The original documents are located in Box 33, folder "11/28/75 HR8841 Extend and Amend the Federal Insecticide Fungicide and Rodenticide Act" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
NOV 28 1975

Signed 11/28/75

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: December 3

November 28, 1975

Posted 11/29

To Archives 12/1

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 8841 - Extend and Amend the Federal Insecticide, Fungicide and Rodenticide Act

Attached for your consideration is H.R. 8841, sponsored by Representative Foley and Representative Wampler which:

-- Extends the appropriations authorization for EPA to carry out the provisions of the Federal Insecticide, Fungicide and Rodenticide Act at a level of $47,868,000 from October 1, 1975 through September 30, 1976 and $23,600,000 from October 1, 1976 through March 31, 1977;

-- Extends for one year certain deadline dates on actions remaining to be taken under FIFRA;

-- Requires EPA to assess the impact of proposed changes in pesticide classification or cancellations on production and prices of agricultural commodities, retail food prices, and other effects on the agricultural economy;

-- Requires EPA to provide the Secretary of Agriculture with notices of proposed changes in regulations issued under FIFRA; and

-- Changes certain provisions relating to self-certification of private pesticide applicators.

A discussion of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 8841 at Tab B.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

NOV 26 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8841 - Extend and amend the Federal Insecticide, Fungicide and Rodenticide Act
Sponsors - Rep. Foley (D) Washington and Rep. Wampler (R) Virginia

Last Day for Action

December 3, 1975 - Wednesday

Purpose

Extends the appropriations authorization for the Environmental Protection Agency (EPA) to carry out the provisions of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) at a level of $47,868,000 from October 1, 1975, through September 30, 1976, and $23,600,000 from October 1, 1976, through March 31, 1977; extends for one year certain deadline dates on actions remaining to be taken under FIFRA; requires EPA to assess the impact of proposed changes in pesticide classification or cancellations on production and prices of agricultural commodities, retail food prices, and other effects on the agricultural economy, and further requires the Secretary of Agriculture to be provided with such analysis; requires EPA to provide the Secretary of Agriculture with notices of proposed changes in regulations issued under FIFRA; changes certain provisions relating to self-certification of private pesticide applicators.

Agency Recommendations

Office of Management and Budget	Approval
Environmental Protection Agency	Approval
Department of Agriculture	Approval (Informally)
Council on Environmental Quality	Approval
Department of Commerce	Approval
Civil Service Commission	Approval

Department of Health, Education, and Welfare	No objection (Informally)
National Science Foundation	No objection
Department of Justice	Defers to interested agencies

Discussion

FIFRA is the basic act under which the manufacture and sale of insecticides and pesticides are controlled. It was significantly amended by the Federal Environmental Pesticide Control Act of 1972 which also transferred administration of the regulatory program from the Department of Agriculture to the EPA. The 1972 Act provided a three-year appropriation authorization which, with a series of recent interim extensions, expired on November 15, 1975.

The use of insecticides and pesticides to achieve high agricultural yields and the control of their use to protect human health and the environment often represent conflicting objectives. Difficulties attendant on the reconciliation of these conflicts have made administration of the program by EPA controversial and the subject of frequent court actions. H.R. 8841, in addition to extending the expired appropriation authorization, contains a number of amendments to FIFRA designed to deal with those problems.

The original Administration bills called for a simple two-year extension of FIFRA. H.R. 8841, as enrolled, extends the appropriations authorization for the EPA to carry out FIFRA through March 31, 1977; it authorizes $47,868,000 for the period October 1, 1975, through September 30, 1976 and $23,600,000 from October 1, 1976, through March 31, 1977. These amounts conform to the levels requested by the Administration.

Other major amendments the enrolled bill makes in FIFRA are described in the following paragraphs.

Notice to the Secretary of Agriculture

EPA must submit proposed notices of intent to suspend or cancel the use of pesticides to the Secretary of Agriculture for comment, at least 60 days prior to taking such action. This requirement may be waived in cases of imminent hazard to human health. Consultation is also required with the Secretary on proposed and final regulations. The Secretary's comments

on such regulations and the Administrator's response must be published in the Federal Register.

Economic Impact

In determining whether the current use of a pesticide should be restricted or cancelled, the Administrator of EPA must take into account the impact of that action on crop production and prices, retail food prices, and the general agricultural economy, as well as the adverse impact on the environment from its continued use. This analysis must be submitted to the Secretary of Agriculture for comment, and his comment and the Administrator's response must be published in the Federal Register with any final actions.

Self-certification of Private Pest Applicators

The EPA Administrator must approve any application to use restricted pesticides (which can only be used by certified applicators) if the applicator signs a self-certification form declaring he has a sufficient ability to use those pesticides without adverse affects. The Administrator may require an affirmation by the applicator that he has completed an approved training program but the Administrator may not require the program to include an examination to establish competency in the use of the pesticide. In addition, any State plan for the certification of applicators shall be approved by EPA if it only requires that self-certification forms be completed. However, a State plan, at the option of the State, may contain variations if it otherwise comports with the requirements of the Act.

Scientific Advisory Panel

The bill provides for the establishment of a scientific advisory panel with which the EPA Administrator must consult on notices of intent to cancel or reclassify the use of a pesticide, and on proposed and final regulations.

Integrated Pest Management

EPA and the States are required to make available to interested individuals instructional materials on integrated pest management techniques in cooperation with the Agricultural Extension Service.

Other Provisions

The bill contains a number of other amendments to FIFRA including cost sharing arrangements for test data, emergency exemptions from the Act, permits for experimental uses, and exclusion of new animal drugs from the coverage of the Act.

James M. Frey
Assistant Director for
Legislative Reference

Enclosures

B

NATIONAL SCIENCE FOUNDATION
WASHINGTON, D.C. 20550

OFFICE OF THE DIRECTOR

Wm Courtee
Rm 7202

November 21, 1975

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Frey:

This is in response to your communication of November 20, 1975, requesting the views of the National Science Foundation on Enrolled Bill H. R. 8841, "To extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes".

The Foundation has no objection to the approval of the bill by the President.

Sincerely yours,

H. Guyford Stever
Director

THE ASSISTANT SECRETARY OF COMMERCE
Washington, D.C. 20230

NOV 21 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H.R. 8841, an enrolled enactment

> "To extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes."

H.R. 8841 would provide appropriation authorizations for the Federal Insecticide, Fungicide, and Rodenticide Act for fiscal years 1976 and1977 and would also make a number of procedural changes in the Act.

The Department of Commerce recommends approval by the President of H.R. 8841.

Enactment of this legislation would involve no increase in the budgetary requirements of the Department of Commerce.

Sincerely,

Betsy Ancker-Johnson

Betsy Ancker-Johnson, Ph.D.

