELLATION AFTER FIVE YEARS.—

"(1) PROCEDURE.—The Administrator shall cancel the registration of any pesticide at the end of the five-year period which begins on the date of its registration (or at the end of any five-year period thereafter) unless the registrant, before the end of such period, requests in accordance with regulations prescribed by the Administrator that the registration be continued in effect.

"(2) INFORMATION.—If at any time after the registration of a pesticide the registrant has additional factual information regarding substantial adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

"(b) CANCELLATION AND CHANGE IN CLASSIFICATION.—If the Administrator determines that registration of a pesticide should be canceled or that the classification of a pesticide should be changed, he shall notify the registrant of such notice, the registrant may, within 30 days (A) registration or change the classification and of his reasons (including the factual basis) therefor in writing. Upon receipt of such notice, the registrant may, within 30 days (A) make the necessary corrections and so notify the Administrator, or (B) file objections and request a public hearing. If the registrant does not take any such action, the notice shall, at the end of 30 days from its receipt by the registrant, constitute a final order of cancellation or change in classification. If the registrant files objections and requests a public hearing, the order of cancellation or change in classification may only be issued after completion of such proceeding.

"(c) SUSPENSION.—

son. Upon the request of any party or when in the hearing officer's judgment it is necessary or desirable, the hearing officer shall refer to a Committee of the National Academy of Sciences all relevant questions of scienific fact arising in the course of the public hearing. The Committee of the National Academy of Sciences shall report in writing to the officer within 60 days on these questions of scientific fact. The report shall be made public and shall be considered as part of the hearing record. The Administrator shall enter into appropriate arrangements with the National Academy of Sciences to assure an objective and competent scientific review of the questions presented to Committees of the Academy and to provide such other scientific advisory services as may be required by the Administrator for carrying out the purposes of this Act. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness and shall order the payment of reasonable fees and expenses as a condition to requiring his testimony. On contest, the subpena may be enforced by an appropriate United States District Court in accordance with the principles stated herein and the Administrative Procedure Act. As soon as practicable after completion of the hearing but not later than 90 days thereafter, the Administrator shall evaluate the data and reports before him and issue an order either revoking his notice of intention issued pursuant to this section, or shall issue an order either canceling the registration, changing the classification, denying the registration, or requiring modification of the labeling or packaging of the article. Such order shall be based only on substantial evidence of record of such hearing and shall set forth detailed findings of fact upon which the order is based.

"(e) JUDICIAL REVIEW.—Final orders of the

Administrator under this section shall be subject to judicial review pursuant to section 16.

"SEC. 7. REGISTRATION OF ESTABLISHMENTS.

"(a) REQUIREMENT.—No person shall produce any pesticide or device subject to this Act in any State unless the establishment in which it is produced is registered with the Administrator. The application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such establishment.

"(b) REGISTRATION.—Whenever the Administrator receives an application under subsection (a), he shall register the establishment and assign it an establishment number.

"(c) INFORMATION REQUIRED.—

"(1) Any producer operating an establishment registered under this section shall inform the Administrator within 30 days after it is registered of the types and amounts of pesticides and devices—

"(A) which he is currently producing;

"(B) which he has produced during the past year; and

"(C) which he has sold or distributed during the past year.

The information required by this paragraph shall be kept current and submitted to the Administrator annually as required under such regulations as the Administrator may prescribe.

"(2) Any such producer shall, upon the request of the Administrator for the purpose of issuing a stop sale order pursuant to section 13, inform him of the name and address of any recipient of any pesticide produced in any registered establishment which he operates.

"(d) CONFIDENTIAL RECORDS AND INFORMATION.—Any information submitted to the Administrator pursuant to subsection (c) shall be considered confidential and shall be subject to the provisions of section 10.

"SEC. 9. INSPECTION OF ESTABLISHMENTS, ETC.

"(a) IN GENERAL.—For purposes of enforcing the provisions of this Act, officers or employees duly designated by the Administrator are authorized—

"(1) to enter, at reasonable times, any establishment; and

"(2) to inspect and obtain samples of any pesticides or devices, packaged, labeled, and released for shipment, and samples of any containers or labeling for such pesticides or devices.

Before undertaking such inspection, the officers or employees must present to the owner, operator, or agent in charge of the establishment, appropriate credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected. If no violation is suspected, an alternate and sufficient reason shall be given in writing. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the samples obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If an analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

"(b) WARRANTS.—For purposes of enforcing the provisions of this Act and upon a showing to an officer or court of competent jurisdiction that there is reason to believe that the provisions of this Act have been violated, officers or employees duly designated by the Administrator are empowered to obtain and to execute warrants authorizing—

"(1) entry for the purpose of this section;

"(2) inspection and reproduction of all records showing the quantity, date of shipment, and the name of consignor and consignee of any illegal pesticide or device found

ministrator to institute proceedings for prosecution of minor violations of this Act whenever he believes that the public interest will be adequately served by a suitable written notice of warning.

"SEC. 10. PROTECTION OF TRADE SECRETS AND OTHER INFORMATION.

"(a) IN GENERAL.—In submitting this data required by this Act, the applicant may (1) clearly mark any portions thereof which in his opinion are trade secrets or commercial or financial information, and (2) submit such marked material separately from other material required to be submitted under this Act.

"(b) DISCLOSURE.—Notwithstanding any other provision of this Act, the Administrator shall not make public information which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act, information relating to formulas of products acquired by authorization of this Act may be revealed to any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.

"SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS.

"(a) IN GENERAL.—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private pesticide applicator to maintain any records or file any reports or other documents.

"(b) SEPARATE STANDARDS.—When establishing or approving standards for licensing or certification, the Administrator shall establish separate standards for commercial and private applicators.

"SEC. 12. UNLAWFUL ACTS.

"(a) IN GENERAL.—

"(1) Except as provided by subsection (b), it shall be unlawful for any person in any

"SEC. 8. BOOKS AND RECORDS.

"(a) REQUIREMENT.—The Administrator may prescribe regulations requiring producers to maintain such records with respect to their operations and the pesticides and devices produced as he determines are necessary for the effective enforcement of this Act. No records required under this subsection shall extend to financial data; sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed).

"(b) INSPECTION.—For the purposes of enforcing the provisions of this Act, any producer, distributor, carrier, dealer, or any other person who sells or offers for sale, delivers or offers for delivery any pesticide or device subject to this Act, shall, upon request of any officer or employee of the Environmental Protection Agency or of any State or political subdivision, duly designated by the Administrator, furnish or permit such person at all reasonable times to have access to, and to copy: (1) all records showing the delivery, movement, or holding of such pesticide or device, including the quantity, the date of shipment and receipt, and the name of the consignor and consignee; or (2) in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or devices. Any inspection with respect to any records and information referred to in this subsection shall not extend to financial data, sales data other than shipment data, pricing data, personnel data, and research data (other than data relating to registered pesticides or to a pesticide for which an application for registration has been filed). in the establishment and in the event of the inability of any person to produce records containing such information, all other records and information relating to such delivery, movement, or holding of the pesticide or device; and

"(3) the seizure of any pesticide or device which is in violation of this Act.

"(c) ENFORCEMENT.—

"(1) CERTIFICATION OF FACTS TO ATTORNEY GENERAL.—The examination of pesticides or devices shall be made in the Environmental Protection Agency or elsewhere as the Administrator may designate for the purpose of determining from such examinations whether they comply with the requirements of this Act. If it shall appear from any such examination that they fail to comply with the requirements of this Act, the Administrator shall cause notice to be given to the person against whom criminal proceedings are contemplated. Any person so notified shall be given an opportunity to present his views, either orally or in writing, with regard to such contemplated proceedings, and if in the opinion of the Administrator it appears that the provisions of this Act have been violated by such person, then the Administrator shall certify the facts to the Attorney General, with a copy of the results of the analysis or the examination of such pesticide for the institution of a criminal proceeding pursuant to section 16, when the Administrator determines that such action will be sufficient to effectuate the purposes of this Act.

"(2) NOTICE NOT REQUIRED.—The notice of contemplated proceedings and opportunity to present views set forth in this subsection are not prerequisites to the institution of any proceeding by the Attorney General.

"(3) WARNING NOTICES.—Nothing in this Act shall be construed as requiring the Administrator to distribute, sell, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person—

"(A) any pesticide which is not registered under section 3;

"(B) any registered pesticide if any claims made for it as a part of its distribution or sale substantially differ from any claims made for it as a part of the statement required in connection with its registration under section 3;

"(C) any registered pesticide the composition of which differs at the time of its distribution or sale from its composition as described in the statement required in connection with its registration under section 3;

"(D) any pesticide which has not been colored or discolored pursuant to the provisions of section 25(c)(5);

"(E) any pesticide which is adulterated or misbranded; or

"(F) any device which is misbranded.

"(2) It shall be unlawful for any person—

"(A) to detach, alter, deface, or destroy, in whole or in part, any labeling required under this Act;

"(B) to refuse to keep any records required pursuant to section, or to refuse to allow the inspection of any records or establishment pursuant to section 8 or 9, or to refuse to allow an officer or employee of the Environmental Protection Agency to take a sample of any pesticide pursuant to section 9;

"(C) to give a guaranty or undertaking provided for in subsection (b) which is false in any particular, except that a person who receives and relies upon a guaranty authorized under subsection (b) may give a guaranty to the same effect, which guaranty shall contain, in addition to his own name and address, the name and address of the

person residing in the United States from whom he received the guaranty or undertaking;

"(D) to use for his own advantage or to reveal, other than to the Administrator, or officials or employees of the Environmental Protection Agency or other Federal executive agencies, or to the courts, or to physicians, pharmacists, and other qualified persons, needing such information for the performance of their duties, in accordance with such directions as the Administrator may prescribe, any information acquired by authority of this Act which is confidential under this Act;

"(E) who is a registrant, wholesaler, dealer, retailer, or other distributor to advertise a product registered under this Act for restricted use without giving the classification of the product assigned to it under section 3;

"(F) to make available for use, or to use, any registered pesticide classified for restricted use for some or all purposes other than in accordance with section 3(d) and any regulations thereunder;

"(G) to use any registered pesticide in a manner inconsistent with its labeling;

"(H) to use any pesticide which is under an experimental use permit contrary to the provisions of such permit;

"(I) to violate any order issued under section 13;

"(J) to violate any suspension order issued under section 6;

"(K) to violate any cancellation of registration of a pesticide under section 6;

"(L) who is a producer to violate any of the provisions of section 7;

"(M) to knowingly falsify all or part of any application for registration, application for experimental use permit, any information submitted to the Administrator pursuant to section 7, any records required to be maintained pursuant to section 8, any report filed under this Act, or any information marked as confidential and submitted to the Administrator pursuant to section 4(c)(2);

"(N) to fail to submit any information required by section 4(c)(2) or section 7(c)(2) or to submit any such information which is false or misleading; or

"(O) to violate any provision of section 4(c)(2) or section 7(c)(2).

"(2) Any person who violates any provision of this Act may be subject to a civil penalty by the Administrator of not more than $5,000 for each offense. Any private pesticide applicator who violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, may be subject to a civil penalty by the Administrator of not more than $1,000 for each offense. No penalty shall be assessed unless the person charged shall have been given notice and opportunity for a hearing on such charge in the county, parish, or incorporated city of the residence of the person charged. In determining the amount of the penalty the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation. In case of inability to collect such civil penalty or failure of any person to pay all, or such portion of such civil penalty as the Administrator may determine, the Administrator shall refer the matter to the Attorney General, who shall recover such amount by action in the appropriate United States district court.

"(3) Any person who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(4) Any person who knowingly violates any provision of this Act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation, shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(5) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of purchasing a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(6) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of applying a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(7) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of supervising the application of a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(8) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of supervising the application of a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(9) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of supervising the application of a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(10) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of supervising the application of a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(11) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of supervising the application of a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(12) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of supervising the application of a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(13) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of supervising the application of a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(14) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of supervising the application of a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

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"(137) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as a certified applicator for the purpose of supervising the application of a restricted use pesticide shall be guilty of a misdemeanor and shall on conviction be fined not more than $25,000, or imprisoned for not more than one year, or both.

"(138) Any person who knowingly violates any provision of this Act and who knowingly misrepresents himself as

istrator under any provision of this Act;

"(N) who is a registrant, wholesaler, dealer, retailer, or other distributor to fail to file reports required by this Act; or

"(O) to add any substance to, or take any substance from any pesticide in a manner that may defeat the purpose of this Act.

"(b) EXEMPTIONS.—The penalties provided for a violation of paragraph (1) of subsection (a) shall not apply to—

"(1) any person who establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased and received in good faith the pesticide in the same unbroken package, to the effect that the pesticide was lawfully registered at the time of sale and delivery to him, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provision of this Act;

"(2) any carrier while lawfully shipping, transporting, or delivering for shipment any pesticide or device, if such carrier upon request of any officer or employee duly designated by the Administrator shall permit such officer or employee to copy all of its records concerning such pesticide or device;

"(3) any public official while engaged in the performance of his official duties;

"(4) any person using or possessing any pesticide as provided by an experimental use permit in effect with respect to such pesticide and such use or possession; or

"(5) any person who ships a substance or mixture of substances being put through tests in which the purpose is only to determine its value for pesticide purposes or to determine its toxicity or other properties and from which the user does not expect to realize any benefit in the pesticidal value of the substance or mixture.

"(c) DISPOSITION AFTER CONDEMNATION.—If the pesticide or device is condemned it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs, shall be paid into the Treasury of the United States, but the pesticide or device shall not be sold contrary to the provisions of this Act or the laws of the jurisdiction in which it is sold: *Provided,* That upon the payments of the costs of the condemnation proceedings and the execution and delivery of a good and sufficient bond conditioned that the pesticide or device shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws of any State in which sold, the court may direct that such pesticide or device be delivered to the owner thereof. The proceedings of such condemnation cases shall conform, as near as may be, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

"(d) COURT COSTS, ETC.—When a decree of condemnation is entered against the pesticide or device, court costs and fees, storage, and other proper expenses shall be awarded against the person, if any, intervening as claimant of the pesticide or device.

"(e) REMOVAL FROM CUSTODY.—No pesticide or device or other property subject to the provisions of this Act shall be removed from the custody of the person to whom delivered by the marshal pursuant to the process issued from the court, except in accordance with the final decree or with such permission as may be granted by the court.

"SEC. 14. PENALTIES.

"(a) IN GENERAL.—Any person who violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than one year, or both.

"(b) EXCEPTIONS.—Notwithstanding the provisions of subsection (a) of this section—

"(1) GOOD FAITH.—No person shall be subject to the penalties of this section for the sale or delivery of any pesticide or device which is adulterated or misbranded within the meaning of this Act, if he establishes a guaranty signed by, and containing the name and address of, the registrant or person residing in the United States from whom he purchased or received in good faith the pesticide or device, to the effect that the pesticide or device is not adulterated or misbranded within the meaning of this Act, and that it complies with the other requirements of this Act, and in such case the guarantor shall be subject to the penalties which would otherwise attach to the person holding the guaranty under the provisions of this Act;

"(2) PRIVATE PESTICIDE APPLICATOR.—Any private pesticide applicator who knowingly violates any provision of this Act shall be guilty of a misdemeanor and shall on conviction be fined not more than $1,000, or imprisoned for not more than 30 days, or both.

"(3) DISCLOSURE OF INFORMATION.—Any person, who, with intent to defraud, uses or reveals information relative to formulas of products acquired under the authority of section 3, shall be fined not more than $10,000, or imprisoned for not more than three years, or both.

"(4) ACTS OF OFFICERS, AGENTS, ETC.—When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any person shall in every case be also deemed to be the act, omission, or failure of such person as well as that of the person employed.

"SEC. 15. INDEMNITIES.

"(a) REQUIREMENT.—If—

"(1) the Administrator notifies a registrant that he has suspended the registration of a pesticide because such action is necessary to prevent an imminent hazard;

"(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard; and

"(3) any person who owned any quantity of such pesticide immediately before the notice to the registrant under paragraph (1) suffered losses by reason of suspension or cancellation of the registration,

the Administrator shall make an indemnity payment to such person.

"(b) AMOUNT OF PAYMENT.—

"(1) IN GENERAL.—The amount of the indemnity payment under subsection (a) to any person shall be determined on the basis

of the cost of the pesticide owned by such person immediately before the notice to the registrant referred to in subsection (a)(1); except that in no event shall an indemnity payment to any person exceed the fair market value of the pesticide owned by such person immediately before the notice referred to in subsection (a)(1).

"(2) SPECIAL RULE.—Notwithstanding any other provision of this Act, the Administrator may provide a reasonable time for use or other disposal of such pesticide. In determining the quantity of any pesticide for which indemnity shall be paid under this subsection, proper adjustment shall be made for any pesticide used or otherwise disposed of by such owner.

"SEC. 16. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW.

"(a) APPLICATION OF ADMINISTRATIVE PROCEDURE ACT.—Except as provided by subsection (b), subchapter II of chapter 5 of title 5 of the United States Code (sec. 551 and following, relating to administrative procedure) and chapter 7 of title 5 of the United States Code (sec. 701 and following, relating to judicial review) apply in respect of rules, rule making, orders, adjudication, licensing, sanctions, agency proceedings, and agency actions (as such terms are used in subchapter II of chapter 5 and in chapter 7 of title 5 of the United States Code).

"(b) JUDICIAL REVIEW.—In the case of actual controversy as to the validity of any order issued by the Administrator following a public hearing, any party at interest may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has a place of business, within 60 days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the cellation of the registration of a pesticide becomes effective, the Administrator shall transmit through the State Department copies of each notice of cancellation of a registration of a pesticide to the governments of other countries and to appropriate international agencies.

"(c) IMPORTATION OF PESTICIDES AND DEVICES.—The Secretary of the Treasury shall notify the Administrator of the arrival of pesticides and devices and shall deliver to the Administrator, upon his request, samples of pesticides or devices which are being imported into the United States, giving notice to the owner or consignee, who may appear before the Administrator and have the right to introduce testimony. If it appears from the examination of a sample that it is adulterated, or misbranded or otherwise violates the provisions set forth in this Act, or is otherwise injurious to health or the environment, the pesticide or device may be refused admission, and the Secretary of the Treasury shall refuse delivery to the consignee and shall cause the destruction of any pesticide or device refused delivery which shall not be exported by the consignee within 90 days from the date of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe: *Provided,* That the Secretary of the Treasury may deliver to the consignee such pesticide or device pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such pesticide or device, together with the duty thereon, and on refusal to return such pesticide or device for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond: *And provided further,* That all charges for storage, cartage, and labor on pesticide or device which are refused admission or delivery shall be paid by the owner or consignee, and in default of such payment

"SEC. 20. RESEARCH AND MONITORING

"(a) RESEARCH.—The Administrator shall undertake research, including research by grant or contract with other Federal agencies, universities, or others as may be necessary to carry out the purposes of this Act, and he shall give priority to research to develop biologically integrated alternatives for pest control. The Administrator shall also take care to insure that such research does not duplicate research being undertaken by any other Federal agency.

"(b) NATIONAL MONITORING PLAN.—The Administrator shall formulate and periodically revise, in cooperation with other Federal, State, or local agencies, a national plan for monitoring pesticides.

"(c) MONITORING.—The Administrator shall undertake such monitoring activities, including but not limited to monitoring in air, soil, water, man, plants, and animals, as may be necessary for the implementation of this Act and of the national pesticide monitoring plan. Such activities shall be carried out in cooperation with other Federal, State, and local agencies.

"SEC. 21. SOLICITATION OF PUBLIC COMMENTS

"In addition to any other authority relating to public hearings and solicitation of views, in connection with the suspension or cancellation of a pesticide registration or any other actions authorized under this Act, the Administrator may, at his discretion, solicit the views of all interested persons, either orally or in writing, and seek such advice from scientists, farmers, farm organizations, and other qualified persons as he deems proper.

"SEC. 22. DELEGATION AND COOPERATION

"(a) DELEGATION.—All authority vested in the Administrator by virtue of the provisions of this Act may with like force and effect be executed by such employees of the Environmental Protection Agency as the Administrator may designate for the purpose.

"(b) COOPERATION.—The Administrator

record of the proceedings on which he based his order, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The court shall consider all evidence of record. The order of the Administrator shall be sustained if it is supported by substantial evidence when considered on the record as a whole. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all cases filed therein pursuant to this section.

"(c) JURISDICTION OF DISTRICT COURTS.—The district courts of the United States are vested with jurisdiction specifically to enforce, and to prevent and restrain violations of, this Act.

"(d) NOTICE OF JUDGMENTS.—The Administrator shall, by publication in such manner as he may prescribe, give notice of all judgments entered in actions instituted under the authority of this Act.

"SEC. 17. IMPORTS AND EXPORTS

"(a) PESTICIDES AND DEVICES INTENDED FOR EXPORT.—Notwithstanding any other provision of this Act, no pesticide or device shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

"(b) CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENT.—Whenever a cancellation notice is issued under section 6(c) with respect to any pesticide or device, the Administrator shall furnish to the government of each foreign country to which such pesticide or device has been exported a copy of such notice.

"(c) EXPORTS OF UNREGISTERED PESTICIDES.—Any pesticide or device which is not registered under this Act may be exported if—

"(1) it is not contrary to the purchaser's declared pesticide use requirements;

"(2) it is not in conflict with any treaty between the United States and the country to which it is exported;

"(3) it is not in conflict with the laws of the country to which it is exported; and

"(4) the country to which it is exported has established a procedure whereby it may refuse entry of such pesticide or device into such country.

"SEC. 18. EXEMPTION OF FEDERAL AGENCIES.

"The President by executive order may exempt any Federal agencies from any provision or all provisions of this Act if he determines that emergency conditions exist which require such exemption.

"SEC. 19. DISPOSAL AND TRANSPORTATION.

"(a) PROCEDURES.—The Administrator shall, after consultation with other interested Federal agencies, establish procedures and regulations for the disposal or storage of packages and containers of pesticides and for disposal or storage of excess amounts of such pesticides, and accept at convenient locations for safe disposal a pesticide the registration of which is canceled under section 6(c) if requested by the owner of the pesticide.

"(b) ADVICE TO SECRETARY OF TRANSPORTATION.—The Administrator shall provide advice and assistance to the Secretary of Transportation with respect to his functions relating to the transportation of hazardous materials under the Department of Transportation Act (49 U.S.C. 1657), the Transportation of Explosives Act (18 U.S.C. 831–835), the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430, 1472H), and the Hazardous Cargo Act (46 U.S.C. 170, 375, 416).

shall constitute a lien against any future importation made by such owner or consignee.

"(d) COOPERATION IN INTERNATIONAL EFFORTS.—The Administrator shall, in cooperation with the Department of State and any other appropriate Federal agency, participate and cooperate in any international efforts to develop improved pesticide research and regulations.

"(e) REGULATIONS.—The Secretary of the Treasury, in consultation with the Administrator, shall prescribe regulations for the enforcement of this section.

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shall cooperate with the Department of Agriculture, any other Federal agency, and any appropriate agency of any State or any political subdivision thereof, in carrying out the provisions of this Act, and in securing uniformity of regulations.

"SEC. 23. STATE COOPERATION, AID, AND TRAINING

"(a) COOPERATIVE AGREEMENTS.—The Administrator is authorized to enter into cooperative agreements with States—

"(1) to delegate to any State the authority to cooperate in the enforcement of the Act through the use of its personnel or facilities, to train personnel of the State to cooperate in the enforcement of this Act, and to assist States in implementing cooperative enforcement programs through grants-in-aid; and

"(2) to assist State agencies in developing and administering State programs for training and certification of pesticide applicators consistent with the standards which he prescribes.

"(b) CONTRACTS FOR TRAINING.—In addition, the Administrator is authorized to enter into contracts with Federal or State agencies for the purpose of encouraging the training of certified pesticide applicators.

"SEC. 24. AUTHORITY OF STATES

"(a) A State may regulate the sale or use of any pesticide or device in the State, but only if and to the extent the regulation does not permit any sale or use prohibited by this Act;

"(b) such State shall not impose or continue in effect any requirements for labeling and packaging in addition to or differfent from those required pursuant to this Act; and

"(c) a State may assist the Administrator in the registration of pesticides formulated for intrastate distribution to meet specific

local needs if that State is certified by the Administrator as capable of exercising adequate controls.

"SEC. BE. AUTHORITY OF ADMINISTRATOR

"(a) REGULATIONS.—The Administrator is authorized to prescribe regulations to carry out the provisions of this Act. Such regulations shall take into account the difference in concept and usage between various classes of pesticides.

"(b) EXEMPTION OF PESTICIDES.—The Administrator may exempt from the requirements of this Act by regulation any pesticide which he determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this Act in order to carry out the purposes of this Act.

"(c) OTHER AUTHORITY.—The Administrator, after notice and opportunity for hearing, is authorized—

"(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment;

"(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man;

"(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601)) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this Act as well as to accomplish the other purposes of this Act;

"(4) to specify that any class of devices shall be subject to this Act if he determines that the application of this Act in respect of such class is necessary to effectuate the purcommittee bill. That change regards an item on which I am sure most of you have been receiving a considerable number of communications.

Mr. Chairman, under this bill all pesticides are classified as general use or restrictive chemicals. The committee thought that those which were classified for general use, the Federal Government should preempt because, after all, these are relatively safe chemicals. However, a big problem does not exist in that category.

I think most members of the committee agreed that it really does not make that much difference to accept that one amendment to give the States the right to add some restrictions on general use pesticides, and that is fine. We will accept that one amendment.

But, Mr. Chairman, I want to go back a little bit. I have been in Congress for only 6 terms, but I can say with honesty that I do not recall any instance in which any committee of this House has given more studious, more serious or more complete attention than was given to this bill by the Committee on Agriculture.

We began working on this bill in February. We held exhaustive hearings. We studied and analyzed the reports and journals, analyzed research, and developed an acquaintance with chlorinated hydrocarbons, organophosphorous synthesis, with the dichlorophenory acetic acids, esters and salts.

We studied the buildup of residues in the lipides of fish, and examined the alleged carbonic enzyme anhydrase in raptors and the opposite effect in gallinaceous birds. We studied chemical effstand correctly what the gentleman is doing by his substitute is in a different form accepting a proposal similar to what is known as the "Foley amendment" or the "States rights amendment" which would give each and any State which wishes to do so to prescribe more rigid requirements than those laid down by the Federal Government.

Mr. KYL. That is correct.

Mr. TEAGUE of California. It has my full support, and I heartily recommend it to my colleagues.

Mr. POAGE. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from Texas.

Mr. POAGE. Mr. Chairman, of course I cannot speak for the committee as a whole because obviously this matter has come up without any chance of having been discussed by the full committee, but speaking for myself, and I am sure for some of my colleagues on the committee, I would suggest that it seems apparent that this amendment does achieve that which most of the Members would like to achieve. Certainly no harm can come from its adoption. Therefore, as far as I am concerned, I would accept the amendment.

Mr. DOW. Mr. Chairman, will the gentleman yield so that I may interrogate him?

Mr. KYL. I will yield to the gentleman from New York.

Mr. DOW. In other words, let me say that the amendment would go to one of the six amendments that I offered, namely, to enlarge the ability of the States to regulate pesticides of general use in their

poses of this Act;

"(5) to prescribe regulations requiring any pesticide to be colored or discolored if he determines that such requirement is feasible and is necessary for the protection of health and the environment; and

"(6) to determine and establish suitable names to be used in the ingredient statement.

"SEC. 26. SEVERABILITY

"If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provisions of this Act are severable.

"SEC. 8G. AUTHORIZATION FOR APPROPRIATIONS

"There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each fiscal year ending June 30, 1972, June 30, 1973, and June 30, 1974. The amounts authorized to be appropriated for any fiscal year ending after June 30, 1974, shall be the sums hereafter provided by law."

Mr. KYL (during the reading). Mr. Chairman, I ask unanimous consent that the substitute amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

(Mr. KYL asked and was given permission to revise and extend his remarks.)

Mr. KYL. Mr. Chairman, the substitute amendment which I have offered does one thing. It makes one change in the fects on fucoids.

We looked at the possibilities for alternate controls such as utilization of sex attractants, and hormonal control as well as the gamma treatment.

We labored 6 months and we brought forth a bill, a fresh new committee print, and even then we went back for further review because the Environmental Protection Agency wanted one provision added and the State Department wanted one subtracted, and we did those two things. Then, the committee said that this is a good bill. The Environmental Protection Agency said this is a good bill and the administration said this is a good bill, and I believe that the House will concur that this is a good bill by accepting this one amendment on State regulation of general use pesticides and then turn back the others because this is actually a balanced piece of legislation.

Mr. Chairman, this balance was difficult to obtain. We add a pinch here and take a little away there and the first thing you know we have a bill which has lost the balance which is so essential to this kind of regulatory system. We will accept this one amendment which appears critical to a number of us and which gives the State the right to further restrict the general use pesticides but with the rest of the amendments we cannot agree.

Mr. TEAGUE of California. Mr. Chairman, will the gentleman yield?

Mr. KYL. Yes, I yield to the gentleman from California.

Mr. TEAGUE of California. If I understand the gentleman's own area?

Mr. KYL. That is correct.

Mr. DOW. The other five amendments that I detailed in my amendment, or in my substitute, rather, are left out. I then inquire of the gentleman from Iowa are you paying no regard to this concept that I have explained which would give the administrator——

The CHAIRMAN. The time of the gentleman from Iowa has expired.

(By unanimous consent, Mr. KYL was allowed to proceed for 3 additional minutes.)

Mr. KYL. I yield further to the gentleman from New York.

Mr. DOW. In other words, your substitute would ignore the point that I have been making; namely, that the bill contains too many snares and pitfalls for the Administrator to properly administrate the bill, and to do so in an efficient and easy manner?

Mr. KYL. If the gentleman will permit me to respond to that, the committee labored on this bill for 6 months. We do not believe—that is, the general membership of this committee does not believe—there are snares and pitfalls. The EPA has approved this bill. The administration has approved this bill. The committee has given overwhelming support to this bill.

In one of his amendment the gentleman says, for instance, that the Administrator of the EPA has the burden of determining whether a pesticide should be used or not. We do not know how he can

interpret the language of the bill in this respect because he strains the language beyond belief. It places the responsibility for whether a pesticide is safe for use on the Administrator. It does not place any burden on the Administrator to prove the pesticide is safe for use. The Administrator has the determination as to whether a pesticide is safe or not. I do not know how the language in the bill could be made more strong. Certainly when we have labored as long as we did on this bill, and when we have reached unanimity of opinion and when we have reached the balance that we have in this legislation, we do not want to destroy the whole piece of legislation by adding something that some Member might want to put in clause 1 on page 10 of the bill.

This is a good bill. The committee approved the bill. The administration approved the bill, and the bill ought to be adopted in the form that it is with the exception of this one amendment which my provision makes clear.

Mr. MIZELL. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from North Carolina.

Mr. MIZELL. Mr. Chairman, I thank the gentleman from Iowa for yielding. Also I want to congratulate the gentleman for offering this amendment. Within this legislation there is a Federal-State partnership. I see no reason why a State should not have the right to regulate insecticides. The substitute amendment offered by the gentleman in the well, Mr. KYL, would preserve this authority for the States and make it a better bill.

So, Mr. Chairman, I urge the adoption

point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

Evidently a quorum is not present. The Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 368]

Alexander	Erlenborn	O'Hara
Anderson, Tenn.	Ford, William D.	Patman
Archer	Fraser	Pelly
Ashley	Frelinghuysen	Pepper
Barrett	Gallagher	Pettis
Belcher	Gray	Railsback
Bevill	Griffiths	Rees
Blanton	Gubser	Reid, N.Y.
Boggs	Gude	Riegle
Brotzman	Halpern	Rodino
Brown, Mich.	Hébert	Ruppe
Buchanan	Horton	Scheuer
Carey, N.Y.	Keith	Schwengel
Celler	Landgrebe	Seiberling
Clark	Lloyd	Smith, Calif.
Clawson, Del	Long, La.	Smith, N.Y.
Clay	McCloskey	Stanton, J. William
Collins, Tex.	McDade	Steed
Colmer	McEwen	Steele
Conyers	McFall	Symington
Crane	McKinney	Teague, Tex.
Dellenback	Metcalfe	Thompson, N.J.
Derwinski	Mollohan	Vigorito
Diggs	Monagan	Whitten
Dingell	Morse	Wilson, Bob
Dowdy	Mosher	Wilson, Charles H.
Dulski	Moss	
Eckhardt	Nedzi	
Edwards, La.	Nelsen	

Accordingly, the Committee rose; and the Speaker having resumed the Chair, Mr. HUNGATE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill H.R. 10729, and finding itself without a quorum, he had directed the roll to be

safety requirements set by the Government. Such permission to sell and use pesticides, however, should not amount to a blanket endorsement of the product or a guarantee to the manufacturer or user of its safety in the future.

If this sound public policy of mere permissive manufacture and use is to be substituted by a policy of complete insurance to all against loss, as is contemplated in the indemnity section of this bill, I believe we should now take a frank look at the consequences.

First. Manufacturers will lose a powerful incentive to test thoroughly in the first instance and will have no reason to continue testing once a product is cleared for the market. Why? Because Uncle Sam will pay for all loss the manufacturer may suffer if further tests disclose the product constitutes an imminent hazard.

Second. As the indemnity section is written producers will gain the profits while the risk of loss is underwritten by the Government. This is certainly not in keeping with the free enterprise system.

Third. The money for indemnities will come out of EPA's budget. Therefore, the reluctance to declare a product an "imminent hazard" will be increased a thousandfold as indemnities in certain circumstances could account for millions of dollars that would have to be added to EPA's budget.

Fourth. Indemnities in this bill are to be paid even if the Government was not at fault or in error in certifying the product initially or negligent in stating a product is an "imminent hazard."

Fifth. This indemnity section would

the gentleman from Iowa (Mr. KYL).

The CHAIRMAN. The time of the gentleman from Iowa has again expired.

Mr. GOODLING. Mr. Chairman, I rise in support of the Kyl amendment and in opposition to the Dow amendment.

For the information of the Members, I was responsible for inserting in the committee bill, the section which Mr. KYL now proposes to delete. I still think it is a good section, put in there more or less to protect farmers.

In the interest of harmony, and this entire bill is built around harmony, I have agreed that this section should come out.

In accord with what Mr. KYL said—in 23 years of legislative service, I have never seen a bill, any bill, in any House that has been given as much consideration as this particular bill. It is definitely a compromise bill. There is no individual, no organization, no chemical company, no conservation group and no commission or board in the Federal Government that receives everything it wanted in this bill, but all are pretty well agreed that this is now a good compromise bill.

I think I can assure the Members of this House, if we accept the Dow amendments, we will have absolutely no bill and then we will have nothing but mass confusion. I support the Kyl amendment and urge the House to vote in favor of the Kyl amendment and vote down the amendments offered by the gentleman from New York (Mr. Dow).

Mr. OBEY. Mr. Chairman, I make the

called, when 346 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

AMENDMENT OFFERED BY MR. EVANS OF COLORADO TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. KYL FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DOW

Mr. EVANS of Colorado. Mr. Chairman, I offer an amendment to the substitute amendment offered by the gentleman from Iowa (Mr. KYL).

The Clerk read as follows:

Amendment offered by Mr. EVANS of Colorado to the substitute amendment offered by Mr. KYL: Page 47, strike out line 13 and all that follows thereafter through page 48, line 17.

(Mr. EVANS of Colorado asked and was given permission to revise and extend his remarks.)

Mr. EVANS of Colorado. Mr. Chairman and Members of the Committee, the indemnity section of the Federal Environmental Pesticide Control Act should be stricken from the bill.

If this section becomes law the U.S. Government will be insuring all manufacturers, wholesalers, retailers, and users of hazardous pesticide products against any loss suffered because a particular pesticide product has been found to constitute an imminent danger to the public or to the environment.

Permission to sell and use a pesticide product should mean only that the particular product has passed the minimum

constitute precedence for amending other laws for the purpose of extending this principle of full insurance to all manufacturers of drugs, food additives, cosmetics, flammable fabrics, toys, and so forth—and this list will inevitably be extended in the future as the Government increasingly requires regulation of hazardous products to protect the environment and the consumer.

Sixth. The unlimited scope of the indemnity section of this bill is unprecedented. Congressman FOLEY in his minority report to this bill underscored this point when he stated:

I do not believe that it is wise to undertake so broad and far reaching a policy of indemnity for the imposition of government prohibitions on hazardous substances. I find it particularly difficult to support this section of the bill when the committee rejected what seemed to me to be an imminently reasonable limitation on the amount of pesticides or devices indemnity might be claimed; namely, no more than a twelve month supply.

There may be limited circumstances where Government negligence or error would require the paying of an indemnity, but this is no warrant for the general and open-ended indemnity provision contained in this bill. This section will cost the taxpayers millions of dollars, while in fact leading to less safety for the public and environment. Therefore it must be rejected.

Mr. POAGE. Mr. Chairman, will the gentleman yield?

Mr. EVANS of Colorado. I yield to the distinguished chairman.

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Mr. POAGE. Mr. Chairman, can the gentleman give us the authority for the statement that this will cost the public millions of dollars? What estimates have you got? What are your figures?

Mr. EVANS of Colorado. We have seen in the last several months products that have been taken from the market in the United States that have been manufactured by various manufacturers. There have been estimates in the newspapers which I cannot vouch for, but which have been emanating from the manufacturers themselves on the cost of withdrawing this product or others and it runs into the hundreds of thousands of dollars.

Mr. POAGE. Can the gentleman name one single pesticide that has been suspended within the last 9 months?

Mr. EVANS of Colorado. No, sir.

Mr. POAGE. I do not think there has been one.

Mr. EVANS of Colorado. No, sir; but looking into the future, and that is what we are doing when we are talking about a policy that is as important as this, we have to understand what the taxpayers are going to be liable for.

We have heard about the recent Stokely case where the Government said that there may have been botulism and required the recall of thosands of cans of beans.

The CHAIRMAN. The time of the gentleman from Colorado has expired.

(Mr. EVANS of Colorado asked and was given permission to proceed for 2 additional minutes.)

Mr. EVANS of Colorado. Mr. Chairman, as I understand the situation, the Government declared that there was media to announce that the recall had been canceled? Is the gentleman familiar with that at all?

Mr. EVANS of Colorado. No.

Mr. MYERS. I never heard that the recall of all this material had been canceled until I read it in the newspaper in the last 2 or 3 days.

Mr. EVANS of Colorado. The point which the gentleman has made is illustrative of how, when the Government has been negligent, the damage can be hard to estimate because it goes far beyond the wholesaler who has a certain supply on hand.

Of course, none of us can be held responsible for the news media. I would hope there would be greater emphasis on correcting such mistakes.

Mr. TEAGUE of California. Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Colorado.

The CHAIRMAN. The gentleman from California is recognized for 5 minutes.

Mr. TEAGUE of California. I shall try not to take the 5 minutes. But I think this ought to be put in perspective. We are talking about authorizing indemnification for a manufacturer or a dealer or a farmer who has purchased or has manufactured a pesticide after that pesticide had been authorized and certified by the Federal Government as being safe. I can well imagine one of Mr. SISK's large growers up in the San Joaquin Valley of California having $50,000 or $100,000 invested in a pesticide in his warehouse. He is not negligent. The Government has said itself it is a perfectly safe chemical to use. He has invested his money in it.

We must face up to the fact that tough regulations are needed to protect not only public health and the environment, but also the farmer. The committee's bill bends over backward to protect the manufacturers' data, to the point where competition is restrained, which will result in higher prices for pesticides for the farmer.

The whole concept of the administration's original proposal has been altered and watered down. Their bill would have classified pesticides in three categories: "general use"—for safe products that anyone could use; "restricted use"—for products that had some risk and could only be applied by a "licensed pesticide applicator" who would be licensed by the State; "use by permit only—for the very dangerous products which are toxic to humans or severely damaging to the environment. This would have been a prescription type system.

Unfortunately, the committee chose to throw out this "permit" category, thereby weakening the entire concept. Further, the bill allows pesticides to be registered as both general use and restricted use, and as a final blow to the entire concept and workability, the bill forbids the States from continuing their own permit systems. Although the bill says that it is illegal to use a pesticide for a purpose for which it is not registered, as long as dangerous chemicals are available they can be misused and there will be accidents.

We must not forget that we are talking about highly dangerous substances. For example, according to Russell Train, Chairman of the Council on Environ-

botulism in a certain batch of, I believe it was, green beans of the Stokely Co. At the request of the Government, Stokeley withdrew, I think it was, in excess of *50,000 of these cans or cases.* Shortly thereafter the Government admitted that it had not found botulism.

This is a perfect example, I believe, of where the Government is liable and should be liable, and the company can, and I think they should recover, because the Government itself made a mistake. But that is an entirely different situation than what we are talking about here. Pesticides that may be used but which are later found to constitute an imminent danger to persons and to the environment in the situation now before us. I think the distinction can be clearly made. For these reasons I think the section should be stricken from the bill.

Mr. MYERS. Mr. Chairman, will the gentleman yield?

Mr. EVANS of Colorado. I am happy to yield to the gentleman from Indiana.

Mr. MYERS. The gentleman mentioned the Stokely-Van Camp Co. and the botulism threat. The broadcast news media covered the impending threat, it will be recalled, quite extensively. I know I heard it announced a number of times, that a certain brand or a certain number of their output had been recalled. I wonder how many consumers in this country destroyed all of their canned beans only to find out later by reading the newspapers that it was unnecessary to do so. Does the gentleman know how much time was devoted by the news

I can imagine dealers throughout the country with hundreds of thousands or even millions of dollars invested in pesticides which are in their storehouses. Then the Government comes along and changes its mind. It says, "No, this is not safe"—after perfectly good-faith action by the manufacturer, the dealer, or the farmer.

It seems to me under those circumstances certainly the innocent party should be indemnified.

Mr. FOLEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. PRICE of Illinois. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Illinois.

Mr. PRICE of Illinois. Mr. Chairman, the pesticide bill reported out by the House Agriculture Committee—H.R. 10729—is out of step with the times. It fails to reflect the deep concern of the American people over the vast quantities of chemicals being poured into the environment every year and the tragic effects of these chemicals. It fails to establish procedures that will properly control the use of pesticides.

It is clear that in the past our Government has not had adequate regulations concerning pesticides to protect health and the environment. But I regret to say that H.R. 10729 does not help the situation. In fact, a number of provisions in the bill, such as the preemption of States' authority and the limitations on judicial review, are a step backward from present law.

mental Quality, last year pesticides were involved in the death of an estimated 200 people in the United States.

There is no exact data on nonlethal poisonings due to pesticides, but in 1969, the latest year for which figures are available, the Poison Control Center in the Food and Drug Administration reported 5,747 cases of accidental ingestion or poisoning due to pesticides. The Center estimates that this probably represents only 10 to 15 percent of the cases which actually occur.

The toxic effects of pesticides on wildlife have also been widely documented.

Therefore, in our efforts to rewrite a major Federal statute we should be responsive to the needs of the public. By adopting the amendments which Mr. Dow is offering we can meet our obligations. I urge my colleagues to vote for the amendments.

(Mr. PRICE of Illinois asked and was given permission to revise and extend his remarks.)

Mr. VANIK. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Ohio.

(Mr. VANIK asked and was given permission to revise and extend his remarks.)

Mr. VANIK. Mr. Chairman, the Federal Environmental Pesticide Control Act of 1971, which we are considering today, has been called regulatory legislation to protect the environment. In reality, the act creates loopholes for those who manufacture and use pesticides. It

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fails to make more stringent qualifications for registration. If this bill is passed in its present form, it would be a severe setback for those who are concerned for our environment and the health of our citizens.

There are three serious defects in this bill which will seriously hinder effective regulation of these dangerous chemicals.

First, it excludes the public from the decisionmaking process of pesticide registration and permits. In the past 10 years, the strong support for the public interest in this area has consistently been expressed by environmental and consumer groups in public hearings. This bill, however, would leave the registration process for pesticides solely up to the chemical manufacturer—who has an obvious economic interest—and the Environmental Protection Agency, who has to act as both the public defender and the judge of the entire proceeding. The general public would be denied any opportunity to make an input into registration decisions. I can only see this as a step backward in environmental responsibility.