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

NOV 24 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill (H.R. 8841), "To extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes."

H.R. 8841, as amended, inter alia extends for two years the authorization of appropriations for the Environmental Protection Agency to carry out the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act.

Aside from the Department's objection to the amendment to section 3(c)(1)(d) of the Act (Section 12 of H.R. 8841) as expressed in our report dated November 12, 1975, the Justice Department defers to the interested agencies as to recommendations for Executive action.

Sincerely,

Michael M. Uhlmann

Michael M. Uhlmann

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 24 1975

OFFICE OF THE
ADMINISTRATOR

Dear Mr. Lynn:

This is in response to your request for a report on the enrolled bill H.R. 8841, a bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes."

The Environmental Protection Agency strongly recommends that the President sign the bill into law.

The enrolled bill would amend the FIFRA to require the Administrator to provide advance notice to the Secretary of Agriculture of proposed actions on registrations and of intent to publish proposed regulations. Certain comment procedures and required considerations are also contained in the amendment.

The enrolled bill would provide that a private applicator may sign a certification form which attests that he has completed a training program and which also contains necessary information and affirmations. The bill also prohibits the Administrator from requiring private applicator testing in State certification programs, but does not preclude a State from requiring testing.

The bill requires the Administrator to submit advance notice of proposed regulations to the Agricultural Committees of Congress.

H.R. 8841 would establish a Scientific Advisory Panel to which the Administrator would be required to submit 60 days in advance proposed registration actions and regulations for comment.

The bill would require the Administrator to consult with the Secretary of Agriculture and the appropriate State governor when they request an emergency exemption for the use of a pesticide. The bill would also exclude "new animal drug" from the definition of "pesticide" and authorize issuance of experimental use permits notwithstanding other requirements of the applicable section. Further, H.R. 8841 would require the Administrator in cooperation with the Extension Service to make integrated pest management instruction available to individuals under State certification programs.

The enrolled bill would also amend section 3(c)(1)(D) of the Act to require that compensation be paid only for data submitted after January 1, 1970, by applicants for registration or reregistration who submitted applications after October 21, 1972. The amendments would also permit either party in a compensation dispute to appeal the Administrator's determination; would authorize a court to either raise or lower the compensation; and would prohibit delay of registration pending a compensation determination.

The enrolled bill would also extend one year the effective dates of certain provisions of the 1972 amendments to the FIFRA. It would authorize appropriations at EPA-requested levels for approximately one and one-half years, through March 31, 1977.

The original Administration legislative proposal would simply have extended our FIFRA authority for two years, at the appropriations levels contained in the enrolled bill. While we did not propose the amendments eventually enacted, we do not regard them as posing an undue administrative burden. Several of the amendments are in fact salutary, such as the extension of effective dates for one year, the provision for integrated pest management instruction, and the amendments to section 3(c)(1)(D), which among other things now clarify the effective date of that section. Finally, the bill does authorize continuation of the program and necessary appropriations for approximately one and one-half years, authorizations which expired on November 15, 1975.

We therefore urge that the President sign the enrolled bill.

Sincerely yours,

Russell E. Train
Administrator

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

November 24, 1975

MEMORANDUM FOR JAMES F.C. HYDE, JR.
OFFICE OF MANAGEMENT AND BUDGET

SUBJECT: H.R. 8841, a bill to "extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes"

The Council on Environmental Quality recommends that the President sign the above enrolled bill.

Steven D. Jellinek
Staff Director

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

CHAIRMAN

November 24, 1975

Honorable James T. Lynn
Director
Office of Management and Budget

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

This is in response to your request for the views and recommendations of the Civil Service Commission on H.R. 8841, an enrolled bill "To extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes."

Only one provision of the enrolled bill H.R. 8841 relates to personnel matters.

Section 7 of the enrolled bill provides that the Administrator of the Environmental Protection Agency shall appoint a Scientific Advisory Panel of seven members, each member of which shall be paid per diem compensation at a rate not to exceed the rate of a GS-18 under the General Schedule. The section also provides that, in the case of a member who may already hold a Federal position which is compensated at a higher rate of pay, such member be paid at that higher rate. We have no objection to this provision.

Therefore, from the standpoint of this personnel provision of H.R. 8841, we recommend that the President sign the enrolled bill into law.

By direction of the Commission:

Sincerely yours,

Robert Hampton

Chairman

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 11-26-75

TO: Bob Linder

FROM:

Attached is Agriculture views letter on H.R. 8841, for inclusion in the enrolled bill file.

OMB FORM 38
REV AUG 73

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

November 26, 1975

Dear Mr. Lynn:

In reply to the request of your office, the following report is submitted on the enrolled enactment H.R. 8841, "To extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes."

This Department recommends that the President approve the bill.

H.R. 8841, as enrolled (the Act), would extend the appropriations authorization for the Environmental Protection Agency (EPA) to carry out the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) through March 31, 1977, and would extend for one year certain deadline dates on actions remaining to be taken under FIFRA. EPA would be required to assess the impact of proposed changes in pesticide classification or cancellations on production and prices of agricultural commodities, retail food prices and other effects of the agricultural economy. The Act would require EPA to provide the Secretary of Agriculture with proposed notices and an agricultural impact analysis relating to proposed changes in pesticide classification or cancellation actions and allow the Secretary to submit comments within prescribed time limits. Proposed and final regulations would also be required to be submitted to the Secretary for comment. The Act also contains provisions relating to self-certification of pesticide applicators, the establishment of a scientific advisory panel to comment on the impact on health and the environment of certain proposed EPA actions, the availability of information on integrated pest management, and the issuance of experimental use permits to agricultural research institutions.

We are unable to determine at this point the additional costs to the Department which would result from enactment of H.R. 8841.

Sincerely,

J. Phil Campbell
Acting Secretary

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: November 26 Time: 212pm

FOR ACTION: George Humphreys ✓
Paul Leach
Max Friedersdorf
Ken Lazarus
Dick Parsons

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: November 28 Time: noon

SUBJECT:

H.R. 8841 - Extend and amend the Federal Insecticide Fungicide and Rodenticide Act

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x
____ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

The subject bill must go to the President Friday afternoon.

December 1, 1975

MEMO TO JUDY JOHNSTON

FROM: GEORGE W. HUMPHREYS

I recommend approval of the attached H.R. 8841.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

For the President

THE WHITE HOUSE

WASHINGTON

ACTION MEMORANDUM LOG NO.:

Date: November 26 Time: 212pm

FOR ACTION: George Humphreys
Paul Leach
Max Friedersdorf
Ken Lazarus
Dick Parsons

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: November 28 Time: noon

SUBJECT:

H.R. 8841 - Extend and amend the Federal Insecticide Fungicide and Rodenticide Act

ACTION REQUESTED:

___ For Necessary Action ___ For Your Recommendations

___ Prepare Agenda and Brief ___ Draft Reply

x
___ For Your Comments ___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

The subject bill must go to the President Friday afternoon.

OK PCL

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If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: November 26 Time: 212pm

FOR ACTION: George Humphreys
Paul Leach
Max Friedersdorf
Ken Lazarus
Dick Parsons

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: November 28 Time: noon

SUBJECT:

H.R. 8841 - Extend and amend the Federal Insecticide Fungicide and Rodenticide Act

ACTION REQUESTED:

___ For Necessary Action ___ For Your Recommendations

___ Prepare Agenda and Brief ___ Draft Reply

x
___ For Your Comments ___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

The subject bill must go to the President Friday afternoon.

No objectio. 0- Dudley Chapman for K. Lazarus
11/26/75

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: November 26 Time: 212pm

FOR ACTION: Geerge Humphreys
Paul Leach
Max Friedersdorf
Ken Lazarus
Dick Parsons

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: November 28 Time: noon

SUBJECT:

H.R. 8841 - Extend and amend the Federal Insecticide Fuggicide and Rodenticide Act

ACTION REQUESTED:

____ For Necessary Action

____ For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

____ For Your Comments

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

The subject bill must go to the President Friday afternoon.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

WASHINGTON

November 28, 1975

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX FRIEDERSDORF

SUBJECT: H.R. 8841 - Extend and amend the Federal Insecticide Fungicide and Rodenticide Act

The Office of Legislative Affairs recommends subject bill be signed.

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-497

EXTENSION AND AMENDMENT OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT, AS AMENDED

SEPTEMBER 19, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

together with

SUPPLEMENTAL, ADDITIONAL, AND DISSENTING LAWS

[To accompany H.R. 8841]

The Committee on Agriculture, to whom the bill (H.R. 8841) to extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for one year, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 1, line 3, strike out all after the enacting clause and insert the following:

That section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended—

(1) By inserting the following new sentences immediately after the second sentence thereof: "In determining whether to issue any such notice, the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days prior to sending such notice to the registrant or making public such notice, whichever occurs first, the Administrator shall provide the Secretary of Agriculture with a copy of such notice and an analysis of such impact on the agricultural economy. If the Secretary comments in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator shall publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator may notify the registrant and make public the notice at any time after such 30-day period notwithstanding the foregoing 60-day time require-

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ment. The time requirements imposed by the preceding 3 sentences may be waived or modified to the extent agreed upon by the Administrator and the Secretary."; and

(2) By adding the following new sentence at the end of such section 6(b): "In taking any final action under this subsection, the Administrator shall include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and he shall publish in the Federal Register an analysis of such impact."

SEC. 2. (a) Section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended—

(1) By inserting "(1)" immediately after "(a)";

(2) By inserting ", in accordance with the procedure described in paragraph (2)," immediately after "is authorized" in the first sentence; and

(3) By adding the following new paragraph at the end thereof:

"(2) PROCEDURE.—

"(A) PROPOSED REGULATIONS.—At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such regulation within 30 days after receiving it, the Administrator shall publish in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 30 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register any time after such 30-day period notwithstanding the foregoing 60-day time requirement.

"(B) FINAL REGULATIONS.—At least 30 days prior to signing any regulation in final form for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such final regulation within 15 days after receiving it, the Administrator shall publish in the Federal Register (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 15 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register at any time after such 15-day period notwithstanding the foregoing 30-day time requirement.

"(C) TIME REQUIREMENTS.—The time requirements imposed by subparagraphs (A) and (B) may be waived or modified to the extent agreed upon by the Administrator and the Secretary."

(b) Section 21(a) of such Act is amended by inserting the following immediately before the period: "in accordance with the procedure described in section 25(a)".

SEC. 3. Section 27 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by adding at the end thereof the following:

"There is hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1975, and ending September 30, 1976, the sum of $47,868,000."

SEC. 4. Section 4 of the Federal Environmental Pesticide Control Act of 1972 is amended—

(i) In subsection (b) by striking the words "four years" and inserting in lieu thereof the words "five years";

(ii) In paragraph (c)(2) by striking the words "four years" and inserting in lieu thereof the words "five years";

(iii) In paragraph (c)(3) by striking the words "four years" and inserting in lieu thereof the words "five years";

(iv) In paragraph (c)(4) by striking the words "four years" and inserting in lieu thereof the words "five years"; and

(v) In paragraph (c)(4)(B) by striking the words "three years" and inserting in lieu thereof the words "four years".

SEC. 5. Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by deleting the period at the end of subsection (a)(1) and inserting the following:

": *Provided*, That the certification standard for a private applicator shall be deemed fulfilled by his signing a self-certification form. The Administrator shall assure that such form contains adequate information and affirmations to carry out the intent of this Act."

SEC. 6. Section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by adding a new paragraph (3) at the end thereof as follows:

"(3) CONGRESSIONAL COMMITTEES.—At such time as the Administrator is required under paragraph (2) of this subsection to provide the Secretary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, he shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate."

SEC. 7. Section 17 is amended by redesignating subsections (d) and (e) as subsections (e) and (f) and adding a new subsection (d), as follows:

"(d) REFUSAL OF ENTRY TO CERTAIN AGRICULTURAL COMMODITIES AND PRODUCTS.—The Secretary of the Treasury shall notify the Administrator of the arrival of any lot of an agricultural commodity or product produced in a country or area which permits the use on such commodity or product of pesticides which the Administrator has refused to register or the registration of which has been suspended or canceled because of possible health hazards resulting from possible residues of such pesticide on the commodity or product, and the Secretary shall refuse entry to such commodity or product until and unless the lot is examined by the Administrator, or the Department of Agriculture in the case of meat and poultry products and the Food and Drug Administration in the case of other food products, acting for the Administrator, and it has been determined that no residues in excess of established United Stats tolerances are present of any such pesticide; provided, in the absence of an established tolerance an action level or enforcement guideline shall be enforced."

SEC. 8. Section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by the addition at the end thereof of the following new subsection (d):

"(d) SCIENTIFIC ADVISORY PANEL.—The Administrator shall submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 6(b) and of the proposed and final form of regulations issued under section 25(a) within the same time periods as provided for the comments of the Secretary of Agriculture under such sections. The time requirements for notices of intent and proposed and final forms of regulation may not be modified or waived unless in addition to meeting the requirements of section 6(b) or 25(a), as applicable, the advisory panel has failed to comment on the proposed action within the prescribed time period or has agreed to the modification or waiver. The comments of the advisory panel and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The panel referred to in this subsection shall consist of seven members appointed by the Administrator from a list of 12 nominees, six nominated by the National Institutes of Health, and six by the National Science Foundation. Each member of the panel shall receive per diem compensation at a rate not in excess of that fixed for GS–18 of the General Schedule as may be determined b ythe Administrator, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this subsection."