Second, this bill lowers the standards for protection of public health and the environment and places more emphasis on economic analysis and impact. When we place economic factors ahead of the health hazard factors for people, our priorities need serious reevaluation. In the bill, the administrator is tempted to favor certain economic benefits to the companies, rather than dealing with indefinite health hazards. Thus pressure is put on the administrator to register certain pesticides despite speculation the bill would be changed on the restriction of data submitted in support of an application for registration. This provision would place the "burden of proof" back onto the chemical manufacturers. The amendment would require complete disclosure of data which tends to prove a substantial environmental effect or lack of effect of a pesticide. This is the only way the technological burden of this problem of registration of pesticides could be reasonably accomplished. In this same area, the amendment also would allow consumer and environmental groups to challenge an Administrator's orders or an application for registration.

Many of the pesticides now used are not essential to the agricultural or industrial output of our Nation. The substitute measure would be a major step forward by permitting the Environmental Protection Agency to deny registration of a pesticide on the grounds that its use is not essential.

Unless this bill is strengthened to control the needless use of these environmental poisons, I will have to oppose it.

We have poisoned the land. We have poisoned the water. We are destroying the oceans of the world with runoff pesticides. Soon, unless we bring rational controls to this problem, we will poison ourselves.

(Mr. FOLEY asked and was given permission to revise and extend his remarks.)

Mr. FOLEY. Mr. Chairman, I rise in support of the Evans amendment. I cannot support the indemnity section of the bill as reported. The committee bill requires full indemnity by the Government uct. Is it not the loss of the investment in the more important areas of research, promotion, market development, and all the related interests that a company has in product identification and acceptance? I would be surprised if indemnification of the stocks on hand would be that meaningful in most forseeable cases.

Why then should we be concerned with the indemnity provision? If the risk of loss is not great why worry about the cost of indemnity? It is not the dollar cost of this provision that worries me. I believe it is a matter of grave concern because its adoption would establish a precedent that is bound to be confusing and troublesome in all those areas in which the Government acts to protect the public health and safety. Food products, cosmetics, drugs, fabrics, toys, automobiles, mechanical devices, aircraft, ships—there is hardly a category of products sold or used in commerce over which the Government does not assume important jurisdiction where there is the need to protect the public health of safety. The means by which the Government extends its protection vary from the moderate and temporary to the punitive and permanent. In extreme cases plants can be closed, products seized, property destroyed—all without compensation.

The committee bill introduces a new and startling principle, that acting in a similar area of jurisdiction to that of food and drug regulation, the Government must automatically and without limit pay indemnity. Negligence or even fault on the part of the manufacturer would not excuse the Government's obligation to pay.

about long-range health hazards and damage to the environment that could be caused by the widespread use of that chemical.

Third, and this is the most blatantly regressive feature of the bill, it shifts the "burden of proof" concerning safety, from the manufacturer to the Environmental Protection Agency. Under this bill, the administrator of the Environmental Protection Agency has the duty and the burden of finding out if every chemical that the industry is using is environmentally unsound. With the current production of nearly 60,000 pesticide products and derivatives, this is an unfeasible and ineffective provision.

The bill in its present form is an emaciated piece of legislation that will have little effect in controlling the registration of pesticides. H.R. 10729 substantially weakens strong clear-cut approaches incorporated in the laws of many States.

I would like to see pesticides treated in the same way as prescription drugs, which are controlled over the counter. This bill fails to set up any mechanisms for registration and use, relying on a loosely drawn procedure for licensing applicators, and in effect abolishes existing procedures on the State level.

I support my colleague from New York (Mr. Dow) in his amendment to H.R. 10729 to strengthen this bill.

This amendment will preserve the authority of the States to further restrict the general use of pesticides.

In this amendment, the language of to all manufacturers, wholesale and retail distributors as well as to farmers and other private users of pesticides whenever a registration is suspended or canceled. The committee refused to accept any limitations on the Government's indemnity obligation. An eminently reasonable amendment was offered in the committee to limit the indemnity obligation to a level no greater than the value of the holder's normal supply—in no case more than a 12-month supply. The committee rejected even this modest limitation so that the bill as reported would indemnify the holder of a canceled pesticide for any amount of stock he might have on hand.

Actually, I believe the danger of economic loss from wasted stocks is grossly exaggerated. First, there is little likelihood that cancellations or suspensions would be numerous or sudden. The rigorous registration process itself will minimize cancellations. Moreover, the time required, even in those limited cases, to conclude administrative action would be more than sufficient to make the risk of economic damage from unused stocks very remote, indeed. The farmer or private used does not typically retain large, long-term stocks of pesticides. Such stocks would probably long be exhausted by the time cancellation was concluded. For the same reasons, I also frankly doubt the gravity of the risk to distributors or even manufacturers.

In any event, the real risk posed by suspension or cancellation to a manufacturer is surely not primarily the supposed unusable inventory of the product. The Government can only buy and buy and buy the products it declares unfit to sell. In the worst cases it may prosecute the manufacturer but at the same time it must indemnify him.

Mr. POAGE. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Texas.

Mr. POAGE. Mr. Chairman, the language on page 47, section 15, part II of the bill, reads—and this is one of the requirements before anybody can get any indemnity:

"(2) the registration of the pesticide is canceled as a result of a final determination that the use of such pesticide will create an imminent hazard;

That is for the protection of the public and not of the manufacturer.

Mr. FOLEY. But I suggest to the chairman that the committee bill would establish in its indemnity provisions a remarkable and dangerous precedent—the precedent that, when the Government acts with the highest responsibility to protect the public health and safety, it must indemnify those adversely affected, even when they are negligent or at fault.

If there are cases of severe hardship or compelling equity based on misconduct or fault by the Government or other special circumstances which would appear to need indemnity, Congress is fully competent to make those special judgments or authorize judicial remedy. Bills can be introduced to indemnify, as in the case of bottlers, canners, users of cyclamates, and others.

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Mr. COLLIER. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Illinois.

Mr. COLLIER. Can the gentleman explain, if we are supposed to handle it individually, then why do we have so much difficulty with arranging for passage of individual bills retrospectively?

Mr. FOLEY. I would say if we have difficulty in passing single case indemnification bills, it is probably because the Members may have doubts about a bill's merits and if that is true how can we turn around today and pass a prospective general indemnification that covers unknown situations and obligations.

If individual indemnification bills are difficult to pass when we know all the facts and circumstances, I should think it would be unthinkable that we approve so unrestrained and uncertain an indemnification proposal as that before us today.

The Agriculture Committee was obviously well intended but the consequence of following the committee in this instance will be a result seriously adverse to the formulation of any intelligent and equitable policy in the critical area of public health and safety.

Mr. EVANS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from Colorado.

Mr. EVANS of Colorado. Mr. Chairman, we have to deal with this bill as it is brought to us on the floor today. They are the ones who will be giving this indemnification. It is a matter of principle. I would be very concerned about strike the requisite number of words, and I rise in opposition to the Evans amendment.

Mr. Chairman, all this indemnification provision in this bill says is that if the Government, having approved a product for use and having approved it for distribution and having approved the manufacture, if that same Government then on a day certain says, "Thou shalt not any further use this product which we said was all right to use," then the individual who owns some of this product shall be indemnified. It is through the action of the Government in the interest of the public we are protecting, and this Government says we should take that product off the market, there should be indemnification.

Now, there is more involved than that. Actually, under normal circumstances, in the majority of times, the Department undoubtedly would say, "We are investigating product X. Do not manufacture any more of this because we are thinking of taking it off the market. We will approve its use to a certain period, and then we will stop its use."

But we still are not getting to the real heart of the discussion. This bill is not designed to protect manufacturers of chemicals. This bill is not designed to protect farmers. It is designed to protect consumers and the enviromnent.

Why do we say we should idemnify manufacturers or users of those pesticides if taken off the market? This is why. It costs from $4 million to $12 million to synthesize any new pesticide for use. That is $4 million to $12 million.

If a company on which we have to rely is the private companies that are going to have to develop them.

Whether this indemnification becomes a bad thing or a good thing depends entirely on how the administration uses it, and Congress certainly has oversight over it.

Mr. EVANS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. KYL. I yield to the gentleman from Colorado.

Mr. EVANS of Colorado. I thank the gentleman for yielding. I think the discussion is certainly on the point and brings into better light the very point I am trying to direct attention to; that is, the precedent we are starting here.

The gentleman talks about an expenditure of $4 million plus for just one product. This could be a fact, surely, but the situation points up what could be applied one hundred times over in the drug industry, where millions and millions of dollars of private enterprise money are spent already in the search for better drugs for Americans. We have not offered this indemnification to them. If we offer it to the pesticide companies, how can we refuse to offer it to the drug companies?

Mr. KYL. The gentleman asks a question to which I shall gladly respond.

When this Government, in the interest of the public generally, takes an action which costs certain individuals money I do not believe it is conscionable not to pay them, any more than it would be conscionable to take a man's property from him for a road or a dam or anything else without compensation. If for the public good the Government takes an action which injures someone there

an extension of this principle in the case of drugs. Many drugs are lawfully on the market that may be found to be harmful in the future. If we are talking about indemnifying drug companies, for instance, in the case of thalidomide, it would have been necessary to indemnify producers of that drug after it was found to be harmful to health.

Mr. FOLEY. Exactly. If we are to be consistent with the principle established in the committee bill we will be led down not one but many twisted paths in an attempt to reconcile pesticide indemnity policy with the radically different procedures used to protect the public in other areas of commerce. At the very minimum, we should set aside the indemnity provisions of this bill for further consideration until we have had a chance to review its application to this entire area of Government policy, responsibility and procedure in some intelligent and consistent way. If in this most sensitive and critical area of Government policy, namely the safety and health of our citizens and the protection of our natural environment, we establish a questionable, dangerous, and confusing precedent such as the committee indemnity section would do, I believe we have undone any benefit that the early enactment of this bill might provide with its early positive features. The adoption of the Evans amendment and several offered by Mr. Dow are key corrections necessary if this legislation is to be a step forward and not a step backward.

Mr. KYL. Mr. Chairman, I move to for the development of alternative controls for insects has spent $4 million to $12 million, risks losing not only its investment but all of its manufacture, what company in good sense is going to try to develop any new product?

We have tried all kinds of alternatives to chemical uses. We have now all kinds of chemical uses, like chlordane, lindane, methoxychlor, dieldrin, aldrin, toxaphene, and dozens of others.

We do not like those methods as a permanent solution to the control of insects, so this Government is experimenting with alternate controls. Our colleges are experimenting. Our Ag experiment station is working.

But what entity has put the most money into this reesarch? It is the private economy. I know of one laboratory which has spent millions of dollars trying to develop a hormonal control of insects. The control would work only on one specific insect. It would have great specificity. It will not kill any bug you do not want to kill.

Fourteen companies already have stopped putting any money into alternate controls for insects because of the fear of having the product removed from the market, because they might get caught in an untenable situation. They cannot justify that kind of research to their stockholders.

There has to be some provision in this bill which will keep from killing the goose that has to lay the egg of alternative controls. We do not have them. It should be a matter of recourse on the part of that individual to recoup the loss which was made possible by the Government action in the interest of the public.

Mr. EVANS of Colorado. I concur.

Mr. KYL. That is not a precedent. We have done that since the beginning.

Mr. EVANS of Colorado. The gentleman says "When the Government takes an action that results in an injury to someone," and I agree with that.

Mr. GOODLING. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, let me first say that I trust the applegrowers in the State of Washington were tuned in during the last 10 minutes.

I would like to put this matter in its proper perspective. I happen to know something about fruitgrowing. More than any other branch of farming, probably. When I want to spray tomorrow, I do not wait until this afternoon to buy my insecticide. Most of the insecticides are bought early in the spring and are there in the packinghouse ready to be used when necessary.

I want to say this further—and Mr. KYL has already brought this out—that companies spend millions and millions of dollars to put these pesticides on the market. Not a single one is ever put on the market unless it is first thoroughly tested. I am certain that practically every experiment station in the entire United States does exactly what we do at our experiment station at Arendtsville. Every new pesticide which has to do with fruitgrowing is thoroughly tested by the

people in the Department of Agriculture at the Penn State University. That is done all over the country, not only my people at Arendtsville. Every experiment station gets it. It is thoroughly tested before a request to register goes to EPA. When my fruitgrowers in Pennsylvania and the fruitgrowers in the State of Washington and in every other State buy a pesticide they buy it in good faith. They know that it has been tested probably by their own experiment station and that it has also been cleared by the Federal Government.

If overnight, as has been said, the Federal Government decides that it is a bad pesticide, then who is responsible for that? If we continue to do this sort of thing, sooner or later the chemical companies are simply not going to experiment. As a result, we will have no pesticides.

Mr. DICKINSON. Mr. Chairman, will the gentleman yield?

Mr. GOODLING. Yes. I yield to the gentleman.

Mr. DICKINSON. I would like to ask a question of the gentleman in the well. I am usually in accord with him on every piece of legislation that comes along, but I am confused in this, because we probably have interference on this issue.

Is it your contention that none of the pesticides that have been used in the past were ones that were approved initially but somewhere down the line it was found that they had effects that were not anticipated and were withdrawn from the market? This is a fact, and it has happened in the past, has it not?

Mr. GOODLING. If that does occur, if it turns out that some product is possibly dangerous, is the Federal Government going to idemnify every manufacturer? I do not know how far they are going to carry this. However, it seems to me we are going to the extreme on this particular issue.

Mr. GOODLING. I want to carry this one step further.

The gentleman from Iowa (Mr. KYL) talked about biological control. In the State of Washington they have been working on biological controls for codling moths for a good many years. They are still using pesticides. They are going to continue to use them. Probably, biological controls will come into the picture, but they are not in it now very successfully.

Mr. OBEY. Mr. Chairman, I move to strike the requisite number of words.

(Mr. OBEY asked and was given permission to revise and extend his remarks.)

Mr. OBEY. Mr. Chairman, I rise in support of the amendment which has been offered by the gentleman from Colorado (Mr. EVANS).

I think it is important that it be made clear just what we are facing here today.

This bill as it came from the committee would prohibit States from enacting stricter regulations for general use pesticides than the Federal Government may eventually provide. That provision is shortsighted and dangerous and unnecessary. The amendment which has been offered by the gentleman from Iowa (Mr. KYL) takes care of that problem.

acceptable, it will still be paid for their trouble. I think that is wrong.

Mr. Chairman, there are a great many other problems that I think we ought to understand. Under this bill and under the Kyl amendment only those attempting to register pesticides would be able to obtain court review or a decision to register or not to register a pesticide. No such opportunity would be available to those trying to stop registration.

I think in considering the amendment of the gentleman from Colorado we ought to keep that in mind.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. OBEY. I yield to the gentleman from Iowa.

Mr. KYL. The gentleman is forgetting, when he talks about the registration of pesticides, the fact that we have laws already on the books. The burden of proof remains with the applicant as under the law with reference to insecticides, fungicides, and rodenticides. The applicant must substantiate the claims of the pesticide and otherwise support the registration. The burden of proof is under the present law and under this proposed legislation it would be the same.

Where is the language that changes that law, may I ask the gentleman?

Mr. OBEY. That is not the way I read the bill.

Mr. KYL. Mr. Chairman, if the gentleman will yield further, the gentleman has not read the law. There is other law besides this act.

Mr. OBEY. I think I have read the law. However, Mr. Chairman, before my time expires, I want to make this statement.

then the Federal Government should be responsible for that loss if the Federal Government cleared it originally.

Mr. DICKINSON. This is not predicated on negligence, as I understand it. If some side effect or injury occurs through a buildup in the system through the use of these materials, such as in the case of DDT, for instance, do you think then that the Federal Government should be in the position of absolutely insuring every effect of a product when it puts its stamp of approval on it even though it cannot be anticipated at the time the Government approves it that this will happen?

Mr. GOODLING. I am not willing to admit that everything the Federal Government does is right in the first place. I am thinking primarily of things of this nature. The latest thing that I think of is the cyclamates coming into the picture. Practically overnight the Food and Drug Administration said that you can no longer use cyclamates. In a warehouse in my own congressional district in Pennsylvania a California company had $2 or $3 million worth of canned fruit. To the best of my knowledge, it is still standing there. That fruit was packed in good faith. The right was given by the Food and Drug Administration. I am asking you, is that particular company responsible for something it did in good faith? I do not think so.

Mr. DICKINSON. I think to carry it to its logical conclusion, then, that you are going to make the Federal Government the absolute insurer of all the food that goes on the store shelves.

However, Mr. Chairman, there are a good many other problems to which the Kyl amendment does not address itself but to which the Dow amendment does.

The Kyl amendment, for instances, does not require the manufacturer to prove that his product will not have a substantial adverse effect on the environment. Instead, it places the burden of proof on the Federal Government. Clearly, this puts the monkey on the wrong back.

There is no reason whatsoever to treat chemical manufacturers any differently than drug manufacturers who under the food and drug law must file information to show beyond a reasonable doubt that their drug is safe for public use. Yet, if the amendment of the gentleman from Colorado is not adopted we will be setting up that precise dichotomy. We will be giving it both ways to pesticide manufacturers. What we will be saying, in effect, if this amendment does not pass is the manufacturer will be given an overwhelming advantage in the question of whether or not its pesticide should be approved. Yet, afterward, if new evidence comes to light, in spite of the efforts of the pesticide manufacturers, which shows that that chemical is dangerous, the chemical manufacturer would still be reimbursed for his trouble and expense.

What this means is that the chemical manufacturer will be able to lobby the Environmental Protection Agency like crazy. It will be able to get its chemical registered. Yet, later on, if new evidence comes to light that the chemical is not

There seems to be an understanding around here that the pesticide law somehow will protect the farmer. That just is not so.

I represent some 30,000 farmers in my congressional district which is as rural a district as you will find in the State of Wisconsin. Yet, my farmers know that if we do not provide some kind of reasonable control over pesticides now, the day will come when reason will be out the window and the curtain will be wrung down on all pesticides, good or bad.

I think my farmers are smart enough to know that that is not in their interest. I suggest to you that the amendment being offered by the gentleman from Colorado (Mr. EVANS) is in the interest of the farmers and in the interest of the public. If you do not adopt the amendment what you will do is eliminate any possibility of any economic incentive to insure that whatever pesticides are registered are going to be safe for the public. I think you ought to adopt the amendment offered by the gentleman from Colorado (Mr. EVANS).

Mr. POAGE. Mr. Chairman, I move to strike the requisite number of words.

(Mr. POAGE asked and was given permission to revise and extend his remarks.)

Mr. POAGE. Mr. Chairman, it has been the ambition of man since the earliest days to find some way to get a free lunch. There is no such thing. Somebody has to pay the bill. Now, uncertainty adds to the bill.

If there is a probability that a substantial portion of these pesticides will be

found dangerous or unfit for use, and if that uncertainty is large, it will add substantially to the cost. I do not think it is as large as the gentleman from Colorado thought that it was, because the gentleman could not point and I could not point to any instance this year where there has been any pesticide, the registration of which has been canceled. Therefore, I cannot believe that this thing is going to cost the millions of dollars per year that have been ascribed to it. Also I think the gentleman from Colorado clearly suggested that the only way to know about the future is to judge by the past. Yet neither he nor I can tell you of any such cancellation in the recent past. I do not think there have been any this year, nor do I think that they occur regularly, so I think the amount here involved will be rather small.

Mr. EVANS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. POAGE. I yield to the gentleman from Colorado.

Mr. EVANS of Colorado. Mr. Chairman, may I ask the distinguished chairman if it is not true that in the last several years several pesticides have been withdrawn from the market?

Mr. POAGE. Over a period of years there have been several pesticides that have been withdrawn, but they have not run into the magnitude suggested by the gentleman.

I think that many of the speakers have recognized that this legislation does not of itself involve many millions of dollars a year, and, therefore, they have succeeded in dragging in the red herring of what somebody else's pro-

So at least one-third of the total loss that would be sustained where a pesticide is found to be injurious to the environment would fall not upon the Dow Chemical Co., but would fall upon the farmers all over this country. That is why we are so concerned about these smaller items, because it does not take but a few hundred dollars out of that poor fellow's pocket to break him completely. That is why the committee and I are concerned even though there may not be hundreds of millions of dollars involved.

Mr. ABERNETHY. Mr. Chairman, will the gentleman yield?

Mr. POAGE. I yield to the gentleman from Mississippi.

Mr. ABERNETHY. The facts are that that person did not buy that pesticide until his Government had assured him that it was safe to use.

Mr. POAGE. That is exactly right. There is no indemnity provided under the terms of this bill for any pesticide except those that have been licensed by the U.S. Government as being something that could be used without danger to man or to his environment.

Mr. EVANS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. POAGE. I yield to the gentleman.

Mr. EVANS of Colorado. Then the principle that you are enunciating here for the protection of the farmer—and I am not against farmers because I have a healthy rural section in my district—is one which would extend to every single person who buys any drug which sometime later on is stricken from the GRAS list as being detrimental to the health of

General Motors and Ford are able to pass these costs on to the consumers—and that is where they go—the purchasers of these automobiles pay for all these safety devices whether they use them or do not use them. But somebody has to pay for these safety devices whether they are used or whether they are not used. In the case of an automobile, it is presumed that if I do not use these shoulder straps that is largely my trouble. In the case of a pesticide, it is presumed that if a wrong pesticide is used that can involve not only the user but it can involve society as a whole. It is to protect society and not the producer that we have brought this bill in. The producer does not need this bill. It is not for his protection—it is for the protection of all society. We believe that is sound or we would not have brought the bill in. We think it is sound to protect society, but we know there is a cost and somebody has to pay that cost and that cost is either going to be paid by the farmers of eastern Colorado or central Texas or somewhere else—or it is going to be paid by society at large—the same society for whose benefit those regulations are imposed—those, in all kindness, on whom you want to impose the burden. The burden is there, and all of your wishes cannot escape the fact that there is a cost involved. We are not trying to shirk the cost. We are simply raising the question of who should pay the cost. The ones for whose protection the cost was levied or somebody who is not involved.

Mr. EVANS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. POAGE. I yield to the gentleman.

gram was going to cost, what we are going to have to pay to the drug manufacturers or to somebody else.

Mr. EVANS of Colorado. Mr. Chairman, if the gentleman will yield further, then subject to the statement made by the gentleman may I ask why the committee felt it was so important to put indemnification in if it has not been a problem?

Mr. POAGE. Because it is important, and tremendously important to the farmer who has only a few thousand dollars involved. For instance, say he has $1,000 invested in pesticides. Then the U.S. Government tells him that he cannot use them when the time comes. And if his ability to feed his family depends on the use of that chemical—it becomes tremendously important regardless of the fact that no great amount of money is involved.

The gentleman seems to be concerned only about the manufacturers, whereas the committee was concerned equally with the man who had bought that product and who was relying upon it as a means of making a livelihood for his family in the next year. Likewise we are concerned with the merchant who has stocked the commodity.

As the gentleman from Pennsylvania so well pointed out, pesticides are something that are purchased early in the year. Actually, about one-third of the total of all of the pesticides in use at any one time is in private ownership, and by private ownership I mean the farmers' ownership.

human beings.

Mr. POAGE. I would not confine payments to drugs or to pesticides. But this bill relates only to pesticides. We have gone somewhat far from my discussion. When we started I wanted to call attention to the fact that someone must pay for uncertainty.

What I am trying to say is that those Members of this House who do not want to pay for the mistakes of our Government are following the philosophy that you can have a free lunch and you can have all of these environmental advantages. I am not trying to find fault with them—if I had we would not have brought this bill out.

The CHAIRMAN. The time of the gentleman from Texas has expired.

(Mr. POAGE asked and was given permission to proceed for 5 additional minutes.)

Mr. POAGE. I started out here to point out that what some Members are trying to do is to get a free ride—a free lunch. You cannot have all of these environmental advantages without somebody paying the bill. They cost—they cost lots of money. I am not suggesting that we should not spend the money. I am suggesting that we should take a good look to determine whether the advantages are greater than the costs. I am suggesting there is a cost. Just to make it real plain, I bought a Chevrolet automobile not long ago. It has some straps up here that I have never unbuckled. But I paid for those straps. That was in the cost of the car.

Mr. EVANS of Colorado. I would agree with the gentleman from Texas, the distinguished chairman of the committee—if it was correct, as he alleged a moment ago, that his bill provided for the paying for governmental mistakes. But the committee's bill does not so provide. The committee bill, as it stands provides that the Government is the insurer of any loss—mistake or no—is not that correct?

Mr. POAGE. No, you are not correct.

Mr. EVANS of Colorado. Then show me where in the bill it provides that indemnity occurs only where the Government is at fault.

Mr. POAGE. No, you are not correct—let me answer.

If the gentleman will take his seat, I will answer his questions, but only one at a time.

Mr. EVANS of Colorado. I had just one.

Mr. POAGE. The gentleman asked me if we are not trying to become the insurer. No, we are not trying to become an insurer. We are merely providing that when the U.S. Government acts contrary to its previous decision, whether we call that previous decision a mistake or not, that the Government should pay. It might be a mistake in light of later information. The Government acts the best it can with the information available and decides that a certain pesticide is not harmful to anyone and licenses the use of that pesticide, and in effect says, "This is all right; with the information we now have we think this is good for everybody."

It may be a mistake or a matter of additional information—the mistake may

have been a result of lack of information, or a mistake in issuing this license a year or 6 years ago. The committee did not want to tie the hands of the Government and say, "You cannot protect the public now." So we say, "You can cancel this registration now, even though you have been approving this item for 5 years. The Government did think it was all right, we now think it is wrong." To that extent the Government must have made a mistake. Whether it was a mistake that could have been avoided or whether it was an unavoidable mistake makes no difference. The Government erred—possibly because it did not have adequate information—but the Government erred in every instance where we authorize indemnity. The question is, Who should be liable for injury? The one who erred, even though it was unintentional, or the one who had nothing to do with it and had no power over it? Where in private law——

Mr. EVANS of Colorado. Mr. Chairman, will the gentleman yield?

Mr. POAGE. Just a second. The gentleman asked me a question and I want to answer it. If the gentleman will sit down, I will answer it.

Mr. Chairman, I wonder who has the floor?

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. POAGE. Mr. Chairman, I ask unanimous consent that I may be permitted to proceed for an additional 5 minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

Mr. TEAGUE of California. Some reference has been made to the fact that we are really providing insurance. If so, it is only in a limited and far-fetched way. We have provided in the bill indemnity for persons suffering losses resulting from a suspension or cancellation of the registration. It has nothing to do with losses they might have suffered because of any damage done by the pesticides through food and fiber to their neighbors or someone down the street.

Furthermore, the amount of indemnity is limited to the amount based on the cost of the pesticide owned by such person immediately before the notice of suspension, except that in no event shall it exceed the fair market value of the pesticide as of that date.

Mr. POAGE. I thank the gentleman. I would come back to the proposition that when we say we are not going to be responsible for the errors of the Government, we must then say that in this whole idea of trying to improve the environment, trying to protect the ecology, all the costs must fall upon those who happen to be in the area at the time. I do not think any of us agree that is sound. I think we all agree that this problem of protecting the environment is something in which the whole of the citizenship of the United States is involved, and the whole of the citizenship of the United States should pay the bill.

I repeat, somebody has to pay the bill.

This committee suggests that it should be those for whose benefit the provision is placed in the bill, and that benefit falls to all of the American citizens. We are simply trying to be fair about this thing place, so they do not end up with egg on their faces if they have to withdraw the registration later on, if they find that perhaps there is something poisonous.

Perhaps they will be making doubly sure in the first place, and this will serve the farmer and his economic situation and needs and also the citizen and his concern about the environment.

Mr. POAGE. The committee would agree with that. The gentleman is correct.

Mr. EVANS of Colorado. Mr. Chairman, if the gentleman will yield further, I will say in response that the fellow who has the responsibility to decide to certify has to make the decision to withdraw. That is something else. If we compound that decision with the problem of what it will cost to make that decision, this may discourage him from finding that a certain pesticide should be withdrawn.

Mr. ANDREWS of North Dakota. The fellow who makes the decision to withdraw is the fellow who makes the decision to register in the first place.

Mr. EVANS of Colorado. We have talked about the responsibility of the Government, and I think it is true the Government has a responsibility, but I do not want us to back away from the responsibility of the manufacturer, and I think, if we strike this indemnity section, we call to the attention of the manufacturer that he has responsibility.

Mr. POAGE. The gentleman overlooks the fact that the cost must be passed on to someone, either the public or the producer. Since the public benefits, I think they should pay.

Mr. RYAN. Mr. Chairman, will the

Mr. EVANS of Colorado. Mr. Chairman, reserving the right to object, I am anxious to get the chairman's answer. I believe he is being given ample time. I would just hope that if he gets this additional time he will yield to some of us who have questions.

Mr. POAGE. The gentleman asks two complicated questions that take a long time to answer.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

Mr. COLLIER. Mr. Chairman, reserving the right to object, I merely wish to make this observation because I think it has to be made. The gentleman from Colorado, in drawing a parallel to drugs and pharmaceuticals in terms of pesticides held by a farmer is just not a logical parallel, for the obvious reason that what is involved in one instance is the serious economic problem which the farmer who has a stock would face as compared to an individual holding some drug or pharmaceutical. I contend it is not a logical parallel in terms of what we are really trying to get at in the indemnity provision of the bill.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Texas for 5 additional minutes.

Mr. TEAGUE of California. Mr. Chairman, will the gentleman yield?

Mr. POAGE. I yield to the gentleman from California.

and say that everybody who gets the benefit should pay the bill. We do not believe that a few struggling wheat farmers, with their grasshopper problems and drought, ought to have to pay the bill. We do not believe that a few dairymen whose milk happened to get poisoned with some kind of pesticide should pay the losses. On the contrary, this committee brought out and passed some years ago legislation to take care of those dairymen, and now I am much surprised to see their spokesmen appear before this Congress and suggest that since they got theirs, nobody else should get anything. We are trying to treat everybody alike and say that they all share in paying for that from which they all benefit.

Mr. ANDREWS of North Dakota. Mr. Chairman, will the gentleman yield?

Mr. POAGE. I yield to the gentleman from North Dakota.

Mr. ANDREWS of North Dakota. Mr. Chairman, the point has been made that a farmer in good faith, using a pesticide certified good for use by the Federal Government, finds the Federal Government reverses itself, and that farmer should not have to pay for that, and I agree, but I think my friend, the gentleman from Colorado, is bringing up another point, which is that we want the regulatory bodies of the Federal Government to be extremely careful when they issue this registration in the first place.

The idea occurs to me that if this indemnity clause is in the bill, then the bureaucrats will be more careful with what they certify is OK in the first

gentleman yield?

Mr. POAGE. I yield to the gentleman from New York.

Mr. RYAN. Mr. Chairman, the gentleman from North Dakota suggested that one of the objectives of the indemnity clause is to require the Government to exercise greater care in registering pesticides. If so, then that is a strong argument for the Dow amendments which would eliminate the bills' restriction on the use of research data without the applicant's permission and require the submission of any data in the control of the applicant which may tend to indicate any substantial adverse effects on the environment. The doctrine of essentiality should also be continued, as provided in the Dow amendments. I would suggest also that the burden should be on the manufacturer in the first place to establish that the pesticide would not have an adverse environmental effect.

Mr. BERGLAND. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I seek recognition to direct a question to the distinguished chairman of our committee, the gentleman from Texas (Mr. POAGE).

Mr. Chairman, in the summer of last year an unknown quantity of a very devastating chemical, known as Dieldrin, was dumped down a drain and into a stream in my hometown, and killed all the fish for a 15-mile reach down river.

With the passage of an indemnity provision, is it likely that if one of these devastating chemicals were suspended by

the Government, because it proved to be harmful to mankind or the environment, and an indemnity were offered, that in all probability the dealer or the farmer would bring that chemical back to a point designated by the EPA to be disposed of in a safe and harmless fashion, rather than to dump it down the river in an irresponsible fashion to do great damage to Americans?

Mr. POAGE. Mr. Chairman, will the gentleman yield?

Mr. BERGLAND. I yield to the gentleman from Texas.

Mr. POAGE. I believe the gentleman's question answers itself. If a man can figure—I believe most farmers can figure, and know most chemical companies can figure—and knows it is going to cost him extra money to dump these condemned products, of course he is not going to dump them. He is going to accept the indemnity, and the commodity will be delivered to the Environmental Agency under the terms of this bill and society will be protected.

Of course, if we are not going to pay an indemnity, if we are going to try to get that loss out of the farmer's hide, he is likely to dump it in any creek he can find.

Mr. BERGLAND. I thank the chairman very much for his explanation.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. BERGLAND. I yield to the gentleman from Iowa.

Mr. KYL. I thank the gentleman for yielding.

The gentleman from New York (Mr. Dow), the gentleman from Wisconsin up with chemicals that, at a fair profit to them, will benefit the consumers of this Nation, not the dealers but the consumers. That is the object of their business.

After a few years when they have reached the point where they think a chemical will be safe and good to the public, they apply to the Federal Government for the purpose of registering that chemical and for the purpose of gaining the privilege to market same.

As the gentleman from Iowa (Mr. KYL) just said, the burden is upon the chemical company to prove to the satisfaction of our Government that the chemical is safe; that it can be used in a manner that will benefit mankind or benefit the animal life or bird life or any other form of life it is designed to benefit and not to their damage.

If those who are serving in Government determine that the product is in the best interests of the public and that the burden has been met, then they grant a license authorizing the distribution of the product.

After this chemical has been registered and its use authorized, and it is later determined that it might be or is dangerous, the Government then moves in and orders it taken off the market.

The Government in ordering these people to take their product off the market says, "You have a certain amount on hand, and you will be reimbursed for it." Why should they not be reimbursed? Were they not in lawful possession of it? Did they not manufacture it in a lawful manner? Did they not manufacture it in keeping with the laws of the Nation

Mr. ABERNETHY. It is done to perform a service to mankind. In performing a service to mankind our Government has not yet, I hope, reached the low level where it will do serious damage to one who has invested his money in something which his Government has heretofore said he might safely manufacture and market, or use.

Mr. EVANS of Colorado. Will the gentleman yield for a brief observation?

Mr. ABERNETHY. Yes. I am happy to yield to the gentleman.

Mr. EVANS of Colorado. One thing which is overlooked by you and the chairman of the committee and others who oppose my amendment is the fact, where a pesticide is withdrawn, that there has been a mistake made by two people, the manufacturer and the agency.

Mr. ABERNETHY. I will answer. If you are going to put it on that basis, you will completely stop all research in this field.

Do you think that the Shell Chemical Co. in California will continue the operation of that expensive and worthwhile research facility if we put this resolution on their back? With all deference, this amendment would force all companies to discontinue further research and the consumer and the public would be the losers.

I trust the amendment will be defeated.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

(By unanimous consent, Mr. ABERNETHY was allowed to proceed for 1 additional minute.)

Mr. ABERNETHY. Mr. Chairman, I have great respect for my friend, the gen-

(Mr. OBEY), and the gentleman from New York (Mr. RYAN) have three times now made the flat statement that the burden of proof in the registration is with the administrator rather than with the manufacturer. This bill we present today is an amendment to current law. We do not change that law. The burden of proof is on the manufacturer. I defy any of these people to show us any language in this bill which changes that law.

Mr. GOODLING. Mr. Chairman, will the gentleman yield?

Mr. BERGLAND. I yield to the gentleman from Pennsylvania.

Mr. GOODLING. I just want to make one observation. When a dealer dumps a pesticide down the drain he is not following directions. If he does not follow directions printed plainly on the label he is not entitled to any indemnity but is subject to a fine.

Mr. ABERNETHY. Mr. Chairman, I move to strike the requisite number of words.

Members of the Committee, those who manufacture the chemicals used today in our households and in American agriculture are good, sensible business people. They have no desire to put on the market a chemical that will kill somebody or injure the health of our citizens.

A few months ago a group from our committee visited the Shell Chemical Co., Research Laboratory in Modesto, Calif. Shell is expending multiplied thousands of dollars at this magnificent research center for the purpose of coming under which they live? Why should the Government take it away from them and require them to lose their investment even though the Government had theretofore authorized its use? Such would be very unfair.

Did you ever own a piece of land and have the Government come along and condemn a part of it for a public road? If you did, then you know that the Government pays for it. You were in lawful possession of the land. The Government is not obliged, under our system at least, to take the land away from you without just compensation.

If you are in lawful possession of a chemical that my chairman and my friend from Iowa (Mr. KYL) just described to you and the Government requires you to destroy it, then you should be compensated for it.

A further point that my chairman made is this: why does the Government say it is taking it away from you? It is taken, or you are ordered to destroy it, for the benefit of the 200 million people who live in this country. It is for their benefit that it is taken off of the market. It is not taken off for the purpose of doing injury to the investor or to the manufacturer or to the farmer. It is done to perform a service to the consumer and the general public.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. ABERNETHY was allowed to proceed for 1 additional minute.)

tleman from Colorado (Mr. EVANS). I can understand his concern. I am going to be frank with you and say that his point also concerned me when we had the bill in committee. It finally got through to me that full compensation should be made for chemicals ordered destroyed under Government order.

(Mr. ABERNETHY asked and was given permission to revise and extend his remarks.)

Mr. DOW. Mr. Chairman, I move to strike the requisite number of words.

(Mr. DOW asked and was given permission to revise and extend his remarks.)

Mr. DOW. Mr. Chairman, my colleague from Iowa (Mr. KYL) made a point that we have not convinced the House in regard to the burden of proof; but where they have placed the burden of proof it lies with the Administrator more than it does with the applicant for registration.

I would like to refer the gentleman to page 17 of the bill, and we will just run over it quickly. It lists the data that the applicant is required to file as follows:

The name and address of the applicant.
The name of the pesticide.
A complete copy of the labeling.
A full description of the tests made.

And note the following:

except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration.

Here you see there is a limitation on the ability of the Administrator to handle this situation which does not appear in the present law.

The applicant must also present a complete formula of the pesticide and request that the pesticide be classified for general use, for restricted use, or for both.

But, Mr. Chairman, there is nothing in the bill to require the applicant to meet other needs such as the essentiality of the pesticide or the danger that it might pose.

I propose later on to offer an amendment that will go to these points. I will have one amendment on the essentiality of the pesticide and another one to require the applicant to disclose any adverse effects which may be present in the pesticide insofar as he knows.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. DOW. Yes, I yield to the gentleman from Iowa.

Mr. KYL. Now, the gentleman has again quoted from page 17 of this bill that portion which reads as follows:

except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration.

This has nothing to do with the burden of proof. When a company goes before the Administrator he has to present his whole detailed proof that the product should be certified and registered. All this says is if JOHN KYL goes before the Administrator, having spent a half million dollars to prepare his case, then son, if there are no requests for further discussion, I move that all debate on the Dow substitute and all substitutes and amendments thereto close.

PARLIAMENTARY INQUIRY

Mr. DOW. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. DOW. Mr. Chairman, the distinguished chairman knows there are several amendments pending here to the substitute amendment offered by the gentleman from Iowa (Mr. KYL). Now, will the motion of the gentleman from Texas foreclose introduction of further amendments to the Kyl substitute?

The CHAIRMAN (Mr. HUNGATE). The Chair will state in response to the inquiry of the gentleman from New York (Mr. Dow) that, if the motion of the gentleman from Texas is agreed to, it will not foreclose the introduction of additional amendments, but they will not be debatable.

Mr. DOW. Mr. Chairman, I object.

The CHAIRMAN. The Chair would ask the gentleman from Texas (Mr. POAGE) whether the gentleman is making a motion or whether the gentleman is asking for unanimous consent?

Mr. POAGE. Mr. Chairman, I move that all debate do now close on the Kyl substitute, and all amendments and substitutes thereto.

PARLIAMENTARY INQUIRY

Mr. DOW. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Colorado (Mr. EVANS) to the substitute amendment offered by the gentleman from Iowa (Mr. KYL), for the amendment in the nature of a substitute offered by the gentleman from New York (Mr. Dow).

The question was taken; and the Chairman announced that the Chair was in doubt.

Mr. EVANS of Colorado. Mr. Chairman, I demand tellers.

Tellers were refused.

Mr. EVANS of Colorado. Mr. Chairman, on that I demand a division.

Mr. GERALD R. FORD. Mr. Chairman, I object. The gentleman did not ask for the division timely.

The CHAIRMAN. The Chair has not announced the result of the vote, and the gentleman from Colorado (Mr. EVANS) can demand a division.

The question was taken; and on a division (demanded by Mr. EVANS of Colorado) there were—ayes 28, noes 65.

So the amendment to the substitute amendment was rejected.

Mr. EVANS of Colorado. Mr. Chairman, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The CHAIRMAN. That parliamentary procedure is not in order in Committee of the Whole.

JOHN Dow cannot go before that same Administrator with another product to be registered and use the material which the first party submitted in support of his registration. That is all.

Mr. DOW. It would be beneficial and helpful when Mr. Dow, the second applicant, comes before the Administrator that the proof of the data supplied by the first applicant would be used. This would contribute to the analysis of the product and to the merits of the product and it would certainly ease the burden on the Administrator to prove adverse effects from the pesticide and it would make it infinitely easier more or less to shift the burden.

I think the gentleman from Iowa has ignored the point I just made; namely, that there should be in the bill another clause which would require the applicant to indicate any substantial adverse effects on the environment, or lack of such effects which may be caused by such pesticides when used for any intended use. This will be presented in a later amendment, and it amplifies the proviso here, and I think it supports my claim that the burden of proof upon the applicant is not sufficient.

The CHAIRMAN. The time of the gentleman has expired.

MOTION OFFERED BY MR. POAGE

Mr. POAGE. Mr. Chairman, we have been discussing other matters than those pertinent to the bill. I believe that all of the Members have discussed this amendment sufficiently, and for that reastate his parliamentary inquiry.

Mr. DOW. Mr. Chairman, may I have assurances that this does not foreclose the introduction and the debate upon subsequent amendments?

The CHAIRMAN. The Chair will state in response to the parliamentary inquiry of the gentleman from New York that the motion will not foreclose the introduction of amendments, but it would preclude further debate.

The Chair will ask the gentleman from Texas if the gentleman is moving to conclude all debate at the present time.

Mr. POAGE. Mr. Chairman, my motion was to close debate at the present time, because there seemed to be no one who indicated a desire that he wanted to speak further, but if there are those who want to speak further then I would change my motion—

Mr. DOW. Mr. Chairman, will the gentleman yield?

Mr. POAGE. Certainly I will yield to the gentleman from New York.

Mr. DOW. Mr. Chairman, we have other amendments here, and at the desk, and there is a desire to debate these amendments. Therefore I would certainly strenuously object to any attempt to foreclose debate on those subsequent amendments.

Mr. POAGE. Mr. Chairman, in the hope that we may get to an agreement here, I ask unanimous consent that all debate on the amendment offered by the gentleman from Colorado (Mr. EVANS) and all amendments thereto do now close.

AMENDMENT OFFERED BY MR. BINGHAM TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. KYL FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DOW

Mr. BINGHAM. Mr. Chairman, I offer an amendment to the substitute amendment offered by the gentleman from Iowa (Mr. KYL).

The Clerk read as follows:

Amendment offered by Mr. BINGHAM to the substitute amendment offered by Mr. KYL: On page 47, line 21, strike out "person" and insert "user".

Mr. BINGHAM. Mr. Chairman, if I may have the attention of the chairman of the committee, I would appreciate it.

I have listened attentively to the debate on the amendment offered by the gentleman from Colorado (Mr. EVANS) and it seemed to me that the principal opposition, at least the opposition to that amendment that was most persuasive, was the case made for the farmer who had bought pesticides and who had them in stock and then found that he could not use them because they had been ruled out.

So I have offered this very simple amendment which would protect the farmer but which would not go beyond that.

Mr. Chairman, I do not want to pursue the matter and I do not want to debate it extensively. This amendment would at least meet the argument that the farmer needs protection. The amendment simply substitutes for the word "person" in line 21, on page 47, the word "user".

[p. H10760]

In other words, any user who owns any quantity of such pesticide would be identified. That, it seems to me, would go a long way toward meeting the objections raised in the Evans amendment.

Mr. RYAN. Mr. Chairman, will the gentleman yield?

Mr. BINGHAM. I yield to the gentleman from New York.

Mr. RYAN. Mr. Chairman, I commend the gentleman on his amendment. I think it is most useful and is consistent with the law which now indemnifies producers of milk, if milk is taken off the market because of contamination by a registered chemical, to which the chairman referred. The amendment limits indemnification to farmers. It does not blanket in manufacturers who should have the burden themselves of establishing that the product will not adversely affect the environment and should assume the risk.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. BINGHAM. I yield to the gentleman.

Mr. KYL. Mr. Chairman, I do not know if the gentleman realizes what he does here.

The original provisions of this act covered more than just the ultimate user of the pesticide. For instance, suppose you have a dealer in your community who has a pesticide which is registered and for which he has paid. He, in turn, intended to sell it to a user who would be eliminated by your substitution of the word "user". It also would not then cover the person who had manufactured the product or who warehoused the product.

Mr. BINGHAM. The case that has been made now for the protection of the dealer was not made earlier. I was trying to meet the appealing case, calling for the protection of the farmer. I yield back the remainder of my time.

Mr. POAGE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from Texas is recognized.

Mr. POAGE. This is just some of the same stuff, just an effort to escape responsibility for a change in judgment on the part of the Government. I think that if you take the property of the National City Bank, you owe the National City Bank the value of that property, just the same as if you take the property of BOB POAGE, or somebody who has even less property than he. I think we owe an obligation to do right by every citizen of the United States, regardless of his economic status. I cannot believe that it is moral to take the property of the Dow Chemical Co. and immoral to take the property of JOHN DOW. I think that it is clear that this is just an attempt to try to have the Government destroy values without paying for them. It does not make any difference whose hands the property is.

Mr. BRASCO. Mr. Chairman, will the gentleman yield for a question?

Mr. POAGE I yield the floor.

Mr. BRASCO. Mr. Chairman, I move to strike the requisite number of words.

The CHAIRMAN. The gentleman from New York is recognized.

Mr. BRASCO. I want to ask a question of the chairman of the committee (Mr. POAGE). I have served on the committee ment should pay the cost when the Government is responsible. If the gentleman will offer an amendment to the Food and Drug Act to reimburse or to pay for such losses as he described, I will support it.

Mr. BRASCO. That is what I wanted to know.

Mr. POAGE. Absolutely. I believe in going across the board, and when the Government is responsible for the loss, the Government should pay the bill. The Agriculture Committee does not have jurisdiction over the matters the gentleman is describing. We are trying to treat everybody alike.

Mr. BRASCO. I understand that. I wanted to get the gentleman's opinion on it.

Mr. SMITH of Iowa. Mr. Chairman, I move to strike the last word.

The CHAIRMAN. The gentleman from Iowa is recognized.

Mr. SMITH of Iowa. The gentleman from New York has just indicated that this bill applies only to farmers. I think that idea should be dispelled at this point. As I understand it, this bill applies to a lot of chemicals that are under the housewife's kitchen sink at the present time. If after this bill passes—and I am not speaking in opposition to the bill—a Member happens to carry a couple cockroaches home in his pocket from the House Restaurant, they are free to multiply in a crack in the Member's house until one of three things happens: Either he burns the house down, or he secures an applicator's license and applies chemicals now available, or else he hires some commercial exterminator company to spray the cracks. Homeowners will no

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Actually, what your amendment does, of course, is to eliminate the main purpose of the amendment which is to provide some incentive for trying to find maximum alternate controls.

I certainly could not accept the amendment at all.

Mr. BINGHAM. I would point out to the gentleman that the case was very eloquently made here by the gentleman from Pennsylvania and the gentleman from Mississippi, I believe, that it was the farmer who was the person who most needed protection because the farmer might go out of business if he lost large amounts invested in pesticides thinking at the time that they were perfectly all right to use and then finding that they are not.

Mr. ANDREWS of North Dakota. Mr. Chairman, will the gentleman yield?

Mr. BINGHAM. I yield to the gentleman.

Mr. ANDREWS of North Dakota. Mr. Chairman, the farmer has to go not only to his stock, but the farmer has to go to the stocks held in the farming community by a dealer. The thrust of the gentleman's amendment, I am afraid, would be to discourage the local dealer from maintaining stocks of pesticides or herbicides where the farmer could get them when he needed them. So I think the gentleman's amendment would do damage to the farmer by virtue of not encouraging the chemical to be stocked in the area.

and I know the gentleman today in his approach is trying to present an argument which is fair and equitable, and it does seem fair and equitable. But he confines it to products that are used in the farming area.

I am wondering whether or not the gentleman supports the theory on a broader basis. Very simply, it is this: In my district in New York there was a small company that employed about 75 to 100 people that had been in business making foods for the last 50 years.

Some months ago the Pure Food and Drug Administration reversed itself on the question of cyclamates that the company was using in their food products. The ban caused the company to take its products off the market causing substantial loss so that they are now in such bad financial condition that they are on the verge of bankruptcy.

I understand what the gentleman is trying to do, but I am wondering whether or not this equity that he is holding forth to people who use pesticides that are first sponsored by the Government as being safe and then recalled would be applied in a broader fashion to people I have described.

Mr. POAGE. Mr. Chairman, will the gentleman yield?

Mr. BRASCO. I yield to the gentleman from Texas.

Mr. POAGE. I am sorry I did not make myself clear. I attempted to. I think we have to pay the cost. I think the Government should be permitted to use some of the chemicals they are now using to keep cockroaches out of their houses.

We should be aware of what we are doing here. Everybody who applies chemicals which are toxic enough to be called "restricted," would have to have an applicator's license. Perhaps some of these chemicals should not be in general use but the provisions of this bill are not of concern just to farmers. This bill applies to the housewife who has a green thumb or to the housewife who is just trying to keep her house clean. It applies to everybody who uses these chemicals.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Iowa (Mr. KYL).

Mr. KYL. Mr. Chairman, I am glad the gentleman makes this comment, because obviously those who are offering these amendments do not understand what is involved. When we talk about pesticides general use and fungicides we are talking about moth balls and chlorox and germicidal floor waxes, the material used in air conditioners to keep the algae content down and so forth.

This bill is not written to protect farmers or manufacturers. It is written to protect the consumers and the environment—in other words, the public.

Mr. SMITH of Iowa. But somehow the people have gotten the idea that the only people who use these chemicals are the farmers. It is not so.

[p. H10761]

Mr. KYL. And when the farmers use them, it is not because they hate the worms, but because the consumers like to eat apples without worms.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. BINGHAM), to the substitute amendment offered by the gentleman from Iowa (Mr. KYL) for the amendment in the nature of a substitute offered by the gentleman from New York (Mr. DOW).

The amendment to the substitute amendment was rejected.

AMENDMENT OFFERED BY MR. RARICK TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. KYL FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DOW

Mr. RARICK. Mr. Chairman, I offer an amendment to the substitute amendment.

The Clerk read as follows:

Amendment offered by Mr. RARICK to the substitute amendment offered by Mr. KYL: Redesignate paragraph (e) as (f) and add a new section (e) as follows:

"(e) IMPORTATION OF AGRICULTURAL PRODUCTS.—Notwithstanding any other provision of law, whenever the use of any pesticide in connection with the producing, processing, or handling of any agricultural commodity is prohibited or limited under any Federal statute, the President shall prohibit importation of such commodity from any country if he determines that—

"(1) such country does not have at least equal restrictions with respect to the use of such pesticide, and

"(2) such commodity is produced in substantial quantities in the continental United States.

The provisions (including penalties and for-

the use of some pesticides or limited in the use of restrictive pesticides, regulations which will have a distinct impact on the food-producing ability of our country as well as food prices and supply.

Yet these same bans and restrictions, as the bill now stands, do not extend to agricultural imports from foreign countries. As the bill presently stands: If we ban or restrict pesticide use only in American agriculture, the chemical companies are still allowed to sell the same banned and prohibited pesticides to foreign countries to be used in food-growing production, which same food can be imported to the United States bearing the banned pesticides prohibited from use in our country.

I feel if we are going to place American agriculture under bans on pesticides or restricted use of chemicals, fairness demands that we apply the same treatment to imported farm commodities, goods, and foodstuffs coming into this country.

If we authorize pesticide bans and controls over U.S. agriculture in the name of safeguarding our environment, only to allow these same pesticides to be brought in on our foodstuffs can it not be said we are defeating the purpose of the bill before us by creating a loophole to the advantage of foreign agriculture?

Those members of the Committee on Agriculture will recall the history behind the deletion of this proposed amendment from the bill. The committee was promised that if this section were removed, it would be later brought up as a separate bill. My feelings are that if we are going to vote pesticide controls on U.S. agriculture today the place for extension of

The administration bitterly opposes this amendment, just as I am sure the previous administration opposed the idea. In fact, every State Department seems to oppose everything that would require foreigners take some action that would be comparable to the action we require of our own citizens. What the State Department always believes is that we must give some special treatment to foreigners. It still believes that, and made it rather plain that if we are going to have a pesticide bill we are not going to have this provision in here.

Perhaps they did not convince others that that would be the case. They did convince me. They convinced me that if we want a bill we must keep this provision out. Most Members have been complaining we were not going far enough, rather than we were going too far, but we are trying to pass a bill. We are trying to do the thing we believe the American people want done, to pass a bill that will give some control over these pesticides and still allow some reasonable use of them.

I am convinced that if you put this amendment on this bill, this good provision—and I say it is a good provision and I think it is a sound and a fair provision—but if you put it on here, then I do not think you will have any bill and you will not have achieved anything at all toward helping either the American farmer or the American consumer.

The farmer will get no assurance of the right to use pesticides—no matter how badly they are needed.

So it is with the environmentalists. When they get all of nothing, they will

feitures) of section 545 of title 18, United States Code, shall apply in enforcing the provisions of this subsection. The President may prescribe rules and regulations to carry out the purposes of this subsection, including but not limited to, provisions for the deferral of the effective date thereof with respect to particular pesticides or agricultural commodities for not more than three years.

(Mr. RARICK asked and was given permission to revise and extend his remarks.)

Mr. RARICK. Mr. Chairman, this amendment was considered in the Agriculture Committee. In fact, I take no pride in authorship since the amendment is the chairman's language and was in the original bill until deleted by presures and influences from outside our committee.

What the amendment proposes is simply to remove the threat of another of the double standards so common in our country today; that is to remove a double standard from American agriculture by applying the provisions of the pesticide control bill to agricultural imports by extending some degree of control over foreign farmers as well as those American farmers who can be expected to escape pesticide banning and regulations by moving their food and fiber producing capabilities from our country to foreign nations.

The bill as it now exists provides that the agricultural sector of our country can be handicapped by being banned from the law to foreign agricultural imports is in the same bill. If there are fears we cannot pass a pesticide bill today which does not discriminate against U.S. farmers, then we are not going to be able to pass a separate bill to protect U.S. consumers from foreign imports tomorrow.

To those who answer all fears of where the bill is going, because of assurances from Mr. Ruckelshaus, the head of EPA, I can but suggest that there is nothing as unassured these days as politics. Next year the seat of Director of the Environmental Protection Agency could well be Mr. Ramsey Clark, or perhaps Ralph Nader, or a militant environmentalist. What is not put in the law today to safeguard our farmers and consumers may have less support in another year.

It is only fair and reasonable that we abolish dual standard by applying the same laws to the foreign imports of food and agricultural commodities that we expect our farmers to operate under in order to protect the environment of the American people.

I recommend that the amendment be adopted.

Mr. POAGE. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, this amendment, if in the form of a bill, would be a good bill. It is word for word what I introduced. I believe I originated the idea, as the gentleman from Louisiana suggested. I offered it separately. Later I offered it as a part of this bill.

still have exactly nothing if you put this on here, and we all still wind up with nothing.

I think it would be a whole lot better to take something. You have legislation here that will give some reasonable degree of protection to everybody concerned. That is the reason why I am opposing what I think it is a good, sound provision.

Separate and apart from this legislation I am for it. I want the gentleman to know it and I want the State Department to know it. But this is just not the place to put it. I have not noticed any one of those who felt they wanted this kind of a bill coming in here urging this amendment. They do not come in and urge it because they know what it will do to the bill.

Mr. KYL. Will the gentleman yield?

Mr. POAGE. Yes. I yield to the gentleman from Iowa.

Mr. KYL. I want to commend the chairman for the action he is taking here. This is his bill. He wants this bill passed. And yet, because his interest is in getting a good pesticide bill passed, he puts his own feelings in the background and says that the amendment should not be adopted and that we should get on with passing the bill.

Mr. POAGE. I thank the gentleman.

Mr. SISK. Will the gentleman yield to me?

Mr. POAGE. Yes, I yield to the gentleman.

[p. H10762]

Mr. SISK. I, too, want to commend the chairman.

I want to say that I am a strong supporter of his bill. I believe in the legislation he proposed and which is now proposed by the gentleman from Louisiana. However, I also agree with the chairman's present position that, unfortunately, apparently we cannot pass a good pesticides regulatory bill with this on it. Therefore, I go along with the chairman, although somewhat reluctantly, to oppose this amendment.

I thank the gentleman for yielding.

Mr. TEAGUE of California. Will the gentleman yield to me?

Mr. POAGE. Yes. I yield to the gentleman.

Mr. TEAGUE of California. I, too, support the position that the chairman has taken. In a case where we have any doubt or any question, here is a letter which came from the Assistant Secretary, Mr. Palmby, within the last 2 weeks. He says:

> Our opposition is based on the fact that this provision will have a serious impact on our agricultural exports and thus work hardships on our farmers.

Well, that is arguable, but, in any event, I offer that as evidence so that there may be no misunderstanding on the Republican side that this suggestion or this proposed amendment is very much opposed by the administration and, in my opinion, it would undoubtedly work out to a veto of the bill.

Mr. GROSS. Will the gentleman yield?

Mr. POAGE. I yield to the gentleman from Iowa.

other countries do not require that our country have the same pesticide control laws that they do. I think that would be the effect of this amendment. And yet, that is the effect of this amendment.

I would like to cite the commodity of corn as an example and how this might affect our market. About 90 percent of all overseas sales of corn go to countries that would be adversely affected by this amendment. They might not strike back, but there is that possibility.

Mr. MELCHER. Mr. Chairman, I move to strike the requisite number of words.

(Mr. MELCHER asked and was given permission to revise and extend his remarks.)

Mr. MELCHER. Mr. Chairman, I shall not take the full 5 minutes of my time, but I must tell you, and the Members of the House, that I very much regret that this section was removed from the bill.

I shall vote for the amendment which has been offered by the gentleman from Louisiana (Mr. RARICK) to replace the section in the bill.

Congress, rightly, should take the leadership in these matters that have to do with the protection of the health of our consumers. We should not kowtow to the feelings and beliefs of the State Department, or the Department of Agriculture, or anyone else, when we see a serious need to protect the human health of the people of this country. The quality standards which we now have as pertain to the effect on the health of the people should apply to the imported foreign food that we purchase and bring into this

know which products are imported and which are of domestic origin. But in neither case should we take the chance with the health of our consuming public.

Testimony before the Committee from Food and Drug Administration officials, outlining surveillance for harmful residues was not reassuring. The testing of chemicial residues on ready-to-eat meats, poultry, and fish was haphazard and raised doubts as to any effective control on residues, on imported foods. As a result, the Committee approved a section in the bill requiring producers of imported foods to follow the same procedures as we do in this country to avoid contamination with toxic chemicals. (A copy of this section follows my views.) The State Department objected saying it would interfere with good relations with countries that export foods to us. The Department of Agriculture objected, stating it would interfere with agricultural trade. The Environmental Protection Agency, in sympathy with these two Cabinet Departments, also objected. But obviously the health of our consumers should be paramount to the speculation conjured by the two Departments which have little basis for their arguments. Their pale objections based on anemic judgments should not be allowed to jeopardize the health of American consumers. Exporting countries are interested in the health of their own consumers as well as the health of their customers abroad; and when our scientists determine that a chemical leaves a harmful residue in foodstuffs, this fact should be noted and observed by all countries. It is of mutual beneficial interest which is on a level higher than mundane trade policy or profits.

Nevertheless, the pressure applied by the Administration through the State Department and the Department of Agriculture caused the deletion from the bill of what I believe to be a very important section to apply the same standards to imported food

Mr. GROSS. I have listened attentively, but I have not yet heard, except for the Department of Agriculture, who is opposed to this amendment. Is it somebody above and beyond the Department of Agriculture?

Mr. POAGE. I am sorry the gentleman did not hear my statement. The State Department is opposed to it.

Mr. GROSS. I would expect the State Department to be opposed to it.

Mr. POAGE. Well, then you have heard who is opposed to it.

Mr. GROSS. I expected the striped pants crowd would. Do they want to import food under circumstances where local producers and distributors are not permitted to sell it to people in this country?

Mr. POAGE. I cannot tell the gentleman the thinking of the State Department, but I think I know something of the practicalities of passing this bill, and I do not think that you can pass the bill if you put this amendment on it.

Mr. GROSS. Will the State Department veto it, or who will?

Mr. POAGE. The President of the United States.

Mr. GROSS. The President of the United States?

Mr. POAGE. That is Mr. Nixon.

I yield to the gentleman from Illinois (Mr. FINDLEY).

Mr. FINDLEY. I thank the chairman for yielding to me.

It is my feeling that this provision, instead of eliminating a double standard, would actually establish one because country. The standards and requirements on the imported food and that food which we produce here in our country as supplied by our domestic producers should be one and the same. There should not be a double standard. I have offered for the advice of the Members of the House additional views covering this subject. It is printed in the report and, rather than taking the time to discuss it in more detail, I trust everyone who is interested in it has already read it, and if you have not read it and are still interested, I hope you will take the time to do so now.

Those views are as follows:

ADDITIONAL VIEWS OF CONGRESSMAN JOHN MELCHER

H.R. 10729, the Federal Insecticide Act of 1971, fails to close a loophole where chemicals on imported foodstuffs are used that may have harmful effects on consumers. We depend on domestic food producers, or livestock, not to use chemicals on their products that science has found to be injurious to the health of consumers. H.R. 10729 continues this requirement for domestic producers, but fails to apply the same safeguard to food products that are imported into the U.S.

With the everwidening use of chemicals in food production, there is increasing need to protect the wholesomeness of dairy, fruit, vegetable, cereal, or meat products by avoiding application of chemicals that would leave residues injurious to health. It is fraudulent to tolerate a double standard between imported and domestic food supplies. Chemical pesticides or herbicides banned for use on domestic food products because their residue would be injurious to consumers, should not be allowed on imported foodstuffs. In most cases, there is no way for the consumer to products that we apply to domestic supplies.

The argument is made that consumers have adequate protection through the surveillance of the Food and Drug Administration and the Department of Agriculture. That is not the case. Very little sampling is done. I am including at the end of my views tables provided by the Food and Drug Administration and by the Department of Agriculture. Examination of their tables prompts the following conclusions:

(1) In the case of meat, fish and poultry, residues for only 13 pesticide compounds in a very few samples are examined. These are pesticides available in this country, but banned for use in production of these foods or allowed only with strict limitations found to be safe.

(2) The incidence percent and the average parts per million are greater in the imported food samples than from the domestic products. Improvement in the presence and amounts of residues found in domestic food products as compared to imported food products in the years 1967, 1968 and 1969 was much better on the domestic side as compared to the imported products. This argues strongly for the banning or limiting uses of the objectionable pesticides as has been done in the U.S. for our domestic producers with a like extension to all producers in other countries who wish to sell products in this country.

(3) Residue sampling is decreasing. The bulwark of consumer protection continues to be reliance on producer compliance not to use banned or limited use chemicals. Even if sampling were increased a hundredfold, it would still only be spot checks which without compliance by producers on banned chemicals offer little assurance to consumers that an adequate job was being done to guard against harmful residues.

(4) There was very little sampling done in 1970, and rejections of shipments of im-

ported meat because of residues in excess of tolerance levels only totaled 23 for the year. However, imports showed the incidence of benzene hexachloride, DDT, dieldrin, and heptachlor epoxide residues are all on the increase indicating a much more extensive use by the producers of the countries of the imported meat. These chemicals are all banned or require strict limitations on use for livestock in this country.

The only valid conclusion in the face of these facts is that H.R. 10729 can only assure consumers adequate protection from harmful residues from pesticides or herbicides when every means is taken to prevent the use of these chemicals on food products consumed by our people. Not to apply these same standards based on scientific evaluations to imported foods may give us, as our State and Agriculture Departments have implied, an open door trade policy, but it is an open door invitation to abuse imported food supplies inviting residues that may harm the health of untold numbers of our people. There can be no justification in taking that chance. Decisions to limit chemicals used by our domestic producers are not decisions lightly made but are made after long and careful study and evaluation. The results should not be ignored by any producers anywhere in the world. Their health and our health is at stake. If the House does not include a section such as Section 17(e) in the Committee print or similar protection, H.R. 10729 has a serious, damaging flaw.

JOHN MELCHER,
Member of Congress.

(Committee Print No. 3, dated July 13, 1971, was used by the committee in the preparation of H.R. 10729. Section 17(e) of Committee Print No. 3 is as follows:)

"(e) IMPORTATION OF AGRICULTURAL PRODUCTS.—Notwithstanding any other provision of law, whenever the use of any pesticide in connection with the producing, processing, or handling of any agricultural commodity is prohibited or limited under any Federal statute, the President shall prohibit importation of such commodity from any country if he determines that—

"(1) such country does not have at least equal restrictions with respect to the use of such pesticide, and

"(2) suct commodity is produced in substantial quantities in the continental United States.

The provisions (including penalties and forfeitures) of section 545 of title 18, United States Code, shall apply in enforcing the provisions of this subsection. The President may prescribe rules and regulations to carry out the purpose of this subsection, including but not limited to, provisions for the deferral of the effective date thereof with respect to particular pesticides or agricultural commodities for not more than three years.

PESTICIDE RESIDUES IN MEATS (FAT BASIS) FISCAL YEARS 1965–69 (BEEF, PORK, ETC.)

[Total diet samples—ready-to-eat food, meat, fish, and poultry (roast beef, ground beef, pork chops, chicken, fish fillets, eggs, frankfurters, etc.)]

Specific compound	Domestic samples, 12,146		Import samples,[1] 3,674		Total diet samples (meat, fish, and poultry), 134 composites	
	Incidence percent	Average p.p.m.	Incidence percent	Average p.p.m.	Incidence percent	Average p.p.m
DDT[2]	75.4	0.33	83.9	0.41	88.1	0.182
DDE[2]					92.5	.168
TDE[2]					80.6	.092
Dieldrin	31.3	.05	46.7	.10	61.9	.026
Heptachlor epoxide[3]	[4] 21.6	.02	10.2	.01	53.7	.016
Heptachlor[3]	9.6	.01	1.1	[5]	3.0	[5]
Lindane	6.6	.01	12.4	.01	19.4	.006
BHC	[7] 20.2	.02	[7] 63.2	.15	50.0	.018
Aldrin	.1	[5]	[7] 1.4	[5]	.7	[5]
Endrin	.4	[5]	1.0	[5]	[7] 1.5	[5]
Methoxychlor	1.8	.01	.6	[5]		
Toxaphene	1.4	.01	.1	[5]	1.5	.004
MCP	[8] 11.8	.02	[4] 45.1	.10	.7	[5]

[1] Import samples for fiscal years 1967, 1968, and 1969 only.
[2] DDT includes DDE and TDE.
[3] Heptachlor includes heptachlor epoxide except fiscal year 1967 (domestic samples only).
[4] Fiscal year 1967 only, 3,098 domestic samples, 1,901 import samples.
[5] Less than 0.005 p.p.m.
[6] Less than 0.001 p.p.m.
[7] Fiscal year 1968 and 1969 only, 4,012 domestic samples and 1,733 import samples.
[8] Fiscal year 1965, 1966, and 1967 only, 8,134 domestic samples.

Source: Food and Drug Administration.

NUMBER OF SAMPLES

Range (parts per million)	Domestic						Imported			
	1965	1966	1967	1968	1969	Total	1967	1968	1969	Total
Methyl chlorophenoxy acetic acid (MCP):										
None found	3,200	1,614	2,357	0	0	7,171	1,044	0	0	1,044
Trace to 0.10	51	134	621	0	0	806	564	0	0	564
0.11 to 0.50	1	35	90	0	0	126	214	0	0	214
0.51 to 1.00	0	1	15	0	0	16	52	0	0	52
1.01 to 1.50	0	0	6	0	0	6	14	0	0	14
1.51 to 2.00	0	0	2	0	0	2	5	0	0	5
2.01 to 3.00	0	0	3	0	0	3	3	0	0	3
Above 3.00	0	0	4	0	0	4	5	0	0	5
Total	3,252	1,784	3,098	0	0	8,134	1,901	0	0	1,901

Range PPM	Domestic						Imported		
	1965	1966	1967	1968	1969	Total	1968	1969	Total
Aldrin:									
None found	3,252	1,783	3,098	2,709	1,298	2,140	1,264	484	1,748
Trace to 0.10	0	0	0	3	1	4	9	13	22
0.11 to 0.50	0	0	0	1	0	1	1	2	3
0.51 to 0.00	0	1	0	0	0	1	0	0	0
1.01 to 1.50	0	0	0	0	0	0	0	0	0
1.51 to 2.00	0	0	0	0	0	0	0	0	0
2.01 to 3.00	0	0	0	0	0	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	2,146	1,274	499	1,773
Benzene hexachloride (BHC):									
None found				2,070	1,130	3,200	446	206	652
Trace to 0.10				576	146	722	370	178	548
0.11 to 0.50				49	17	66	382	98	480
0.51 to 1.00				10	3	13	60	14	74
1.01 to 1.50				4	1	5	11	3	14
1.51 to 2.00				2	0	2	0	0	0
2.01 to 3.00				2	1	3	2	0	2
Above 3.00				0	1	1	3	0	3
Total				2,713	1,299	4,012	1,274	499	1,773

Range PPM	Domestic						Imported			
	1965	1966	1967	1968	1969	Total	1967	1968	1969	Total
DDT:										
None found	1,148	568	644	472	161	2,993	300	216	76	592
Trace to 0.10	1,245	513	925	728	383	3,794	522	365	129	1,016
0.11 to 0.50	435	386	1,106	1,080	572	3,579	638	499	201	1,338
0.51 to 1.00	203	129	241	253	103	929	236	113	45	394
1.01 to 1.50	67	59	76	60	43	305	78	30	24	132
1.51 to 2.00	70	38	25	34	13	189	39	22	6	67
2.01 to 3.00	41	42	38	37	20	178	50	16	6	72
Above 3.00	43	49	43	40	4	179	38	13	12	63
Total	3,252	1,784	3,098	2,713	1,299	12,416	1,901	1,274	499	3,674
Dieldrin:										
None found	3,220	1,713	1,054	1,561	798	8,346	1,017	636	304	1,957
Trace to 0.10	30	50	827	963	434	2,304	481	267	139	887
0.11 to 0.50	2	20	1,186	181	63	1,452	366	326	52	744
0.51 to 1.00	0	0	13	6	3	22	29	38	4	71
1.01 to 1.50	0	1	4	1	0	6	3	4	0	7
1.51 to 2.00	0	0	8	1	1	10	3	3	0	6
2.01 to 3.00	0	0	2	0	0	2	0	0	0	0
Above 3.00	0	0	4	0	0	4	2	0	0	2
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Endrin:										
None found	3,248	1,782	3,096	2,692	1,279	12,097	1,886	1,271	481	3,638
Trace to 0.10	2	0	1	17	20	40	8	3	17	28
0.11 to 0.50	2	2	1	4	0	9	6	0	1	7
0.51 to 1.00	0	0	0	0	0	0	1	0	0	1
1.01 to 1.50	0	0	0	0	0	0	0	0	0	0
1.51 to 2.00	0	0	0	0	0	0	0	0	0	0
2.01 to 3.00	0	0	0	0	0	0	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Heptachlor:										
None found	3,241	1,709	3,020	1,970	1,044	10,984	1,896	1,243	494	3,633
Trace to 0.10	11	50	64	628	213	676	5	13	2	20
0.11 to 0.50	0	25	4	109	42	180	0	18	3	21
0.51 to 1.00	0	0	0	5	0	5	0	0	0	0
1.01 to 1.50	0	0	0	1	0	1	0	0	0	0
1.51 to 2.00	0	0	0	0	0	0	0	0	0	0
2.01 to 3.00	0	0	0	0	0	0	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0	0

Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Lindane:										
None found	3,202	1,680	2,831	2,462	1,171	11,346	1,747	1,091	382	3,220
Trace to 0.10	26	56	217	202	106	607	116	144	104	364
0.11 to 0.50	15	34	40	43	22	154	29	38	13	80
0.51 to 1.00	6	6	5	5	0	22	4	1	0	5
1.01 to 1.50	1	3	4	1	0	9	4	0	0	4
1.51 to 2.00	0	2	1	0	0	3	1	0	0	1
2.01 to 3.00	2	3	0	0	0	5	0	0	0	0
Above 3.00	0	0	0	0	0	0	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Toxaphene:										
None found	3,104	1,773	3,093	2,709	1,298	11,977	1,899	1,274	499	3,672
Trace to 0.10	56	3	0	0	1	60	0	0	0	0
0.11 to 0.50	45	4	2	0	0	51	0	0	0	0
0.51 to 1.00	23	3	1	0	0	27	0	0	0	0
1.01 to 1.50	5	0	0	0	0	5	0	0	0	0
1.51 to 2.00	12	1	0	0	0	13	0	0	0	0
2.01 to 3.00	4	0	2	1	0	7	0	0	0	0
Above 3.00	3	0	0	3	0	6	2	0	0	2
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674
Heptachlor epoxide:										
None found			2,429	0	0	2,429	1,714	1,161	426	3,301
Trace to 0.10			600	0	0	600	161	94	60	315
0.11 to 0.50			60	0	0	60	26	19	13	58
0.51 to 1.00			3	0	0	3	0	0	0	0
1.01 to 1.50			2	0	0	2	0	0	0	0
1.51 to 2.00			0	0	0	0	0	0	0	0
2.01 to 3.00			2	0	0	2	0	0	0	0
Above 3.00			2	0	0	2	0	0	0	0
Total			3,098	0	0	3,098	1,901	1,274	499	3,674
Methoxychlor:										
None found	3,157	1,780	3,076	2,658	1,260	11,931	1,888	1,271	492	3,651
Trace to 0.10	46	1	8	6	16	77	8	1	3	12
0.11 to 0.50	21	1	9	38	23	92	3	0	3	6
0.51 to 1.00	19	0	4	10	0	33	1	2	1	4
1.01 to 1.50	4	0	0	0	0	4	1	0	0	1
1.51 to 2.00	3	2	0	0	0	5	0	0	0	0
2.01 to 3.00	2	0	1	0	0	3	0	0	0	0
Above 3.00	0	0	0	1	0	1	0	0	0	0
Total	3,252	1,784	3,098	2,713	1,299	12,146	1,901	1,274	499	3,674

Source: Food and Drug Administration.

PESTICIDE RESIDUES IN IMPORTED MEATS, CALENDAR YEARS 1967–70 (BEEF, PORK, SWINE, SHEEP)

[Number of samples]

Range (parts per million)	1967	1968	1969	1970
DDT				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	413	266	299	333
0.11 to 0.50	534	498	438	453
0.51 to 1	196	116	95	85
1.01 to 1.50	86	32	36	14
1.51 to 2	51	20	9	2
2.01 to 2.50	27	9	2	4
2.51 to 3	19	10	5	5
3.01 to 3.50	13	2	3	3
3.51 to 4	5	5	4	1
4.01 to 4.50	6		5	
4.51 to 5	1	2	1	
5.01 to 6	6		3	1
6.01 to 7	3		1	
7.01 to 8		1	2	
8.01 to 10			2	2
10 to 15	2			
15 and over	1		1	
Total positives	363	961	906	903
Violations of total positives	7	1	7	2
Total samples in violation	302	377	107	77
DIELDRIN				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	467	334	411	592
0.11 to 0.50	370	414	95	42
0.51 to 1	29	39	5	
1.01 to 1.50	2	4		
1.51 to 2	3	2		
2.01 to 2.50				
2.51 to 3				
3.01 to 3.50	1			
3.51 to 4				
4.01 to 4.50	1			
4.51 to 5				
5.01 to 6				
6.01 to 7				
7.01 to 8				
8.01 to 10				
10.0 to 15				
15.0 and over				
Total positives	873	793	511	634
Violations of total positives	174	193	11	21
Total samples in violation	302	377	107	77

Range (parts per million)	1967	1968	1969	1970
BENZENE HEXACHLORIDE				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	540	508	435	523
0.11 to 0.50	290	423	188	200
0.51 to 1	50	77	15	4
1.01 to 1.50	15	12	4	1
1.51 to 2	6	2	1	
2.01 to 2.50	4	2	1	
2.51 to 3	1	2		
3.01 to 3.50	1	1		
3.51 to 4	1	1		
4.01 to 4.50				
4.51 to 5	1			
5.01 to 6				
6.01 to 7	2			
7.01 to 8				
8.01 to 10		1		
10.0 to 15				
15.0 and over				
Total positives	911	1,029	644	728
Violations of total positives	173	263	64	68
Total samples in violation	302	377	107	77
HEPTACHLOR EPOXIDE				
Total samples analyzed	1,928	1,414	1,033	995
None found	112	23	18	26
0.01 to 0.10	137	127	121	203
0.11 to 0.50	26	29	28	26
0.51 to 1			1	
1.01 to 1.50				
1.51 to 2				
2.01 to 2.50				1
2.51 to 3				
3.01 to 3.50				
3.51 to 4				
4.01 to 4.50				
4.51 to 5				
5.01 to 6				
6.01 to 7				
7.01 to 8				
8.01 to 10				
10.0 to 15				
15.0 and over	1	1		
Total positives	164	157	150	230
Violations of total positives	5	2	8	2
Total samples in violation	302	377	107	77

Source: U.S. Department of Agriculture.

Mr. DENHOLM. Mr. Chairman, will the gentleman yield?

Mr. MELCHER. I yield to the gentleman.

Mr. DENHOLM. Mr Chairman, I associate myself with the remarks of the gentleman from Montana and I join in support of the amendment.

I believe that the existing provision of the proposed legislation imposes an obligation on the people of this country that it does not impose on the foreign producers that deliver and trade in our domestic market. Therefore, I join with the gentleman in support of the amendment.

Mr. RYAN. Mr. Chairman, I move to strike the requisite number of words.

(Mr. RYAN asked and was given permission to revise and extend his remarks.)

Mr. RYAN. Mr. Chairman, speaking of a double standard, I would call the attention of the members of the Committee to the exemption which the bill grants for exports in section 17, page 50, where there appears the following language:

> Notwithstanding any other provision of this Act, no pesticide or device shall be deemed in violation of this Act when intended solely for export to any foreign country and prepared or packed according to the specifications or directions of the foreign purchaser.

Mr. Chairman, when the bill does not require pesticides manufactured for export to be registered and to meet the requirements imposed upon pesticides in our own domestic market, then I ask how can we justify barring the importation of farm commodities which may have been treated abroad with the very substance which has been exported from the United States and is not subject to the bill?

Our concern for health and environmental protection should extend beyond our own shores, and the exemption for exports should be stricken.

The CHAIRMAN. The question is on *the amendment offered by the gentleman* from Louisiana (Mr. RARICK) to the substitute amendment offered by the gentleman from Iowa (Mr. KYL) for the amendment in the nature of a substitute offered by the gentleman from New York (Mr. Dow).

The question was taken; and on a division (demanded by Mr. RARICK) there were—*ayes 36, noes 43.*

Mr. RARICK. Mr. Chairman, I demand tellers.

Tellers were refused.

So the amendment to the substitute amendment was rejected.

Mr. POAGE. Mr. Chairman, again I wonder if we cannot agree upon a time limitation. I note that the Members are getting impatient, and we seemed to be voting down most of these amendments, so I wonder if we might agree that all debate and all amendments to the Dow amendment in the nature of a substitute and the Kyl substitute amendment and all amendments thereto close in 20 minutes.

The CHAIRMAN. Is the gentleman from Texas making a unanimous-consent request?

Mr. POAGE. I am, Mr. Chairman.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

Mr. DOW. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

MOTION OFFERED BY MR. POAGE

Mr. POAGE. Mr. Chairman, I move that all debate on the Dow amendment in the nature of a substitute, the Kyl substitute amendment, and all amendments thereto close in 20 minutes.

The CHAIRMAN. The question is on the motion offered by the gentleman from Texas (Mr. POAGE).

The motion was agreed to.

Mr. DOW. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count.

PARLIAMENTARY INQUIRY

Mr. DOW. Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

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Mr. DOW. Mr. Chairman, if there is a rollcall will this come out of the time limitation?

The CHAIRMAN. The Chair will state in response to the inquiry of the gentleman from New York (Mr. Dow) that the motion that was agreed to, that was offered by the gentleman from Texas (Mr. POAGE) was for 20 minutes of debate, and the Chair will advise the gentleman from New York that there will be 20 minutes allotted for debate.

Mr. DOW. I thank the Chairman.

The CHAIRMAN. One hundred twenty-six Members are present, a quorum.

AMENDMENT OFFERED BY MR. KASTENMEIER TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. KYL FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DOW

Mr. KASTENMEIER. Mr. Chairman, I offer an amendment to the substitute amendment.

The Clerk read as follows:

Amendment offered by Mr. KASTENMEIER KYL: On page 17, strike out all that comes after "based" on line 12, strike out lines 13 through 15, and strike out all that precedes the semicolon on line 16.

Mr. KASTENMEIER. Mr. Chairman, if my understanding of committee bill section 3, subparagraph (c)(1)(D) is correct, this provision effectively subverts existing patent laws by extending indefinitely through the registration requirements the rights of exclusive production of a pesticide material. I am aware, of course, that the bill does not intrude directly into existing patent law, but its that "data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application or registration."

This exception, narrowly interpreted, could mean that the original developer of the patented and registered pesticide could foreclose the use of similar test data even after the patent has expired by any later registration.

However, even with a broader interpretation of the language, allowing a later submission of original and separate scientific data demonstrating the efficacy and safety of a registered pesticide material, there are strong economic forces which will prevent such later submissions for registrations. The scientific data required to support an application for registration of a pesticide material are extremely costly to generate. Without the patent protection enjoyed by the original application, it is unlikely that a secondary applicant for registration of the same material would undertake the costly research effort required. Therefore, even with the more generous interpretation of the language in this provision, the patent holder and registrant of a pesticide can effectively prevent market entry of new producers of that pesticide by simply refusing to give permission to the Administrator to use the scientific data already available in registering subsequent applications. With no time limit, this provision could very effectively operate to make the original registrant of a patentable pesticide material the only registrant. The subversion of the from pirating another industry's secrets. That is all it does.

The CHAIRMAN. Does any Member wish to be heard on the Kastenmeier amendment? If not, the question is on the amendment offered by the gentleman from Wisconsin (Mr. KASTENMEIER), to the substitute amendment offered by the gentleman from Iowa (Mr. KYL), for the amendment in the nature of a substitute offered by the gentleman from New York (Mr. Dow).

The amendment to the substitute amendment was rejected.

AMENDMENT OFFERED BY MR. DOW TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. KYL FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DOW

Mr. DOW. Mr. Chairman, I offer an amendment to the substitute amendment offered by the gentleman from Iowa (Mr. KYL).

The Clerk read as follows:

Amendment offered by Mr. Dow to the substitute amendment offered by Mr. KYL: Page 19, strike out lines 12 and 13.

(By unanimous consent, Mr. RYAN yielded his time to Mr. Dow.)

The CHAIRMAN. The gentleman from New York (Mr. Dow) is recognized.

Mr. DOW. Mr. Chairman, the essentiality of a pesticide is, of course, highly important to establish in this day when every economic poison is suspect. Yet section 3(c)(5), page 19, lines 12 and 13 of the committee's bill, says that the "Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide."

infringement is effectively accomplished by proposed changes in registration procedures.

Let me explain the situation more fully.

Under existing patent law, an inventor is rewarded for ingenuity and effort by being granted exclusive rights over reproduction of the invention. This protection affords financial returns to the inventor beyond those that would ordinarily accrue in a fully competitive market situation. However, that exclusive reproduction protection is granted for a period of only 17 years. The basic value judgment here is that while an inventor should be financially rewarded for his ingenuity, at some point this special benefit must cease and the competitive forces of a free and open market allowed to operate to bring the invention to users at the lowest possible cost. This reflects the constitutional requirement that patents shall be "for limited times."

In this bill, we have language which I believe would give an unlimited right of exclusive protection for patentable pesticides beyond the usual 17-year period. Section 3 of the bill covers the registration of pesticides and section 3 (c) provides procedures for registration, and subparagraph 3(c)(1) specifies the statement required of an applicant. Subparagraph 3(c)(1)(D) provides that if requested by the Administrator, a full description of the tests made and the results upon which the claims are based must be included. This seems clear. Now reading further on page 17, line 12 of the bill, it provides further as an exception statutory 17-year patent protection limit is obvious.

Existing patent laws offer ample protection and financial reward to the developers of new pesticide materials, and I am strongly opposed to language in the committee bill which offers such developers further protection by establishing registration procedures giving exclusive rights of manufacture beyond the 17-year patent law limit.

The CHAIRMAN. Does any Member care to be heard on the amendment offered by the gentleman from Wisconsin (Mr. KASTENMEIR)?

Mr. KYL. Yes, Mr. Chairman.

The CHAIRMAN. The gentleman from Iowa (Mr. KYL) is recognized.

Mr. KYL. Mr. Chairman, the gentleman from Wisconsin and others have tried to make something appear which does not appear, in seeking to amend this provision of the act.

This is what the bill says in effect.

The Government has the right to require any information it wants. All information must be given to the Government so the Government can make a decision.

But if manufacturer "A" asks to register a chemical and another manufacturer, manufacturer "B," comes in and wants to register its own chemical then "B" cannot use the information developed by the first applicant.

The Government gets all the information it needs and the public gets all the information it needs. All the committee language does is to prevent one industry

In order to evaluate the impact of this provision, some definition of "essentiality" is a prerequisite. The word itself is part of an administrative procedure used in several agencies and departments, including the EPA, the Departments of Interior, Agriculture, and Health, Education, and Welfare. The policy is used when dealing with certain chemicals that have systematically proven to be persistent in the environment. To date, these chemicals have included benzene, hexachloride, chlordane, lindane, strobane-T, toxaphene, and compounds containing lead and arsenic. The policy prescribes that proposals from manuafcturers for uses of these persistent pesticide chemicals include arguments to show the need for the chemicals in use. This need becomes a part of the benefit-cost analysis in whether to permit certain uses of the persistent chemicals.

For an example of its use, authorization for the use of DDT by agencies of the U.N. in the control of malaria would take into consideration arguments relating to the persistence of the chemical as well as consideration of the arguments that DDT is the singularly most effective chemical for fighting malaria on a large scale. This latter argument amounts to an "essentiality" argument.

The problem of duplicate chemicals enter here, and my amendment is not intended to limit them. However, if a poison is proposed for a need already met by an earlier and less harmless chemical, then the lack of essentiality of the new chemical certainly suggests that it should not be approved.

[p. H10767]

My amendment would eliminate the waiver of essentiality from the bill. The substitute is a response to an established need. To specifically eliminate need is an arbitrary effort in favor of chemical manufacturers. It ties the hands of agency administrators who have established a workable and important doctrine.

The CHAIRMAN. Does any Member desire to be heard on the amendment?

Mr. McCLURE. Mr. Chairman, I wish recognition.

The CHAIRMAN. The Chair recognizes the gentleman from Idaho.

Mr. McCLURE. Mr. Chairman, I yield to the gentleman from Iowa (Mr. KYL).

Mr. KYL. Mr. Chairman, in the first place, the Environmental Protection Agency already has what it calls an essential use doctrine in connection with restricted use pesticides. It in effect does what the gentleman wants to be done, but in a logical fashion. Therefore, this amendment is unnecessary. Furthermore, if we apply this doctrine economywide, the Federal Government would say, "We have a Ford automobile; therefore we do not need a Chevrolet, a Plymouth, a Dodge, or a Chrysler." We could say that in relation to any field in which there is more than one product in competition. We already have what the gentleman desires. To carry it further would make it ludicrous.

Mr. Chairman, the amendment should not be adopted.