SEC. 9. Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by adding at the end thereof the following new sentence:

"The Administrator in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination."

SEC. 10. Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is hereby amended to read as follows:

"(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: *Provided*, That the term 'pesticide' shall not include any article (1)(a) that is a 'new animal drug' within the meaning of

section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), or (b) that has been determined by the Secretary of Health, Education and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing an article covered by clause (1) of this proviso."

SEC. 11. Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by adding at the end thereof the following new subsection:

"(g) EXEMPTION FOR AGRICULTURAL RESEARCH AGENCIES.—Notwithstanding the foregoing provisions of this section, the Administrator may issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution which applies for such permit. Each permit shall not exceed more than a one year period or such other specific time as the Administrator may prescribe. Such permit shall be issued under such terms and conditions restricting the use of the pesticide as the Administrator may require: *Provided*, That such pesticide may be used only by such research agency or educational institution for purposes of experimentation."

and amend the title to read as follows: "To extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes."

BRIEF EXPLANATION OF THE LEGISLATION

The bill provides as follows:

1. In issuing notices of intent of proposed action regarding cancellation of registration or changes in classification, EPA must consider among other factors the impact of the proposed action on the agricultural economy. Prior to issuance, the proposed notice must be submitted to the Secretary of Agriculture for comment and the Secretary's comments and EPA's response must be published in The Federal Register.

2. Proposed regulations and final form of regulations must be submitted to Secretary of Agriculture for comment within prescribed time limits prior to signature, and the Secretary's comments and EPA's response published in The Federal Register together with the regulations.

3. Funding authorization of FIFRA is extended to September 30, 1976, at a level of $47,868,000.

4. Deadline dates on actions remaining to be taken under FIFRA are extended for one year.

5. Certification standards for private applicator would be deemed fulfilled by his signing a self-certification form which would include information and affirmation prescribed by the Administrator to carry out the intent of the Act.

6. Proposed and final form of regulations must be provided to the House Commitee on Agriculture and the Senate Committee on Agriculture and Forestry within prescribed time limits prior to signature.

7. Notices of intent of proposed action regarding cancellation of registration and changes in classification and proposed and final forms of regulations must be submitted for comment as to impact on health and environment to a scientific advisory panel prior to signature, and comments of panel and EPA's response published in The Federal Register.

8. Each lot of an agricultural commodity or product arriving in the United States must be examined if produced in a country which permits the use on such product of a pesticide which was banned in the United States because of possible health hazards of residues on such product and refused entry unless it is determined not to contain pesticide residues in excess of allowable tolerances.

9. In determining if emergency conditions exist for exempting Federal or State agencies, EPA must consult with the Secretary of Agriculture and the Governor of the State.

10. Pesticides covered by FIFRA are defined to exclude animal drugs and animal feeds regulated by the Food and Drug Administration.

11. Experimental use permits may be issued to an agricultural research agency or educational institution for experimentation on pesticides whose registration has been cancelled or suspended, subject to terms and conditions and time limitations prescribed by the Administrator.

PURPOSE AND NEED

EXTENSION OF FUNDING AUTHORIZATION

H.R. 8841, as amended, would extend the funding authorization for FIFRA for another 12 months to September 30, 1976, at a level of $47,868,000, the level requested by EPA for that period. Unless action is taken to extend the authorization, it will terminate on September 30, 1975—the date provided recently by Congress in the interim extension enacted in Public Law 94-51. The need for extending the funding authorization in order for EPA to continue to expend funds in implementation of FIFRA is recognized in the 1976 fiscal year appropriation bill for EPA adopted by the House and now pending in Congress. H.R. 8070 provides "No funds provided for the Environmental Protection Agency by this Act may be used for any Federal insecticide, fungicide or rodenticide activity after September 30, 1975, that is not authorized by law."

The committee has limited the extension of the authorization to one year, rather than the two-year period originally sought by EPA, to give it an opportunity to continue to exercise effective oversight activities over its operations, particularly in view of the controversies that have been generated in many of its activities. The effect of the hearings held on the extension provided in H.R. 8841, as amended, has been to improve communications between EPA and the committee and establish a more responsive attitude towards the needs of American agriculture.

The amount authorized to be appropriated by H.R. 8841 covers all activities under FIFRA including research activities. Another bill, H.R. 7108, was recently adopted by the House and is now before the Senate for consideration. H.R. 7108 provides authorization for the conduct of all research activities of EPA including an authorization in the amount of $14,047,000 for research under FIFRA during the period October 1, 1975, to September 30, 1976. At such time as Congress has completed action on H.R. 7108, the portion of the amount authorized under H.R. 8841 which is available for research is intended to be that provided for under H.R. 7108.

H.R. 7108, as adopted by the House, sets forth a dollar authorization for research through September 30, 1976, but provides that no part of any amount appropriated under that provision may be obli-

gated or expended after September 30, 1975. H.R. 8841 provides the authorization referred to in the other Act.

IMPACT OF DECISIONS ON AGRICULTURAL ECONOMY

In the committee consideration of the proposal to extend the funding authorization for FIFRA, there was strong criticism directed towards EPA for its not taking sufficient account of the impact of its decisions on the agricultural economy. This criticism was directed both at the adjudications made by EPA and the regulations issued by EPA in implementation of the Act. The concern under the Act is with unreasonable adverse effects on the environment which is defined to mean "unreasonable risks to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide." This requires balancing of costs and benefits—including the effects on health and the environment but also importantly the effect on the agricultural economy. The committee believes that the statutory test is a sound one and that changes are not needed in the formula. There was, however, a strong belief among many witnesses that the impact on the agricultural economy of decisions in EPA was not fully developed by EPA and was not given sufficient recognition.

The committee amendment meets this concern. It seeks to involve the Department of Agriculture in important phases of the decisionmaking process, in rulemaking and adjudication, and tighten the degree of cooperation between the agencies. By requiring EPA to seek Agriculture's comments, the substitute proposal assures that the impact on the agricultural economy of actions taken by EPA will be fully developed.

Secondly, the substitute assures that EPA takes cognizance of the effect of its actions on the agricultural economy at virtually every step in the decisionmaking process and induces agreement between the two agencies by providing for the Department of Agriculture's comments and EPA's response to be published.

This represents a real change from present procedures. If the agencies could not agree, the amendment would afford an opportunity for public debate to be centered around any arguments offered by the Secretary of Agriculture for his objections to any change in classification of a pesticide or regulations issued under the Act. It would have much the same effect as the public exposure of an environmental impact statement but in this case on the advisability of action taken by EPA with respect to the other side of the equation in the cost-benefit assessment.