The CHAIRMAN. Does any other Member wish to be heard on the amendment? If not, question is on the amendment offered by the gentleman from

Ford, William D.	Long, Md.	Reuss
Fraser	McCormack	Riegle
Frey	McDade	Rodino
Fulton, Tenn.	McKay	Roe
Gallagher	Macdonald, Mass.	Roncalio
Gaydos	Madden	Rooney, Pa.
Giaimo	Mazzoli	Rosenthal
Gibbons	Meeds	Rostenkowski
Goldwater	Mikva	Roush
Gonzalez	Miller, Calif.	Roybal
Grasso	Minish	Runnels
Green, Pa.	Mink	Ryan
Griffiths	Mitchell	St Germain
Gude	Monagan	Sarbanes
Hamilton	Moorhead	Saylor
Hanna	Morse	Scheuer
Hansen, Wash.	Mosher	Seiberling
Harrington	Moss	Snyder
Hathaway	Murphy, Ill.	Stanton, James V.
Hawkins	Nedzi	Steele
Hays	Nix	Stokes
Hechler, W. Va.	Obey	Sullivan
Heinz	O'Hara	Symington
Helstoski	O'Konski	Thompson, N.J.
Hicks, Mass.	O'Neill	Tiernan
Hicks, Wash.	Patten	Udall
Howard	Pike	Van Deerlin
Jacobs	Podell	Vanik
Karth	Preyer, N.C.	Waldie
Kastenmeier	Price, Ill.	Whalen
Kemp	Pryor, Ark.	Wolff
Kluczynski	Pucinski	Yates
Koch	Rangel	
Kyros	Rees	
Lent	Reid, N.Y.	

NOES—221

Abbitt	Flowers	Mayne
Abernethy	Flynt	Melcher
Albert	Ford, Gerald R.	Miller, Ohio
Anderson, Ill.	Forsythe	Mills, Md.
Anderson, Tenn.	Fountain	Mizell
Andrews, Ala.	Frelinghuysen	Mollohan
Andrews, N. Dak.	Frenzel	Montgomery
Archer	Fuqua	Morgan
Ashbrook	Galifianakis	Murphy, N.Y.
Aspinall	Gettys	Myers
Baker	Goodling	Natcher
Baring	Gray	Nelsen
Belcher	Green, Oreg.	Nichols
	Griffin	Passman
	Gross	Pepper
Terry	Whalley	Wylie
Thompson, Ga.	White	Wyman
Thomson, Wis.	Whitehurst	Yatron
Thone	Widnall	Young, Fla.
Ullman	Wiggins	Young, Tex.
Vander Jagt	Williams	Zablocki
Veysey	Winn	Zion
Waggonner	Wright	Zwach
Wampler	Wyatt	
Ware	Wydler	

NOT VOTING—58

Alexander	Dowdy	Mailliard
Arends	Dwyer	Metcalfe
Barrett	Edwards, La.	Michel
Bevill	Garmatz	Mills, Ark.
Blackburn	Gubser	Minshall
Brown, Mich.	Halpern	Patman
Burke, Fla.	Hastings	Pelly
Chappell	Hébert	Purcell
Clancy	Heckler, Mass.	Railsback
Clawson, Del	Horton	Schwengel
Clay	Jones, Ala.	Smith, Calif.
Collier	Kee	Springer
Collins, Tex.	Kuykendall	Stanton, J. William
Conyers	Landgrebe	Teague, Tex.
Crane	Lloyd	Vigorito
Davis, Wis.	Long, La.	Whitten
Derwinski	McClory	Wilson, Bob
Devine	McCloskey	Wilson, Charles H.
Dickinson	McFall	
Diggs	McKinney	

So the amendment to the substitute amendment was rejected.

Mr. NIX. Mr. Chairman, on this vote I voted "no." I wish to be recorded as having voted "aye."

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

AMENDMENT OFFERED BY MR. DOW TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. KYL FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DOW

Mr. DOW. Mr. Chairman, I offer an amendment to the substitute amendment offered by Mr. KYL.

The Clerk read as follows:

New York (Mr. Dow), to the substitute amendment offered by the gentleman from Iowa (Mr. KYL), for the amendment in the nature of a substitute offered by the gentleman from New York (Mr. Dow).

The question was taken; and the Chairman announced that the noes appeared to have it.

TELLER VOTE WITH CLERKS

Mr. DOW. Mr. Chairman, I demand tellers.

Tellers were ordered.

Mr. DOW. Mr. Chairman, I demand tellers with clerks.

Tellers with clerks were ordered; and the Chairman appointed as tellers Messrs. DOW, KYL, POAGE, and TEAGUE of California.

The Committee divided, and the tellers reported that there were—ayes 152, noes 221, not voting 58, as follows:

[Roll No. 369]

[Recorded Teller Vote]

AYES—152

Abourezk	Brademas	Daniels, N.J.
Abzug	Brasco	Danielson
Adams	Brown, Ohio	Delaney
Addabbo	Buchanan	Dellums
Anderson, Calif.	Burke, Mass.	Dingell
Annunzio	Burton	Donohue
Ashley	Byrne, Pa.	Dow
Aspin	Carey, N.Y.	Drinan
Badillo	Carney	Dulski
Begich	Celler	du Pont
Bennett	Chisholm	Eckhardt
Biaggi	Collins, Ill.	Edwards, Calif.
Biester	Conte	Eilberg
Bingham	Corman	Fascell
Boland	Cotter	Fish
Bolling	Coughlin	Flood
	Culver	Foley

Bell	Grover	Perkins
Bergland	Hagan	Pettis
Betts	Haley	Peyser
Blanton	Hall	Pickle
Blatnik	Hammer-schmidt	Pirnie
Boggs		Poage
Bow	Hanley	Poff
Bray	Hansen, Idaho	Powell
Brinkley	Harsha	Price, Tex.
Brooks	Harvey	Quie
Broomfield	Henderson	Quillen
Brotzman	Hillis	Randall
Broyhill, N.C.	Hogan	Rarick
Broyhill, Va.	Holifield	Rhodes
Burleson, Tex.	Hosmer	Roberts
Burlison, Mo.	Hull	Robinson, Va.
Byrnes, Wis.	Hungate	Robison, N.Y.
Byron	Hunt	Rogers
Cabell	Hutchinson	Rooney, N.Y.
Caffery	Ichord	Rousselot
Camp	Jarman	Roy
Carter	Johnson, Calif.	Ruppe
Casey, Tex.	Johnson, Pa.	Ruth
Cederberg	Jonas	Sandman
Chamberlain	Jones, N.C.	Satterfield
Clark	Jones, Tenn.	Scherle
Clausen, Don H.	Kazen	Schmitz
	Keating	Schneebeli
Cleveland	Keith	Scott
Colmer	King	Sebelius
Conable	Kyl	Shipley
Daniel, Va.	Landrum	Shoup
Davis, Ga.	Latta	Shriver
Davis, S.C.	Leggett	Sikes
de la Garza	Lennon	Sisk
Dellenback	Link	Skubitz
Denholm	Lujan	Slack
Dennis	McClure	Smith, Iowa
Dent	McCollister	Smith, N.Y.
Dorn	McCulloch	Spence
Downing	McDonald, Mich.	Staggers
Duncan		Steed
Edmondson	McEwen	Steiger, Ariz.
Edwards, Ala.	McKevitt	Steiger, Wis.
Erlenborn	McMillan	Stephens
Esch	Mahon	Stratton
Eshleman	Mann	Stubblefield
Evans, Colo.	Martin	Stuckey
Evins, Tenn.	Mathias, Calif.	Talcott
Findley	Mathis, Ga.	Taylor
Fisher	Matsunaga	Teague, Calif.

Amendment offered by Mr. Dow to the substitute amendment offered by Mr. KYL:

On page 49, line 7, strike out "following a public hearing, any party at interest" and insert in lieu thereof ", any person adversely affected", and on page 28, strike out lines 11 through 19.

(By unanimous consent, Mr. BINGHAM yielded his time to Mr. Dow).

The CHAIRMAN. The Chair recognizes the gentleman from New York (Mr. Dow).

(Mr. DOW asked and was given permission to revise and extend his remarks.)

Mr. DOW. Mr. Chairman, this amendment as it applies to page 49 goes to the question of those who may take the Administrator of the Environmental Protection Agency to court.

In the committee the original bill granted that right to any person adversely affected could take the Administrator to court. But in the committee they changed these words to read, "Following a public hearing any party at interest."

Mr. Chairman, "any party at interest" is a very definite restriction. It means that only the manufacturer can take the Administrator to court.

My amendment would revert to the original language reading that "any person adversely affected." That might be a State, if you please, it might be a State that wanted to do it. It would also include all those organizations which are concerned with the condition of our environment and the public good.

Certainly, Mr. Chairman, we ought to revert to that wording.

The CHAIRMAN. Are there any other Members on the list who wish to speak to this amendment?

Mr. CARNEY. Mr. Chairman, I wish to address the Committee on this amendment.

The CHAIRMAN. The gentleman's name is not on the list.

Are there any Members on the list who wish to be heard on this amendment?

The Chair recognizes the gentleman from Pennsylvania (Mr. GOODLING).

(By unanimous consent MR. GOODLING yielded his time to Mr. KYL.)

(Mr. KYL asked and was given permission to revise and extend his remarks.)

Mr. KYL. Mr. Chairman, the amendment which is offered here really changes nothing because in the final analysis the Court will decide the question of the designation of "party at interest" as compared to the designation "person adversely affected." Our language does not narrow the scope of judicial review nor does it limit review to registrants, applicants for registration, on the Environmental Protection Agency. This question has been definitely decided by Court decisions establishing a broad concept of standing as in the cases of *Association of Data Processing Service Organizations* v. *Camp*, 397 U.S. 150 (1970) and *Barlow* v. *Collins* 397 U.S. 159 (1970), and National Automatic Laundry and Cleaning Council against Shultz.

Mr. Chairman, the amendment should not be adopted because all it does is confuse the issue.

The CHAIRMAN. Are there any other Members whose names are on the list

Daniels, N.J.	Heinz	Price, Ill.
Danielson	Helstoski	Pryor, Ark.
Dellenback	Hicks, Mass.	Pucinski
Dellums	Hicks, Wash.	Quie
Dent	Howard	Rangel
Dingell	Jacobs	Rees
Donohue	Karth	Reid, N.Y.
Dow	Kastenmeier	Reuss
Drinan	Keating	Riegle
Dulski	Kluczynski	Robison, N.Y.
du Pont	Koch	Rodino
Dwyer	Kyros	Roe
Eckhardt	Lent	Roncalio
Edwards, Calif.	Link	Rooney, Pa.
Eilberg	Long, Md.	Rosenthal
Erlenborn	Lujan	Rostenkowski
Esch	McCormack	Roush
Fascell	McDade	Roybal
Fish	Macdonald, Mass.	Ryan
Flood	Madden	St Germain
Foley	Matsunaga	Sarbanes
Ford, William D.	Meeds	Saylor
Fraser	Mikva	Scheuer
Frelinghuysen	Minish	Seiberling
Frenzel	Mink	Shipley
Galifianakis	Mitchell	Snyder
Gallagher	Moorhead	Stanton, James V.
Gaydos	Morse	Steele
Giaimo	Mosher	Steiger, Wis.
Gonzalez	Moss	Stokes
Grasso	Murphy, Ill.	Stratton
Green, Pa.	Murphy, N.Y.	Sullivan
Griffiths	Nedzi	Symington
Gude	Nix	Thompson, N.J.
Hamilton	Obey	Tiernan
Hanley	O'Hara	Udall
Hanna	O'Konski	Van Deerlin
Hansen, Wash.	O'Neill	Vander Jagt
Harrington	Patten	Vanik
Harvey	Perkins	Waldie
Hathaway	Pickle	Whalen
Hawkins	Pike	Wolff
Hays	Podell	Yates
Hechler, W. Va.	Preyer, N.C.	Yatron

NOES—209

Abbitt	Evans, Colo.	McCulloch
Abernethy	Evins, Tenn.	McDonald, Mich.
Albert	Findley	McEwen
Anderson, Ill.	Fisher	McKay
Andrews, Ala.	Flowers	McKevitt
Andrews,	Flynt	Shoup
Shriver	Stuckey	Whitehurst
Sikes	Talcott	Widnall
Sisk	Taylor	Wiggins
Skubitz	Teague, Calif.	Williams
Slack	Terry	Winn
Smith, Calif.	Thompson, Ga.	Wright
Smith, Iowa	Thomson, Wis.	Wyatt
Smith, N.Y.	Thone	Wydler
Spence	Ullman	Wylie
Staggers	Veysey	Wyman
Steed	Waggonner	Young, Fla.
Steiger, Ariz.	Wampler	Young, Tex.
Stephens	Ware	Zablocki
Stubblefield	Whalley	Zion
	White	Zwach

NOT VOTING—55

Alexander	Diggs	Michel
Anderson, Tenn.	Dowdy	Miller, Calif.
Arends	Edwards, La.	Mills, Ark.
Baker	Gubser	Minshall
Barrett	Halpern	Patman
Bevill	Hastings	Pelly
Blackburn	Hébert	Purcell
Broyhill, N.C.	Heckler, Mass.	Railsback
Burke, Fla.	Horton	Schwengel
Clancy	Jones, Ala.	Springer
Clawson, Del	Kuykendall	Stanton, J. William
Clay	Landgrebe	Teague, Tex.
Collier	Lloyd	Vigorito
Collins, Tex.	Long, La.	Whitten
Colmer	McClory	Wilson, Bob
Conyers	McCloskey	Wilson, Charles H.
Crane	McClure	
Delaney	McFall	
Derwinski	McKinney	
	Metcalfe	

So the amendment to the substitute amendment was rejected.

Mr. McMILLAN. Mr. Chairman, I ask unanimous consent that I may change my vote from "yea" to "nay."

The CHAIRMAN. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

AMENDMENT OFFERED BY MR. DOW TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. KYL FOR THE AMENDMENT IN THE NATURE

who wish to be heard on this amendment?

If not, the question is on the amendment offered by the gentleman from New York (Mr. Dow) to the substitute amendment offered by the gentleman from Iowa (Mr. KYL) for the amendment in the nature of a substitute offered by the gentleman from New York (Mr. Dow).

The question was taken; and on a division (demanded by Mr. Dow) there were—ayes 64, noes 125.

TELLER VOTE WITH CLERKS

Mr. DOW. Mr. Chairman, I demand tellers.

Tellers were ordered.

Mr. DOW. Mr. Chairman, I demand tellers with clerks.

Tellers with clerks were ordered; and the Chairman appointed as tellers Messrs. DOW, KYL, POAGE, and TEAGUE of California.

The Committee divided, and the tellers reported that there were—ayes 167, noes 209, not voting 55, as follows:

[Roll No. 370]

[Recorded Teller Vote]

AYES—167

Abourezk	Biester	Byrne, Pa.
Abzug	Bingham	Byron
Adams	Blatnik	Carey, N.Y.
Addabbo	Boland	Carney
Anderson, Calif.	Bolling	Celler
	Brademas	Chisholm
Annunzio	Brasco	Collins, Ill.
Ashley	Broomfield	Conte
Aspin	Brown, Mich.	Corman
Badillo	Buchanan	Cotter
Begich	Burke, Mass.	Coughlin
Bennett	Burton	Culver
Bergland	Carter	Daniel, Va.
Blaggi	Chamberlain	Davis, Ga.
Boggs	Clark	Davis, S.C.
Brademas	Clausen, Don H.	Davis, Wis.
Brasco	Cleveland	de la Garza
Brinkley	Conable	Denholm
Brooks	Conyers	Dennis
Brotzman	Corman	Devine
Brown, Ohio	Culver	Dickinson
Broyhill, Va.	Daniel, Va.	Dorn
Burke, Mass.	Davis, Ga.	Downing
Burleson, Tex.	Davis, S.C.	Duncan
Burton	Davis, Wis.	Edmondson
Byrne, Pa.	de la Garza	Edwards, Ala.
Byron	Denholm	Eshleman
Carey, N.Y.	Dennis	Evins, Tenn.
Carney	Devine	Fascell
Celler	Dickinson	Flood
Chisholm	Dorn	Flynt
Clausen, Don H.	Downing	Foley
Cleveland	Duncan	Ford, William D.
Collins, Ill.	Edmondson	Fraser
Conable	Edwards, Ala.	Frelinghuysen
Conte	Eshleman	Fulton, Pa.
Conyers	Evins, Tenn.	Gaydos
Corman	Fascell	Giaimo
Cotter	Flood	Gonzalez
Coughlin	Flynt	Green, Pa.
Culver	Foley	Gude
Daniel, Va.	Ford, William D.	Hamilton
Davis, Ga.	Fraser	Hanna
Davis, S.C.	Frelinghuysen	Hanrahan
Davis, Wis.	Fulton, Pa.	Harrington
de la Garza	Gaydos	Hastings
Denholm	Giaimo	Hawkins
Dennis	Gonzalez	Hays
Devine	Green, Pa.	Hechler, W. Va.
Dickinson	Gude	Heckler, Mass.
Dorn	Hamilton	Helstoski
Downing	Hanna	Hicks
Duncan	Hanrahan	Holifield
Edmondson	Harrington	Howard
Edwards, Ala.	Hastings	Howe
Eshleman	Hawkins	Hungate
Evins, Tenn.	Hays	Jacobs
Fascell	Hechler, W. Va.	Jarman
Flood	Heckler, Mass.	Johnson, Calif.
Flynt	Helstoski	Johnson, Pa.
Foley	Hicks	Jones, Ala.
Ford, William D.	Holifield	Jones, N.C.
Fraser	Howard	Jones, Tenn.
Frelinghuysen	Howe	Karth
Fulton, Pa.	Hungate	Kastenmeier
Gaydos	Jacobs	Kazen
Giaimo	Jarman	Kee
Gonzalez	Johnson, Calif.	Keith
Green, Pa.	Johnson, Pa.	Kemp
Gude	Jones, Ala.	King
Hamilton	Jones, N.C.	Kyl
Hanna	Jones, Tenn.	Landrum
Hanrahan	Karth	Latta
Harrington	Kastenmeier	Leggett
Hastings	Kazen	Lennon
Hawkins	Kee	McCollister
Hays	Keith	McMillan
Hechler, W. Va.	Kemp	Mahon
Heckler, Mass.	King	Mailliard
Helstoski	Kyl	Mann
Hicks	Landrum	Martin
Holifield	Latta	Mathias, Calif.
Howard	Leggett	Mathis, Ga.
Howe	Lennon	Mayne
Hungate	McCollister	Mazzoli
Jacobs	McMillan	Melcher
Jarman	Mahon	Miller, Ohio
Johnson, Calif.	Mailliard	Mills, Md.
Johnson, Pa.	Mann	Mizell
Jonas	Martin	Mollohan
Jones, N.C.	Mathias, Calif.	Monagan
Jones, Tenn.	Mathis, Ga.	Montgomery
Karth	Mayne	Morgan
Kastenmeier	Mazzoli	Myers
Kazen	Melcher	Natcher
Kee	Miller, Ohio	Nelsen
Keith	Mills, Md.	Nichols
Kemp	Mizell	Passman
King	Mollohan	Pepper
Kyl	Monagan	Pettis
Landrum	Montgomery	Peyser
Latta	Morgan	Pirnie
Leggett	Myers	Poage
Lennon	Natcher	Poff
McCollister	Nelsen	Powell
McMillan	Nichols	Price, Tex.
Mahon	Passman	Quillen
Mailliard	Pepper	Randall
Mann	Pettis	Rarick
Martin	Peyser	Rhodes
Mathias, Calif.	Pirnie	Roberts
Mathis, Ga.	Poage	Robinson, Va.
Mayne	Poff	Rogers
Mazzoli	Powell	Rooney, N.Y.
Melcher	Price, Tex.	Rousselot
Miller, Ohio	Quillen	Roy
Mills, Md.	Randall	Runnels
Mizell	Rarick	Ruppe
Mollohan	Rhodes	Ruth
Monagan	Roberts	Sandman
Montgomery	Robinson, Va.	Satterfield
Morgan	Rogers	Scherle
Myers	Rooney, N.Y.	Schmitz
Natcher	Rousselot	Schneebeli
Nelsen	Roy	Scott
Nichols	Runnels	Sebelius
Passman	Ruppe	Shipley
Pepper	Ruth	Shoup
Pettis	Sandman	Shriver
Peyser	Satterfield	Sikes
Pirnie	Scherle	Skubitz
Poage	Schmitz	Slack
Poff	Schneebeli	Smith, Iowa
Powell	Scott	Smith, N.Y.
Price, Tex.	Sebelius	Snyder
Quillen	Shipley	Spence
Randall	Shoup	Staggers
Rarick	Shriver	Stanton, J. William
Rhodes	Sikes	Steed
Roberts	Skubitz	Steelman
Robinson, Va.	Slack	Steiger, Ariz.
Rogers	Smith, Iowa	Steiger, Wis.
Rooney, N.Y.	Smith, N.Y.	Stephens
Rousselot	Snyder	Stuckey
Roy	Spence	Symington
Runnels	Staggers	Talcott
Ruppe	Stanton, J. William	Taylor
Ruth	Steed	Teague, Calif.
Sandman	Steelman	Thomson, Wis.
Satterfield	Steiger, Ariz.	Udall
Scherle	Steiger, Wis.	Ullman
Schmitz	Stephens	Van Deerlin
Schneebeli	Stuckey	Vanik
Scott	Symington	Vigorito
Sebelius	Talcott	Waggonner
Shipley	Taylor	Wampler
Shoup	Teague, Calif.	Watkins
Shriver	Thomson, Wis.	Watson
Sikes	Udall	Watts
Skubitz	Ullman	Whalen
Slack	Van Deerlin	Whitehurst
Smith, Iowa	Vanik	Whitten
Smith, N.Y.	Vigorito	Widnall
Snyder	Waggonner	Wiggins
Spence	Wampler	Wilson, Bob
Staggers	Watkins	Wilson, Charles H.
Stanton, J. William	Watson	Winn
Steed	Watts	Wright
Steelman	Whalen	Wyatt
Steiger, Ariz.	Whitehurst	Wydler
Steiger, Wis.	Whitten	Wylie
Stephens	Widnall	Wyman
Stuckey	Wiggins	Yates
Symington	Wilson, Bob	Young, Alaska
Talcott	Wilson, Charles H.	Young, Fla.
Taylor	Winn	Young, Ga.
Teague, Calif.	Wright	Young, S.C.
Thomson, Wis.	Wyatt	Young, Tex.
Udall	Wydler	Zablocki
Ullman	Wylie	Zion
Van Deerlin	Wyman	Zwach
Vanik	Yates	
Vigorito	Young, Alaska	
Waggonner	Young, Fla.	
Wampler	Young, Ga.	
Watkins	Young, S.C.	
Watson	Young, Tex.	
Watts	Zablocki	
Whalen	Zion	
Whitehurst	Zwach	
Whitten		
Widnall		
Wiggins		
Wilson, Bob		
Wilson, Charles H.		
Winn		
Wright		
Wyatt		
Wydler		
Wylie		
Wyman		
Yates		
Young, Alaska		
Young, Fla.		
Young, Ga.		
Young, S.C.		
Young, Tex.		
Zablocki		
Zion		
Zwach		

OF A SUBSTITUTE OFFERED BY MR. DOW

Mr. DOW. Mr. Chairman, I offer an amendment to the substitute amendment.

The Clerk read as follows:

Amendment offered by Mr. Dow to the substitute amendment offered by Mr. KYL: Page 28, line 24, strike out "and scientific review", and page 29, line 10, strike out "Upon", strike out lines 11 through 23, and strike out all that precedes the period on line 24.

Mr. DOW. Mr. Chairman, this amendment would strike out the privilege given in the committee bill to any manufacturer, party to a hearing, on suspension of his product to request referral of the issue to a scientific committee.

This is an example of the manner in which a party to an EPA hearing can complicate and divert the proceedings.

At a point in the testimony before the House Committee on Agriculture, the EPA addressed itself to this point, and to the point that a committee of the National Academy of Sciences—NAS—shall conduct this scientific review. Said EPA:

We strongly believe that such mandatory committee should not be included in the regulatory process on pesticides which the Administrator has the responsibility to administer. We believe our testimony and other statements submitted to the Committee provide strong support for not having a mandatory advisory committee.

The NAS has stated that statutory functions required of it as in FIFRA might tend to erode its independent advisory relationship to Federal Agencies as granted to it in the original Federal charter to the Academy.

525-313 O - 73 - 29

The NAS has further stated that it believes that participation by the NAS in the regulatory process of controlling the use of pesticides is an inappropriate assignment of a governmental role to a private organization. At the same time, the NAS strongly indicates its willingness to provide scientific assistance and advice to the Administrator of EPA and to assist informally in the provision of appropriate agency advisory committees.

As we have indicated, we strongly oppose any type of mandatory advisory committee in the pesticides regulatory process.

I might add that there is nothing in the legislation to prevent EPA from asking for such scientific aid as it may desire, from any quarter.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. TEAGUE).

Mr. TEAGUE of California. Mr. Chairman, I rise in opposition to the amendment. I cannot understand the purpose of this amendment which is designed to knock out the provision which was inserted at the insistence of the EPA. What it provides is that a committee of the National Academy of Sciences shall report in writing regarding the matter at issue. It does not preclude the use of any other scientific persons within the United States. It is designed to bring about a more fair and scientific judgment on the application pending.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. TEAGUE of California. I yield to the gentleman from Iowa.

Mr. KYL. Mr. Chairman, I emphasize this is the language the Environmental Protection Agency wanted in the bill, and the committee came back into special would like to have the Members listen to what I have to say. Under the bill as presently drawn, there is an absolute guarantee to the producer of the pesticide that he will not lose money once the United States registers that pesticide. All this amendment says is that the producer cannot recover from the United States for the value of that pesticide in his own hands if he knew or with reasonable research could be expected to have known that the pesticide and a detrimental environmental effect such as to cause it to be withdrawn. It does not deny to the farmer complete recovery where the United States prevents his using pesticides in his hands, and it does not deny to the producer the right to recover from the U.S. Government the value of the pesticide if the producer is innocent, that is, if the producer did not know the environmental effects and could not with reasonable diligence have found out.

The CHAIRMAN. The time of the gentleman from Texas has expired.

(By unanimous consent, Mr. SEIBERLING yielded his time to Mr. ECKHARDT.)

Mr. ECKHARDT. Mr. Chairman, I submit if we do not pass this amendment we are guaranteeing to the producer an absolute governmental guarantee of no loss of funds. It is as if, for instance, the manufacturer of castor oil for infants advertises that it will stop constipation and makes a medicine that induces fatal infant diarrhea, and the medicine in his hands is then paid for by the United States because it is banned for its bad side effects.

We do not guarantee such reparation to anybody else, and I submit we should

[Roll No. 371]

[Recorded Teller Vote]

AYES—168

Abourezk	Frenzel	Obey
Abzug	Fulton, Tenn.	O'Hara
Adams	Galifianakis	O'Konski
Anderson, Calif.	Gallagher	O'Neill
Annunzio	Gaydos	Patten
Ashley	Giaimo	Pickle
Aspin	Gibbons	Pike
Badillo	Gonzalez	Podell
Begich	Grasso	Preyer, N.C.
Bennett	Green, Pa.	Price, Ill.
Biester	Griffiths	Pryor, Ark.
Bingham	Gude	Pucinski
Blanton	Hamilton	Rangel
Boland	Hanna	Rees
Bolling	Harrington	Reid, N.Y.
Brademas	Harsha	Reuss
Brasco	Hathaway	Riegle
Buchanan	Hawkins	Robison, N.Y.
Burke, Mass.	Hays	Rodino
Burton	Hechler, W. Va.	Rogers
Byrne, Pa.	Heinz	Roncalio
Carney	Helstoski	Rosenthal
Celler	Hicks, Mass.	Rostenkowski
Chisholm	Howard	Roush
Clark	Jacobs	Roybal
Clausen, Don H.	Karth	Runnels
Cleveland	Kastenmeier	Ruppe
Collins, Ill.	Kazen	Ryan
Conte	Keating	St Germain
Corman	Kluczynski	Sarbanes
Cotter	Koch	Saylor
Coughlin	Kyros	Scheuer
Culver	Lent	Seiberling
Daniels, N.J.	Long, Md.	Shriver
Danielson	Lujan	Snyder
Dellenback	McCormack	Stanton, James V.
Dellums	McEwen	Steele
Denholm	Madden	Stokes
Dent	Mailliard	Symington
Dingell	Matsunaga	Thompson, N.J.
Donohue	Mazzoli	Tiernan
Dow	Meeds	Udall
Drinan	Metcalfe	Van Deerlin
Dulski	Mikva	Vander Jagt
du Pont	Miller, Calif.	Vanik
Dwyer	Minish	Waldie
Eckhardt	Mink	Whalen
	Minshall	White
	Mollohan	

session to include it at the insistence of EPA.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. Dow), to the substitute amendment offered by the gentleman from Iowa (Mr. KYL), for the amendment in the nature of a substitute offered by the gentleman from New York (Mr. Dow).

The amendment to the substitute amendment was rejected.

AMENDMENT OFFERED BY MR. ECKHARDT TO THE SUBSTITUTE AMENDMENT OFFERED BY MR. KYL FOR THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. DOW

Mr. ECKHARDT. Mr. Chairman, I offer an amendment to the substitute amendment offered by Mr. KYL.

The Clerk read as follows:

Amendment offered by Mr. ECKHARDT to the substitute amendment offered by Mr. KYL: Page 47, line 21, immediately after "person" insert unless the producer shows that the adverse environmental effects which caused the suspension of the registration were not known and could not with reasonable research or investigation have been known to the producer. If such facts were known, or should have been known to the producer, the United States shall be subrogated to the rights of any purchaser to whom a payment has been made against the producer.

(Mr. ECKHARDT asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Chairman, I not guarantee it with regard to environmentally harmful pesticides.

Mr. ABERNETHY. Mr. Chairman, I will take 30 seconds of my time.

This is a rehash of the Evans of Colorado amendment we voted on a few minutes ago. These chemicals are not manufactured except under supervision of the Federal Government and only after the Federal Government has issued an authorization so to do. The amendment ought to be voted down.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas (Mr. ECKHARDT), to the substitute amendment offered by the gentleman from Iowa (Mr. KYL), for the amendment in the nature of a substitute offered by the gentleman from New York (Mr. Dow).

The question was taken; and on a division (demanded by Mr. ECKHARDT) there were—ayes 82, noes 130.

TELLER VOTE WITH CLERKS

Mr. ECKHARDT. Mr. Chairman, I demand tellers.

Tellers were ordered.

Mr. ECKHARDT. Mr. Chairman, I demand tellers with clerks.

Tellers with clerk were ordered and the Chairman appointed as tellers Messers. ECKHARDT, KYL, TEAGUE of California, and SEIBERLING.

The Committee divided, and the tellers reported that there were—ayes 168, noes 203, not voting 60, as follows:

Edwards, Calif.	Monagan	Wilson, Charles H.
Eilberg	Moorhead	Wolff
Evans, Colo.	Morgan	Wright
Fascell	Morse	Wydler
Fish	Moss	Yates
Foley	Murphy, Ill.	Yatron
Ford, William D.	Murphy, N.Y.	Young, Fla.
Fraser	Nedzi	
	Nix	

NOES—203

Abbitt	Chappell	Griffin
Abernethy	Colmer	Gross
Addabbo	Daniel, Va.	Grover
Anderson, Ill.	Davis, Ga.	Hagan
Andrews, Ala.	Davis, S.C.	Haley
Andrews, N. Dak.	Davis, Wis.	Hall
Archer	de la Garza	Hammer-schmidt
Ashbrook	Delaney	Hanley
Aspinall	Dennis	Hansen, Idaho
Belcher	Devine	Harvey
Bell	Dickinson	Hastings
Bergland	Dorn	Henderson
Betts	Downing	Hicks, Wash.
Biaggi	Duncan	Hillis
Boggs	Edmondson	Hogan
Bow	Edwards, Ala.	Holifield
Bray	Erlenborn	Hosmer
Brinkley	Esch	Hull
Broomfield	Eshleman	Hungate
Brotzman	Evins, Tenn.	Hunt
Brown, Mich.	Findley	Hutchinson
Brown, Ohio	Fisher	Ichord
Broyhill, Va.	Flood	Jarman
Burleson, Tex.	Flowers	Johnson, Calif.
Burlison, Mo.	Flynt	Johnson, Pa.
Byrnes, Wis.	Forsythe	Jonas
Byron	Fountain	Jones, N.C.
Cabell	Frelinghuysen	Jones, Tenn.
Caffery	Frey	Kee
Camp	Fuqua	Keith
Carey, N.Y.	Garmatz	King
Carter	Gettys	Kyl
Casey, Tex.	Goldwater	Landrum
Cederberg	Goodling	Latta
Chamberlain	Gray	Leggett
	Green, Oreg.	

Lennon	Poff	Steed
McClure	Powell	Steiger, Ariz.
McCollister	Price, Tex.	Steiger, Wis.
McCulloch	Quie	Stephens
McDade	Quillen	Stratton
McDonald, Mich.	Randall	Stubblefield
McKay	Rarick	Sullivan
McKevitt	Rhodes	Talcott
McMillan	Roberts	Taylor
Mahon	Robinson, Va.	Teague, Calif.
Mann	Roe	Terry
Martin	Rooney, N.Y.	Thompson, Ga.
Mathias, Calif.	Rousselot	Thomson, Wis.
Mathis, Ga.	Roy	Thone
Mayne	Ruth	Ullman
Melcher	Sandman	Veysey
Miller, Ohio	Satterfield	Waggonner
Mills, Md.	Scherle	Wampler
Mizell	Schmitz	Ware
Montgomery	Schneebeli	Whalley
Mosher	Scott	Whitehurst
Myers	Sebelius	Widnall
Natcher	Shipley	Wiggins
Nelsen	Shoup	Williams
Nichols	Sikes	Winn
Passman	Sisk	Wyatt
Pepper	Skubitz	Wylie
Perkins	Slack	Wyman
Pettis	Smith, Calif.	Young, Tex.
Peyser	Smith, Iowa	Zablocki
Pirnie	Smith, N.Y.	Zion
Poage	Spence	Zwach
	Staggers	

NOT VOTING—60

Alexander	Derwinski	McKinney
Anderson, Tenn.	Diggs	Macdonald, Mass.
Arends	Dowdy	Michel
Baker	Edwards, La.	Mills, Ark.
Baring	Ford, Gerald R.	Mitchell
Barrett	Gubser	Patman
Bevill	Halpern	Pelly
Blackburn	Hansen, Wash.	Purcell
Blatnik	Hébert	Railsback
Brooks	Heckler, Mass.	Rooney, Pa.
Broyhill, N.C.	Horton	Schwengel
Burke, Fla.	Jones, Ala.	Springer
Clancy	Kemp	Stanton, J. William
Clawson, Del	Kuykendall	Stuckey
Clay	Landgrebe	Teague, Tex.
Collier	Link	Vigorito
Collins, Tex.	Lloyd	
	Long, La.	

My amendment does give to the States the right to impose more strict regulations than are included in the Federal law. I know that this is in accordance with the wishes of most of the Members of the House.

Again I thank the gentlemen for yielding me their time.

The CHAIRMAN. The Chair recognizes the gentleman from Texas (Mr. POAGE).

Mr. POAGE. Mr. Chairman, I just want to take this time to make it perfectly clear that the really effective vote is the vote that we are about to take on the Kyl substitute to the Dow amendment. If the Kyl substitute is adopted, as I hope it will be, that will in effect be the passage of the bill. I do not believe there is anything else controversial about it. So I am going to urge the Members of the House to support the Kyl substitute.

The CHAIRMAN. The question is on the substitute amendment offered by the gentleman from Iowa (Mr. KYL), for the amendment in the nature of a substitute offered by the gentleman from New York (Mr. Dow).

The question was taken; and on a division (demanded by Mr. Dow) there were—ayes 167, noes 56.

So the substitute amendment was agreed to.

The CHAIRMAN. The question recurs on the amendment in the nature of a substitute offered by the gentleman from New York (Mr. Dow), as amended.

The question was taken; and on a division (demanded by Mr. Dow) there were—ayes 189, noes 41.

So the amendment in the nature of a

after shall register all new applications under such provisions.

(2) After two years but within four years after the enactment of this Act the Administrator shall register and reclassify pesticides registered under the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act prior to the effective date of the regulations promulgated under subsection (c)(1).

(3) Any requirements that a pesticide be registered for use only by a certified pesticide applicator shall not be effective until four years from the date of enactment of this Act.

(4) A period of four years from date of enactment shall be provided for certification of pesticide applicators.

(A) One year after the enactment of this Act the Administrator shall have prescribed the standards for the certification of pesticide applicators.

(B) Within three years after the enactment of this Act each State desiring to certify pesticide applicators shall submit a State plan to the Administrator for the purpose provided by section 4(b).

(C) As promptly as possible but in no event more than one year after submission of a State plan, the Administrator shall approve the State plan or disaprove it and indicate the reasons for disapproval. Consideration of plans resubmitted by States shall be expedited.

(5) One year after the enactment of this Act the Administrator shall have promulgated and shall make effective regulations relating to the registration of establishments, permits for experimental use, and the keeping of books and records under the provisions of this Act.

(d) No person shall be subject to any criminal or civil penalty imposed by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, for any act (or failure to act) occurring before the expiration of 60 days after final regulations (relating to such penalty) under the Federal Insecticide, Fungicide, and Rodenticide Act,

Conable	McClory	Whitten
Conyers	McCloskey	Wilson, Bob
Crane	McFall	

So the amendment to the substitute amendment was rejected.

The CHAIRMAN. The Chair recognizes the gentleman from California (Mr. SCHMITZ).

(By unanimous consent, Mr. SCHMITZ yielded his time to Mr. KYL.)

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. KYL).

Mr. KYL. Mr. Chairman, I thank the gentleman from California for yielding me his time, and I take this time to acquaint the House with the vote which will occur on my amendment.

We have now disposed of the other items which were included in the original amendment, and therefore what remains is the substance of my amendment, and that is the amendment on which most Members were most concerned.

Under the bill, pesticides are classified as general- or restricted-use pesticides. In the case of general-use pesticides in the bill, we had preempted the States from acting beyond the Federal law.

The CHAIRMAN. The time of the gentleman has expired.

The Chair recognizes the gentleman from North Dakota (Mr. ANDREWS).

(By unanimous consent, Mr. ANDREWS of North Dakota yielded his time to Mr. KYL.)

The CHAIRMAN. The Chair recognizes the gentleman from Iowa (Mr. KYL).

Mr. KYL. Mr. Chairman, I thank the gentleman for yielding me his time.

substitute, as amended, was agreed to.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

AMENDMENTS TO OTHER ACTS

SEC. 3. The following Acts are amended by striking out the terms "economic poisons" and "an economic poison" wherever they appear and inserting in lieu thereof "pesticides" and "a pesticide" respectively:

(1) The Federal Hazardous Substances Act, as amended (15 U.S.C. 1261 et seq.);

(2) The Poison Prevention Packaging Act, as amended (15 U.S.C. 1471 et seq.); and

(3) The Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.).

EFFECTIVE DATES OF PROVISIONS OF ACT

SEC. 4. (a) Except as otherwise provided in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended by this Act, and as otherwise provided by this section, the amendments made by this Act shall take effect at the close of the date of the enactment of this Act, provided if regulations are necessary for the implementation of any provision that becomes effective on the date of enactment, such regulations shall be promulgated and shall become effective within 90 days from the date of enactment of this Act.

(b) The provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and the regulations thereunder as such existed prior to the enactment of this Act shall remain in effect until superceded by the amendments made by this Act and regulations thereunder: *Provided,* That all provisions made by these amendments and all regulations thereunder shall be effective within four years after the enactment of this Act.

(c) (1) Two years after the enactment of this Act the Administrator shall have promulgated regulations providing for the registration and classification of pesticides under the provisions of this Act and thereas amended, are published in the Federal Register.

(e) For purposes of determining any criminal or civil penalty or liability to any third person in respect of any act or omission occurring before the expiration of the periods referred to in this section, the Federal Insecticide, Fungicide, and Rodenticide Act shall be treated as continuing in effect as if this Act had not been enacted.

Mr. SEBELIUS. Mr. Chairman, I appreciate this opportunity to discuss H.R. 10729, the Environmental Pesticide Control Act of 1971.

At the outset, I would like to emphasize that this legislation is the compromise product of environmentalists, farm groups, State and Federal officials, the chemical industry, and the public. It is a sincere effort by the Committee on Agriculture to approach this issue on the basis of reason and sound judgment, rather than emotion and sensationalism. The committee has the responsibility to protect the interests of the farmers, the consumer, and the environment.

In hearings before our committee, some witnesses proposed a virtual ban on all agricultural chemicals. However, without pesticides to control disease-spreading insects and other defoliating pests, food supplies could be substantially reduced, both in quantity and quality, and food costs could soar as much as 300 percent. Without pesticides, our annual harvest of grains such as corn and rise, and fruits and vegetables would be reduced an estimated 20 to 30 percent. Commercial fertilizers add an estimated 20 percent to crop production.

[p. H10771]

I would like to briefly mention two points. First, I want to emphasize the committee's intent in section 11:

> No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private pesticide applicator to maintain any records or file any reports or other documents.

Too many times a well-intentioned Congress has passed restrictive and regulatory legislation which has resulted in unrealistic and burdensome demands on the individual citizen.

Worse, regulations without regard to local situations and subject to enforcement and penalty have created situations where the effect of a well-intentioned law created more problems than the problem it was enacted to solve. Put in another way, realistic pesticide control will not come about by placing unnecessary recordkeeping requirements and restrictions on the farmer or individual citizen.

Second, I want to express the resolve of the committee in the establishment of standards for licensing or certifying private applicators. Prior experience and expertise must be given every consideration and requirements for the licensing or certification of new applicants must be reduced to an absolute minimum. In this environmental effort, let us recognize the farmer has been a pioneer in soil stewardship and we should utilize his practical experience and common sense, rather than create unrealistic and unnecessary restrictions.

I feel that H.R. 10729 with these qualifications is a reasonable approach for Fungicide, and Rodenticide Act regulations, the manufacturer has the duty to prove that his product meets EPA standards. If H.R. 10729 becomes law, just the reverse will occur. The EPA will have the burden of finding out if the product is environmentally unsound. Such a shift in my judgment is inconsistent with reasonable Federal regulatory practices and is wholly unacceptable.

Fourth, under H.R. 10729 the Administrator of the Environmental Protection Agency is required to indemnify registrants who registrations are suspended or canceled because of action taken to prevent imminent hazards. The amount of payment is not limited in time and is based on the cost of the pesticide before it was removed from the market. While I recognize that a manufacturer in good faith can produce and market a product which might later prove harmful, I fail to understand how the Agriculture Committee wrote an open-ended indemnity clause into H.R. 10729. A much sounder approach would have placed a time limitation on any indemnities.

The Dow amendment to H.R. 10729 displays a far more suitable approach to pesticide control and has my support.

Mr. RARICK. Mr. Chairman, I did not vote to favorably report the pesticide control bill when it left the committee. Nothing transpiring since has changed my views that the provisions of H.R. 10729 delegates such overwhelming powers to the office of the Administrator of the Environmental Protection Agency that if arbitrarily applied they would constitute a threat to the food producing purpose of the bill is for control of the farmers and protection of ecologists.

Today's farmer already faces tremendous odds—not in supplying our people with an abundance of food stuffs; he has done a superb job in this field—but rather in staying in business, making a profit while using the most advanced machinery and agricultural chemicals that science can devise. The farmer's principal battle centers around the labor shortage—not that labor does not exist, but that people will not work at farmer's wages or they feel that farm labor is beneath their status. In the absence of farm labor our food production has been maintained through the use of increased mechanization and agricultural chemicals, pesticides, herbicides, and defoliates. Only in this way has American agriculture been able to keep the supermarket shelves stocked and our food storehouses full. We are one of the few countries in the world able to feed its own people and have enough left over to sell, if not give, to the socialist countries where governmental interference has denied the farmers the incentive or the ability to feed their own people.