This provision does in reverse what the present law does in regard to small watersheds under Public Law 566. The EPA can file objections to determinations of the USDA to approve certain small watersheds. The USDA does not have to accept the objections and in fact can provide approval in spite of EPA's objection. However, the procedure provides real leverage to the objections that may be voiced by the Secretary and strong inducement to EPA to take full account of the impact of its decisions on the agricultural economy.

In making the decisionmaking process much more open it is in keeping with recommendations of the National Academy of Sciences

study, commissioned by EPA, entitled "Decision-Making for Regulating Chemicals in the Environment."

The committee amendment, unlike the original Poage-Wampler amendment, does not fragment jurisdiction over pesticide programs by requiring approval of two agency heads before any decision is reached. Under the original Poage-Wampler amendment there was no structual provision to resolve these differences—either agency head had authority to veto—neither had the authority to decide. This type of arrangement would seriously impair the ability of government to function and might well disadvantage the agricultural interests in the country. It was believed more prudent by the committee to make certain that the consultation process worked and that the concerns of USDA were expressed fully and taken into account seriously and openly.

There have been references to other precedents for duality of responsibility. They were not considered apt precedents. In other statutes which allow EPA or other Federal agencies to modify specific decisions of a sister agency, they specifically set forth the basis on which the authority may be exercised. They are devoted to specific issues and do not apply across the board to entire programs. The original Poage-Wampler amendment would have allowed the Secretary to veto actions without any standards or objective criteria specified and even on matters that do not concern agriculture. The Administrator of EPA testified before the committee that of the thousands of products registered, a substantial number of pesticides are registered for nonagricultural use ranging from slimicides for industry to disinfectants.

Another serious difficulty with the original proposal lay in handling of adjudication proceedings involving cancellation and changes in classification. It would have given the Secretary of Agriculture a veto over decisions reached by the EPA Administrator which is required to be based on a record developed at the hearing without requiring the Secretary of Agriculture to consider the record developed or for that matter any extrinsic evidence. The committee amendment instead provides requirements for USDA's input before the administrative hearing is held, advertises it so that the public can amplify on the agricultural impact at the hearings, but preserves the authority of EPA to make a final decision, requiring the Administrator at the same time to provide and publish a detailed analysis of the impact on agricultural economy.

Some would have proposed transferring authority over pesticides back to USDA. There was, however, wide criticism of USDA's handling of programs when USDA did have final authority in the matter. Because environmental protection cuts across so many jurisdictions, it was believed an independent agency was needed and thus EPA was created by the President in Reorganization Plan 3 of 1970. It was intended originally that the agency would work closely with and draw upon assistance of other agencies. The committee amendments are designed to this end. The 1972 amendments to FIFRA were reported by this committee providing for EPA control over regulation of pesticides and suspension and cancellation of pesticides. The committee does not find sufficient reason to depart from its original judgment on the matter.

CONSULTATION WITH AGRICULTURE COMMITTEES OF CONGRESS

Another action taken by the committee that is designed to make EPA more aware of the impact of its proposals on the agricultural sector is the requirement included in H.R. 8841 that the Agricultural Committees of the Congress be given the same advance notice of proposed and final forms of regulations as the Secretary of Agriculture. This will improve liaison and communications between the committees and EPA on problems involved in ongoing administration of the Act. It will give the committees an opportunity to bring any concerns they may have regarding regulations to the EPA Administrator prior to issuance—particularly in the light of information that comes to their attention, such as the comments of the Secretary of Agriculture and the scientific advisory panel.

The committee has included in H.R. 8841, an extension for one year of time deadlines for actions remaining to be taken under the Act. These include the deadline for completing implementation of the 1972 amendments of FIFRA (currently October 21, 1976), the deadline for registration and classification of pesticides (currently October 21, 1976), and deadline on requirements for certification of applicators (currently October 21, 1976) and the deadline on the requirement for States to submit applicator certification plans (currently October 21, 1975). The committee action was taken because of the delays encountered to date in implementing various provisions of the law which make it unlikely that the original target dates can be realized. For example, re-registration and classification of currently registered pesticides are dependent on the regulations which provide the procedures for this purpose. The regulations were required to be promulgated by October 21, 1974, but because of complexities involved were only published in the Federal Register July 3, 1975.

The State programs for certification of applicators are dependent on information concerning the pesticides likely to be classified for restricted use—the greater the number, the greater the workload on the States. Information as to this issue was only provided the States in July 1975. In addition, regulations prescribing standards for certification of applicators which were required to be issued by October 21, 1973, were not promulgated until October 9, 1974. The committee is of the view that there is a need for extending these dates as well as the final dates for certification of applicators and for implementing the 1972 amendments because of the complexities of the issues that remain. This will allow thorough and deliberate consideration to be given the matter through the procedures provided in H.R. 8841, as amended.

SELF-CERTIFICATION

Section 5 of H.R. 8841, as amended, provides for the certification standards for a private applicator to be fulfilled by signing a self-certification form. The Administrator is given authority to assure that the form contains adequate information and affirmations to carry out the intent of the Act.

FIFRA provides that any pesticide classified for restricted use by certified applicators must be applied by or under the direct supervision of a certified applicator. A certified applicator may be either a private applicator or commercial applicator. The committee amendment applies only to a private applicator, namely a person who is certified to use or supervise use of a restricted use pesticide for purposes of producing any agricultural commodity on property owned or rented by him or his employer or (if applied without compensation other than the trading of services between producers) on the property of another person. EPA has the obligation under the Act of prescribing standards for certification of applicators to assure that they are competent in the use and handling of the restricted use pesticide.

The committee heard much testimony highly critical of the manner in which EPA had begun to administer the provision regarding certification of private applicators and the burden and the time-consuming process it would place on farmers to become certified. The committee does not see the need for a farmer who would be treating his own farm as he has done for many years to have to go to the county seat or elsewhere for a special training program to get certified. It was believed that the farmer would be more aware of the dangers of restricted use pesticide if each time he makes a purchase he is given a self-certification form to read and sign. As currently administered in many States the producer is required to read a book and pass a test that deals with many compounds—only a few of which he has any intention of using. The self-certification form would focus on the very pesticide the applicator plans to use.

The committee amendment would eliminate increasing the bureaucracy and red tape needlessly. It should provide substantial dollar savings in the Federal and State levels that would otherwise be involved in conducting training programs for hundreds of thousands of farmers throughout the country. Farmers have a self-interest in the safe and proper use of pesticides. It is their own safety that is at stake. They are responsible people and with the certification form can be relied on to use pesticides in a manner that will protect themselves, their land and the environment.