Perhaps this is the cause of the problem we face from the emotional hysteria of the ecologists and environmentalists who do not seek a reasonable balance between continuing our food production capabilities and any dangers to our environment. Some seek immediate solutions by bans and prohibitions because they have never known what it is to go to the grocery store or the supermarket and find the shelves bare or not offering multiple choices of food from which to

controlling the harmful effects of [illegible]tial pesticides without destroying the benefits. I am hopeful that the administration of this legislation will allow us to protect our environment while balancing the necessary and lawful use of pesticides to satisfy farmer and consumer interests.

Mr. McKINNEY. Mr. Chairman, with the publication of Rachel Carson's book, "Silent Spring" and the subsequent book, entific verification of the dangers of indiscriminate pesticide use, it would have seemed incumbent upon Congress to develop an effective Pesticide Control Act. H.R. 10729, in my judgment, fails to meet the criteria which such a program demands. My opposition to this bill rests in four areas.

First, by preempting individual States from enacting tougher regulations on "general use" pesticides, this bill negates the excellent initiatives displayed by States like New York. Section 24 of H.R. 10729, by posting overall Federal standards, fails to recognize that particular needs created by local conditions such as climate, pest population, and population density are best handled by State and local agencies.

Second, the committee bill by classifying pesticides in two categories, "general use" and "restricted use" eliminates a third category proposed by the Nixon administration, "use by permit only," which would have established more effective control over the use of especially dangerous pesticides.

Third, a major change effected by H.R. 10729 is the shifting of the burden of proof. Under current Federal Insecticide, ability of the American people. Perhaps typical of the power and control herein being given to the Environmental Protection Agency was a problem discussed by the mainland sugarcane producers today at lunch. They feel that this same Environmental Protection Agency may ban all open field burning, including cane burning under the Federal Clean Air Act. Such a ruling would so greatly handicap the farmer in harvesting his cane by increased labor costs that the U.S. cane farmer would be put out of business. The result would be the creation of a monopoly in the hands of foreign sugar producers. I do not disagree with the announced purpose of this legislation, "to protect the public health and welfare and the environment through the improved regulation of pesticides."

My opposition rather goes to the unnecessary creation of another Federal bureaucracy and increased centralization of governmental control over the food and fiber needed to feed and clothe the American people. No one can explain the full thrust of the powers herein granted and no one should doubt that EPA would be given the potential for absolute control of food production in the United States. Control of food by a powerful centralized government has long been considered a threat to the people because he who has the power to control the food can most effectively control the people. Nowhere in the purpose of this bill is the farmer or the food requirements of the American people protected or given any consideration. The entire select. In the United States we have raised several generations of city dwellers who are so accustomed to an abundance of readily available food that they take for granted that the supply is limitless and that the grocers produce the food in the back room.

H.R. 10729 if passed today may well become a law. If so, it will remain a law until the trials and tribulations of future generations repeal it. Passage of this law certainly gives the Agency something to grow on in the way of guidelines and the usual bureaucratic expansion. In extreme hands, the position of Administrator of EPA could be arbitrarily used to all but tie the hands of American farmers and, in the name of curbing pollution and preserving ecology, produce a food shortage; or, under severe leadership, a famine in the United States. Under such conditions the slogans of some environmentalists clamoring for population control and living room would be rapidly brought into focus. Those of us who sat in on the extended hearings given this bill should remember the calloused disregard expressed up some scientists toward the human population which they felt was the problem anyway.

The present Director of EPA is personally known to some and there appears little fear of misuse of his authority. But nothing is as susceptible to change as politics itself, and I wonder if the lack of present unconcern would continue under a new administration when a Ralph Nader or perhaps a Ramsey Clark or some other militant environmentalist were named Director. This bill grants such ex-

tensive powers that theoretically the director of EPA could stop the majority of the American people from taking a bath if he suddenly decided that fluoridated water was harmful and banned its use.

Enactment of the pesticide control bill can only result in further collectivization of American agriculture. The small farmer being denied the use of some agricultural chemicals and facing the additional expense of restricted chemicals can not be expected to operate at a loss. They can be expected to be taken over by bigger farmers doing business on a large scale operation.

Consider, for example, that section 14 under penalties states that any private pesticide applicator who violates any provision of this act subsequent to receiving a written warning from the Administrator or following a citation for a prior violation may be assessed a civil penalty by the Administrator of not more than $1,000 for each offense. This is a civil penalty assessed by the Administrator—not by a judge or a court—and this is in addition to the penalty of a $1,000 and/or 30 days in jail under the criminal section.

Another astounding provision of this bill is the complete exclusion of imported foreign agricultural products from the effects of the Pesticide Control Act. In other words, pesticides and chemicals banned from use or given restricted use in the United States, will continue to be manufactured here and exported to foreign nations whose farmers, including Americans who have transferred their farming operations to foreign soil, can use the banned and restricted pesticides lized man has inflicted on nature. But, I feel any solution can only come through balance—reasoned discipline and intelligent limitations. I am firmly convinced that the American people have the intelligence and the ability to control every ecological threat on the local and State level by use of the laws now on the books. In the final analysis, people, and not laws, will conserve the environment. Most people are pollution conscious today, and they are entitled to a chance to solve their problems with reason and moderation rather than being forced to submit to more controls under a centralized bureaucrat.

I cannot support the bill merely to satisfy someone else's commitments, nor am I satisfied that passage of this bill is progress merely because it creates another gigantic bureaucracy to be turned loose over the lives and liberties of the American people.

Time will prove my reservations on this bill justified, and my opposition to another Federal control bill as well founded. I must cast my people's vote against the bill.

Mr. POAGE (during the reading). Mr. Chairman, I ask unanimous consent that the remainder of the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. DOW. Mr. Chairman, I move to strike the last word.

The CHAIRMAN. The gentleman from New York is recognized.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. CONTE. In its present form I am, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONTE moves to recommit the bill H.R. 10729 to the Committee on Agriculture.

The SPEAKER. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER. The question is on the motion to recommit.

The question was taken; and the Speaker announced that the noes appeared to have it.

Mr. DOW. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. The Chair will count.

Two hundred forty-nine Members are present, a quorum.

So the motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. KYL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 288, nays 91, not voting 51, as follows:

[Roll No. 372]

YEAS—288

Abbitt	Daniel, Va.	Hamilton
Abernethy	Daniels, N.J.	Hammer-
Addabbo	Davis, Ga.	schmidt
Anderson, Ill.	Davis, S.C.	Hanley

on agricultural commodities and then import the food into the United States for our domestic markets. What a double standard this establishes, to give foreign farmers even an additional advantage over the American farmer.

One need not be a genius to reasonably conclude that the long-range effect of this bill will be to deagriculturalize the United States and make our people dependent upon foreign imports for food.

Those on the floor will recall that I had earlier offered an amendment to the bill which would have provided for applying the same pesticide control standards to foreign agricultural imports as those under which U.S. farmers would be expected to operate. Tragically for our farmers and consumers, the amendment failed and this double standard of discrimination against U.S. farmers remains. This, despite the deniable fact that if imported foreign agricultural products have been treated with banned chemicals, any residue could be expected to constitute the same threat to our environment as would have been experienced by domestically grown food using the same chemicals.

I find no quarrel with the announced intent of the bill, but I do question the necessity of creating a new powerful bureaucracy and the tremendous authority which would here be made law.

Like the overwhelming number of our farmers, I am a conservationist and was one long before this bill was envisioned or many of our ecologists found it profitable to worry about the dangers civi-

Mr. DOW. Mr. Chairman, I am not going to take any time. I am delighted to have a vote of confidence from across the aisle. I will say this, that for my part I am going to vote against this bill because it is not adequate. It is no better than the present law as it stands. Therefore, I advise all of my colleagues to vote against it. There may be a motion to recommit, and I would certainly vote in favor of such a motion.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. HUNGATE, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee having had under consideration the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, pursuant to House Resolution 626, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. CONTE

Mr. CONTE. Mr. Speaker, I offer a motion to recommit.

Anderson, Tenn.	Davis, Wis.	Hanna
Andrews, Ala.	de la Garza	Hansen, Idaho
Andrews, N. Dak.	Delaney	Hansen, Wash.
Annunzio	Dellenback	Harsha
Archer	Dennis	Harvey
Ashbrook	Dent	Hastings
Aspinall	Devine	Hathaway
Baring	Dickinson	Hays
Belcher	Dorn	Heinz
Bell	Downing	Henderson
Bennett	Duncan	Hicks, Mass.
Bergland	du Pont	Hicks, Wash.
Betts	Dwyer	Hillis
Biester	Edmondson	Hogan
Blanton	Edwards, Ala.	Holifield
Blatnik	Eilberg	Hosmer
Boggs	Erlenborn	Hull
Bow	Esch	Hungate
Brasco	Eshleman	Hunt
Bray	Evans, Colo.	Hutchinson
Brooks	Evins, Tenn.	Ichord
Broomfield	Fascell	Jacobs
Brotzman	Findley	Jarman
Brown, Mich.	Fish	Johnson, Calif.
Brown, Ohio	Fisher	Johnson, Pa.
Broyhill, Va.	Flood	Jonas
Buchanan	Flowers	Jones, N.C.
Burleson, Tex.	Flynt	Jones, Tenn.
Burlison, Mo.	Forsythe	Kazen
Byrne, Pa.	Fountain	Keating
Byrnes, Wis.	Frelinghuysen	Kee
Byron	Frenzel	Keith
Cabell	Frey	King
Caffery	Fulton, Tenn.	Kluczynski
Camp	Fuqua	Kyl
Carney	Galifianakis	Kyros
Carter	Gallagher	Landrum
Casey, Tex.	Garmatz	Latta
Cederberg	Gaydos	Leggett
Celler	Gettys	Lennon
Chamberlain	Gibbons	Lent
Chappell	Goldwater	Long, Md.
Clark	Gonzalez	Lujan
Clausen, Don H.	Goodling	McClure
Cleveland	Gray	McCollister
Collins, Ill.	Griffin	McCulloch
Colmer	Griffiths	McDade
Cotter	Gross	McDonald, Mich.
Coughlin	Grover	McEwen
	Hagan	McKay
	Haley	McKevitt
	Hall	

McMillan
Macdonald, Mass.
Madden
Mahon
Mailliard
Mann
Martin
Mathias, Calif.
Matsunaga
Mayne
Mazzoli
Miller, Calif.
Miller, Ohio
Mills, Md.
Mizell
Mollohan
Monagan
Montgomery
Morgan
Mosher
Murphy, Ill.
Murphy, N.Y.
Myers
Natcher
Nelsen
Nichols
Nix
O'Konski
O'Neill
Passman
Patten
Pepper
Perkins
Pettis
Peyser
Pickle
Pike
Pirnie
Poage
Poff
Powell
Preyer, N.C.
Price, Ill.
Price, Tex.
Pryor, Ark.
Pucinski
Quie
Quillen
Randall
Rhodes
Roberts
Robinson, Va.
Robison, N.Y.
Rogers
Roncalio
Rooney, N.Y.
Rooney, Pa.
Rostenkowski
Roush
Rousselot
Roy
Ruppe
Ruth
Sandman
Satterfield
Saylor
Scherle
Schmitz
Schneebeli
Scott
Sebelius
Shipley
Shoup
Shriver
Sikes
Sisk
Skubitz
Slack
Smith, Calif.
Smith, Iowa
Smith, N.Y.
Snyder
Spence
Staggers
Stanton, James V.
Steed
Steiger, Ariz.
Steiger, Wis.
Stephens
Stratton
Stubblefield
Sullivan
Symington
Talcott
Taylor
Teague, Calif.
Terry
Thompson, Ga.
Thomson, Wis.
Thone
Ullman
Vander Jagt
Veysey
Waggonner
Wampler
Ware
Whalen
Whalley
White
Whitehurst
Widnall
Wiggins
Williams
Winn
Wright
Wyatt
Wydler
Wylie
Wyman
Yatron
Young, Fla.
Young, Tex.
Zablocki
Zion
Zwach

NAYS—91

Abourezk
Abzug
Adams
Anderson, Calif.
Ashley
Aspin
Badillo
Begich
Biaggi
Bingham
Boland
Bolling
Brademas
Brinkley
Burke, Mass.
Burton
Carey, N.Y.
Chisholm
Clay
Conte
Corman
Culver
Danielson
Dellums
Denholm
Dingell
Donohue
Dow
Drinan
Dulski
Eckhardt
Edwards, Calif.
Foley
Ford, William D.
Fraser
Giaimo
Grasso
Green, Oreg.
Green, Pa.
Gude
Harrington
Hawkins
Hechler, W. Va.
Helstoski
Howard
Karth
Kastenmeier
Koch
McCormack
Mathis, Ga.
Meeds
Melcher
Metcalfe
Mikva
Minish
Mink
Mitchell
Moorhead
Morse
Moss
Nedzi
Obey
O'Hara
Podell
Rangel
Rarick
Rees
Reid, N.Y.
Reuss
Riegle
Rodino
Roe
Rosenthal
Roybal
Runnels
Ryan
St Germain
Sarbanes
Scheuer
Seiberling
Steele
Stokes
Thompson, N.J.
Tiernan
Udall
Van Deerlin
Vanik
Waldie
Wilson, Charles H.
Wolff
Yates

NOT VOTING—51

Alexander
Arends
Baker
Barrett
Bevill
Blackburn
Broyhill, N.C.
Burke, Fla.
Clancy
Clawson, Del
Collier
Collins, Tex.
Conable
Conyers
Crane
Derwinski
Diggs
Dowdy
Edwards, La.
Ford, Gerald R.
Gubser
Halpern
Hébert
Heckler, Mass.
Horton
Jones, Ala.
Kemp
Kuykendall
Landgrebe
Link
Lloyd
Long, La.
McClory
McCloskey
McFall
McKinney
Michel
Mills, Ark.
Minshall
Patman
Pelly
Purcell
Railsback
Schwengel
Springer
Stanton, J. William
Stuckey
Teague, Tex.
Vigorito
Whitten
Wilson, Bob

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Gerald R. Ford.
Mr. Barrett with Mr. Diggs.
Mr. Vigorito with Mr. Conyers.
Mr. Dowdy with Mr. Baker.
Mr. McFall with Mr. Michel.
Mr. Purcell with Mr. Pelly.
Mr. Whitten with Mr. Springer.
Mr. Teague of Texas with Mr. Horton.
Mr. Stuckey with Mr. Collins of Texas.
Mr. Jones of Alabama with Mr. Clancy.
Mr. Bevill with Mr. Gubser.
Mr. Alexander with Mr. Railsback.
Mr. Link with Mr. Clawson.
Mr. Mills of Arkansas, with Mr. Arends.
Mr. Patman with Mr. Bob Wilson.
Mrs. Heckler of Massachusetts with Mr. Minshall.
Mr. Broyhill of North Carolina with Mr. Lloyd.
Mr. Crane with Mr. Kemp.
Mr. Kuykendall with Mr. McClory.
Mr. McKinney with Mr. J. William Stanton.
Mr. Landgrebe with Mr. Blackburn.
Mr. Derwinski with Mr. Halpern.
Mr. McCloskey with Mr. Burke of Florida.
Mr. Collier with Mr. Conable.

Mr. ASHLEY changed his vote from "yea" to "nay."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

[p. H10774]

1.1k(5)(b) Vol. 118 (1972), Sept. 26: Considered and passed Senate, amended, pp. S15885–S15900

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1972

Mr. ROBERT C. BYRD. Mr. President, I therefore, ask unanimous consent that the unfinished business be temporarily laid aside and that the Senate proceed to the consideration of H.R. 10729, a bill to amend the Federal Insecticide Act.

[p. S15885]

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

Calendar No. 922 (H.R. 10729) a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

The PRESIDING OFFICER. Is there objection to the requests of the Senator from West Virginia? The Chair hears none and it is so ordered.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce with amendments.

AGRICULTURE AND FORESTRY AND COMMERCE

The amendments of the Committee on Commerce are as follows:

On page 69, line 6, after the word "in", strike out "substantial" and insert "unreasonable"; on page 72, line 2, after the word "environment", strike out the semicolon and insert a comma and "including the protection of the health of farmers, farmworkers, and others who may come in contact with such pesticides or pesticide residues;"; in line 10, after the word "environment", strike out "; or" and insert "including the protection of the health of farmers, farmworkers, and others who may come in contact with such pesticides or pesticide residues; or"; in line 16, after the word "causes", strike out "substantial" and insert "unreasonable"; on page 76, line 18, after the word "any", where it appears the second time, strike out "substantial" and insert "unreasonable"; on page 77, after line 4, strike out:

The Administrator shall not make any lack of essentiality a criterion for denying registration of any pesticide.

On page 83, line 8, after the word "cause", strike out "substantial" and insert "unreasonable"; in line 19, after the word "restrictions,", strike out "substantial" and insert "unreasonable"; in line 21, after the word "applicator,", insert "farmer, farmworker, or other person who may come in contact with the pesticide or pesticide residues,"; on page 84, line 14, after the word "cause", strike out "substantial" and insert "unreasonable"; on page 85, line 3, after the word "prevent", strike out "substantial" and insert "unreasonable"; on page 86, line 22, after the word "certification", strike out the period and insert "and the competence of an individual shall include the ability to undertake such measures as the Administrator may by regulation require to protect the health of farmers, farmworkers, and others who may come into contact with such pesticides or pesticide residues."; on page 89, line 16, after the word "cause", strike out "substantial" and insert "unreasonable"; in

On pages 80, line 4, after the word "information.", strike out "Except as provided by section 10, within 30 days after the Administrator registers a pesticide under this Act he shall make available to the public the data called for in the registration statement together with such other scientific information as he deems relevant to his decision."; on page 81, line 11, after the word "without", strike out "substantial" and insert "unreasonable"; after line 12, strike out:

and the Agency agree that it shall commence at a later time. The hearing shall be held in accordance with the provisions of subchapter II of title 5 of the United States Code, except that the presiding officer need not be a certified hearing examiner. No party other than the registrant and the Agency shall participate except that any person adversely affected may file briefs within the time allotted by the Agency's rules."

After line 23, insert:

"(2) EXPEDITED HEARING.—Any expedited hearing held prior to a suspension order shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Administrator may make applicable thereto. The right to subpoena documents shall be granted to any party whenever the Administrator considers it appropriate. Any interested person may intervene in such proceeding and participate fully as a party."

On page 94, after line 12, strike out:

"(3) EMERGENCY ORDER.—Whenever the Administrator determines that an emergency exists that does not permit him to hold a hearing before suspending, he may issue a suspension order in advance of notification to the registrant. In that case, paragraph (2) shall apply except that the order of suspension shall be in effect pending the expeditious completion of the remedies provided by that paragraph and the issuance of a final order on suspension."

At the beginning of line 22, strike out "(4)" and insert "(3)"; in line 23, after the word "suspension", strike out "following a hearing"; on page 95, line 3, after word "appeals.", strike out "Any order of suspension entered prior to a hearing before the Administrator shall be subject to immediate review in an ac-

525-313 O - 73 - 30

"(bb) SUBSTANTIAL ADVERSE EFFECTS ON THE ENVIRONMENT.—The term 'substantial adverse effects on the environment' means any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide.

And in lieu thereof, insert:

"(bb) UNREASONABLE ADVERSE EFFECTS ON THE ENVIRONMENT.—The term 'unreasonable adverse effects on the environment' means any risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, including the availability of alternative means of pest control.

On page 78, after line 24, strike out:

"(D) if requested by the Administrator, a full description of the tests made and the results thereof upon which the claims are based, except that data submitted in support of an application shall not, without permission of the applicant, be considered by the Administrator in support of any other application for registration:

And insert:

"(D) a full description of any tests offered in support of the application and the results thereof:."

In line 11, after the word "consideration", strike out the semicolon and insert a colon and "*Provided further*, That the Administrator shall not rely on test results submitted pursuant to this subsection unless he determines that (i) the tests were conducted in accordance with applicable Federal, State, or local law and (ii) participation in the tests was the result of a free, voluntary, and informed choice by each participant;". line 23, after the word "avoid", strike out "substantial" and insert "unreasonable"; on page 90, line 23, after the word "have", strike out "substantial" and insert "unreasonable"; on page 91, line 7, after the word "regarding", strike out "substantial" and insert "unreasonable"; on page 92, line 16, after the word "pesticide", insert "and has given notice of such suspension order to the registrant. Prior to issuing such suspension order, the Administrator, if necessary to determine if an imminent hazard exists, may conduct an expedited hearing in accordance with paragraph 2 of this subsection. Following any such suspension order, the procedures of subsection (d) of this section with respect to the Administrator's notice of his intention to cancel the registration or change the classification of a pesticide shall be held in an expeditious manner.

At the top of page 93, strike out:

"Except as provided in paragraph (3), the Administrator shall notify the registrant prior to issuing any suspension order. Such notice shall include findings pertaining to the question of 'imminent hazard'. The registrant shall then have an opportunity, in accordance with the provisions of paragraph (2), for an expedited hearing before the Agency on the question of whether an imminent hazard exists.

"(2) EXPEDITE HEARING.—If no request for a hearing is submitted to the Agency within five days of the registrant's receipt of the notification provided for by paragraph (1), the suspension order may be issued and shall take effect and shall not be reviewable by a court. If a hearing is requested, it shall commence within five days of the receipt of the request for such hearing unless the registrant tion by the registrant or other interested person with the concurrence of the registrant in an appropriate district court, solely to determine whether the order of suspension was arbitrary, capricious or an abuse of discretion, or whether the order was issued in accordance with the procedures established by law. The effect of any order of the court will be only to stay the effectiveness of the suspension order, pending hearing before the Administrator. This action may be maintained simultaneously with any administrative review proceeding under this section."; on page 96, line 1, after the word "objections.", strike out "Upon a showing of relevance and reasonable scope of evidence sought by any party to a public hearing, the Hearing Examiner shall issue a subpena to compel testimony or production of documents from any person. The Hearing Examiner shall be guided by the principles of the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness. On contest, the subpena may be enforced by an appropriate United States district court in accordance with the principles stated herein." and insert "All public hearing authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the administrator may make applicable thereto. The right to subpena documents shall be

granted to any party whenever the Administrator considers it appropriate. Any interested person may intervene in such proceedings and participate fully as a party."; in line 25, after the word "hearing.", insert "Each such committee shall include qualified scientists not more than one-third of which shall have an economic interest in the chemical industry. None of the members of such committee shall have any economic interest in the pesticide which is the subject of referral."; on page 100, at the beginning of line 25, strike out "for distribution or sale" and insert "or used"; on page 101, line 2, after the word "devices,", strike out "packaged, labeled, and released for shipment,"; in line 8, after the word "held", strike out "for distribution or sale" and insert "or used"; on page 104 line 3, after the word "General.", insert "Copies of any communication, document, report or other information received by the Administrator from any manufacturer or sent by the Administrator to any manufacturer shall be made available to the public upon identifiable request, and at reasonable cost, unless such information may not be publicly released under the terms of subsection (b) of this section."; after line 14, strike out:

(b) DISCLOSURE.—*Notwithstanding any* other provision of this Act, the Administrator shall not make public information which contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential, except that, when necessary to carry out the provisions of this Act, information relating to formulas of products acquired by authorization of this Act may be revealed to of identification of injured persons be made without their express written consent.

"(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

"(c) Any communication from a person to the Administrator or any other employee of the Environmental Protection Agency concerning a matter presently under consideration in a rulemaking or adjudicative proceeding in the Environmental Protection Agency shall be made a part of the public file of that proceeding unless it is a communication entitled to protection under subsection (b) of this section.

"(d) In the event of a dispute between any manufacturer who has submitted information in support of a registration and the Administrator as to whether such information constitutes, a trade secret not subject to disclosure, then such dispute shall be submitted to the Attorney General of the United States for his determination which shall be final. In any such dispute, the determination of the Attorney General shall be rendered within 30 days of submission to him, and shall be communiacted to the Administrator and to the manufacturer in writing.

On page 107, after line 12, strike out:

"(a) IN GENERAL.—No regulations prescribed by the Administrator for carrying out the provisions of this Act shall require any private applicator to maintain any records or file any reports or other documents.

At the beginning of line 17, strike out "(b)"; on page 114, line 7, after the word "causes", strike out "substantial" and insert "unreasonable"; on page 116, at the beginning of line 2, strike out "$1,000" and insert "$10,000"; on page

to the Constitution) who is alleged to be in violation of (1) any requirement under section 3(a) of this Act, (2) any condition of registration imposed by the Administrator, (3) a suspension or cancellation order under section 6 of this Act, or (4) the prohibition against misuse of a pesticide under section 12(a)(2)(H) of this Act, or

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator. Any action brought against the Administrator under this paragraph shall be brought in the District Court of the District of Columbia.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, over suits brought under this section.

"(b) No civil action may be commenced—

"(1) under subsection (a)(1) of this section—

"(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, and (ii) to any alleged violator of the regulation or order, or

"(B) if the Administrator or the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the regulation or order, but in any such action any person may intervene as a matter of right;

"(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator.

Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

"(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

"(d) The court, in issuing any final order

any Federal agency consulted and may be revealed at a public hearing or in findings of fact issued by the Administrator.'

And, in lieu thereof, insert:

"(b) DISCLOSURE.—

"(1) The Administrator or any officer or employee of the Environmental Protection Agency or any committee referred to in subsection (d) of section 6 of this Act shall not disclose any information which the Administrator determines concerns or relates to a trade secret referred to in section 1905 of title 18, United States Code, except that such information may be disclosed by the Administrator—

"(A) to any other Federal department, agency, or official for official use if such department, agency, or official requests such information and has a reasonable need for such information;

"(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

"(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

"(D) if relevant in any proceeding under this Act, except that such disclosure shall preserve the confidentiality to the extent possible without impairing the proceeding; and

"(E) to the public in order to protect its health, after the manufacturer of any product to which the information pertains has been given notice and an opportunity, for a period of 15 days following such notice, to comment in writing or to discuss in closed session the matter relating to the disclosure of such information, if the delay resulting from such notice and opportunity for comment or discussion would not be detrimental to the public health.

In no event shall the names or other means

17, line 23, after the word "Act,", strike out "Agency refusals to cancel or suspend registrations or change classifications not following a hearing and other"; on page 118, line 4, after the word "of", strike out "any order issued by the Administrator following a public hearing," and insert "(1) any cancellation order, suspension order, or order to change classifications, (2) any agency refusal to cancel or suspend registrations or change classifications, or (3) any other order issued by the Administrator following a public hearing, "; at the beginning of line 14, strike out "order, a petition praying that the order be set aside in whole" and insert "order or refusal, a petition praying that the order or refusal, be set aside in whole"; in line 20, after the word "order", insert "or refusal"; in line 21, after the word "Code", insert "or, if there were no proceedings, the relevant documents of which his record is comprised"; in line 25, after the word "order", insert "or refusal"; in line 26, after the word "order", insert "or refusal"; on page 119, line 4, after the word "order", insert "or refusal"; in line 10, after the word "order", insert "or refusal"; after line 20, insert a new section, as follows:

"SEC. 16. CITIZEN CIVIL ACTIONS.

"(a) Except as provided in subsection (b) of this section, any person may commence a civil action for injunctive relief on his own behalf whenever such action constitutes a case or controversy—

"(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment

in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

"(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any other statute or under common law to seek enforcement of any regulation or order or to seek any other relief.

"(f) For purposes of this section, the term 'person' means an individual, corporation, partnership, association, State, municipality, or political subdivision of a State or any agency of the Federal Government.

"(g) When any actions brought under this subsection involving the same defendant and the same issues of violations are pending in two or more more jurisdictions, such pending proceedings, upon application of the defendant reasonably made to the court of one such jurisdiction, may, if the court in its discretion so decides, be consolidated for trial by order of such court, and tried in (1) any district selected by the defendant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the defendant may apply to the court of one such jurisdiction, and such court (after giving all parties reasonable notice and opportunity to be heard) may by order, unless good cause to the contrary is shown, specify a district or reasonable proximity to the applicant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall

give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

On page 123, at the beginning of line 1, change the section number from "16" to "17"; in line 7, after the word "purchaser", strike out the period and insert a comma and "except that (1) a statement which complies with paragraphs (A) through (E) of section 3(c)(1) shall be submitted in support of any such pesticide to the Administrator, (2) such pesticide shall be subject to section 8, and (3) no pesticide may be exported unless the Administrator determines that the export of such pesticide will not result in unreasonable adverse effects on the environment of the United States. If the Administrator determines that such adverse effects will result, any person adversely affected by such determination shall have the same remedies as provided for registrants in section 6."; after line 18, strike out:

"(b) CANCELLATION NOTICES FURNISHED TO FOREIGN GOVERNMENTS.—Whenever a cancellation of the registration of a pesticide becomes effective, the Administrator shall transmit through the State Department copies of each notice of cancellation of a registration of a pesticide to the governments of other countries and to appropriate international agencies.

And, in lieu thereof, insert:

"(b) NOTICES FURNISHED TO FOREIGN GOVERNMENTS.—Subject to section 10 of this Act, the Administrator shall furnish to the government of the foreign nations to which any pesticide may be exported (1) a notice of the availability of the statement required under sections 3(c) (1), (2) all labels approved under section 3, and (3) all orders of

"(c) A State may recommend registration for pesticides formulated for distribution and use within that State to meet specific local emergency needs. If such State is certified by the Administrator as capable of preventing unreasonable adverse effects on the environment from the use of such pesticides by adopting procedures similar to those contained in this Act, and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator, such recommendation shall be deemed registration under section 3 for all purposes of this Act consistent with this section. Copies of all data pertaining to registration shall be forwarded to the Administrator, but the registration under this section shall not be effective for more than 90 days unless extended by the Administrator or unless the pesticide is registered by him in accordance with section 3 of this Act.

On page 130, at the beginning of line 23, change the section number from "24" to "25"; on page 132, at the beginning of line 14, change the section number from "25" to "26"; at the beginning of line 21, change the section number from "26" to "27"; at the beginning of line 22, strike out "There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act for each fiscal year ending June 30, 1972, June 30, 1973, June 30, 1974, and June 30, 1975." and insert "There is authorized to be appropriated to carry out the provisions of this Act not to exceed $15,000,000 for the fiscal year ending June 30, 1972, not to exceed $15,000,000 for the fiscal year ending June 30, 1973, not to exceed $25,000,000 for the fiscal year ending June 30, 1974, and not to exceed $35,000,000 for the fiscal year ending June 30, 1975."

the yeas and nays now while we have a sufficient number of Senators present.

Mr. TALMADGE. Mr. President, this is a bill of major importance, a bill which has been considered not only by the Committee on Agriculture and Forestry, but also by the Committee on Commerce, with some differences of opinion which have been resolved. It will be necessary to go to conference with the House.

Under those conditions, I think the yeas and nays should be ordered, and I ask for the yeas and nays on the passage of the bill.

The yeas and nays were ordered.

Mr. TALMADGE. Mr. President, with reference to the pending bill, the Senator from Alabama (Mr. ALLEN), the chairman of the subcommittee who handled this matter, has done a magnificent job for 10 months. When the bill came before the Committee on Agriculture he held hearings not once but twice, and every witness who desired to be heard was heard. Many of the issues were highly controversial. He resolved those issues, in my judgment, in the national interest. The committee reported the bill to the Senate without a single dissenting vote.

Then, the bill was sent to the Committee on Commerce, inasmuch as they had some jurisdiction, since it covered in some degree fish and wildlife, which is under the jurisdiction of the Committee on Commerce. They added 63 amendments to the bill. Most of those amendments had been rejected by the Committee on Agriculture and Forestry.

During the long period of time of negotiations between the two committees,

suspension and all notices of cancellation or change in classification issued pursuant to section 6.

On page 125, at the beginning of line 24, change the section number from "17" to "18"; on page 126, at the beginning of line 5, change the section number from "18" to "19"; at the beginning of line 23, change the section number from "19" to "20"; on page 127, at the beginning of line 18, change the section number from "20" to "21"; on page 128, at the beginning of line 5, change the section number from "21" to "22"; at the beginning of line 16, change the section number from "22" to "23"; on page 129, at the beginning of line 13, change the section number from "23" to "24"; in line 14, after the word "State", insert "or local government: in line 15, after the word "device", strike out "in the State" and insert "within its jurisdiction"; in line 18, after the word "State", insert "or local government"; after line 21, strike out:

"(c) A State may provide registration for pesticides formulated for distribution and use within that State to meet specific local needs if that State is certified by he Administrator as capable of exercising adequate controls and if registration for such use has not previously been denied, disapproved, or canceled by the Administrator. Such registration shall be deemed registration under section 3 for all purposes of this Act, but shall authorize distribution and use only within such State and shall not be effective for more than 90 days if disapproved by the Administrator within that period.

And, in lieu thereof, insert:

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. JAVITS. Mr. President, I will not object, of course. I just wonder whether the parliamentary situation is such that upon the completion of action on the bill which is now being called up, we would without any further proceedings return to the unfinished business.

Mr. ROBERT C. BYRD. Mr. President, in response to the query of the senior Senator from New York, which is a very appropriate one, I ask unanimous consent that the unfinished business remain in a temporarily laid-aside status until the close of business today.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. JAVITS. It would then be restored.

Mr. ROBERT C. BYRD. The Senator is correct.

Mr. JAVITS. I thank the Senator.

The PRESIDING OFFICER. The Chair points out that debate on this measure and amendments thereto is controlled.

Mr. ROBERT C. BYRD. Mr. President, would the Senator from Georgia (Mr. TALMADGE) yield me 1 minute.

Mr. TALMADGE. Mr. President, I yield 1 minute to the acting majority leader.

Mr. ROBERT C. BYRD. Mr. President, I ask the distinguished senior Senator from Georgia whether it is his intention to ask for the yeas and nays on passage of this bill, and if so, would he ask for which lasted for virtually 2 months, the Senator from Alabama and the general counsel and first officer of our committee, Mr. Harker Stanton, did a yeoman job. I do not know of any staff work in the last 15½ years that I have been in the Senate that has been as efficient and effective as that which Mr. Stanton did on behalf of the Committee on Agriculture and Forestry. In that effort the Senator from Alabama (Mr. ALLEN) worked with him daily, and in my judgment they have worked out a very fine bill. I hope the Senate will agree to it.

I yield now so much time as he may desire to the Senator from Alabama, who did such an outstanding job on this bill.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I thank the chairman of the Committee on Agriculture and Forestry, the distinguished Senator from Georgia (Mr. TALMADGE), for his kind remarks. I would be less than candid if I did not say that each and every step that was taken by the subcommittee and by the staff of the committee was referred to the distingiushed chairman of the committee, the distinguished Senator from Georgia (Mr. TALMADGE), for his advice and counsel. Without his help and assistance, and his wise counsel and advice, this compromise could never have been agreed to.

Mr. President, I extend my deep appreciation to the distinguished Senator from Georgia for the help and cooperation that he gave to reaching this compromise.

[p. S15888]

Now, Mr. President, reiterating what the distinguished chairman said, this bill was first referred to the Committee on Agriculture and Forestry and was reported to the Senate with a substitute by the Committee on Agriculture and Forestry; and the very same day it was reported it was referred by unanimous consent to the Committee on Commerce to exercise its jurisdiction over the bill.

Mr. President, at this time there are pending at the desk amendments offered by the Committee on Commerce.

Mr. President, I ask unanimous consent that notwithstanding the fact that the committee amendments have not been agreed to, it be in order to offer a complete substitute for the whole bill; and that if the substitute should be agreed to all of the committee amendments be considered as having been withdrawn.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection, and it is so ordered.

Mr. ALLEN. Mr. President, I offer the amendment on behalf of myself and Senators HART, AIKEN, BEALL, BELLMON, CANNON, CHILES, COTTON, CURTIS, DOLE, EASTLAND, EDWARDS, HARTKE, HUMPHREY, INOUYE, JORDAN of North Carolina, MCGOVERN, MAGNUSON, MILLER, MOSS, NELSON, PACKWOOD, PASTORE, SPONG, STEVENSON, TALMADGE, TUNNEY, and YOUNG.

Mr. President, these sponsors of this compromise amendment constitute all the members of the Committee on Agriculture and Forestry and a majority of the members of the Committee on Commerce.

The PRESIDING OFFICER. If there is favorably acted upon by the full committee. It was then re-referred to the Committee on Commerce. We have now reached the time for consideration by the full Senate, and I would but repeat the admonition of President Nixon in his letter of April 24 to the chairman of our committee (Mr. TALMADGE):

It is important that the momentum now built up for action on this problem during this Congress not be lost. I am writing to express the hope that your Committee will seek and obtain early floor action to provide the Environmental Protection Agency with the tools it needs to regulate pesticides in the public interest.

Mr. ALLEN. Mr. President, I send to the desk and I ask unanimous consent to have printed in the RECORD at this point an explanation of H.R. 10729 as it appeared in the original report of the Committee on Agriculture and Forestry.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

SHORT EXPLANATION

This bill completely revises the Federal Insecticide, Fungicide, and Rodenticide Act.

At the present time, this Act prohibits interstate commerce in unregistered pesticides, and permits registration only when if used as directed or in accordance with commonly recognized practice the pesticide is not injurious to man, vertebrate animals, or desirable vegetation. It does not prohibit the misuse of any registered pesticide, nor does it regulate pesticides moving only in intrastate commerce.

The new bill would—

(A) regulate the use of pesticides to protect man and his environment; and

(B) extend Federal pesticide regulation to actions entirely within a single State.

tration and cancellation actions by combining scientific review and public hearings and requiring all questions to be submitted for scientific review at the outset of the hearing; (Section 6)

(5) give applicants for registration proprietary rights in their test data. (Section 3(c)(1)(D)

(6) authorize the Administrator to—

(a) establish pesticide packaging standards to protect children and adults and for other purposes; (Section 24(c)(3)

(b) regulate pesticide and container disposal; (Section 18)

(c) issue experimental use permits; Section 5)

(d) conduct research on pesticides and alternatives and monitor pesticide use and presence in the environment. (Section 19)

(7) provide for certification of applicators by the States under a program approved by the Administrator. In addition, the States would be authorized to issue conditional registrations for pesticides intended for local use; and States could impose greater regulation on a pesticide than that of the Federal Government. (Sections 4 and 23)

(8) limit appropriations to carry out the Act to the period ending June 30, 1975.

GENERAL EXPLANATION OF H.R. 10729

This bill provides for the more complete regulation of pesticides in order to provide for the protection of man and his environment and the enhancement of the beauty of the world around him.

Pesticides affect the food man eats, the water he drinks, the air he breathes and the flora and fauna that surround him and provide him with beauty, recreation, and inspiration. They are necessary to keep his home free from vermin, to protect him from diseases spread by insects, rats, and other vectors, protect his possessions from termites and other destructive insects, and beautify his lawns and parks.

Pesticides are essential to man's food sup-

no objection, the amendment will be stated by title, and because of its length will not be printed in the RECORD at this point.

The assistant legislative clerk read as follows:

The Senator from Alabama, for himself and others, proposes a substitute amendment in lieu of the amendments proposed by the Committee on Agriculture and Forestry and the Committee on Commerce.

Mr. MILLER. Mr. President, I would like to take this opportunity to commend the Senator from Alabama (Mr. ALLEN) and the Senator from Michigan (Mr. HART) for their diligent efforts in reaching the compromise bill which is now before us. As ranking Republican on the full Agriculture Committee, I know that the Subcommittee on Agricultural Research and General Legislation, under its able chairman, the Senator from Alabama, spent a lot of time and study on this highly complex legislation. And I also know of the long hours that Mr. Harker Stanton, staff director and general counsel of our committee, his assistants, and their counterparts on the Committee on Commerce have spent in drafting language that can be agreed upon by a majority of the Senate. These people also merit our thanks.

On February 8, 1971, President Nixon asked for a pesticide bill in his message on the environment. Subsequently a bill was adopted by the House, and hearings were held immediately thereafter by our Committee on Agriculture and Forestry. The bill, with amendments was then

The major provisions would—

(1) prohibit the use of any pesticide in a manner inconsistent with its labeling. (Section 2(a)(2)(G)) No pesticide could be registered or sold unless its labeling was such as to prevent any injury to man or any substantial adverse effect on environmental values, taking into account the public interest, including benefits from its use. (Sections 2(q)(F), (G), and (H) and 3).

(2) require pesticides to be classified for general or restricted use. Restricted use pesticides could be used only by or under the supervision of certified applicators or subject to such other restrictions as the Administrator may determine. (Section 3(d)) This should not be construed as a limitation of the broad authority described in item (1). The House Committee report (page 15) indicates that the Administrator should not set up a system for use only by permit approved in writing for each application by a pest management consultant; but that general or seasonal licenses, permits, or other similar forms of approval may be required.

(3) extend the Act to all pesticides by including those distributed entirely within a single State. (Section 3.)

(4) strengthen enforcement by—

(a) requiring the registration of all pesticide producing establishments, and regular submission by them of production and sales-volume information; (Section 7)

(b) authorizing entry of establishments and other places where pesticides are held for sale or distribution and inspection and sampling of pesticides and devices; (Section 9)

(c) authorizing stop sale, use, or removal orders and seizure; (Section 13)

(d) providing for civil and increased criminal penalties; (Section 14)

(e) authorizing cooperation with State; (Sections 21 and 22)

(f) improving procedures governing registration.

ply both as to quality and quantity. A generation ago consumers could expect to find occasional worms in apples and more frequent worms in sweet corn. Today we are blessed with wholesome, attractive, pest-free foods, processed, packaged, and marketed under clean and sanitary conditions. We have an abundance of food at reasonable prices.

Farm Production has increased by 156 percent since the 1935–39 period notwithstanding the fact that approximately 50 million acres were retired from production in 1970. And this level of production has been achieved in spite of the fact that the farm population has decreased from about 30 million persons to about 9.4 million persons.

More than 200 million persons in the United States, and many more millions throughout the world, now depend upon these farms and farm operators for most of their food and fiber. All of us are consumers. As consumers we all benefit from the increased efficiency and use of modern technology in the production and marketing of farm products.

When we go to market we can choose from over 6,000 different food items including fresh, frozen, canned, concentrated, dehydrated, ready-mixed, ready-to-serve, or in heat-and-serve form. Today, farmers feed over 70 million more persons in this country than they did in the late thirties. Consumers are now required to devote less of their income for a wider variety and higher quality of food than they did before. In 1972, only 15.8 per cent of disposable income was spent on food as compared to 23 per cent in earlier years. Compare this to 30 per cent in Europe . . . 50 per cent in the Soviet Union . . . and as high as 90 per cent in many other countries.

American food is the best buy in the world.

Pesticides are important in the preserva-

tion of natural beauty. As examples of the unpleasant effects caused by insects in the absence of effective pesticides, the following are quoted from a pamphlet on the gypsy moth published by the Department of Agriculture in April of this year.

"Gypsy moths have been in this country since 1869, when imported specimens escaped during experiments being performed by a Massachusetts naturalist. Extensive Federal-State efforts confined gypsy moth destruction to New England, New York and Pennsylvania for many years. But, in 1958, concern over the possibility of environmental contamination caused a switch from large-scale spraying of DDT to limited application of less persistent insecticides.

"In recent years, gypsy moth populations have built up to alarming levels, with spread occurring throughout much of the Northeast and into parts of the South. The nearly 2 million acres of trees defoliated in 1971 doubled the acreage stripped in 1970, was six times more than in 1969, and was twelve times more than recorded in 1968.

"The gypsy moth is a European insect and is one of the world's worst forest pests. They are harmless in the moth stage, but as caterpillars feed on the leaves of forest, shade, ornamental and fruit trees. A single complete defoliation can kill some softwood trees; two or more defoliations can kill many types of hardwoods.

* * * * *

"Gypsy moth infestations leave their mark on urban and suburban areas, as well as forests. Caterpillars cover sidewalks and get into water reservoirs, stores, homes and swimming pools. They make parks and other outdoor recreational facilities temporarily unusable and lower property values with tree-killing defoliations."

While appropriate pesticides properly used are essential to man and his environment, many constitute poisons that are too dangerous to be used in certain circumstances. Section 2(q) designates a pesticide as misbranded in certain circumstances, one being that when used in accordance with its label or commonly recognized practice it causes any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide. Section 3(d)(1)(C) provides that if the pesticide, when used in accordance with its label or commonly recognized practice, may cause, without additional regulatory restrictions, any injury to man or any substantial adverse effects on environmental values, taking into account the public interest, including benefits from the use of the pesticide, it shall be classified for restricted use and subjected to additional restrictions. If it is so classified because of a determination that the acute dermal or inhalation toxicity of the pesticide presents a hazard to the applicator or other persons it would be required to be applied only by or under the direct supervision of a certified applicator. If it is so classified for any other reason, it would either be required to be applied only by or under the direct supervision of a certified applicator, or subject to such other restrictions as the Administrator may determine. By comparing these provisions with each other and with existing law, it can be seen that (1) they provide for a more finely tuned control of pesticides which will more easily permit their beneficial use and prevent their misuse; and (2) few pesticides which are now registered would be classified for restricted use. Since the present criteria for registration, the criteria for registration under the bill, and the criteria for restricted use classification under the bill are essentially similar, except for the provision for additional restrictions in connection with classification for restricted use, it follows that currently registered pesticides were at the time of registration found to be safe based on present criteria without the imposition of pesticides in a manner designed to protect and improve the environment.

(2) *Extension to actions entirely within a single state.*—The existing law prohibits the sale or distribution of unregistered pesticides in interstate commerce. Section 3 of the bill would extend this prohibition to any commerce so that pesticides produced and sold in a single state would be subject to federal registration and all of the prohibitions of the Act.

(3) *Strengthening enforcement, proprietary rights in test data, and additional authorities.*—All of these provisions are designed to provide for tighter control of pesticide registration and use to insure protection to man and the environment. Registration of pesticide producing establishments will aid th Administrator in tracking down violations and accidental discharge or spillage. Stop sale, use, or removal orders and seizures will provide immediate means for preventing the use of dangerous pesticides. Improved procedures for registering and cancelling registration will speed desirable pesticides to the market and speed the removal of undesirable pesticides. Giving applicants proprietary rights in their test data will encourage applicants to spend the money necessary to test their products fully and assure their safety. Requiring subsequent applicants to make their own tests will serve as a double check on the original test procedures and either provide double assurance that the products are safe or show up their shortcomings.

HISTORICAL BACKGROUND

The use of chemicals in agriculture began with the trend toward intensive farming in the mid-19th century. Cultivation of specialized crops created imbalances in nature which provided insects and other pests ideal conditions in which to multiply.

As an example, the Colorado potato bettle in 1850 lived on local plants and maintained

ous to be used for any purpose. Others are dangerous unless used extremely carefully, and some may have long lasting adverse effects on the environment. Some may be taken up in the food chain and accumulated in man and other animals. Improperly used they may endanger bees and other useful insects, birds, and other animals and their food supply. Pesticides may cause injury through accidental ingestion, inhalation or deposit on the skin. Pesticides therefore have important environmental effects, both beneficial and deleterious. Their wise control based on a careful balancing of benefit versus risk to determine what is best for man is essential.

At present the Federal Insecticide, Fungicide and Rodenticide Act provides for the labeling of pesticides with appropriate directions for their use and cautions and warnings. If a pesticide is such that when used in accordance with its label or common practice it is injurious to man, other vertebrates, or useful plants, it cannot be registered under the Act and cannot be sold or distributed in interstate commerce. If a chemical is registered and it subsequently appears that under the foregoing criteria it should not have been registered, its registration may be cancelled; and in case of imminent hazard its registration may be immediately suspended pending the completion of cancellation proceedings.

But there is no prohibition at present against the misuse of a registered pesticide. There also is no control under the Act for pesticides distributed entirely within a single state. The provisions of H.R. 10729 are needed to correct these and other deficiencies in the law in order to provide effective control. Some of the major changes provided for by the bill are as follows:

(1) *Restrictions on use.*—Section 12(a)(2)(G) prohibits the use of any pesticide in a manner inconsistent with its labeling. Section of such additional restrictions. The Committee understands that EPA is engaged in upgrading its criteria (as to safety and effectiveness) for the registration of pesticides and expects to use the revised criteria for the classification of existing pesticides under the new Act. Also because of research and other information being accumulated on the risks and benefits associated with pesticides, this will warrant some pesticides being placed in the restricted category. The effect of classification for restricted use therefore is to provide for additional regulatory restrictions, additional to those on the label, which will make the pesticide safe to use and thereby bring it within the criteria for registration. The difference between restrictions in use shown on the label and additional regulatory restrictions imposed on restricted use pesticides is that the additional restrictions may more easily be changed as conditions warrant, and that in many cases it would be more appropriate to control the use or the making available for use of a pesticide through general regulations than through its labeling. In order to change the restrictions on the label or labeling, the Administrator might have to start cancellation proceedings. Regulatory restrictions may be changed promptly by issuing a new regulation or by exercising authority provided for in the existing regulation. The additional regulatory restrictions thus constitute a tighter form of control.

Section 12(a)(2)(F) makes it unlawful to make for use or use any restricted use pesticide contrary to such regulations, and section 12(a)(2)(G) makes it unlawful to use any registered pesticide in a manner inconsistent with its labeling. By prohibiting the misuse of pestcides, these provisions protect the environment and also prevent the growth of commonly recognized practices which would require the cancellation of registration of a pesticide, thereby assuring the continued use a balanced population in its natural environment. When the early settlers planted potatoes, the beetles were furnished a vast new supply of food. They multiplied. They became a pest to the new settlers and spread eastward to other potato fields as a result of their own population pressure. Nothing was effective against this new pest until the arsenic compound, Paris green was applied.

By the latter half of the 19th century, United States agriculture was well on the way toward becoming a commercial production industry. Progressive scientific farming was promoted by the founding of the land-grant colleges, the agricultural experiment stations, and the creation of an extension-education system. These institutions, together with the United States Department of Agriculture, made up an extremely effective organization of applied research, informational and demonstration programs, and consulting services for farmers.

As a result of these developments in which the increasing use of chemical pesticides played an important role, most of U.S. food supplies and substantial quantities of food for export are now produced by fewer than 5 percent of the population.

FEDERAL INSPECTION ACT OF 1910

As early as 1910 the distribution and use of chemical pesticides reaches a level which required Federal regulation for the protection of users, consumers and the general public. Federal regulation of pesticides began with the enactment of the Federal Insecticide Act of 1910, although State regulation was undertaken in some States at an even earlier date.

The Federal Insecticide Act of 1910 prevented the manufacture, sale or transportation of adulterated or misbranded insecticides and fungicides and authorized regulation of sales of insecticides and fungicides.

As the number and variety of chemical pesticides manufactured and used increased,

individual States increased the scope of their regulations. In 1946 the Council of State Governments developed a uniform insecticide, fungicide and rodenticide act for the consideration of and adoption by the individual States. At the same time the Congress began holding hearings on proposed more comprehensive Federal legislation.

FIFRA ENACTED

In June 1947, the Insecticide Act of 1910 was repealed and replaced by the Federal Insecticide, Fungicide and Rodenticide Act. By this time great changes had occurred in the field of chemical pesticides, or economic poisons. New plant materials and synthetic chemicals developed through both private and publicly-financed research had greatly increased the number of pesticides available and widened the scope of their usefulness. DDT and herbicides were becoming increasingly important.

The 1947 Act required:

1. The registration of economic poisons or chemical pesticides prior to their sale or movement in interstate or foreign commerce.

2. The prominent display of poison warnings on labels of highly toxic pesticides.

3. The coloring or discoloring of dangerous white powdered insecticides to prevent their being mistaken for foodstuffs.

4. The inclusion of warning statements on the label to prevent injury to people, animals and plants.

5. The inclusion of instructions for use to provide adequate protection for the public.

6. That information be furnished the administrator of the Act with respect to the delivery, movement, or holding of pesticides.

This Act was designed to work in harmony with the uniform State insecticide, fungicide and rodenticide act which was adopted in many States.

MILLER AMENDMENT

In 1954 pesticide regulations were expanded further by an amendment to the Food pesticides led to the creation of a Presidential Scientific Advisory Committee which made a number of recommendations in its 1963 report.

It concluded among other things that,

1. Monitoring programs to obtain systematic data on pesticide residues should be expanded.

2. Federal research programs concerned with pesticides should be expanded and coordinated.

3. A broad educational program emphasizing the hazards in the use of pesticides should be undertaken.

It also recommended amendments to existing pesticide legislation to:

1. Eliminate "protest" registrations.

2. Require each pesticide to carry a license number identification, and

3. Include fish and wildlife as useful vertebrates and invertebrates under the Federal Pesticide Act.

It was the consensus of that committee that mankind must continue to fight insects and other pests in the most efficient manner possible, and that an integrated program involving chemicals was absolutely necessary.

1964 AMENDMENTS

In 1964, amendments to the Federal Insecticide, Fungicide and Rodenticide Act of 1947 were adopted which, as recommended, eliminated protest registration and authorized each pesticide to carry a license number identification. The 1964 amendments also expedited procedures for suspending the marketing of previously registered pesticides which were found to be unsafe.

At that time, the Departments of Agriculture, Interior and Health, Education, and Welfare entered into an interdepartmental agreement, which among other things established procedures for resolving any differences they might have with respect to the licensing and regulation of new pesticides.

The appropriate use of chemical pesticides sented to the subcommittee by a total of 70 witnesses. A number of other letters, statements, reports, and recommendations were also formally furnished the Committee in connection with the hearings.

Subsequently, on March 7 and 8, 1972, additional open hearings were held on a House passed pesticide bill, H.R. 10729, and a Committee Print thereof prepared especially for this purpose. At this time a total of 89 witnesses presented statements. As in the previous hearings additional papers were also made available to the Committee.

A list comprising 86 typewritten pages of all amendments proposed to H.R. 10729 and reasons therefor was prepared for subcommittee consideration. Subsequently Committee Print No. 2 was prepared illustrating a number of suggestions for amendments to the bill. The subcommittee, in executive session considered all of these, as well as other amendments. Most were accepted and are shown below:

AMENDMENTS RECOMMENDED BY THE SUBCOMMITTEE

(1) delete "pesticide" from "certified pesticide applicator" to avoid confusion with certified public accountants (CPA's);

(2) give EPA discretion as to the necessity for the physical presence of a certified applicator;

(3) define "imminent hazard" to include a situation involving hazard to survival of an endangered species;

(4) define "ingredient statement" to require all pesticides to show the name and percentage of each active ingredient and the total percent of inert ingredients;

(5) require the establishment registration number to be shown on the label (rather than on accompanying labeling);

(6) classify a pesticide as misbranded if "when used in accordance with the requirements of the Act or commonly recognized practice" it causes substantial adverse effects on the environment;

and Drug Act authorizing its administrator to set tolerance limits for the residues of pesticides on foods.

This provision, known as the "Miller amendment," requires the pretesting of a chemical pesticide before it can be used on food crops. The manufacturer is required to provide detailed data to demonstrate to the administrator of the Federal Pesticide Act (FIFRA) that the chemical is useful to agriculture and how much residue, if any, will remain in or on a food crop after application.

The manufacturer must also supply scientific data on the toxicity of the chemical to warm-blooded animals. It is from these data and from their own research that the Federal Food and Drug Administration sets a tolerance or maximum amount of residue which may legally remain in or on the food crop when it is marketed.

1959 AMENDMENTS

After 1947 several new types of agricultural chemicals, generally referred to as nematocides, defoliants, desiccants, and plant regulators were developed and acquired widespread commercial use. Nematocides were used to control nematodes, or very small eelworms which attack the roots of plants. Defoliants were found useful to make leaves drop from plants to facilitate mechanical harvesting of the crop. Desiccants also were found useful in drying plant tissues to facilitate harvesting the crop. And, plant regulators were found useful under some conditions in regulating the growth processes of plants.

In 1959 the 1947 Act was again amended to include these products under the general regulatory provisions for economic poisons on chemical pesticides.

INCREASING CONCERN IN THE 1960'S

In the early 1960s increasing public concern regarding the longer run public health and ecological effects of some of the chemical and the adequacy of existing regulations has continued to be widely discussed in the public forum. Various committees of both the House and the Senate have held hearings, studied the problem, and issued reports on pesticides and public policy and deficiencies in the administration of the Federal Insecticide, Fungicide and Rodenticide Act.

Two years ago the Department of Health, Education, and Welfare appointed a commission on pesticides and their relationship to environmental health. Over 5,000 references to published and ongoing scientific research were reviewed and evaluated by this Commission. It made a number of recommendations in November, 1969, which were considered by all agencies involved in regulations and research relating to pesticides and their use.

CREATION OF ENVIRONMENTAL PROTECTION AGENCY

A year later, President Nixon proposed a reorganization of the agencies of the Federal Government dealing with pesticides to more effectively deal with the problems in this area. In December, 1970, he transferred the pesticide and pure food regulatory staffs located in the Departments of Agriculture, Interior, and Health, Education, and Welfare to a new Environmental Protection Administration.

PESTICIDE LEGISLATION PROPOSED

In February 1971 the President submitted the legislative recommendation which along with other proposals before the Committee became the basis for this bill.

COMMITTEE DELIBERATION

The Subcommittee on Agricultural Research and General Legislation held open hearings on four bills, S. 232, S. 272, S. 660, and S. 745, all of which deal with pesticide regulations, during the period March 23–26, 1971. All who wished to testify were provided an opportunity. Statements were pre-

(7) exclude non-toxic, vitamin-hormone products not intended for pest destruction from the definition of "plant regulator";

(8) leave the determination of what is a trade secret to the courts (rather than the Administrator);

(9) add to the provision for proprietry rights in test data a proviso permitting the Administrator to refer to any applicant's test data in evaluating the adequacy of another applicant's test data;

(10) give the Administrator discretion to give an applicant more than thirty days to make corrections;

(11) permit "other interested persons with the concurrence of the registrant" to contest the denial, cancellation, or suspension of registration, or a change in classification, where the registrant fails to do so;

(12) authorize the Administrator to require pesticide packaging and labeling for restricted use to be clearly distinguishable from packaging and labeling for general use;

(13) make restricted classification depend in part on the hazards involved in the use of a pesticide "in accordance with a commonly recognized practice";

(14) make it clear that EPA can withdraw its approval of a state certification plan;

(15) allow the Administrator to permit continued sale or use of a pesticide whose registration is cancelled where not inconsistent with the purposes of the Act;

(16) require submission of all scientific questions "at the outset of the hearing" to prevent delays through additional references while the hearing is proceeding;

(17) provide for entry by EPA of any place where pesticides or devices are held for distribution or sale (as well as manufacturing establishments);

(18) permit the Administrator (rather than the President by executive order in emergency conditions) to exempt federal or state agencies;

(19) require the Administrator to solicit the views of the Secretary of Agriculture before publishing regulations;

(20) authorize the Administrator to utilize the cooperative state extension services in providing information to farmers;

(21) make it clear that a state may provide registration to meet specific local needs (subject to disapproval by the Administrator);

(22) give the Administrator discretion as to which provisions of section 2(q)(1) (definition of misbranded) or section 7 (registration of establishments) shall be applicable to any class of device;

(23) extend the appropriation authority for the Act one year to fiscal 1975; and

(24) prohibit EPA from charging fees, other than reasonable registration fees.

Four amendments were passed for submission to the full Committee for its deliberation without subcommittee recommendation as follows:

Amendment 1, would authorize third parties to petition for cancellation or suspension and obtain judicial review. There were three alternative proposals:

(A) NACA proposal would make registration prima facie evidence of compliance for all purposes, provide for cancellation in contested cases only on the basis of scientific data not considered at time of registration, strike the provision for hearings initiated by the Administrator, and provide for judicial review in such cases in the district court;

(B) Hart-Nelson Amendment No. 1010 provided for review in such cases in the circuit court, prohibited stay of an agency action unless the party seeking the stay was likely to prevail and would suffer irreparable harm;

(C) EPA proposed appeal to the circuit court and indicated that the Hart-Nelson provision for a stay duplicated that already in the bill. EPA recommended an alternative version.

(b) continues the present clear criteria (compliance with the Act) for cancellation proceedings;

(c) provide for the initiation of cancellation proceedings either by notice of intent to cancel, or notice of intent to hold a hearing (so that the Administrator may have the benefit of more information before he decides to cancel);

(d) provides for hearings on suspensions except in emergency situations;

(e) provides for judicial review by the court of appeals in all cases where there has been an administrative hearing and by the district court in all cases where there has not been an administrative hearing; and

(f) makes it clear that any person who will be adversely affected by an order may obtain judicial review.

Before adopting this compromise proposal, the Committee considered all of the numerous amendments submitted to clarify the procedure for judicial review, third-party participation in the administrative decision-making process, and the grounds which permit the Administrator to cancel a registration before a five-year period. The procedures adopted carry forward the language of present law by which the Administrator cancels where a substantial question exists. Under present practice third-parties may request the Administrator to review new data and determine whether formal proceedings should be commenced. The Committee action permits persons adversely affected to continue to be able to request review of the status of a registration and adversely affected persons, like users, also to participate in the administrative process. The language "adversely affected" is in present law and the Committee has rejected the House language which refers to "interested persons" so as to avoid any implication of desiring to change present law.

The Committee has determined that the Administrator should be able to call a hearing when he believes it useful rather than 4 leaves the Administrator with broad power to impose such regulatory restrictions as may be necessary, but gives any person adversely affected by such regulations 60 days to petition the court of appeals for review of such regulations.

The Committee adopted Amendment No. 2 and turned down Amendment No. 3. In addition it considered several minor amendments adopting several including technical amendments.

In connection with striking the indemnity provisions the Committee felt that with the tighter regulation provided by the bill, suspension and cancellation should rarely be necessary; and that on such rare occasions it should be possible to permit existing stocks to be used up in a safe manner. In this connection the Committee considered the following letter from Mr. David D. Dominick, Assistant Administrator, E.P.A., outlining the method to be used by EPA in cancelling registration:

ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., May 10, 1972.

Hon. HENRY BELLMON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR BELLMON: You may recall that during our discussion of H.R. 10729, the proposed legislation for the regulation of pesticides, you were concerned that EPA have the flexibility to continue a registration for use during a growing season, even though we have determined after a hearing that the registration should be cancelled.

I believe our present authority under H.R. 10729 is sufficiently flexible to permit an orderly phase-out where farmers have relied on a pesticide for use during an upcoming growing season. It is open to registrants and user groups to raise at the hearing any question bearing on the benefits of using a product. Any showing of need for a pesticide during an upcoming season would be relevant and the statute would permit us to issue an order that would result in a label

Amendment 2 would strike out the provision for indemnities to owners of pesticides for which registration is first suspended and then cancelled.

Amendment 3 would provide for citizens' civil actions for injunctive relief against the United States, the Administrator, or any other person. EPA suggested an alternative which would (i) limit it to cases against producers, applicators, and the Administrator; (ii) specify venue in the district in which the violation occurred, or in the case of suits against the Administrator, the District of Columbia; (iii) strike the provision for citizen intervention in U.S. suits and provide for intervention by the U.S. (rather than the Administrator) in citizens suits; and (iv) provide for consolidation of like citizen suits.

Amendment 4 would strike the provisions of section 3(d)(1)(C) authorizing the Administrator to impose restrictions other than the requirement that the pesticide be applied by or under the direct supervision of a certified applicator.

Committee Print No. 3 was then prepared showing all of this action and was used by the full Committee as a basis for its deliberations.

The full Committee considered the bill submitted by the subcommittee on June 7, 1972.

The amendments recommended by the subcommittee were adopted and decisions were made on the four amendments presented by the subcommittee without recommendation.

With respect to Amendments No. 1 and No. 4 the full Committee adopted compromise proposals as follows:

The compromise proposal for Amendment 1—

(a) makes registration prima facie evidence of compliance only as long as no cancellation proceedings are pending;

issue a notice of intent to cancel. Such a procedure permits the Administrator to initiate formal review without placing a stigma on a product when he is not convinced that the registration should be cancelled. It also permits the Administrator to proceed without automatically cancelling if no specific request for a hearing is received.

After a hearing judicial review on petition by any person adversely affected is properly lodged in the courts of appeals, since an adequate record exists for such review. Where, however, the Administrator has determined no substantial question of safety exists which warrants formal review, and thus has refused to hold a hearing, review should be by a district court since there is no record for the court of appeals.

The Committee has also provided for expedited hearings on questions of suspension so that the procedure will be analogous to cancellation. Where a suspension action is taken prior to a hearing, a district court could stay the suspension pending the Administrator's determination after a hearing except such stay shall be dissolved at the time the Administrator issues a decision. If, after the hearing, the Administrator determines to suspend, the order becomes effective and any district court restraining order is dissolved, and the power to stay the Agency's order shall rest with the courts of appeals.

The Committee has also endorsed the House bill which eliminates the two-step procedure in present law requiring review by a scientific advisory committee followed by a public hearing. The House bill substitutes a procedure whereby at the start of a public hearing relevant questions of scientific fact are referred to a Committee of the National Academy of Sciences as part of the hearing procedures.

The compromise proposal for Amendment

use for a given season or period of time or indeed in a certain geographical location. It would be our policy to invoke this flexibility on a showing by affected groups that the particular chemical were needed for the growing season.

While I am reasonably confident that we have such flexibility, (see the attached memorandum), I think a few words to this effect in the Senate Committee Report could nail the situation down.

On a related subject, this matter underscores the importance for broad public participation in our regulatory process. As the law stands at present, users and interested groups, like environmentalists, have standing to participate in our decisions. The House bill has changed the language in the present act. It is our view that this change in language does not create a change in substance in view of the case law which does not suggest that courts view these two phrases differently. While we do not believe a change back to the original FIFRA langauge is required, the Committee may wish to include language in the Committee report which would clarify what we believe to be the case.

Sincerely,

DAVID D. DOMINICK,
Assistant Administrator for Categorical Programs.

The Subcommittee recommended and the full Committee approved the following comments:

1. A number of witnesses recommended amendments to specifically require the labeling to bear directions and warnings to protect farmers and others coming into contact with pesticides or residues; prohibit use of test data unless the tests were legal and voluntary; specifically mention danger to farmers and others coming in contact with pesticides or residues as a ground for restricted use classification; and specifically

require certified applicators to have the ability to guard against such danger. The bill, as reported by the Committee, provides complete safeguards to protect farmers and others coming into contact with pesticides or residues. It does so in general terms that are very broad and cover much more than would be covered by the proposed amendments. The Committee felt that by specifically mentioning particular areas protected by the general provisions, there might be some suggestion that the general provisions should be construed to cover less than actually intended. Section 2(j) of the bill defines "environment" to include all men, whether they come into contact with the pesticides or pesticide residues, or not. Sections 2(q)(1)(F), (G), and (H) and 3(c)(6)(C) are designed to protect all men. The Committee believes there can be no question about the matter, but takes this occasion to emphasize that the bill requires the Administrator to require that the labeling and classification of pesticides be such as to protect farmers, farm workers, and others coming in contact with pesticides or pesticide residues.

2. A number of witnesses supported amendments to—

(1) add a new definition, defining "unreasonable adverse effects on the environment",

(2) provide for use of the new definition in section 3(c)(5)(C) providing for approval of registration, and

(3) strike out the last sentence of section 3(c)(5) which prohibits denial of registration because of "lack of essentiality".

The Environmental Protection Agency advised the Committee that it would construe the new definition to have exactly the same meaning as that for "substantial adverse effects on the environment" in section 2(bb) of the bill, that adoption of the new definition would require additional changes throughout the bill, and that striking out the last sentence of section 3(c)(5), which prohibits denial of registration because of "lack of essentiality", would make no difference in the bill.

Honey bees nesting in a house.
Book lice in a home.
Strawberry root weevil invading a home.
Springtails in an office.
Box elder bug invading a house.
Carpenter bees in the siding of a house.
Bamboo borer in furniture.
Fungus beetles in a home.
Elm leaf beetles invading a home.
Wax moths from abandoned honey comb in a wall.
The blood sucking cone nose budg.

Undoubtedly there are many more. We cannot expect a manufacturer to go to the expense of registering a product for the control of minor and occasional pests such as these. But these pests can be controlled by pesticides that have been registered for control of other pests in comparable locations or environments. It would be helpful in the cause of permitting us to be a law-abiding industry if it were recognized that such a use of a pesticide would not be "inconsistent" with its labelling. If we can help in any way in formulating such a clarification we would want to do so.

This bill would regulate the use of a pesticide for the first time. It is not the intention of the Committee to prohibit any use which is in no way harmful, and which has only beneficial effects on man and his environment. The Committee considered an amendment to the bill to assure that such use would not be prohibited, but concluded that this was a matter which would have to be left to the good sense of the Administrator, the manufacturers, and the users. It is the hope of the Committee that by proper administration of the labeling requirements and administrative interpretations of the law and the labels approved by him, the Administrator will be able to make it clear to users that such uses are not prohibited. Further, it is the belief of the Committee that the use of the word "inconsistent" should be read and administered in a way so as to visit penalties only upon those individuals who are clearly violating the intent of the law.

The Committee has also considered the amendments which were proposed and published in the Federal Register of January 22, 1972, would authorize any witness testifying in a review proceeding under the Act to record his testimony for subsequent televising or broadcasting. The Committee disapproves of this provision. The review proceedings authorized by section 6 are adjudicatory in nature. As such they are subject to the various statutory and constitutional provisions relating to adjudicatory hearings. The purpose of the hearings is to provide a record of competent scientific evidence for the consideration of the Administrator in making his decision as to whether or not a registration should be granted or denied. The obligation is on the Administrator to make this decision based upon the record as a whole and not upon any one part of the record. Televising or broadcasting is of necessity related to just one portion of a witness' testimony. It would of necessity exclude any cross-examination or other testimony which would raise a question as to the qualifications of the witness or the validity of this testimony.

The rule published on May 11, 1972, did not include the provision discussed above, and the Committee does not approve of their inclusion at any later date.

Mr. ALLEN. Mr. President, the Committee on Agriculture and Forestry worked long and hard on this bill. On March 23, 24, 25, and 26, 1971, its Subcommittee on Agricultural Research and General Legislation held hearings on S. 232, S. 272, S. 660, and S. 745. The subcommittee heard all witnesses who wished to testify and a total of 70 witnesses presented statements. The committee carefully analyzed all bills and made detailed comparisons of S. 660 and S. 745 with existing law. On March 7 and 8, 1972, the subcommittee held hearings on H.R. 10729 and again heard all wit-

ference in the manner in which the bill was carried out. With respect to lack of essentiality, EPA said:

We believe the present language of section 3(b) is preferable since it states Agency policy. Where two products pose that same degree of risk and are equally necessary and effective, one should not be registered in preference to the other. Of course, where the same control can be achieved more safely than with a product which is being examined, the definition of "substantial adverse effects" in section 2(bb) would itself mandate consideration of the alternatives.

Consequently the Committee did not adopt these amendments.

3. Dr. Ralph E. Heal, Executive Secretary of the National Pest Control Association, raised the following question at the Committee's hearings on this bill:

At the hearings on S. 745 last year, our Association asked for an amendment that would permit enough flexibility in interpretation of label instructions to permit our industry to control certain minor posts legally under circumstances where no pesticide had been registered for the control of that pest. H.R. 10729 provides wording that could be interpreted as giving this flexibility, when it says, "Section 12(a)(2)(G). It shall be unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling." The Report of the House Committee on Agriculture, No. 92–511, discussed the interpretation of "inconsistent," recommending that it be applied in a common sense manner (page 16, item 11). The illustration used, however, dealt with concentration of pesticide rather than species of pest to be controlled.

We again ask your consideration of this question. A preliminary check has shown that we have no effective pesticide registered for the following pest problems:

viduals who have disregarded instructions on a label that would indicate to a man of ordinary intelligence that use not in accordance with such instructions might endanger the safety of others or the environment. Thus, for example, it would be expected that use of a general, unrestricted pesticide registered for use on enumerated household pests to exterminate a pest not specified on the label would not be inconsistent with the labeling. On the other hand, the use of even a general use pesticide in a manner inconsistent with a specified caution or restriction on the label should be considered inconsistent with the labeling. For example, the use in the home of a general use pesticide labeled "for use outdoors" or "not for use in enclosed areas", would be prohibited under this provision.

4. The Senate Committee considered the decision of the House Committee to deprive political subdivisions of States and other local authorities of any authority or jurisdiction over pesticides and concurs with the decision of the House of Representatives. Clearly, the fifty States and the Federal Government provide sufficient jurisdictions to properly regulate pesticides. Moreover, few, if any, local authorities whether towns, counties, villages, or municipalities have the financial wherewithal to provide necessary expert regulation comparable with that provided by the State and Federal Governments. On this basis and on the basis that permitting such regulation would be an extreme burden on interstate commerce, it is the intent that section 24, by not providing any authority to political subdivisions and other local authorities of or in the States, should be understood as depriving such local authorities and political subdivisions of any and all jurisdiction and authority over pesticides and the regulations of pesticides.

5. Sec. 164.31(c) of the rules of procedure

nesses that wished to testify. A total of 89 witnesses presented statements. Many helpful suggestions were made. Hundreds of amendments were proposed. All of them were carefully considered by the subcommittee and the committee. Several committee prints were made of S. 745 and H.R. 10729 to illustrate a number of these amendments. The committee included in its recommended amendment to the Senate all those amendments proposed by witnesses which it deemed meritorious.

Mr. President, this bill does two things. First, it provides for regulating the use of pesticides, as distinguished from their labeling and interstate distribution. Second, it extends pesticide regulation to intrastate commerce.

At present, the Federal Insecticide, Fungicide, and Rodenticide Act prohibits interstate commerce in unregistered pesticides. It permits registration only when, if used as directed or in accordance with commonly recognized practice, the pesticide is not injurious to man, vertebrate animals or desirable vegetation. The Administrator of the Environmental Protection Agency, who administers this act, is required to refuse to register any article if it does not appear to him that it complies with all of the provisions of the act. He may cancel the registration of any pesticide under the same circumstances. Directions for the use of the pesticide and the cautions and warnings which must appear on its label are subject to his approval. The Administrator, therefore, now has the power to keep

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harmful pesticides off the market and the power to see that adequate directions and cautions are on the label setting out the manner in which the pesticide should be used.

The Administrator does not, however, now have any power to see that the directions are followed. This bill would provide that authority by making it unlawful to use any registered pesticide in a manner inconsistent with its labeling. This provision gives the Administrator complete control over the use of any pesticide. He must refuse to register it unless its labeling complies with the requirements of the act and it will perform its intended function without unreasonable adverse effects on the environment. In order to comply with the requirements of the act, the labeling must contain such directions, cautions, and warnings as the Administrator finds adequate to protect health and the environment. The bill would require those directions, cautions, and warnings to be followed.

In order to provide for a more finely tuned control of pesticide use, the bill provides further for the division of pesticides into general use pesticides and restricted use pesticides. Pesticides classified for restricted use could be applied only by or under the direct supervision of a certified applicator or subject to such other restrictions as the Administrator might provide by regulation. Suppliers would be prohibited from making restricted use pesticides available for use other than in accordance with such regulation. This would provide for very tight control. The sale of restricted use pesti-

Third, authorizing stop sale, use, or removal orders and seizure.

It would authorize the Administrator to establish packaging standards to protect children and adults from accidental injury. It would authorize the Administrator to regulate pesticide and container disposal. to issue experimental use permits, to conduct research, and to monitor pesticide use and presence in the environment.

It would prohibit the Administrator from considering data submitted in support of one application from being considered in support of any other application for registration unless a reasonable share of the cost of producing the test data to be relied upon is paid by the second applicant. The cost of testing a product to determine the pests for which it is effective, the commodities on which it can be safely used, and the proper method of application may be very great. If the product is not patentable or if the patent protection has expired, there is nothing at present to prevent a competitor from registering a similar product and establishing efficacy and safety through use of the first applicant's data.

The bill would limit appropriations to carry out the act to the period ending June 30, 1975. This would make a review of this legislation necessary prior to that date.

Mr. President, pesticides serve many purposes. They include insecticides, fungicides, rodenticides, herbicides, and nematocides. They are important to the cleanliness and sanitation of our homes, restaurants, hospitals, food processing plants, and other places. They are attack by insects, rodents, and other pests; protect our health from pest-carried diseases, and at the same time protect our food supply, wildlife, and health from the harmful effects which can be caused by misuse of pesticides.

Mr. President, I ask unanimous consent to have printed in the RECORD at this point an explanation of the compromise substitute for the text of H.R. 10729.

There being no objection, the explanation was ordered to be printed in the RECORD, as follows:

EXPLANATION OF COMPROMISE SUBSTITUTE FOR THE TEXT OF H.R. 10729

Mr. President, at the same time that the Committee on Agriculture and Forestry reported this bill I asked that it be referred to the Committee on Commerce. That Committee reported the bill on July 19 with a number of amendments; and since that date the two Committees have been trying to work out the differences between their respective recommendations. There never was any basic difference in purpose; and an amendment in the nature of a substitute has been prepared resolving all of the differences.

DESCRIPTION OF AGRICULTURE AND COMMERCE COMMITTEE STAFFS, SUBSTITUTE FOR TEXT OF H.R. 10729

The substitute consists of the amendment recommended by the Committee on Agriculture and Forestry, plus—

(1) Commerce Committee Amendment No. 1 (registration criteria, with technical modifications. This amendment represents no change in substance, but does constitute a slight clarification in language.

(2) a substitute for Commerce Committee Amendment No. 2 The substitute retains the exclusive use of data provision recommended by this Committee; but provides in addition for a mandatory licensing system

cides could be limited to certified applicators who had proved their ability to use them properly and who faced loss of certification if they used them contrary to regulation. Restrictions imposed by regulation could be changed by the Administrator from time to time as he deemed necessary, relaxing the regulation where that could be safely done so as to make the benefits of the pesticide more easily obtainable, or tightening restrictions where that action appeared necessary to protect health and environment. It is anticipated that only the more dangerous pesticides would be classified for restricted use.

The other major change made by the bill is to extend it to all pesticides intended for use in the United States. Present law applies only to those distributed in interstate commerce. These two changes give the Administrator practically plenary power to assure that every pesticide in the country is properly labeled with adequate cautions and directions and restricted, wherever necessary, to use by trained applicators.

In addition to the two major changes discussed above, the bill would completely revise the Federal Insecticide, Fungicide, and Rodenticide Act. It would strengthen enforcement by:

First, requiring the registration of all pesticide producting establishments and regular submission by them of information;

Second, authorizing entry, inspection, and sampling at places where pesticides are held for sale;

portant to forests, to soil conservation, and to our water supplies which in turn are so dependent upon good forest and soil management. They contribute to the quantity and quality of our food supply from the seed intended for planting to the serving placed on the table. During all stages of production and processing, our food supply must be protected from insects, rodents, weeds, and fungus. Production is helped through the use of plant regulators, defoliants, and dissicants. All of these are necessary to assure the farmer of a bountiful harvest and the consumer of adequate supplies of attractive and nutritious foods at reasonable prices.

However, pesticides do not constitute an unmitigated blessing. The attributes which make them useful and necessary also make them dangerous. A poison which is capable of killing an insect or a rodent may, if not properly used, kill or cause serious injury to useful insects, pets, wildlife, or man. Defoliants improperly used may defoliate useful plants, and herbicides improperly used may kill desirable vegetation. Some pesticides may be too dangerous to use under any circumstances. Others may be used only with the greatest care. In almost all cases, they should be used in accordance wiht carefully prepared directions and cautions.

It is the purpose of this bill to regulate the use of pesticides so as to obtain their benefits and avoid their dangers; provide a bountiful food supply; protect our forests, parks, and homes from at-

under which permission to use test data in return for a reasonable share of the cost of producing the data would be required.

(3) a substitute for Commerce Committee Amendment No. 3. The substitute would prohibit any member of a scientific advisory committee from having a financial or other conflict of interest with respect to any matter considered by such committee. This appears to be in accord with existing general government policy.

(4) a substitute for Commerce Committee Amendment No. 5 (exports). The substitute would—

(A) make producers of pesticides and devices for export subject to section 8 (which authorize the prescription of books and records requirements), and

(B) prohibit the exportation of pesticides prepared for export in accordance with the foreign purchaser's directions if such export would result in adverse effects on the environment of the United States.

Unlike the Commerce Committee Amendment, this provision correctly makes the producers, rather than the pesticides, subject to the recordkeeping requirements; retains and expands the Agriculture Committee provision requiring notice to foreign governments of pesticides banned in the United States; provides a penalty for exportation contrary to its provisions; would require the Administrator, in determining whether export of a pesticide should be banned, to consider whether such a ban would merely shift production to foreign countries (i.e., whether the ban would actually result in any protection to the environment of the United States); and would not require pre-clearance unless the pesticide was one which the Administrator by regulation had listed as one "likely to result in adverse effects on the environme ntof the United States". The Commerce Committee amendment would

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have prohibited exportation of even the most innocuous pesticide packed in accordance with the purchaser's directions until such export had been cleared by the Administrator. The listing of any pesticide as "likely to result in adverse effects" would be subject to judicial review.

(5) a substitute for Commerce Commitee Amendment No. 6 (confidentiality). The substitute would—

(A) keep the Agriculture Committee provision requiring submission of all test data requested by the Administrator;

(B) delete the Agriculture Committee provision requiring the Administrator to make the data called for in the registration statement and other scientific information available to the public within thirty days after registration;

(C) prohibit the disclosure of information or data received or sent pertaining to applications for registration until thirty days prior to registration (or at registration if an emergency or the public health requires that registration not be delayed), and require such data to be made available to the public at that time. If the Administrator determined during such thirty day period on the basis of substantial new evidence or evaluations of data earlier received that the pesticide did not meet the requirements for registration he would have to give the applicant notice of that fact within such period, thereby initiating denial of registration proceedings.

(D) require written communications between the Administrator and any person to be made available to the public upon identifiable request and at reasonable cost; but only subject to such conditions as will not unreasonably interfere with administration of the Act, paragraph (C) above, or the prohibition against disclosure described in paragraph (E) below. The Commerce Committee amendment on this point would have required oral communications to have been out respect to cancellation or change in classification, instead of only until the Administrator's hearing on the suspension; and (2) permits participation by other parties (in addition to the Administrator and registrant) in a suspension hearing conducted prior to suspension of registration.

(9) a substitute for Commerce Committee Amendment No. 15 (specific authorization). The substitute would authorize appropriation for fiscal 1973, 1974, and 1975 not to exceed, respectively, $40 million, $52 million, and $64 million (in lieu of the Commerce Committee figures of $15 million, $25 million, and $35 million.

(10) minor amendments of a technical nature.

(11) a provision for screening imported agricultural commodities to determine pesticide residues that are excessive under the Federal Food, Drug, and Cosmetic Act.

Commerce Committee amendments 4 (penalties), 8 (hearing structure), 10 (authority of local governments to regulate the use of pesticides), 12 (authority of states to register pesticides), 13 (record-keeping by private applicators), and 14 (right of entry) are not included in the substitute.

As part of the agreement with respect to a substitute it was agreed that the following should be included in the legislative history of the bill:

GRADE SECRETS

(1) Information that constitutes a trade secret, financial information which is privileged or confidential, or commercial information the disclosure of which gives a competitor a competitive advantage with respect to the proprietor of the information should be protected from disclosure except under those circumstances enumerated in subsection (c)(1).

General approval is given to "trade secret" as incorporated in the Restatement of Torts.

In determining whether given matter constitutes a trade secret, consideration shall be that in certain circumstances it might be unfair or inequitable for government regulation to require a substantial testing expense to be borne by the first applicant, with subsequent applicants thereby gaining a free ride. On the other hand, unnecessary duplicative testing would represent a wasteful, time-consuming, and costly process resulting in a substantial misallocation of resources. Thus it was decided that fairness and equity require a sharing of the governmentally required cost of producing the test data used in support of an application by an applicant other than the originator of such data. If no agreement can be reached, the Administrator is vested with authority to determine the reasonable share of the cost of the test data used, including subsequent reallocations upon requests for use of such data by additional applicants.

Mr. ALLEN. Mr. President, I ask unanimous consent to have printed in the RECORD a statement by the distinguished Senator from Michigan (Mr. HART).

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR HART

It is my pleasure to rise in support of the substitute measure we are considering. Clearly it is a great step forward from the existing Federal Insecticide, Fungicide and Rodenticide Act, and it is my sincere hope that we will be able to pass it this year. Credit should go to many for the bill we have before us. The Senate Agriculture Committee has done a remarkable job in improving upon the bill sent over from the House. The distinguished Chairman of the Committee (Mr. TALMADGE) and the distinguished Chairman of the Subcommittee on Agricultural Research and General Legislation (Mr. ALLEN) are to be congratulated for their efforts in committee and for their willingness to discuss with members of the Com-

made public, would have been limited to communications between the Administrator and "manufacturers", would not have been conditioned on non-interference with administration, and would not have been limited as described in (C) above.

(E) prohibit disclosure of trade secrets, confidential financial information, or commercial information the disclosure of which may give a competitor a competitive advantage, except to other federal officials, in judicial proceedings, in proceedings under the Act, and to any other person in order to protect the public health. The Administrator's decision to release any information which the registrant or applicant believed to be protected from disclosure would be subject to judicial review by declaratory judgment.

(6) a substitute for Commerce Committee Amendment No. 7 (citizens' suits). The substitute would provide for citizens' suits only against the Administrator for failure to perform non-discretionary acts or failure to investigate and prosecute violations. Unlike the Commerce Committee amendment, citizens' suits would not be authorized against manufacturers, distributors, users, and other persons; and the amendment does not provide for the payment of attorney's and expert witness fees and other litigation costs.

(7) a substitute for Commerce Committee Amendment No. 9 (inclusion of farmworkers in term "man"). The substitute contatin none of the Commerce Committee provisions, but instead make it an unlawful act to use any pesticide in tests on human beings without disclosure of foreseeable consequences and voluntary participation.

(8) a substitute for Commerce Committee Amendment No. 11 (suspension).The substitute contains none of the Commerce Committee provisions, but instead (1) provides that a court stay of a suspension order issued without a hearing shall continue in effect until the Administrator's final decision with given to—

(a) the extent to which the data is independently known to outsiders or is used by outsiders for similar purposes;

(b) the extent to which it is known by insiders;

(c) the extent of the measures taken by an owner to guard its secrecy;

(d) value of the data to the owner and others, including the extent to which, if used in conduct of a business, it would confer a competitive advantage on said owner;

(e) the amount of effort or money expended in developing the data; and

(f) the ease or difficulty with which the data could properly be acquired or duplicated by others.

Deliberation has been given to those circumstances under which it may be proper to release trade secrets. Those instances are set forth in subsection (c) of section 10. In all instances the disclosure shall be done in such a method as to guard the secrecy of the data as much as possible and insure it will not fall into the hands of a competitor.

LEGISLATIVE INTENT WITH RESPECT TO SECTION 3(C)(1)(D)

The change back to section 3(c)(1)(D) as reported by the Agriculture Committee with additions has essentially 2 purposes:

(1) To authorize the Administrator to require a description of *all* relevant tests and their results and

(2) To prevent unnecessary repetitive testing by subsequent applicants.

Thus, all data either voluntarily submitted hereunder or required to be submitted by the Administrator may be used by the Administrator in making determinations of the adequacy of the test data submitted in connection with other applications. As concerns use of such data in *support* of *another* application without permission of the originator of the test data, however, it is recognized mittee on Commerce certain proposed amendments which that committee found desirable. The substitute measure incorporates several of the features of those amendments in what I think most would regard as a highly workable compromise. A testimony to that description may be found in the wide range of support that the initial announcement of this measure has received. It seems to me essential that we make all efforts to keep that support alive and add to it with the purpose of insuring that the bill reported back from the imminent House-Senate Conference resembles the one we consider today to the greatest extent possible.

Certainly the Administration deserves much of the credit for the emergence of this legislation this year. Many of the basic elements of the compromise bill stem from the legislation as originally proposed by the Environmental Protection Agency. Throughout our deliberations on the bill the Administration has repeatedly stressed the need for legislation this year. While I would agree with various Administration spokesmen that legislation is in fact needed, I would hope that they would agree with me that the particular legislation which best serves our needs is the legislation now before the Senate. We have indications that the Administration will support this bill. We would greatly welcome such support at the earliest possible time with the hopes that it will increase the chances for survival of the main features of the bill in conference.

The distinguished Senator from Alabama, Mr. ALLEN, has ably described the basic elements of our bill. It has been a pleasure for me to work with him throughout the development of this legislation, and I look forward to continued joint effort on our part in support of the concepts agreed on. The bill takes important strides in the control of the use of pesticides, the regulation of intrastate shipments and sale of pesticides,

control of exports of pesticides which may inflict unreasonable harm on the environment, the protection of farmworkers from involuntary risks, and the promotion of citizen participation in the regulatory process through comment before administrative agencies and litigation in the courts. It is a tough but fair bill which I would urge my colleagues to enact quickly and work for diligently in conference.