Under the committee amendment there is broad authority for the Administrator to assure that the form contains adequate information and affirmation to describe fully the properties and limitations on use of the pesticide. The affirmation could require in detail statements by the applicant to assure that he fully comprehended the information on the form and that he understood that he would be subject to criminal penalties if he falsely certified to the accuracy of the statements. The Administrator could also provide in the statement that the person had never been convicted or otherwise found guilty of making a false affirmation as a condition for being authorized to make use of the form.

There was discussion in the Committee of a State plan which is operated through dealers who are licensed periodically and informed and instructed on the proper uses of the various pesticides that they are licensed to sell. At the time of purchase of a pesticide, the dealer goes through the information on the label with the prospective buyer and satisfies himself that the buyer understands the limited uses prescribed by the label. Once the dealer is satisfied that the buyer understands the label clearly he provides the buyer with a certification form

for signature in which the buyer certifies he understands the restricted uses of the pesticide and will conduct himself accordingly. The dealer is checked periodically to assure that he is informed on the uses of the various pesticides that he is licensed to sell and is properly instructing buyers.

It is the committee's intent that the self-certification program provided by the committee amendment could be administered by EPA to require a program such as the one described above. However, under the committee amendment the Administrator could not require as a prerequisite for certification that the applicator take a training program, other than the training and instruction received from the dealer and provided on the form.

Further, it is the committee's intent that if a State were to submit for approval a more rigorous type of plan for certification of private applicators that the Administrator would be authorized to approve the plan, although the plan could not be required by the Administrator if it were not requested by the State.

REFUSAL OF ENTRY

The committee amendment also contains provisions designed to refuse entry to any agricultural commodity or product produced in a country or area which permits the use on such commodity or product of pesticides which the Environmental Protection Agency has either refused to register or suspended or cancelled because of possible health hazards resulting from residues of the product if, after inspection by the appropriate agency of the Government, residues are found in excess of established U.S. tolerances.

Under existing law, the various agencies of the Government having responsibility in this area conduct sampling of agricultural commodities and do prohibit entry to any commodity containing excessive residues. The language contained in the committee amendment differs from existing law in requiring the inspection of all lots of any commodity exposed to a pesticide which has been banned in this country or which the Environmental Protection Agency has refused registration because of a possible health hazard.

Supporters of the amendment in committee repeatedly emphasized that, unlike a similar amendment in 1972, its provisions were directed toward the American consumer and the protection of his health. One of the members, speaking in support of the amendment, said:

> It would not eliminate the economic inequities. It will not put us on a parity in terms of the cost of production with a foreign nation, but it will give protection to American consumers who might find their health endangered or impaired.

The sponsor of the provisions addressed the question of its need in committee:

> Under regulations, the Food and Drug Administration and the Department of Agriculture do make inspections and do take residue tests. The problem is that it is done on a random basis and it is not done sufficiently to assure that all of the products that come in are really free of harmful residues.

SCIENTIFIC ADVISORY PANEL

Section 8 of the bill as reported is designed to strengthen, along the same lines of Sections 1 and 2, the input of the scientific community into the decisionmaking processes of the Environmental Protection Agency. These provisions are designed in such a way as to require the Administrator of EPA to select from a field of 12 nominees a panel of seven scientists to serve in an advisory capacity regarding pesticide actions. The nominations would be made by the National Institutes of Health and the National Science Foundation, and the panel selected would be provided with advance copies of EPA notices of proposed rulemaking, final regulations, and notices of intent to cancel or change registration at the same time they are provided to the Department of Agriculture as set forth by Sections 1 and 2 of the reported bill.

The purpose of this provision is to involve persons nominated by the bona fide scientific community in a consultative capacity at the time when it is most meaningful so that we might benefit from their experience and insight. The amendment will tap a tremendous reservoir of talent where there is the best expertise on problems of health and the environment. By adding this scientific and medical inputs it should strengthen the impact of scientific personnel at EPA. Committee members have heard criticism that at times decisions reached may not reflect the scientific opinion of EPA's staff. The amendment should insure a better working relationship between EPA and the scientific community across the country.

MISCELLANEOUS PROVISIONS

Section 9 of the committee bill as reported amends Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to require the Administrator to consult with the Secretary of Agriculture of the United States and the Governor of any State concerned if they request a determination of the existence of emergency conditions. This language is intended to increase the coordination between the Department of Agriculture and the Governor of the State involved and the Administrator of EPA in determining if emergency conditions do in fact exist which justify a specific exemption from existing pesticide regulations.

Section 10 of the bill as reported is designed to correct a problem in jurisdiction between the Environmental Protection Agency and the Food and Drug Administration. Its provisions are an outgrowth of the testimony before the committee by representatives of the Animal Health Institute and later testimony before the committee by the Honorable Sam Fine of the Food and Drug Administration.

The final section of the bill as reported by the committee deals with issuance of experimental use permits by the Administrator of EPA and is designed to clarify his ability to issue such a permit subject to terms and conditions which he may establish to a public or private agricultural research agency or educational institution. This provision would make clear that the Administrator has authority to permit bona fide experiments to be conducted by such organizations on pesticides which have been suspended or canceled.

Committee Considerations

During the week of May 12–16, 1975, the committee held extensive hearings to review the Environmental Protection Agency's implementation of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and to consider H.R. 6387, a bill introduced at the request of the administration by Chairman Foley and Congressman Wampler, the Ranking Minority Member, to extend for 2 years the authorization for funding of programs established by that act.

At that time, the committee received testimony from administration representatives from the Environmental Protection Agency and the Department of Agriculture, industry representatives, representatives of various States, the National Association of State Departments of Agriculture, farm organizations, individual State departments of agriculture, public interest groups, and interested individuals.

The committee continued consideration of H.R. 6387 on June 3, 5, 9, 10, and 11, 1975. A number of controversial issues were raised during the hearings and in later deliberations on the legislation, resulting in the preparation of numerous amendments to the basic act.

When it became apparent that the issues could not be resolved in time for adoption of a bill by the committee in time to report it to the House floor and have it enacted prior to the lapse of funding authority under the original Act on June 30, 1975, the committee acted to amend H.R. 6387 to provide for an interim extension of funding authority through September 30, 1975. It was the feeling of the committee that such an extension would enable the Environmental Protection Agency to carry out its functions in an orderly manner while the committee considered the various proposed changes in the basic Act which had been proposed by the members of the committee. H.R. 6387, as amended by the committee, was considered and passed by the House on June 17, 1975. The bill was later passed by the Senate on June 24, 1975, and signed into law (Public Law 94–51), by the President on July 2, 1975.