Mr. ALLEN. Mr. President, I would like to acknowledge the effective and diligent work done by the Senator from Michigan (Mr. HART); the Senator from Wisconsin (Mr. NELSON), who is going to speak in just a moment; and the Senator from Illinois (Mr. STEVENSON). Their efforts have contributed so much to the development of this bill. The Senator from Wisconsin prepared his own bill on this subject, S. 660, and the Committee on Agriculture and Forestry took much time on that bill and from the testimony of the Senator from Wisconsin (Mr. NELSON) and the amendments he proposed with the Senator from Michigan (Mr. HART), in developing the amendment recommended by the committee to the Senate.

Subsequent to the time this bill was reported by the Committee on Agriculture and Forestry, the Senators I just mentioned continued in their effort to work for a cleaner environment, for the banning of exports that might adversely affect the environment, and for protection of the farmworkers. Through their efforts and the efforts of other Senators on the two committees, we have been able to present a good bill to the Senate today. I am hopeful the bill will receive the unanimous support of the Senate, and I

essary food and fiber for this country and for much of the free world.

I would also like to commend the chairman of the Committee on Commerce, the Senator from Washington (Mr. MAGNUSON). Through his efforts and those of the chairman of the Committee on Agriculture, the Senator from Georgia (Mr. TALMADGE), the two committees worked together very closely in working out a compromise that I feel should be acceptable to all the divergent interests concerned with this legislation.

So it has been a spirit of compromise that has brought about the agreement that we are submitting to the Senate at this time.

At this time I would like to yield to the distinguished Senator from Wisconsin (Mr. NELSON), who has contributed so much to the reaching of this agreement.

Mr. NELSON. I thank the distinguished Senator from Alabama.

Mr. President, it is not necessary for me to describe each of the provisions of this bill, because they have been clearly presented by other Senators who are members of either the Agriculture Committee or the Commerce Committee. I would like to say, however, that this is an historic piece of legislation. For the first time, we have before us a bill that has come out of the Committee on Agriculture and Forestry and also has been reported by the Commerce Committee, which establishes a rational procedure for the testing, marketing, and controling the use of pesticides. It is a step that has been long overdue. In this country and in other countries we have been indiscriminately admitting into the mar-

It was further argued that because the possible dangers were not proven, they should not be given serious consideration.

The French writer Jacques Ellul claims that there is a "technological imperative" which is the dominating force of our age:

Everything which is technique is necessarily used as soon as it is available, without distinction of good or evil. This is the principal law of our age.

Such a law is not inevitable. Technical possibility can and must be incorporated with human and ethical judgments in making decisions about proceeding from laboratory possibility to societywide application. Nowhere is the need for anticipatory investigate and regulatory mechanisms more appropriate than in the field of toxic and persistent pesticides control.

The record is now abundantly clear that a single strategy of pest control through the use of chemical pesticides has been an economic, environmental, agricultural and public health failure. Not only have we saturated the environment with many toxic poisons that endanger a wide spectrum of living organisms including birds, animals and marine creatures but continued massive use of certain chemicals threaten the production of some crops.

Six years after I introduced the first legislation in Congress to limit the use of DDT, and now after administrative proceedings that extended for some 15 months, we are finally able to anticipate an end to the irrational and excessive

feel that this is an example of what can be accomplished by the diligent efforts of the staffs of the two committees seeking a reasonable compromise on this very delicate subject.

Without the help and hard and dedicated work of Mr. Harker Stanton, from the Committee on Agriculture and Forestry; Mr. Leonard Bickwit and Mr. Michael Brownlee, from the Committee on Commerce; Mr. Bernard Nash, from the Committee on the Judiciary; and the work of the Environmental Protection Agency, starting with Mr. William D. Ruckelshaus, Mr. David Dominick, Deputy Administrator, Mr. Steadman Overman, Mr. Kenneth Wood, and Mr. Charles Fabricant, all of whom made considerable input into the compromise that has been reached, on this bill, we would not have reached this accomplishment.

I must say that it is a much better bill than came out of the Senate Committee on Agriculture and Forestry. As fine a bill as we all felt that was, we believe that the amendments that have been proposed by the distinguished Senator from Wisconsin (Mr. NELSON), the distinguished Senator from Michigan (Mr. HART), and the distinguished Senator from Illinois (Mr. STEVENSON), have made this bill a much better bill, a bill which will protect better the environment, but which will also protect the farmer and those engaged in agriculture in the use of pesticides, and guarantee them the right properly to use pesticides in the tremendous jobs they have of providing the necketplace chemicals for pest control and herbicides for controlling plant life without having any knowledge of the implications of their use.

The Committee on Agriculture and Forestry, its chairman, Mr. TALMADGE and the Senator from Alabama (Mr. ALLEN), have put in long hours on this bill. So have the Senator from Michigan (Mr. HART) and the Commerce Committee spend long hours on this bill. Now, these two committees, together with their staffs, have reached an agreement on a piece of legislation which will probably turn out to be as significant as any environmental legislation that has previously been considered by this Congress. So I wish to commend those Senators and their staffs who have worked so hard on reaching this agreement, and finally producing an effective and sensible bill for the rational control and use of herbicides and pesticides.

Mr. President, a little over a decade ago scientists began raising questions about the environmental damage and human health hazards posed by the unrestricted use of chemical pesticides. At that time anyone calling for improved regulatory programs and controls before toxic pesticides became pervasive in our environment was branded as a "nut."

Like the warnings of Rachel Carson in her 1962 book, "The Silent Spring," expressions of concern about the indiscriminate use of toxic and dangerous chemicals in pest control were dismissed out of hand. It was simply stated that you cannot halt the march of progress. use of this persistent chemical. By the end of this year a ban on all uses of DDT except for some very restricted specific uses and for public health needs becomes effective.

The need for rational control and sensible use of pesticides is compelling. Each year this country produces 1 billion pounds of chemical pesticides. This means a production of 5 pounds of pesticides for every American in this country. At this level we are now facing immediate as well as unknown long-term ecological damage. At this level we are now facing reports that pesticides were involved in the deaths of about 200 people in 1970.

If projections from existing production rates are correct, we must also face the prospect that by 1985 the production of pesticides in this country will approximate 6 billion pounds. To regulate and control toxic and long-lasting chemicals, we are still dependent upon Federal law that has not been updated for 25 years.

The Federal Insecticide, Fungicide, and Rodenticide Act of 1947 requires only that pesticides must be registered before they move in interstate commerce. This authority basically deals with registration and labeling requirements. It has no authority to deal with the actual use or misuse of these chemicals. It does not regulate pesticides moving solely in intrastate commerce. As recent experience has shown, any administrative actions that are undertaken under this law to remove a pesticide from the market are not only exceedingly complex and lengthy, they are also undertaken after

distributions in the market and use in the environment.

Instead of continuing to wait for tragic evidence of pesticide dependence and misuse to force itself upon our consciences, we must institute the legal scientific, and administrative framework to search for hard information and knowledge about pesticides and pest control before these toxic substances become widely used. Passage of H.R. 10729 will indicate that we are finally prepared to impose sensible rules and guidelines for the marketing and use of pesticides.

This January the Senate approved a bill which I introduced last year to establish a 5-year national field demonstration program in integrated pest control. Under the provisions of S. 1794, all the various methods of pest control—biological, physical, as well as chemical—are integrated into a program to best suit the climate and crop conditions in particular agricultural areas.

Now we are considering and debating another major piece of pestiiide legislation. H.R. 10729 seeks to modernize the Federal Insecticide, Fungicide, and Rodenticide Act and give the Environmental Protection Agency the proper administrative tools to both regulate the entry of new pesticides into the market and oversee the actual use and application of these pesticides once they have been registered with EPA.

Both S. 1794 and H.R. 10729 bear the personal mark and reflect the diligent efforts and support of Senator JAMES ALLEN and the Agriculture Committee. Both of these measures were shaped by Senator ALLEN in his Subcommittee on

First, that all pesticides moving in interstate or intrastate commerce be registered with EPA;

Second, that EPA may deny or remove a registration upon a showing of "unreasonable" risks to the environment—including man—in registering a pesticide;

Third, that EPA would be authorized to classify pesticides for general use, or restricted use by qualified applicators, depending upon the hazards;

Fourth, that EPA may cancel registrations following administrative review, and may summarily suspend registrations in the case of an imminent hazard;

Fifth, that establishments producing pesticides be registered with EPA;

Sixth, that the Administrator may issue stop-sale, use, removal, and seizure orders with respect to any pesticide in violation of the act;

Seventh, that citizens be authorized to bring injunctive suits against EPA for failing to perform mandatory duties or for failing to investigate allegations of misuse;

Eighth, that farmworkers be protected from involuntary pesticides experiments; and

Ninth, that EPA may prohibit the export of pesticides under certain conditions and will provide foreign governments of all important decisions on pesticides regulations.

I think it is particularly important that the Agriculture/Commerce agreement reflects the substance of nine of the 11 amendments which Senator HART and I introduced on March 7, 1972. Thus, H.R. 10729, as amended by the Agriculture/Commerce amendments, would contain provisions—

Mr. President, I ask unanimous consent that several editorials commenting on this legislation which were printed in the New York Times, the Washington Post, and the Sheboygan Press be printed at this point in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the New York Times, July 16, 1972]

NEW LAW FOR PESTICIDES

Soon after its return this week the Senate is scheduled to take up a revised pesticide control bill, one of the most important—and controversial—items on its agenda. If the legislation is to serve the interests of the environment, at home and abroad, the Senate bill will have to prevail over its feeble counterpart in the House of Representatives. And if it is to be a really major contribution, it will have to include the strengthening amendments added by Senators Nelsen of Wisconsin and Hart of Michigan.

Even the basic Senate bill is superior to the House version, which would require pesticide manufacturers to file only minimal information and would, in effect, relieve them of having to prove that a product is both safe and necessary before it can be registered. Even worse, it would indemnify manufacturers for financial loss, should the Government feel compelled to rule a noxious chemical off the market.

Among the Senate amendments, which await only formal approval by the Commerce Committee, three are outstanding. One would require a manufacturer applying for registration of a product to report all its test data to the Environmental Protection Agency and to insure that no pertinent information be hidden from public disclosure on the ground that it is a "trade secret."

Another would permit citizen suits against both manufacturer and the E.P.A. for alleged failure to perform a mandatory duty

Research and General Legislation and his contributions to these two major pieces of pesticides legislation have been significant.

H.R. 10729 also was referred to the Commerce Committee where the efforts of Senator HART contributed additional substance to the legislation before us. In reporting H.R. 10729 to the Senate on July 19, 1972, the Commerce Committee proposed 15 amendments. As a cosponsor with Senator HART of a majority of these amendments it is my opinion that these provisions give important additional authority to the Environmental Protection Agency to protect the environment and the public from the misuse of unnecessary or dangerous pesticides.

The package of amendments now before us reflect a reasonable compromise agreement between the Agriculture Committee and the Commerce Committee. Each participant in this agreement may have some reservations about particular provisions that have been added or about particular provisions that have been deleted.

No one should have any doubt, however, that this agreement marks a major and significant improvement over present authority to control pesticides. No one should have any doubts about the concern for environmental quality which is expressed in this bill with the addition of the Agriculture/Commerce package of amendments.

H.R. 19729, as amended by the Agriculture/Commerce agreement, would provide:

First, that would change the standard of registration of a pesticide from no "substantial adverse effects" on human beings or on the environment to no "unreasonable adverse effects" thereby requiring an assessment of the social costs and the social benefits of any pesticides application;

Second, that the test data submitted by manufacturers in support of a pesticide registration will be made available to the public 30 days before a decision to register a pesticide becomes effective;

Third, that test data shall be available to manufacturers who are willing to share the costs;

Fourth, that if a pesticide is likely to be used differently than indicated by the label with possible adverse environmental effects, it would be classified for restricted use by certifiated applicators;

Fifth, that members of scientific advisory committees shall have no financial or other conflict of interest;

Sixth, that would not offer any indemnity to manufacturers whose pesticides are removed from the market by cancellation or suspension of their registration;

Seventh, that citizens suits would be allowed for the enforcement of the act;

Eighth, that would provide that the public would have a right to participate in most suspension procedures; and

Ninth, that would give EPA the authority to control exports of pesticides under certain conditions and also require the Administrator to inform foreign governments of important decisions in domestic pesticide regulation.

in connection with the registration process. And a third would require that foreign nations and international agencies be fully warned of the danger of those pesticides which the United States bans at home but allows to be exported. A terrifying example is the fungicide used to treat grain shipments intended for seed, which has caused the deaths of hundreds of Iraqis who unwittingly used the seed for bread.

These and a dozen other strengthening amendments will be treated as a block on the Senate floor. If they are approved, opponents will have to chip away at them one by one, which should be difficult. If they are voted down *en bloc*, then their proponents will have to reintroduce them one by one, which will be even harder.

Congressional environmentalists will need all the public backing they can get for the floor fight and for the conference committee battle to follow.

[From the Washington Post, March 12, 1972]

THE NEED FOR PESTICIDE CONTROL

No one who has enjoyed the bounty of farmers have done well in supplying the nation with food. The production rate since 1940 is phenomenal; according to the Department of Agriculture, the production of 17 major crops in 1969, if produced with the average yields of 1940, would have required almost 300 million acres more land than was actually used—a land area equivalent in size to the states of Texas, New Mexico and Arizona. One reason many of these farmland miracles have occurred is the wide application of pesticides, the highly toxic chemicals that include insecticides, herbicides, fungicides, rodenticides, fumigants and a small sea of related products. An estimated one billion pounds of pesticides are produced annually, about five pounds for every American.

The trouble with these pesticides is that not only are pests destroyed but so also are

large parts of the environment and wildlife. Russel E. Train, chairman of the Council on Environmental Quality, has noted that in 1970 pesticides were involved in the death of about 200 people in the United States: those are the acute effects, saying nothing about chronic effects which take years or even generations to become apparent. The list of ecological damage caused by pesticides is long, starting with at least six million fish killed in one recent year. That these sad and tragic conditions exist may be traced to a number of causes, including a weak law passed by Congress in 1947, lax enforcement by the Department of Agriculture and a chemical industry not always overly concerned with questions of health and ecology.

The question of how to control the use and abuse of pesticides is expected to be settled in this session of Congress. Exhaustive hearings have been held, indicating once again the complexity of protecting the public's health and its environment when issues of technology and profits are concerned. The House has already passed a pesticide control bill. But despite some useful sections it is generally weak and hardly a major improvement over existing law. The nation's pesticide makers support the bulk of the House approach, and it is small wonder why. Among other things, the bill provides indemnification for chemical firms suffering losses as a result of owning a pesticide that was suspended as hazardous. As Senator Nelson has pointed out, suspending a pesticide is similar to other recalls in the marketplace—of defective cars or poisonous soups, for example. The government does not hand over money to these manufacturers for their hazards. So why the chemical makers?

Another weakness—one pointed out by David Dominick of the Environmental Protection Agency—is that EPA, in registering a pesticide, would not be allowed to look at test information already submitted by other manufacturers; thus, as Mr. Dominick points measure of doubtful future is a water pollution control bill that left the Senate in robust health four months ago only to emerge enfeebled last week from the House Public Works Committee .

An especially strange concept embedded in the committee's approach to pesticide control is the novel provision that if a noxious chemical is ruled off the market, its manufacturer must be indemnified. David Dominick of the Environmental Protection Agency characterized the idea, rather too mildly, as "a bad precedent." Why should taxpayers be asked to compensate toy manufacturers for removing inflammable dolls from the market or soup makers for calling in poisoned cans?

Another House provision, concerning test data, would foster monopoly and restrict pesticide business to large manufacturers; still another would sanction a pesticide so long as it was safe if used as directed regardless of how dangerous it might be when misused.

Going beyond E.P.A.'s laudable recommendations to knock out these unsound proposals, Senators Nelson of Wisconsin and Hart of Michigan would provide for class action suits when Government fails to protect the public against dangerous pesticides. They would require that full information on these chemicals be made available at the time they are registered. For these and Mr. Dominick's objectives the Senators should be encouraged to make this a far from Silent Spring.

[From The Sheboygan (Wis.) Press, May 11, 1972]

THOSE PESTICIDES

Last November, the House approved legislation known as the Federal Environmental Pesticides Control Act.

It would require all pesticides to be registered with the Environmental Protection Agency and would set up general and restricted use categories. Only agency-certified applicators would be authorized to use pesticides had unknown and cumulative effects on plants, animals and humans. A few years later scientists discovered harmful buildups of DDT and other chemicals in birds and fish and that Americans carry in their bodies an average of 12 parts per million of pesticide residues. This is nearly twice the level allowed for most foods in interstate commerce.

This is frightening, of course, but the fact remains that a great many Americans are living to a ripe old age and that the life span has been increasing. There is also the estimate by the Department of Agriculture that without pesticides there would be a 30 per cent drop in crop production and a 25 per cent loss of livestock. If that should happen, the resulting increase in food prices probably would have a greater adverse effect on the health of many Americans than the amount of pesticide residue in their systems.

Stricter controls over the use of pesticides undoubtedly are needed. Manufacturers are turning out one billion pounds of pesticides each year—five pounds for every American. The problem is to provide the needed controls without drastically cutting production. One possibility is that out of the current debate will come greater reliance on such control methods as insect predators, sterlization, pest diseases and the development of crop strains that are more resistant to pests. Thus, the sometimes heated debate could serve as a spur for such efforts.

[From the Washington Post, July 21, 1972]

CONTROLLING PESTICIDES

As if the weather wasn't hot enough already, a heated debate is expected soon on the Senate floor on the need for pesticide control. Unless total inertia takes over, Congress is likely to produce pesticide legislation this session. Last winter, the House acted; although its bill had useful sections it was generally weak and no great advance over

out, the House bill can "afford additional economic protection, foster monopoly, and it may tend to restrict pesticide business to large manufacturers."

A Senate Agriculture subcommittee is at work on legislation and will conclude hearings shortly. Senators Hart and Nelson have offered a series of amendments—ones largely supported by environmental and conservation groups—that are needed if real, rather than cosmetic, control is to be had. One amendment, for example, provides for citizen suits, allowing a citizen to enforce compliance when the government fails to act against a violator. Another amendment—also involving the public—asks that the facts about a pesticide be made available when application is made by the manufacturer to EPA; thus, its registration could be contested by the public and the scientific community.

As with the current struggle to get a clean water bill through Congress, immense effort goes into the process. Once these environmental laws are passed, the public will be forced to live with them for some time to come. Unless strong controls against pesticides are made now, the Congress might as well not have bothered. Twenty years ago, there was a certain innocence about spraying the land to get rid of bugs; but we know better now. Our land and ourselves are being poisoned, too.

[From the New York Times, Mar. 20, 1972]

FOR A NOISY SPRING

Two major bills for improving the environment are approaching legislative crises that will determine whether they are to be mere gestures or serious advances. A revised pesticide control law passed by the House will have to be greatly strengthened in the Senate if it is to afford more than weak protection against toxic substances that kill not only insects and fungi but fish, birds and mammals as well, including humans. The other restricted pesticides. The legislation also provides for indemnity payments to manufacturers of pesticides whose registrations were cancelled by EPA because the substances were found to be hazardous.

A Senate Agriculture Subcommittee has the bill under consideration. It is possible that after some amendments have been accepted, final action on the measure will be taken before the end of the current session.

Senator Gaylord Nelson of Wisconsin and Senator Philip A. Hart of Michigan have introduced 11 amendments. Their proposals include toughening the registration criteria, requiring that manufacturers' test data be made public before registration, classifying more pesticides for restricted use, and eliminating the provision requiring indemnity payments to manufacturers. Senator Adlai Stevension III of Illinois is the sponsor of an amendment to help protect farmers and laborers exposed to pesticides. It has been estimated that as many as 800 workers are killed and more than 80,000 injured annually by agricultural chemicals.

Federal laws on the use of pesticides have undergone little change since 1947. Linda Billings of the Sierra Club contended at a subcommittee hearing that there is need for a profound and complete overhaul in the way this country deals with pesticides. Weldon Barton of the National Farmers Union testified that "there's something of a balance you have to strike between protection of the environment and continued food production." Then, there is the following assertion by John M. Stackhouse of the National Agricultural Chemicals Association:

"Pesticides are registered on the basis of a lot of work and a lot of scientific information. They're being criticized on the basis of a lot of emotion."

Without doubt, much emotion is involved. The debate started a decade ago wih publication of Rachel Carson's "Silent Spring." The argument in this book was that many existing law. There is no denying that pesticides have caused many farmland miracles by killing off destructive insects, pests, herbs, fungi and rodents. Along with the miracles, however, tragedies have occurred also. Chairman Russell E. Train of the Council on Environmental Quality reports that in 1970 pesticides were involved in the death of about 200 people. Ecological damage has been intense, not to mention long-range risks that take years, even decades, to run their course.

The Senate Agriculture Committee approved a bill that is superior to the House bill. It rejects, for example, indemnification for chemical companies suffering cash-register losses when a pesticide is banned as hazardous. This was a wise decision; why should an industry be paid for its mistakes? Despite this improvement and others in the Senate bill, additional strictness is needed. Senators Hart, Nelson and Stevenson have offered a series of amendments that are fair and logical, and would go far to protect farm workers, the food supply and the environment. These amendments have been adopted by the Commerce Department. One amendment, for example, would allow for the first time adequate control of pesticides sold to foreign countries. A fear exists that although DDT has been banned in the United States, its export to foreign nations may one day return to haunt us. Another amendment would require the Environmental Protection Agency to disclose nontrade secret information submitted by a manufacturer before approval of a pesticide is given. Currently, the public is cut off from such facts; thus, the public cannot contest the registration of a pesticide until after the fact. A third amendment would allow citizens to bring suit against violators of the law and against the EPA for failure to perform mandatory duties.

The Senate debate will be watched closely, not only by the chemical industry but also by a large number of conservation, environ-

mental, consumer, labor and farm groups. In the past, the latter bloc was not especially attentive to possible pesticide dangers. But now the dangers are no longer merely possible; many are actual. The Senate has an excellent chance to do what the House has not: control the use of pesticides and forbid their abuse.

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. Mr. President, I will say to my distinguished chairman that I yield back to him such time as remains of the time allotted to me.

Mr. TALMADGE. Mr. President, I yield back the remainder of my time.

Mr. AIKEN. Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment in the nature of a substitute (putting the question).

The amendment was agreed to.

The amendment was ordered to be engrossed and the bill to be read a third time.

The bill was read the third time.

Mr. TALMADGE. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. TALMADGE. I believe the yeas and nays have been ordered; have they not?

The PRESIDING OFFICER. The Senator is correct.

Do Senators yield back their time?

Mr. TALMADGE. I yield back the remainder of my time.

Mr. AIKEN. Mr. President, I yield all

Mr. TUNNEY. Mr. President, only in the last few centuries has man made more than a trivial impact on the biological events of the world. But in that time, through his technology, he has taken from nature what cannot be replaced and created wastes which cannot be absorbed into natural cycles. This must be taken into strong consideration while discussing the whole question of pesticide legislation.

H.R. 10729 addresses the control and use of pesticides and ways to prevent their misuse. Clearly, we can approach solutions in the United States by enacting strong and workable guidelines; but the use of pesticides in foreign countries is, to a very great extent, not within our control, nor should it be. The fact, however, remains that we do import vast quantities of agricultural commodities. Since we are talking about the same American consumer, whether he is eating domestic or imported food—and often he does not know—he should be guaranteed equal protection.

In order to provide that protection I offered to the committees an amendment to the Federal Insecticide, Fungicide, Rodenticide Act which will require the Secretary of Agriculture and the Secretary of Health, Education, and Welfare to initiate and carry out an intensive quality control screening system at the ports of entry and in the market basket to detect pesticide residues.

This screening will complement the existing monitoring program already in operation by the respective departments. I believe additional screening for quality control of imports reaching the Amer-

Mr. President, based on information I have received from highly qualified specialists, including veterinary public health officials, toxicologists, and physicians, I believe that much of the meat, poultry, citrus, coffee, and other agricultural commodites imported by the United States contain dangerous levels of pesticide residues.

Given even normal agricultural application of pesticides—and this is something which varies from country to country because of different environmental considerations, disease control and other variables—it is clearly fallacious to believe that the products we import are not contaminated to some degree or other. And it is precisely that degree with which I am concerned and precisely that degree which I believe we do not know. Tables published by the Food and Drug Administration show that dangerous pesticides are present in samples taken by their inspectors and those samples contain in almost every case higher levels of residue than do domestic samples. Many countries which export to the United States do not have laws regulating the use of pesticides, and in those which do, they are often not enforced. Latin America, alone, exports 480 million pounds of fresh and cooked meat to this country, and many of those countries do not even have laboratories capable of performing the necessary assays to determine pesticide residue levels.

In addition, the amendment requires that to the degree practicable, additional research shall utilize data on consumption patterns at different socioeconomic levels.

time on this side.

The PRESIDING OFFICER. All time has been yielded back.

ORDER TO PROCEED TO S. 3987, A BILL TO REPLACE THE VOCATIONAL REHABILITATION ACT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, upon the disposition of H.R. 10729, on which the Senate is about to vote, the Senate proceed to the consideration of S. 3987, a bill to replace the Vocational Rehabilitation Act.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR JAVITS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, immediately following the remarks of the able Senator from Indiana under the order previously entered, the distinguished Senator from New York (Mr. JAVITS) be recognized not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1972

The Senate continued with the consideration of the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

ican table is necessary for several reasons.

Just as DDT accumulates in the physical environment, that and other chlorinated hydrocarbons and organophosphates accumulate in man and animal—in varying degrees. It is unknown, at present, exactly what this accumulation ultimately means but it is clear that we cannot afford to risk public health for the sake of questionable expediences. In short, any positive approach to a solution of pesticide contamination of our environment must be predicated on a total knowledge of all sources of contamination. Imported agricultural commodities are a factor and must be considered as such. Accordingly we must define as precisely as is statistically possible the quality of all commodities including imports which ultimately comprise the American diet.

The General Accounting Office, in its report of February 18, 1972, recognized the problem of pesticide residues in imported meats and made very specific recommendations to Congress for better inspection and improved methods of adminstration regarding that inspection. According to their report, many plants in foreign countries were inspected only once in a 10-month period. Their report stated, and I quote:

> United States consumers may not have been adequately safeguarded from imported meat and meat products processed under unsatisfactory conditions.

The Food and Drug Administration views pesticide residues a "worrisome threat to the food supply."

I believe this is very important. The Department of Agriculture itself has reported that one of the problems of lower cost processed meat has been pesticide residue.

Consumptive patterns are changing in the United States. More and more people are looking for substitutes for red meat—in many cases the substitute being processed meat. The Department has never statistically sampled imported processed meat, for example, and this was one of the specific recommendations made by the GAO.

Therefore, the obvious conclusion is that although we do know that residues are present in imports we do not know as much as we should.

I believe that foreign countries want to meet U.S. standards because they are, of course, interested in the welfare of their own citizens, as well as their need for export markets. Obviously, the necessary equipment is expensive and technicians to perform analyses require extensive training. Other national budgets may not be able to make that a priority, but the U.S. consumer is statutorily guaranteed inspection equal to U.S. standards. U.S. monitoring systems have, in the past, been instrumental in the enactment of pesticide legislation in other countries. For example, in 1968 Argentina banned the use of dieldrin and heptachlor specifically because of problems with export shipments to the United States.

Therefore, qualitative knowledge of pesticide residues in imported products will allow the United States to contribute

useful and informative data at the international level. And in this respect, I am talking specifically about U.S. contributions to the Codex Alimentarius—an international body concerned with food standards for direct and indirect food additives such as pesticides or drug residues.

International harmonization of standards is sure to have greater importance as more and more knowledge of the problem is known. For developing countries, this knowledge will aid in establishment of food legislation that provides adequate standards for consumer protection as well as assisting in the promotion of their exports.

Mr. PACKWOOD. Mr. President, as a cosponsor of the compromise measure worked out by the Senate Agriculture and Forestry Committee and the Commerce Committee, I want to express my appreciation to the members of those committees for their perseverance in developing the pesticide amendments we are voting on today.

This package has evolved through much agony, deliberation, argument, reflection, and compromise. Each has had to give some.

Effective pesticide legislation is an essential part of our environmental efforts here in the Senate. In my opinion the House has deserted the ship, and forced upon this Congress and the Nation an inadequate and weak bill. We have a chance to improve upon that sad picture, and while the compromise proposal before us may in some instances fall short of our high goals at the outset, I believe Committee on Agriculture and Forestry and the Committee on Commerce for their diligent efforts in compromising the two very different bills that emerged from the committees.

PRESERVES FARM USES

The bill now before us is of some historic significance in that it is sponsored by nearly all the members of the two committees. It has the general support of farmers and environmental groups as well.

The bill, which was conceived nearly 20 months ago in President Nixon's message on the environment, is a true product of the American way of government in that all viewpoints have been considered and melded together into a piece of legislation that we can all live with.

ENVIRONMENTAL PROTECTION

For the first time the Federal Government will have the tools to protect our environment from the abuses of unsafe pesticides while at the same time make available safe and efficacious products to enable our farmers to continue to supply an abundance of food and fiber at reasonable prices.

Mr. President, I will not attempt to reiterate here the specifics of this bill which have been so thoroughly explained by the Senator from Alabama. I would urge swift passage by the Senate of this landmark legislation in order that we may go to conference with the other body and send a final bill to the President for his signature at an early date.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass? On this question, the Senator from Pennsylvania (Mr. SCOTT), and the Senator from Texas (Mr. TOWER) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senators from Ohio (Mr. SAXBE and Mr. TAFT) and the Senator from Vermont (Mr. STAFFORD) are absent on official business to attend the Interparliamentary Union meeting.

The Senator from Kentucky (Mr. COOPER), the Senator from Florida (Mr. GURNEY), and the Senator from North Dakota (Mr. YOUNG) are detained on official business.

If present and voting the Senator from Kentucky (Mr. COOPER), the Senator from Florida (Mr. GURNEY), the Senator from Illinois (Mr. PERCY), and the Senator from Texas (Mr. TOWER) would each vote "yea."

The result was announced—yeas 71, nays 0, as follows:

[No. 476 Leg.]

YEAS—71

Aiken	Edwards	Mondale
Allen	Ervin	Montoya
Anderson	Fannin	Moss
Bayh	Fong	Muskie
Beall	Gambrell	Nelson
Bellmon	Gravel	Packwood
Bennett	Hansen	Pastore
Bentsen	Hart	Pearson
Bible	Hartke	Proxmire
Boggs	Hatfield	Randolph
Brooke	Hollings	Ribicoff
Burdick	Hruska	Roth
Byrd, Robert C.	Hughes	Schweiker
Cannon	Inouye	Smith
Case	Jackson	Sparkman
Chiles	Javits	Stennis
Church	Jordan, Idaho	Stevens
Cook	Kennedy	Stevenson
Cotton	Long	Symington

it deserves our wholehearted support as an important corrective step in the control and use of pesticides.

It is my hope that the Senate will approve the compromise today, and that the Senate conferees will hold steadfastly to the Senate version, particularly as it deals with registration criteria, indemnities, judicial review of all actions, prohibition on exports, citizen suits against the Administrator, availability of test data, and exclusive use of data.

As the sponsor of the administration proposal, S. 745, last year, I was dismayed with the setback handed us by the House. S. 745, in my opinion, was a good bill.

Senator NELSON also introduced strong legislation, S. 660. Both of these measures were given consideration by the Agriculture and Forestry Committee, along with the House-passed measure. Indeed, Senator ALLEN consented to hold additional hearings this year in order to give any concerned parties opportunity to comment upon the House bill.

Senator HART is to be commended for his efforts to improve upon the House bill, by working closely with the Agriculture and Forestry Committee.

There has been much time and effort spent on bringing forth the compromise we have before us today; and I hope that all within this Congress and in the administration who are sincerely concerned about our quality of life, will close ranks and stand firm on the Senate improvements.

Mr. DOLE. Mr. President, I wish to thank the Senator from Alabama (Mr. ALLEN) and members of the staff of the

tion the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Missouri (Mr. EAGLETONQ, the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Oklahoma (Mr. HARRIS), the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Rhode Island (Mr. PELL), the Senator from Virginia (Mr. SPONG), the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Wyoming (Mr. MCGEE) and the Senator from North Carolina (Mr. JORDAN) are absent on official business.

I further announce that, if present and voting, the Senator from New Jersey (Mr. WILLIAMS), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from South Dakota (Mr. MCGOVERN), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Arkansas (Mr. FULBRIGHT), and the Senator from Virginia (Mr. SPONG) would each vote "yea."

Mr. COTTON. I announce that the Senator from Colorado (Mr. ALLOTT), the Senators from Tennessee (Mr. BAKER and Mr. BROCK), the Senator from New York (Mr. BUCKLEY), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Illinois (Mr. PERCY), the Senator

Cranston	Magnuson	Talmadge
Curtis	Mansfield	Thurmond
Dole	Mathias	Tunney
Dominick	McClellan	Weicker
Eastland	Miller	

NAYS—0

NOT VOTING—29

Allott	Griffin	Pell
Baker	Gurney	Percy
Brock	Harris	Saxbe
Buckley	Humphrey	Scott
Byrd,	Jordan, N.C.	Spong
Harry F., Jr.	McGee	Stafford
Cooper	McGovern	Taft
Eagleton	McIntyre	Tower
Fulbright	Metcalf	Williams
Goldwater	Mundt	Young

So the bill (H.R. 10729) was passed.

Mr. ALLEN. Mr. President, I move that the Senate insist upon its amendments and request a conference with the House of Representatives and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. TALMADGE, Mr. ALLEN, Mr. HART, Mr. MOSS, Mr. MILLER, Mr. DOLE, and Mr. WEICKER conferees on the part of the Senate.

Mr. ALLEN. Mr. President, I ask unanimous consent that the bill as passed by the Senate be printed.

The PRESIDING OFFICER. Without objection, it is so ordered.

[p. S15900]

1.1k(5)(c) VOL. 118 (1972), Oct. 5: Senate agreed to conference report, pp. S16977–S16981

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT—CONFERENCE REPORT

Mr. ALLEN. Mr. President, I submit a report of the committee of conference on H.R. 10729, and ask for its immediate consideration.

The PRESIDING OFFICER (Mr. PROXMIRE). The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of this day at p. H9175.)

Mr. ALLEN. Mr. President, I ask unanimous consent that the printing of the report as a Senate report be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I ask unanimous consent that Mr. Harker Stanton, Mr. Forrest Reese of the Agriculture and Forestry Committee, and Leonard Bickwit of the Committee on Commerce be allowed to remain in the Chamber during the consideration of the report.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, this conference report was agreed to by all conferees on the part of the Senate and House. There were at least 51 points of difference. The House receded from its disagreement to 32 of these differences. The Senate receded from 7. The remainder were compromised, generally in line with the Senate amendment.

The Senate provision on mandatory licensing of test data was retained with minor modifications. The Senate receded with respect to its disclosure provisions, but the House receded with respect to judicial review of the Administrator's disclosure decisions. The Senate had to yield on its provision banning exports, but the House yielded on the Senate's provision with respect to notification to

Conference substitute. Same.

3. *Senate amendment.* Gives EPA discretion as to the necessity for the physical presence of a certified applicator.

Conference substitute. Same. (section 2 (e)(4))

4. *Senate amendment.* Gives the Administrator discretion as to which provisions of section 2(q)(1) (definition of misbranded) or section 7 (registration of establishments) shall be applicable to any class of device.

Conference substitute. Same. (sections 2 (h), 2(q)(1), and 25(c)(4))

5. *Senate amendment.* Changes the registration criteria from "substantial" to "unreasonable" adverse effects on the environment and change the definition slightly, without making any change in substance.

Conference substitute. Same. (sections 2 (x) and 2(bb) and elsewhere throughout the bill)

6. *Senate amendment.* Defines "imminent hazard" to include a situation involving hazard to survival of endangered species.

Conference substitute. Same, except that it specifies an "unreasonable" hazard. (section 2(l))

7. *Senate amendment.* Defines "ingredient statement" to require all pesticides to show the name and percentage of each active ingredient and the total percentage of inert ingredients.

Conference substitute. Same. (section 2 (m))

8. *Senate amendment.* Requires the establishment registration number to be shown on the label (rather than on accompanying labeling).

Conference substitute. Same. (section 2 (q)(1)(D))

9. *Senate amendment.* Classifies a pesticide as misbranded if "when used in accordance with the requirements of the Act or commonly recognized practice" it causes unreasonable adverse effects on the environment.

foreign governments with respect to pesticides banned in the United States. The House indemnity provision was modified to prohibit indemnities to manufacturers who continue to produce a pesticide without timely notification to the Administrator of facts which would require cancellation. The Senate provision for citizen suits against the Administrator is not included in the conference report, but the judicial review provisions are generally in line with the Senate amendment, and persons adversely affected and who have been parties to the proceedings would be entitled to judicial review.

Mr. President, this is a good report, and I hope it will be agreed to.

I ask unanimous consent at this time that there be inserted in the RECORD a digest of the differences between the two Houses and the manner and method by which those differences were settled.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

SENATE COMMITTEE ON AGRICULTURE AND FORESTRY

(Differences between the Senate amendment to H.R. 10729 and the conference substitute therefor)

1. *Senate amendment.* Deletes "pesticide" from "certified pesticide applicator" in section 2(e) and elsewhere (and similar titles) to avoid confusion with certified public accountants.

Conference substitute. Same.

2. *Senate amendment.* Permits an employee to apply pesticides on his employer's land as a private applicator under section 2(e)(2).

Conference substitute. Makes such effects cause for denial or cancellation of registration, but would not subject manufacturer to criminal penalties for misbranding in such case. (sections 3(c)(5)(D) and 6(b))

10. *Senate amendment.* Excludes nontoxic, vitamin-hormone products not intended for pest destruction from the definition of "plant regulator".

Conference substitute. Same. (section 2(v))

11. *Senate amendment.* Defines "establishment" as a place where pesticides or devices are produced or held for distribution or sale. This would make it clear that a farmer who mixed two pesticides in his spreaders or sprayer would not be required to register as an establishment.

Conference substitute. Same. (section 2(dd))

12. *Senate amendment.* Specifically requires the Administrator to request all test data not in his possession that he needs to make his decision on registraton.

Conference substitute. Not specifically required.

13. *Senate amendment.* Provides for mandatory licensing of test data.

Conference substitute. Same, with some modifications from Senate provision. (section 3(c)(1)(D))

14. *Senate amendment.* Strikes out the requirement for making data available to the public within thirty days after registration and instead—

(A) prohibits the disclosure of information or data received or sent pertaining to applications for registration until thirty days prior to registration (or at registration if an emergency or the public health requires that registration not be delayed), and requires such data to be made available to the public at that time. If the Administrator determined during such thirty-day period on the basis of substantial new evidence or evaluations of data earlier received that the

pesticide did not meet the requirements for registration he would have to give the applicant notice of that fact within such period, thereby initiating denial of registration proceedings.

(B) requires written communications between the Administrator and any person to be made available to the public upon identifiable request and at reasonable cost; but only subject to such conditions as will not unreasonably interfere with administration of the Act, paragraph (A) above, or the prohibition against disclosure described in section 10(c). *Conference substitute.* Does not adopt this amendment.

15. *Senate amendment.* Makes the prohibition against making lack of essentiality more definite by changing it to read "Where two pesticides meet the requirements of this paragraph, one should not be registered in preference to the other."

Conference substitute. Includes both House and Senate provisions on this subject. (section 3(c)(5)(C))

16. *Senate amendment.* Gives the Administrator discretion to give an applicant more than thirty days to make corrections.

Conference substitute. Same. (section 3(c)(6))

17. *Senate amendment.* Permits "other interested persons with the concurrence of the registrant" to contest the denial, cancellation, or suspension of registration, or a change in classification, where the registrant fails to do so.

Conference substitute, Same. (sections 3(c)(6), 3(d)(2), 6(a)(1), 6(b), and 6(b)(4))

18. *Senate amendment.* Authorizes the Administrator to require pesticide packaging and labeling for restricted use to be clearly distinguishable from packaging and labeling for general use.

Conference substitute. Same. (section 3(d)(1)(A))

19. *Senate amendment.* Makes restricted

27. *Senate amendment.* Provides for initiation of change in classification proceedings as an alternative to cancellation proceedings when registration is suspended.

Conference substitute. Same. (section 6(c)(1))

28. *Senate amendment.* Provides for hearings on suspensions except in emergency situations.

Conference substitute. Same. (section 6(c))

29. *Senate amendment.* Provides for judicial review for suspensions (as generally in other cases) in the district court where there has been no hearing, in the court of appeals where there has been a hearing. (House did not provide for an administrative hearing on suspension and therefore provided for judicial review only in the district court.) Under Senate provision, court stay of a suspension order would be effective until final decision with respect to cancellation or change in classification. Under House provision, a new suspension order could be entered as soon as the court ruled that the original order had been ruled not in accordance with legal procedures.

Conference substitute. Same as Senate. (section 6(c))

30. *Senate amendment.* Provides submission of all scientific questions "at the outset of the hearing" to prevent delays through additional references while the hearing is proceeding.

Conference substitute. Provides for submission "at any time before the hearing record is closed", and conditions such submission on concurrence of a party and the Hearing Examiner. (section 6(d))

31. *Senate amendment.* Specifically prohibits any member of a scientific advisory committee from having a financial or other conflict of interest with respect to any matter considered by the committee.

Conference substitute. Same. (section 6(d))

criminal penalties for wrongdoers for which penalties were inadvertently omitted from House bill.

Conference substitute. Same. (sections 14(a)(2) and 14(b)(2))

40. *Senate amendment.* Omits provision for indemnities.

Conference substitute. Contains House provision for indemnities, except that indemnities would be denied a manufacturer who withheld essential information showing that his pesticide should not be registered. (section 15)

41. *Senate amendment.* Provides judicial review for "any person who will be adversely affected" rather than "any party at interest."

Conference substitute. Same, except that it is further limited to persons who had been parties. (section 16(b))

42. *Senate amendment.* Provides for citizen suits against Administrator.

Conference substitute. Omits this provision.

43. *Senate amendment.* Provides for notice to foreign governments whenever a registration or suspension becomes effective or whenever a registration, cancellation, or suspension ceases to be effective.

Conference substitute. Same. (section 17(b))

44. *Senate amendment.* Provides for quality control screening of imported agricultural commodities for pesticide residues.

Conference substitute. Omits this provision.

45. *Senate amendment.* Permits the Administrator (rather than the President by executive order in emergency conditions) to exempt federal or state agenices.

Conference substitute. Permits the Administrator to exempt only in emergency conditions. (section 18)

46. *Senate amendment.* Requires the Administrator to solicit the views of the Secretary of Agriculture before publishing regula-

classification depend in part on the hazards involved in the use of a pesticide "in accordance with a commonly recognized practice".

Conference substitute. Same. (section 3(d)(1)(B) and (C))

20. *Senate amendment.* Subjects restricted use regulations to judicial review.

Conference substitute. Same. (section 3(d)(1)(C)(ii))

21. *Senate amendment.* Specifically subjects a change in classification to judicial review.

Conference substitute. Same. (section 3(d)(2))

22. *Senate amendment.* Makes registration prima facie evidence of compliance as long as no cancellation proceedings are in effect.

Conference substitute. Same. (section 3(f)(2))

23. *Senate amendment.* Makes it clear that EPA can withdraw its approval of a state certification plan.

Conference substitute. Same. (section 4(a) and (b))

24. *Senate amendment.* Allows the Administrator to permit states to issue experimental use permits.

Conference substitute. Same. (section 5(f))

25. *Senate amendment.* Allows the Administrator to permit continued sale or use of a pesticide whose registration is cancelled where not inconsistent with the purposes of the Act.

Conference substitute. Same (sections 6(a)(1), 12(a)(1)(A), and 12(a)(2)(K))

26. *Senate amendment.* Restores the existing cancellation criteria, permits the Administrator to initiate cancellation proceedings either by cancellation notice or hearing notice.