On July 29 and 30, 1975, the committee met again to consider legislation to extend FIFRA. At that time it had under consideration H.R. 8841 which would extend the authorization under FIFRA for an additional year through September 30, 1976, at a funding level of $47,868,000. H.R. 8841 was introduced by the Chairman and the Ranking Minority Member to serve as a basis for markup during further committee consideration of the issues involved in extension of the funding authorization of FIFRA. The committee continued to meet after the August recess and completed its markup in sessions held September 4, 5, and 11, 1975.

The following summarizes the issues raised during hearings and open business meetings on the bills to extend FIFRA:

A. Continuing the Authorization

At the time of the hearings in May, both the EPA and the USDA supported enactment of H.R. 6387. At that time EPA requested that the committee refrain from substantive amendments to the act.

Representatives of the National Association of State Departments of Agriculture, the State Departments of Agriculture for Illinois, Indiana, Ohio, West Virginia, the spokesmen for the National Forest Products Association, the New York Department of Agriculture and Markets, the National Grange, the California Rice Research Foundation, the National Wildlife Federation in their testimony also recommended at that time that no amendments be made to the act, although at later dates many of these spokesmen supported particular amendments offered to FIFRA.

Many witnesses had a number of complaints regarding administration of the act and asked for a 1-year rather than a 2-year extension to enable the committee to review the manner that EPA meets their concerns in administration of the program, particularly since final regulations had not then been issued on a number of important matters.

The National Pest Control Association's spokesman called for authorizations for fiscal year 1976 with the EPA allowed to expend only 50 percent of its funds in the first 6 months of the year before returning to the committee. It asked for there to be suspension of further funding if the committee found its directives had not been complied with.

B. Postponement of Time Deadlines

A number of witnesses asked for postponement of implementation of various sections of the act, particularly those sections which are dependent on actions taken under other provisions which have been delayed in implementation.

The representatives of the Iowa Fertilizer and Chemical Association and the American Association of Nurserymen suggested that the committee review the time schedules and extend any deadlines that warrant it. Particular sections as to which time deadlines have been requested to be extended are as follows:

1. Registration, section 4(c)(2) of the Federal Environmental Pesticide Control Act of 1972 (FEPCA)

Section 4(c)(2) requires the registration and reclassification of currently registered pesticides after two years but within four years after enactment of the Act (by October 21, 1976). The spokesman for the National Canners Association and others recommended the extension of this deadline date by one year because of the delay in issuing the regulating providing the procedures for re-registration and classification. These regulations were finally published in the *Federal Register* on July 3, 1975.

2. Certification, section 4(c) (3) and (4) of FEPCA

These sections contain a number of critical time deadlines. Section 4(c)(3) provides that requirements that a pesticide registered for use only by a certified applicator shall not be effective until October 21, 1976. Section 4(c)(4) states that a period of four years from date of enactment shall be provided for certification of applicators, i.e., until October 21, 1976. Section 4(c)(4)(A) requires that EPA prescribe standards for certification of applicators by October 21, 1973. These were not promulgated until October 9, 1974. Section 4(c)(4)(B) requires that any States desiring to certify applicators submit a State plan by October 21, 1975, for consideration by the Administrator.

The Illinois Department of Agriculture, the representatives of FS Services, Inc., Illinois Fertilizer and Chemical Association, and the

National Canners Association recommended extension for one year of the deadline dates for certification of applicators and for submission of State plans.

An extension of these deadlines for two or more years was supported by the spokesmen for the Nebraska Unicameral Legislature, the Idaho Department of Agriculture and the National Cotton Council, while the Wyoming Department of Agriculture recommended delaying the certification deadline until after the task of classifying pesticides had been completed. The New York Department of Agriculture and Markets suggested that the October 1976 deadline for certification should not be extended unnecessarily.

These recommendations were based on EPA's delay in issuing a list of restricted use pesticides under section 3 of the act and to provide sufficient opportunity for effective training and development programs and for the State certification of pesticide applicators. As of the current date, EPA had not completed the task of classifying pesticides; indeed had just issued regulations providing procedures for registration and classification of pesticides. The State programs are dependent on the pesticides classified for restricted use. In order to assist the States, EPA is only now circulating information on the number of pesticides it anticipates will be classified for restricted use.

3. Final effective date

Section 4(b) of the Federal Insecticide, Fungicide, and Rodenticide Act of 1972 provides that all amendments made by that act to FIFRA would become effective by October 21, 1976.

The USDA Under Secretary and the Society of American Florists testified to the merit of extending the final effective date of the act to allow thorough and deliberate consideration of the regulations recognizing the task to be greater than originally envisioned, while the Vermont Department of Agriculture recommended extension of the time deadline by 2 years.

EPA position on extension of time deadline

Mr. Russell Train, Administrator, Environmental Protection Agency, testified on July 29, 1975, that EPA would not object to the 1-year extension from October 1976 to October 1977 of the deadline dates for certification of applicators and the whole process of the use of restricted pesticides coming into effect, that very likely it would be a desirable thing in the long run.

He stated, however, that he did not feel a real need for extending the October 1975 date for submission of State plans—2 State plans were in, about 20 others were in draft and were being reviewed by EPA. He also stated that he believed extension of the October 1976 time for re-registration and classification would be a mistake, that it would be a good idea to have this take place 1 year prior to the deadline date for requirements that pesticides be applied only by certified applicators. He agreed that one could not be sure about certification requirements until after it was known what would be the restricted group of pesticides. In view of the testimony of other witnesses of the need for more time in implementing the act, the committee extended all the remaining critical deadline dates as provided in section 4 of H.R. 8841, as amended.

C. Hot-line

Strong committee criticism was directed in questioning of EPA spokesmen to EPA's use of a nationwide toll-free hotline that would be maintained by a private contractor to receive reports of pesticide misuse and other violations. The hotline resulted from a grant agreement signed by EPA with the National Farmworker Information Clearinghouse of Antioch College for the Juarez-Lincoln Center to operate a toll-free telephone system to record complaints about violations of the law. To advertise this effort, the Agency had issued a press release on May 16, 1975, in which it stated in part:

> Estimates of the number of farm workers made ill every year from misuse of pesticides range in the hundreds of thousands. Hundreds of these workers die. The misuse of pesticides in homes, gardens and other areas also has caused illness and has destroyed plant and animal life.

During the hearings EPA officials apologized for the inaccuracy of the press release—stating that the estimates are unfounded in fact and were based upon unsubstantiated allegations made in 1972.

The committee members criticized the EPA arrangement because it involved a nongovernmental organization in enforcement-related activities and smacked of vigilantism. Also, the advertisement aspect of the project tended to stir up complaints and encourage Americans to tattle on their neighbors rather than provide information. Encouragement to report violations generally has been associated with serious offenses such as illegal narcotics sales and smuggling.

In response to the broad consensus of concern by the committee members, on July 18, 1975, the committee received the following letter from EPA:

U.S. Environmental Protection Agency,
Office of the Administrator,
Washington, D.C., July 18, 1975.