Conference substitute. Substantially the same. (section 6(b))

32. *Senate amendment.* Provides for entry by EPA of any place where pesticides or devices are held for distribution or sale (as well as manufacturing establishments).

Conference substitute. Same, but limits it to entry for purpose of inspecting and obtaining samples. (section 9(a))

33. *Senate amendment.* Describes an illegal pesticide as one "which is adulterated, misbranded, not registered (in the case of a pesticide), or otherwise in violation of this Act".

Conference substitute. Same. (section 9(b))

34. *Senate amendment.* Specifically provides for certification of facts to Attorney General with respect to institution of proceedings for civil penalties.

Conference substitute. Same. (section 9(c))

35. *Senate amendment.* Provides more liberal disclosure policies with respect to trade secrets and other confidential information.

Conference substitute. Adopts House provision. (sections 10(a) and (b))

36. *Senate amendment.* Provides for judicial review of the Administrator's decision to release information which the applicant or registrant believes to be protected from disclosure.

Conference substitute. Same. (section 10(c))

37. *Senate amendment.* Prohibits exportation of pesticides which would result in unreasonable adverse effects on the environment of the United States.

Conference substitute. Omits this provision.

38. *Senate amendment.* Prohibits tests on human beings without adequately informing them and obtaining their voluntary participation.

Conference substitute. Same. (section 12(a)(2)(P))

39. *Senate amendment.* Provides civil and tions.

Conference substitute. Same. (section 21)

47. *Senate amendment.* Authorizes the Administrator to utilize the cooperative state extension srevices in providing information to farmers.

Conference substitute. Same, but "in cooperation with the Secretary of Agriculture." (section 23(c))

48. *Senate amendment.* Makes it clear that a state may provide registration to meet special local needs (subject to disapproval by the Administrator).

Conference substitute. Same. (section 24(c))

49. *Senate amendment.* Extends the appropriation authority for the Act one year to fiscal 1975 and limits to specific amounts.

Conference substitute. Extends to 1975 but without specific amounts. (section 27)

50. *Senate amendment.* Prohibits EPA from charging fees, other than reasonable registration fees.

Conference substitute. Omits this provision, but statement of managers states intent that no fees be charged. (section 27)

51. *Senate amendment.* Makes penalties effective only after the Administrator has taken such action as may be necessary to permit compliance (as well as having issued regulations).

Conference substitute. Same. (section 4(d) of the amending bill)

Mr. ALLEN. Mr. President, I yield to the Senator from Iowa (Mr. MILLER).

Mr. MILLER. Mr. President, I would like to say that the conference report represents the very best that we could arrive at. There were some sharp differences between the House and the Senate conferees over some rather fundamental differences. However, I believe

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that this is a very supportable bill. It does not go into certain elements that the Senate had desired. On the other hand, it does go into certain elements that the Senate did desire. The same thing can be said about the House position.

One of the most difficult areas to be negotiated here had to do with test data use in submitting an application for a certificate. I believe the protection afforded the owner of test data represents an adequate protection, and while I understand that some people who own test data do not wish to have it made available under any circumstances at all, this position would constitute a considerable cost to the Government, and a proper reimbursement approach seemed to be in order.

What we have provided in this particular conference report has been a procedure whereby, through the use of the courts, the owner of the test data can, if he is not satisfied with the award made by the EPA, try to obtain additional amounts of money representing the just compensation due him, and in the meantime he will have the added protection of being able to receive the amount of the award made by the EPA.

I think this is about the best protection that could be afforded to the owner of test data.

I want to commend particularly the Senator from Alabama for the outstanding work his subcommittee did on this bill.

Mr. ALLEN. I thank the Senator from Iowa.

I yield now to the Senator from Wisconsin (Mr. NELSON).

precedent is being established in this bill. There are literally thousands of products in the marketplace which are dangerous. As they are proven by evidence to be dangerous and are removed from the marketplace, each manufacturer will be asking for indemnification from the public citing the precedent of this pesticides bill.

Take the example of cyclamates. The bill that came over from the House indemnifies the users of cyclamates in the production of soft drinks. If that bill should pass in this body as it did in the House, there are estimates that the manufacturers of soft drinks will be entitled to indemnification for economic losses that may range from somewhere around $100 million to $500 million. In addition, a number of food additives are going to be found to be carcinogenic and they are going to have to be removed from the marketplace under the provisions of the Delaney law. Every single one of the manufacturers of these additives is going to ask the Congress for indemnification.

I do not understand why the public should indemnify a manufacturer who put a dangerous product into the marketplace. When the public discovers it is dangerous why should the public then have to pay for the losses on the product a manufacturer has in stock at the time he is ordered to take it out of the marketplace? That is absolutely preposterous and indefensible.

The same principle also applies to prescription drugs. Every single year prescription drugs are being removed from the marketplace because they are

were among those 500 products that were classified on the GRAS list as generally recognized as safe a number of years ago.

Mr. BUCKLEY. I think it would spell out some source of difference if a governmental agency gives instructions to release the substance, and thus encourages or at least does not act to prevent the manufacture. That places the manufacturer operating on the side of no danger; but the Federal agency might be in a different category from these other types of manufacturers of over-the-counter drugs, where there was never any implied approval at a governmental level.

Mr. NELSON. No, I do not think I would agree with the distinguished Senator from New York. Over-the-counter drugs have just been thrown into the marketplace and used over the years without the manufacturer proving that they were safe. The law did not require any proof of safety of over-the-counter drugs. The law did not even require proof of safety as to prescription drugs until 1938. That still does not mean that when the manufacturer puts a dangerous drug into the marketplace we should indemnify him from economic loss. Regardless of what the law is—he manufactured it, he marketed it, and it was his unsafe product. Why should the public have to pay for it?

Mr. BUCKLEY. I agree. It was at his risk. But I was asking specifically whether the cyclamate situation was in a different category, where some agency of the Government may have said at some point, "We have no objection, we find

Mr. NELSON. Mr. President, the bill that the Senate sent to the conference under the leadership of the distinguished Senator from Alabama (Mr. ALLEN) is a far superior bill to the bill that came out of the conference.

I recognize the problem that the Senate conferees had, and there is no doubt that, if they were going to get a bill, they had to compromise. No doubt they got the best bill they could get.

The House bill, when it originally came to the Senate, contained an indemnification provision to pay manufacturers for losses suffered whenever a pesticide is removed from the marketplace because it is hazardous. Wisely, the Senate Committee on Agriculture and Forestry removed that indemnification provision. In the Senate bill which we passed 71 to 0 on September 26 it did not appear. The representatives of the administration supported the amendment of Senator HART and myself to delete the provision for indemnification in the Senate Agriculture Committee. In fact, in response to questions from the distinguished Senator from Alabama (Mr. ALLEN), Mr. David Dominick, representing the Environmental Protection Agency, said:

1. H.R. 10729 provides for the indemnification of persons suffering as a result of owning a pesticide whose registration is subject to suspension followed by a final order of cancellation. The administration bill had no such provision. We believe that this is a bad precedent and the provision particularly as worded in the House bill is unwise.

I just want to call the attention of the Senate to the fact that a very serious found to be unsafe. Upjohn's Panelba and other fixed combination drugs were selling at a rate of about $5 million a year. Then they were removed from the marketplace at the recommendation of the National Research Council of the National Academy of Sciences.

We are going to have thousands and thousands of drugs removed from the marketplace because they are found to be hazardous. We are going to have each manufacturer say to the taxpayers, "Pay us the losses that have resulted as a consequence of our manufacturing and putting into the marketplace a hazardous drug. We think we are entitled to be indemnified." And in addition to the prescription drugs, all of the over-the-counter drugs are presently being reviewed by the FDA.

So we are establishing a precedent in this legislation that may be tremendously expensive.

As a matter of fact, almost $1 billion worth of pesticides were sold last year. As we closely examine these pesticides and find that some of them are hazardous, the manufacturers are going to come in under this provision, and they are going to ask the public to pay for the losses they have suffered on products they have manufactured without adequately testing them in the first place.

Mr. NELSON. I yield.

Mr. BUCKLEY. Did the FDA ever come up with a finding that cyclamates were safe in the first instance?

Mr. NELSON. There was never any specific investigation of safety. The cyclamates, if my memory is correct, no objection to the marketing of this specific product."

Mr. NELSON. I think that the Senator is correct in that there is a slight distinction. But from my own viewpoint, it is not a distinction that justifies indemnification.

It is true that a group of scientists took a look at the existing literature and saw that some products had been used over a long period of time. On the basis of this literature survey and without any tests, it was concluded that some of these products were generally recognized as safe. Then evidence began to be developed over the years, and some of them have been demonstrated not to be safe.

In the cyclamate case, the Food and Drug Administration has now taken the position, I believe, that they do not object to indemnification in that specific case. What they are also saying, I guess, is that the cyclamate case does not set a pecedent as to the rest of the GRAS list.

But I still think the principle must be firmly established that the manufacturer of a product which is inherently dangerous is the one who is responsible for paying his own losses when the Government says, "That is a dangerous product you have put into the marketplace, and therefore you must remove it." Whatever losses occur when a dangerous substance is removed from the marketplace should not be paid for by the taxpayer, any more than General Motors, Ford, Chrysler, or American Motors should be indemnified by the public for putting a car into the marketplace

[p. S16979]

and suddenly discovering at a later date that it is a defective "lemon."

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

Mr. NELSON. When the automakers discover that there is a difficulty in one of their automobiles, they do not come here and say to Congress, "We put an unsafe vehicle into the marketplace and it is costing us a lot of money to take it out of the marketplace, will you indemnify us?"

However, that is the precedent that may be set with this provision in this pesticide bill.

Mr. BUCKLEY. I thank the Senator.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. HART. Mr. President, I have listened with attention, and I think agreement, to the Senator from Wisconsin, that if we had our "druthers" we would have either no indemnity for any manufacturer or a more tightly drawn indemnification section as it relates to the manufacturers.

It is because of the presence of this one aspect in this conference report that I could not quarrel with those who resolved what is really a judgment question as to whether the advances which are clearly contained in the bill are sufficient to justify the regression which is involved in the indemnity clause.

What has emerged, as I see it, is something of a mixed bag, consisting of quite a few pluses as compared to existing law and one rather substantial minus. On Agency of dangers of which they are aware.

The provision nonetheless would allow recovery of indemnity payments in many cases where in my view they are not justified. I fear the provision will to some extent curb incentives by the chemical industry to police itself and may result in unhealthy budgetary pressures on the Administrator when he decides whether or not to suspend a registration.

Balancing these pluses and minuses is of course a question of judgment on which reasonable men may differ. It is my judgment at this time that the gains in this bill outweigh the losses and that enactment is in the public interest. I would have to admit to some uncertainty in this evaluation and would hardly quarrel with those who balance the interests differently. That uncertainty results in large part from an inability to predict what would happen in the next and succeeding Congresses with respect to proposed pesticide legislation were we not to act at this time.

Let me close by congratulating the distinguished chairman of the Agriculture Committee (Mr. TALMADGE) and the distinguished chairman of the Subcommittee on Agricultural Research (Mr. ALLEN) who can be proud of shaping the major features of this legislation. While of course I would have hoped that the bill before us today would have more closely resembled the Senate-passed version, I do believe that what has emerged from conference worthwhile.

Mr. TUNNEY. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Mr. President, the right to object, we have two sides of the aisle here.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that time on the conference report be limited to 5 minutes, to be equally divided between the Senator from Alabama——

Mr. DOLE. I am one of the conferees.

Mr. ROBERT C. BYRD. The Senator from Kansas.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. TUNNEY. Mr. President, will the Senator yield for a question?

Mr. ALLEN. I yield.

Mr. TUNNEY. The Senator from Alabama knows that the Senator from California had an amendment in the bill as it passed the Senate which would have provided for greater inspection of foreign commodities coming into the country. I note that as the bill came from conference, my amendment was stripped from the bill.

I feel that my amendment was a very important one, in that American farmers should not have to subscribe to a greater degree of care for the health of American citizens than do foreign farmers who send their commodities into this country.

I am curious to know why the conferees apparently felt that foreign farmers should have to subscribe to a less intense degree of scrutiny of their commodities than American farmers do.

Mr. ALLEN. I thank the distinguished Senator from California for raising this question.

Certainly his amendment was part of the Senate bill. That is one of the few Senate provisions that did bite the dust

balance I believe our action is sound. The pluses will undoubtedly give this country a great many public health benefits. For the first time pesticides will be subject to regulation through the control of the use of the chemical, rather than merely the manufacturer and labeling of the product. Moreover, procedures for banning pesticides will be greatly streamlined, thus facilitating control of harmful effects before these become widespread. Additional protection has been extended to farmworkers to prevent their exposure to involuntary risks from experimental tests involving pesticides, and coverage of the act will now extend to intrastate manufacture, distribution and use of potentially harmful pesticides, While additional pluses were sought, these constitute a very substantial improvement over the situation under existing law.

The minus involves the indemnity provision, which was included in the House bill but stricken by the Senate. After considerable discussion of this provision in conference a compromise was reached which in my view eliminates some, but certainly not all, of the problems associated with indemnities. The provision is limited to losses incurred by reason of suspensions of dangerous pesticides which pose "imminent hazards" to the public. Such suspensions have occurred under existing law only three times since its inception. Another limitation eliminates payments to those who have produced harmful pesticides without informing the Environmental Protection

would the distinguished manager of the conference report indicate whether he expects to be on this conference report much longer, and, if so, could we get a time limitation?

Mr. ALLEN. Mr. President, I will say to the distinguished Senator from West Virginia, the assistant majority leader, that I did not think it would take more than 2 or 3 minutes when we first started. I would have liked to say something in response to what the Senator from Wisconsin said, which was somewhat of an unfavorable nature, but would have replied in even more detail to the remarks of the Senator from Michigan (Mr. HART), which have been more favorable, and I want to pay tribute to him and his spirit of compromise for the open mind with which he went into the deliberations of the conference committee.

I do not care to add anything further, and would not even press for a rollcall vote.

Mr. TUNNEY. Mr. President, I would like to have 90 seconds for a question.

Mr. ROBERT C. BYRD. Could we get a time limitation? As the majority leader has said, it is the intention to complete H.R. 1 tonight, and while conference reports are important, they could go over until tomorrow, but if we let H.R. 1 go over until tomorrow, the Lord only knows how many more amendments will come out of the woodwork.

Mr. ALLEN. I would be willing to agree to a 5-minute limitation.

Several Senators addressed the Chair.

Mr. DOLE. Mr. President, reserving

in the conference committee deliberation. One reason was that the amendment agreed to in the Senate, where we have no germaneness rule, would not have been germane under the House rules, and a point of order could have been made at that point.

The second reason why it was withdrawn, or the Senate receded to the House position, was the import-export situation regarding farm products. The United States exports some $8 billion in agricultural products, not counting the wheat recently sold to Russia and China. We import some $6 billion worth of goods. The provision that the Senator was advocating would have caused retaliation on the part of other countries.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. ALLEN. I ask unanimous consent that I may have 2 additional minutes.

The PRESIDING OFFICER. The time of the Senator from Alabama has expired, under the unanimous-consent agreement.

Mr. ALLEN. I ask unanimous consent that I may have 2 additional minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ALLEN. So the fear of retaliation, plus the adamant attitude of the House, both as to the provision and to its germaneness, did result in the dropping of the very excellent amendment offered by the distinguished Senator from California.

Mr. TUNNEY. I thank the Senator

from Alabama for characterizing the amendment as excellent.

It was my understanding, in addition—I have just heard this in the last few minutes—that the administration lobbied very heavily against the amendment I offered. I was wondering whether the distinguished Senator has any knowledge of those activities.

Mr. ALLEN. I have no knowledge of any such activity.

Mr. TUNNEY. It seems to me that the sufferers are the American farmers, and it seems to me a great shame that the products of Americans farmers should have to subscribe to a stiffer test than the products of foreign farmers.

Mr. ALLEN. I say to the Senator from California that if he will offer this amendment in the form of a bill, we will see that he gets an early hearing before the subcommittee on which I serve.

Mr. TUNNEY. I thank the Senator.

The PRESIDING OFFICER. The Senator from Kansas has 2½ minutes.

Mr. DOLE. Mr. President, I rise in support of the conference report.

As one of the conferees, and having some interest in the bill, I can say, as the Senator from Michigan said earlier, that there were a number of difficult issues to be resolved.

There was not full satisfaction on the part of the Senate conferees with the indemnity provision. I think many of us felt that it should have been restricted to producers and perhaps retailers and not manufacturers. I believe the question essentially became whether we would have a pesticide bill or break up in disagreement over one issue. In fact, that issue finally was resolved.

So when we look at the entire bill and look at the great work done by the Senator from Alabama and others who held very extensive hearings, in my opinion it is a step forward. If there are some imperfections, they can be resolved in the next session of Congress, as can the amendment referred to by the distinguished Senator from California.

Issues were compromised, as is true in any conference. The issues of citizens' suits, disclosure of data, and payment for data were resolved not to our entire satisfaction; but I believe the question became, in the minds of the conferees, Should there be a bill this year? I felt that in good faith the conferees on the Senate side felt that this bill would be much better than no bill at all, even with some imperfections.

I rise in support of the bill. I think it is a good effort, and I am happy to associate with all those in the Committee on Agriculture and Forestry and the Committee on Commerce in arriving at what I believe is a good beginning.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

[p. S16981]

1.1k(5)(d) VOL. 118 (1972), Oct. 12: House agreed to conference report, pp. H9795–H9798

CONFERENCE REPORT ON H.R. 10729, FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT

Mr. POAGE. Mr. Speaker, I call up the conference report on the bill (H.R. 10729) to amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Texas (Mr. POAGE)?

Mr. YATES. Mr. Speaker, reserving the right to object, as I understand the bill, this is one that contains certain indemnification provisions of not only the manufacturers of pesticides but as well for those using pesticides all the way down the chain. The provisions may possibly be more drastic than the provisions for indemnification that were contained in the cyclamate bill that was passed by the House recently.

Mr. Speaker, I have no will to object to consideration of the bill. All that I want to do is alert the House to the fact that the bill does contain such provision, and that those of us who oppose the bill want to be given an opportunity to have a vote on the bill. If that be so, I will withdraw my reservation of objection.

The SPEAKER. Of course, the House has control always over the form of the vote and whether a vote will be taken.

Mr. YATES. There will be a vote taken?

The SPEAKER. There will be a vote.

Mr. YATES. All right. I withdraw my reservation of objection.

Mr. SEIBERLING. Mr. Speaker, reserving the right to object, I would just like to observe that this bill is following a precedent that we, unfortunately, established in connection with the cyclamate bill of indemnifying manufacturers who put out substances which are harmful, if found to be harmful. I simply want to record the fact that this bill has a very undesirable aspect.

Mr. YATES. Mr. Speaker, will the gentleman yield?

Mr. SEIBERLING. I yield to the gentleman from Illinois.

Mr. YATES. The bill goes further than that. It not only presupposes to indemnify the manufacturers; it also presupposes to indemnify those who have bought the pesticides and who have stored them, intending to use them. intending to use them. They, too, may be indemnified under the terms of this bill.

Mr. SEIBERLING. Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of October 5, 1972.)

Mr. POAGE (during the reading). Mr. Speaker, I ask unanimous consent that the statement be considered as read.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. POAGE. Mr. Speaker, this conference report does not involve any new principles that were not in the House bill. In fact, the provisions that are put in here are provisions limiting the scope of the House bill. We did come to a real compromise. The conferees on the part of both Houses were in unanimous agreement, and every conferee signed the report, and every viewpoint was represented.

Among the conferees of the House are W. R. POAGE, W. M. ABBITT, BERNIE SISK, JOHN DOW—who did not agree with some of us when the bill was before the House—PAGE BELCHER, GEORGE GOODLING, and JOHN KYL.

The Senate position involved such a difference of viewpoint as those held by Senator HART, Senator MILLER, Senator DOLE, and Senator ALLEN.

There was a very decided difference of opinion among the conferees. We did seriously work out those differences. Those who have expressed some fear that the conferees were too liberal with indemnities should remember that some of those who signed the report were most active in the effort on the floor of the House to refuse any indemnity. We did accept compromise.

The provision as to indemnity does not give anyone who holds any of these pesticides which may have been prohibited the right to get paid for it if it was produced after registration is withdrawn. It only gives that right to those who hold pesticides which were produced under a valid license from the United States, and who had not been notified by the Environmental Agency that that pesticide might be dangerous.

We do provide that in the event of any feeling on the part of the Environmental Agency that a compound might be dangerous they might notify the manufacturer that they were going to hold a hearing on it, and from that moment on, the manufacturer could not receive any indemnity for what he produced.

We think it is a fair and equitable provision. We believe we are presenting an equitable compromise in this report. We have represented all viewpoints. We hope the House will approve the conference report.

Mr. Speaker, I yield to the gentleman from Iowa.

(Mr. KYL asked and was given permission to revise and extend his remarks.)

Mr. KYL. Mr. Speaker, I include with my remarks a section-by-section synopsis of the major provisions of the conference pesticide bill prepared by the Environmental Protection Agency:

SECTION-BY-SECTION SYNOPSIS OF THE MAJOR PROVISIONS OF THE CONFERENCE PESTICIDE BILL

Section 1 of the bill states its purpose and title.

Section 2 of the bill sets forth the amendments to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended:

AMENDMENTS TO FIFRA

Section 1. Short Title and Table of Contents.

Section 2. Definitions.

Section 3. Registration of Pesticides.

1. With certain exceptions, any pesticide in U.S. trade must be registered with the Administrator.

2. In order to obtain registration, a pesticide producer must submit an application identifying himself and the pesticide, showing the labeling, and stating claims to be

made, directions for use, the pesticide formula, requested classification, and test data and results which support the claims made.

The Administrator may not consider the test data supporting one application in support of another application without the originator's permission or unless the second applicant has first offered to pay reasonable compensation for the test data. If the parties cannot agree on the amount and method of payment, the Administrator makes the determination. If the owner of the test data does not agree with the determination, he may appeal to a Federal district court. The court may not determine that the amount of payment should be less than that determined by the Administrator.

3. All information except trade secrets and privileged information in support of registration must be made available to the public within 30 days of the registration.

4. A pesticide which meets the requirements of the Act shall be registered, and nonessentiality cannot be a criterion for denial of registration.

5. If registration is denied, notice of the denial and reasons for denial must be published in the Federal Register. The applicant then has recourse to administrative and judicial appeals.

6. Registered pesticides will be classified for either general use or restricted use. A pesticide would be restricted because of its potential for harm to either human health or the environment.

The Administrator may require that the packaging and labeling of a pesticide for its restricted uses be clearly distinguishable from its general uses.

A restricted use pesticide which is a hazard to human health is subject to the restriction that it be applied by a certified pesticide applicator, who is certified by the State according to standards set by the Administrator and may be either a commercial or private certified applicator.

deficiency or request a public hearing. The Administrator may also decide to hold a hearing on a registration to determine whether or not cancellation or change in classification should ensue.

3. At any time during a hearing a question of relevant scientific fact may be referred by the Hearing Examiner to a Committee of the National Academy of Sciences for a report. The Hearing Examiner may also compel testimony or production of documents by subpoena. Within 90 days from the close of a hearing the Administrator must issue an order regarding the registration in question.

4. If the Administrator finds such action necessary to prevent an imminent hazard to health or the environment during the pendency of cancellation or change in classification proceedings, he may suspend the registration after 5 days notice to the registrant, who may within that period request an expedited hearing on the imminent hazard finding. The suspension order would not take effect until any requested hearing had been completed.

The Administrator may issue an emergency suspension order, taking effect immediately, when necessary; and any subsequent hearing would be expedited.

5. Final orders of the Administrator under this section are subject to judicial review under section 16. However, orders issued prior to hearing would be reviewed in an appropriate district court.

Section 7. Registration of Establishments

1. Pesticide producing establishments are required to be registered with the Administrator.

2. Producers are required to submit upon initial registration and annually information on the amount of pesticides produced, distributed, and sold.

Section 8. Books and Records

1. The Administrator may require pesticide and device producers to maintain records respecting their operations which are

1. No regulations under the Act may require a private applicator to maintain records or file reports.

2. Private and commercial applicator certification standards set by the Administrator must be separate.

Section 12. Unlawful Acts

A number of unlawful acts are contained in the section which relate to the requirements of the other sections of the bill pertaining to registration of pesticides and producing establishments, record-keeping and reporting, pesticide use, and others. Additional unlawful acts include not giving a pesticide's classification when advertising and failure to fully inform persons involved in pesticide testing.

Secton 13. Stop Sale, Use, Removal, and Seizure

1. When it appears a pesticide is in violation of the Act or its registration has been suspended or cancelled by final order, the Administrator may issue a "stop sale, use, or removal" order to any person.

2. Pesticides in violation of the Act may be seized, as may misbranded devices and pesticides which have an unreasonable adverse effect on the environment even when used in accordance with requirements and as directed on the labeling.

Section 14. Penalties

1. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor is liable to a $5,000 civil penalty for an Act violation. Private applicators and other persons are liable only to a $1,000 civil penalty on their second and subsequent offenses. Opportunity for hearing is required prior to assessment of a civil penalty.

2. Any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor is liable to a penalty of $25,000 or 1 year in prison or both upon conviction for a misdemeanor. Private applicators and other persons are liable to $1,000 or 30 days in prison or both. Persons who reveal formula infor-

A pesticide classified for restricted use because it could harm both health and the environment can be made subject to other restrictions by regulation, which are reviewable in a court of appeals.

The Administrator may change a pesticide classification but the action is subject to administrative and judicial review.

Section 4. Use of Restricted Use Pesticides; Certified Applicators

1. The Administrator sets minimum standards for the certification of applicators, which are to be separate for private and commercial applicators.

2. Certification will be accomplished by State programs whose plans are approved by the Administrator. The Administrator may withdraw approval of a State plan if the program is not maintained in accordance with it.

Section 5. Experimental Use Permits

1. The Administrator may issue permits and set the terms for the experimental use of a pesticide in order to gather data for registration, and may establish a temporary pesticide residue tolerance level for that purpose.

2. The Administrator may authorize a State to issue experimental use permits under an approved plan.

Section 6. Administrative Review; Suspension

1. Registrations are automatically cancelled after 5 years unless a request is made that they be continued.

2. If the Administrator has reason to believe a registered pesticide does not comply with the Act or that it, when "used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment", he may move to cancel the registration or change the classification of the pesticide. The registrant is notified and may correct the necessary for enforcement of the Act.

2. Records on the location and movement of pesticides or devices are to be accessible to the Administrator's agent upon request for inspection and copying.

3. Financial, sales, pricing, personnel, and research data are excluded from the above requirements.

Section 9. Inspection of Establishments

1. The Administrator's agent may enter any establishment or other place where pesticides or devices are held for distribution or sale, inspect pesticides or devices, and take samples. The agent must state a sufficient reason for his action.

2. A warrant to enter a place and inspect and reproduce records may be obtained when the Administrator's agent shows there is reason to believe the Act has been violated.

3. If a violation of the Act appears to have occurred, the Administrator shall notify the suspected violator, and shall certify the facts to the Attorney General for the institution of criminal or civil proceedings. However, for minor violations the Administrator may issue a warning instead.

Section 10. Protection of Trade Secrets and Other Information

1. In submitting required data, a registration applicant may mark the portion he considers trade secrets, or commercial or financial information, and submit it separately.

2. The Administrator may not make information public if it comprises trade secrets, or commercial or financial information. However, pesticide formulas may be revealed in certain instances in order to carry out the purposes of the Act.

3. Disputes between the Administrator and an applicant or registrant concerning releasable information would be resolved in a district court by declaratory judgment.

Section 11. Standards Applicable to Pesticide Applicators

mation are liable to $10,000 or 3 years in prison or both.

Section 15. Indemnities

1. Persons owning a pesticide whose registration is suspended and later cancelled are eligible for payment by the Administrator of an indemnity for the pesticide owned. Manufacturers who had knowledge prior to the issuance of a suspension notice that their products did not meet registration requirements and who continued to produce the pesticide without notifying the Administrator of the deficiency would not be eligible.

2. In lieu of indemnification the Administrator may authorize under certain limited conditions the use or other disposal of a pesticide.

Section 16. Administrative Procedure; Judicial Review

1. Except as otherwise provided, EPA refusals to cancel or suspend registration or change classifications which do not follow a public hearing are reviewable in district courts, as are other final non-discretionary Agency actions.

2. Review of an order of the Administrator will occur in a court of appeals upon the request of any person who will be adversely affected by the order and who took part in the public hearing leading to the order. The court shall review all evidence of record, and commencement of proceedings does not operate as a stay of an order unless specifically ordered by the court.

3. District courts have jurisdiction to specifically enforce and to prevent and restrain violations of the Act.

Section 17. Imports and Exports

1. Producers of exported pesticides or devices are subject to the requirements of Section 8, Books and Records, but are otherwise required only to prepare the product as specified by the foreign purchases in order to comply with the Act.

2. The Administrator is required to notify foreign governments through the State Department whenever the registration, or the cancellation or suspension of the registration of a pesticide becomes effective or ceases to be effective.

3. The Administrator is authorized to examine imported pesticides or devices and have those in violation of the Act refused entry, seized, and destroyed.

Section 18. Exemption of Federal Agencies

The Administrator may exempt any Federal or State agency from the Act if he determines that emergency conditions exist which require such exemption.

Section 19. Disposal and Transportation

The Administrator shall establish procedures and regulations for storage or disposal of pesticides and containers. He is required to accept at convenient locations for disposal a pesticide whose registration is suspended, then cancelled.

Section 20. Research and Monitoring

Authority for pesticide research and monitoring is provided, including research contracts and grants. Cooperation with other governmental agencies is authorized for research and monitoring purposes. A National Monitoring Plan is required to be formulated and carried out by the Administrator.

Section 21. Solicitation of Comments; Notice of Public Hearings

1. The Administrator is required to solicit the views of the Secretary of Agriculture before publishing regulations under the Act.

2. The Administrator is authorized to solicit the views of all interested persons concerning any action under the Act and seek advice from qualified persons.

3. Timely notice of any public hearing to be held shall be published in the Federal Register.

Section 22. Delegation and Cooperation

1. The Administrator may delegate his authority under the Act.

2. The Administrator shall cooperate with

Such sums as are necessary are authorized to be appropriated through June 30, 1975, and thereafter as provided by new legislation.

REMAINING BILL PROVISIONS

Section 3 of the bill contains technical amendments making other Acts conform to amended FIFRA.

Section 4 of the bill provides the effective dates of provisions of the FIFRA amendments.

1. Two years after enactment the Administrator shall have promulgated registration and classification regulations and thereafter shall register new applications under those regulations.

2. After two years but within 4 years existing registrations shall be registered and reclassified in accordance with the regulations described in 1 above.

3. Any requirement that a pesticide be registered for use only by a certified applicator shall not be effective until 4 years from enactment.

4. A period of 4 years from enactment shall be provided for certification of applicators, with certification standards prescribed within one year and State certification plans submitted to the Administrator within 3 years and approved by the Administrator within one year of submission.

5. One year after enactment regulations governing registration of establishments, experimental use permits, and keeping of books and records shall be made effective.

6. No person shall be subject to any penalty before 60 days after the publication of pertinent regulations in the Federal Register and after the Administrator has taken such other action as may be necessary to permit compliance with the pertinent provision.

7. Except as otherwise provided above, all amendments take effect upon enactment or, if regulations are required, within 90 days, when such regulations are to be effective.

8. Provisions of FIFRA prior to enactment of the bill remain in effect until superseded

dividual case that emergency conditions exist before exempting Federal and State agencies from the provision of the act. Since immediate and effective action is required against imported pests on an average of 10,000 to 11,000 times annually, the Secretary of Agriculture should be given authority by EPA to cooperate with State agencies to initiate action in sufficient time to prevent the introduction of new pest species. It is understood, of course, that the Secretary of Agriculture is authorized and required to apply such remedial action under the Plant Quarantine and Federal Plant Pest Act and various animal quarantine acts.

Mr. YATES. Mr. Speaker, it is difficult to oppose a bill which seeks to control the indiscriminate manufacture, sale and use of pesticides. The harm they have done and are capable of doing requires prompt action by the Congress. Were it not for the provisions—the very generous provisions providing for indemnification I would support this bill.

However, Mr. Speaker, I must protest against the indemnification provisions. The so-called cyclamates bill was estimated to cost the taxpayers anywhere between $100 million and $500 million. This bill may cost much more. The safeguards against improper compensation are not nearly adequate.

I am concerned that this provision may weigh heavily upon the Administration of EPA. Having the task of protecting people and the environment from deadly and hazardous chemicals, he may hesitate to ban any such chemicals which are in use from further distribution when

to carry out the Act.

Section 23. State Cooperation, Aid, and Training

1. The Administrator may delegate to a State the authority to cooperate in enforcement of the Act, train State personnel in cooperative enforcement, and assist States to implement cooperative enforcement with grants.

2. The Administrator may assist States in developing and administering applicator certification programs under cooperative agreements and under contracts.

3. The Administrator may utilize the Cooperative State Extension Services to inform farmers of measures taken under the Act.

Section 24. Authority of States.

1. A State may impose greater regulation on the sale or use of a pesticide than that of the Federal Government. However, different State packaging or labeling requirements are prohibited.

2. States certified by the Administrator may register pesticides formulated for distribution and use within its bounds, and the registration is permanent if not disapproved by the Administrator within 90 days.

Section 25. Authority of the Administrator.

1. The Administrator may exempt from the Act pesticides which do not require regulation, or are adequately regulated under other Federal law.

2. The Administrator is authorized to declare that which is a pest; determine highly toxic substances in pesticides; specify classes of devices subject to certain misbranding provisions and Section 7; prescribed pesticide discoloration requirements; and determine suitable pesticide names.

Section 26. Severability.

The Act is severable in that the invalidity of one provision would not invalidate the remaining provisions.

Section 27. Authorization for Appropriations.

amendments are to be effective within 4 years of enactment.

Mr. Speaker, there has been some concern expressed over the implementation of section 18 of the conference report.

This section permits the Administrator of EPA to exempt any Federal or State agency from the provisions of the act if he determines that emergency conditions exist which require such exemption.

Under the House language that we took to conference, the President, rather than the Administrator of EPA, would have been vested with the authority to waive the application of the act to State and Federal agencies.

In the conference committee it was pointed out that there may be instances when action must be taken quickly to ameliorate a threat of plant or insect infestation—such as a grain cargo from a foreign nation carrying an insect pest not found in the United States. In such cases, formal Presidential action might take too long.

Thus, the language of section 18 as written by the conferees is intended to authorize the Administrator to exempt Federal and State agencies so that they may immediately apply treatments which may be required to prevent the introduction of pests at ports of entry or against new pest outbreaks that may occur in the United States utilizing pesticides which are not registered for the specific target pest species. Section 18 as currently worded implies that the Administrator must determine in each in-

he knows if decision may cost the Government; that is, the taxpayers, millions of dollars.

This bill, even with its good provisions may still be inadequate to protect the environment. But one thing is certain—it will protect the pesticide manufacturers. Why should the Government be called upon to pay for losses when the Government may not be at fault.

Mr. Speaker, it is most unfortunate that these provisions providing indemnification were placed in the bill. They constitute a most unfortunate procedure.

Mr. GOODLING. Mr. Speaker, it has been said that legislating is the art of compromise. The conference report on the Federal Environmental Pesticide Control Act of 1972 falls into that category.

The House Committee on Agriculture started public hearings on this bill early in the 92d session. Following the public hearings countless conferences were held with interested individuals and organizations. The committee then met in executive session and after a considerable number of meetings reported a clean bill for floor action. No major changes were made on the floor and the bill passed by a sizable margin.

The same procedure was followed in the Senate but here hearings were held by both the Agriculture and the Commerce Committees. Major changes were made and the bill passed the Senate by a sizable vote.

The conference committee spent a considerable number of hours attempt-

ing to compromise the differences between the two bills.

The conference report we submit for your consideration today is a report I, as one conferee, believe is a measure every segment of our economy and every Government agency can live with. No individual, no organization, no Government agency was able to have everything written into the bill that may have appeared desirable but the report we ask you to approve is an excellent one. This is attested to by the fact that all conferees signed the report.

Mr. HANNA. Mr. Speaker, the conferees on H.R. 10729, the "Federal Environmental Pesticide Control Act of 1972," are to be commended for resolving their differences and bringing us this most important public production legislation. I am pleased that the House conferees yielded on the Senate provisions defining "plant regulator" so as to exclude nontoxic vitamin-hormone products not intended for pest destruction from the definition. This is consistent with the language in the House Committee report, page 15, on the measure, concerning Ascophyllum Nodosum, the Norwegian variety of seaweed. This product is nontoxic and nonpoisonous and in every respect clearly falls within the exclusion. Dr. T. L. Senn, head of the Department of Horticulture at Clemson University, Clemson, S.C., a distinguished scientist who has done extensive research on Ascophyllum Nodosum has stated in a communication dated September 28, 1972:

As we have pulished many times and as voluminous literature reveals, seaweed-Asco-

Broyhill, N.C.	Holifield	Railsback
Burleson, Tex.	Hosmer	Randall
Burlison, Mo.	Hunt	Rarick
Byron	Hutchinson	Reuss
Camp	Ichord	Rhodes
Carlson	Jacobs	Roberts
Carter	Jarman	Robinson, Va.
Casey, Tex.	Johnson, Calif.	Rogers
Cederberg	Johnson, Pa.	Rooney, Pa.
Clausen, Don H.	Jones, Ala.	Roush
	Jones, N.C.	Rousselot
Clawson, Del	Jones, Tenn.	Roy
Cleveland	Kastenmeier	Runnels
Collier	Kazen	Ruppe
Collins, Tex.	Keating	Ruth
Conover	Keith	Sandman
Daniel, Va.	Kemp	Satterfield
Davis, Ga.	Kyl	Scherle
Davis, Wis.	Landgrebe	Schneebeli
de la Garza	Latta	Schwengel
Dellenback	Leggett	Sebelius
Dennis	Lennon	Shipley
Derwinski	Lent	Shoup
Dickinson	Lujan	Shriver
Dorn	McClory	Sikes
Downing	McCloskey	Slack
Dulski	McCollister	Smith, Iowa
Duncan	McCormack	Spence
Eckhardt	McCulloch	Stanton, J. William
Edwards, Ala.	McEwen	
Erlenborn	McFall	Steele
Fascell	McKay	Steiger, Wis.
Findley	McKevitt	Stephens
Fisher	Mahon	Stratton
Flood	Mailliard	Stubblefield
Flowers	Mallary	Talcott
Flynt	Mann	Teague, Calif.
Forsythe	Mathias, Calif.	Terry
Fountain	Mayne	Thomson, Wis.
Frenzel	Meeds	Thone
Frey	Melcher	Veysey
Gibbons	Michel	Waggonner
Goldwater	Miller, Ohio	Wampler
Gonzalez	Mink	Ware
Goodling	Mizell	Whalley
Grover	Mollohan	White
Gubser	Mosher	Whitten
Hagan	Myers	Wiggins
Hamilton	Natcher	Wilson, Bob
Hammer-schmidt	Nelsen	Winn
	Obey	Wright
Hansen, Idaho	O'Konski	Wyatt
Harsha	Passman	Wylie
Brasco	Garmatz	Nichols
Broyhill, Va.	Gettys	Nix
Burke, Fla.	Giaimo	O'Hara
Byrne, Pa.	Gray	Patman
Byrnes, Wis.	Green, Oreg.	Pelly
Cabell	Gross	Peyser
Caffery	Haley	Pirnie
Carey, N.Y.	Halpern	Price, Tex.
Celler	Hanley	Pryor, Ark.
Chappell	Hanna	Pucinski
Chisholm	Hansen, Wash.	Purcell
Clancy	Harvey	Reid
Clark	Hawkins	Roncalio
Clay	Hébert	Rooney, N.Y.
Colmer	Heinz	Rosenthal
Corman	Howard	Schmitz
Crane	Hungate	Scott
Curlin	Jonas	Sisk
Davis, S.C.	Kee	Skubitz
Delaney	King	Smith, Calif.
Denholm	Kuykendall	Smith, N.Y.
Devine	Landrum	Snyder
Diggs	Link	Springer
Donohue	Lloyd	Staggers
Dow	Long, La.	Steed
Dowdy	McClure	Steiger, Ariz.
du Pont	McDonald, Mich.	Sullivan
Dwyer		Symington
Edmondson	McMillan	Teague, Tex.
Eilberg	Macdonald, Mass.	Thompson, Ga.
Esch		Thompson, N.J.
Eshleman	Martin	Udall
Evans, Colo.	Matsunaga	Ullman
Evins, Tenn.	Miller, Calif.	Vander Jagt
Fish	Mills, Ark.	Whitehurst
Ford, Gerald R.	Mills, Md.	Widnall
Frelinghuysen	Mitchell	Williams
Fuqua	Monagan	Wydler
Galifianakis	Montgomery	Yatron
Gallagher	Murphy, N.Y.	

So the conference report was agreed to.

A motion to reconsider was laid on the table.

[p. H9798]

phyllum Nodosum—is certainly non-toxic. Research in the United States and abroad has definitely estalished that vitamins and hormones are contained in Ascophyllum Nodosum and various other seaweeds. It is my firm belief that the material does not destroy pests such as insects and therefore is not intended for pest destruction. The beneficial effects of seaweed extracts are obtained through biological activity as exhibited by certain vitamins, hormones and various nutritional elements only required by the plant in a small amount. These above mentioned facts are well established in the literature.

The SPEAKER. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER. The question is on the conference report.

TELLER VOTE WITH CLERKS

Mr. YATES. Mr. Speaker, I demand tellers.

Tellers were ordered.

Mr. YATES. Mr. Speaker, I demand tellers with clerks.

Tellers with clerks were ordered; and the Speaker appointed as tellers Messrs. POAGE, SEIBERLING, YATES, and KYL.

The question was taken; and there were—ayes 198, noes 99, not voting 134, as follows:

[Roll No. 437]

[Recorded Teller Vote]

AYES—198

Abbitt	Baker	Bray
Alexander	Belcher	Breaux
Andrews, Ala.	Bennett	Brinkley
Andrews, N. Dak.	Bergland	Brooks
Arends	Bevill	Broomfield
Aspin	Biester	Brotzman
Aspinall	Blatnik	Brown, Mich.
	Brademas	Brown, Ohio
Hastings	Pettis	Wyman
Hays	Pickle	Young, Fla.
Hechler, W. Va.	Poage	Young, Tex.
Heckler, Mass.	Powell	Zion
Henderson	Preyer, N.C.	Zwach
Hillis	Quie	
Hogan	Quillen	

NOES—99

Abzug	Grasso	Perkins
Adams	Green, Pa.	Pike
Addabbo	Griffin	Podell
Anderson, Calif.	Griffiths	Price, Ill.
Ashley	Gude	Rangel
Begich	Hall	Rees
Boggs	Harrington	Riegle
Boland	Hathaway	Robison, N.Y.
Bolling	Helstoski	Rodino
Buchanan	Hicks, Mass.	Roe
Burke, Mass.	Hicks, Wash.	Rostenkowski
Burton	Horton	Roybal
Carney	Hull	St Germain
Chamberlain	Karth	Sarbanes
Collins, Ill.	Kluczynski	Saylor
Conable	Koch	Scheuer
Conte	Kyros	Seiberling
Conyers	Long, Md.	Stanton, James V.
Cotter	McDade	Stokes
Coughlin	McKinney	Stuckey
Culver	Madden	Taylor
Daniels, N.J.	Mathis, Ga.	Tiernan
Danielson	Mazzoli	Van Deerlin
Dellums	Metcalfe	Vanik
Dent	Mikva	Vigorito
Dingell	Minish	Waldie
Drinan	Minshall	Whalen
Edwards, Calif.	Moorhead	Wilson, Charles H.
Foley	Morgan	Wolff
Ford, William D.	Moss	Yates
Fraser	Murphy, Ill.	Zablocki
Fulton	Nedzi	
Gaydos	O'Neill	
	Patten	
	Pepper	

NOT VOTING—134

Abernethy	Archer	Betts
Abourezk	Ashbrook	Biaggi
Anderson, Ill.	Badillo	Bingham
Anderson, Tenn.	Baring	Blackburn
Annunzio	Barrett	Blanton
	Bell	Bow

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