Hon. Thomas S. Foley,
Chairman, Committee on Agriculture,
House of Representatives,
Washington, D.C.

Dear Mr. Chairman: In my testimony before the Committee June 9, I promised the Agency would undertake a full review of the toll free number for public communication concerning pesticides, and would advise you of our conclusions.

As I have expressed to you and Committee Members on prior occasions, we sincerely regret the inaccurate statements made in the initial radio announcement of the telephone number. As distressing as this serious error was, however, I feel that, by itself, it should not determine the outcome of our review.

One feature of the pesticide telephone number which aroused criticism was the Agency's use of a non-governmental organization to administer the toll free telephone aspect of its enforcement program. I agree that the use of a third party for this purpose was inadvisable and our agreement with the outside group has been modified accordingly. The question of whether it is appropriate to continue the service using EPA personnel is one I have deliberated for some time.

In the course of this review I have learned that considerable precedent for the operation of a toll free telephone service can be found in the enforcement programs of other Federal agencies. The National Institute of Occupational Safety and Health, the Consumer Product Safety Commission, the Bureau of Mines, the Internal Revenue Service, and the Department of Justice all have utilized citizen reporting through a toll free telephone system or other means to assist in their regulatory and law enforcement functions.

In the full context of our effort to assure that effective poisons are safely used, and taking cognizance of fundamental changes in the regulatory scheme mandated by the 1972 FEPCA, I perceive a tremendous need for ready and accurate communication with persons from many walks of life affected by this law. Toward this end, I think a single general information contact point in the administering Agency is desirable.

Accordingly, the Agency will continue the operation of the toll free telephone service as an intra-Agency program, on an interim basis. We hope and expect that the toll free number would be beneficial in this respect. Any advertising of the service will emphasize this objective.

Insofar as enforcement is concerned, this would be an aspect, albeit a secondary one, of the program. We would not advertise the number in such a way as to solicit the reporting of violations. Allegations of misuse or improper product formulation or other enforcement information would not be considered or used as evidence in an enforcement proceeding, but could serve as the basis for initiating an investigation.

Our intention is to operate the service in this manner for six months, keeping careful records of all inquiries and the disposition of them. On this basis it will be possible to determine whether the useful features we anticipate are realized and whether this is the best use, in support of the objectives of FIFRA, of the limited resources involved. We will review with the Committee results from the trial period. Should practical experience demonstrate that this is not a worthwhile effort we would terminate it at that time.

Sincerely yours,

JOHN R. QUARLES, Jr.,
Deputy Administrator.

In a meeting with the committee on July 29, 1975, Mr. Train, Administrator of EPA, stated that he was eliminating the hot-line for any purpose whatsoever—that the program was terminated as of that date, whether administered by a third party contractor or by EPA.

D. Fire Ants—Mirex

The need for an effective program to control or eradicate the fire ant was a subject of major concern to the committee. The fire ant is a persistent pest that has spread through the southern part of the United States and caused toxic effects on livestock and food crops in particular. It is a painful people pest. The USDA has been conducting a suppression program in cooperation with the States through matching funds. Prior to the FIFRA hearings it announced that its efforts would end June 30, 1975, claiming that it was a waste of public funds in the light of constraints placed by EPA on the use of mirex—the only known pesticide that can control or eradicate fire ants. This decision precipitated sharp questioning of representatives of EPA during the FIFRA hearings and resulted in a special oversight hearing by the Departmental Operations, Investigations and Oversight Subcommittee on June 26, 1975. Mr. Quarles, Deputy Administrator, EPA, and Mr. Campbell, Under Secretary of Agriculture, explained the background of the fire ant problem, but there were strong differences of opinion as to the type of restraints which should be established on the use of mirex because of the environmental problems claimed to result from its use, particularly in aquatic areas.

It was explained to the committee that EPA instituted proceedings in 1973 under section 6(b)(2) of FIFRA to hold a hearing to determine whether or not registration of mirex should be canceled or its directions for use changed. Prior to the hearing, mirex had been registered for aerial and ground application with properly calibrated equipment, and with a prohibition against aerial application in coastal counties in or near aquatic or heavily forested areas. Application of mirex was limited to once per year. The administrative hearing was held to explore whether mirex with its restricted labeling requirements complies with FIFRA and whether when used in accordance with commonly recognized practices causes unreasonable adverse effects on the environment. The hearings were suspended in early 1975 pending outcome of settlement negotiations. Agreement was reached by many parties to the proceedings, but the settlement negotiations broke down when representatives of USDA withdrew. In the settlement negotiations EPA indicated a willingness to liberalize its restrictions such as the one application per year limitation, in the context of additional restrictions to minimize hazards. The USDA contended that these restrictions were too limiting and precluded an effective program.

The committee was advised that the administrative hearings were initiated again in August and USDA has adhered to its policy of terminating participation in the control program. As of this date, the committee is not aware that the parties are any nearer agreement and members are concerned that there will be no program in effect for control of the fire ant during the forthcoming season.

The committee calls upon EPA to expedite consideration of the matter. In particular, it urges EPA and USDA to redouble their efforts to reach agreement so that effective action can be taken against the fire ant and the country not left defenseless against this pest during the forthcoming season.

E. Coyotes and Other Predators

Another issue that was the subject of extensive discussion with EPA officials during the hearing was the matter of predator controls. In 1972 the President issued Executive Order 11643 banning the use of toxic materials on public lands or by Federal officials for the purpose of controlling predatory animals. This order was followed by the decision of the Department of Interior to stop the use and distribution of predator poisons on public land. Later that year, EPA announced the suspension and cancellation of Federal registration for a large number of pesticides used in controlling predators. The decision became final without a hearing since it was not requested by any person.

Much public discussion and concern in Congress followed these actions. A considerable number of hearings were held by various congressional committees to investigate the issues and to debate legislation.

In November 1973 several States requested specific exemptions under section 18 of FIFRA for the emergency use of sodium cyanide (one of the chemicals subject to suspension and cancellation order) and the registration of the M–44 gun—a device used to propel cyanide capsules into a predator's mouth when it tugs on the loaded bait. Instead, in 1974 EPA announced a plan for an M–44 coyote experimental use program. The permit would authorize its use on private land for the purpose of developing data on the effectiveness of M–44 in reducing sheep losses, the efficacy and cost comparisons between M–44 and nonchemical control techniques and on any adverse human or environmental effects. States receiving EPA approval for sodium cyanide experimental programs include Texas, California, Montana, Idaho, South Dakota, Nebraska, and Kansas. The terminal dates for the program in each State varied slightly from State to State but generally was in mid-1975. In June 1974, the Department of Interior published emergency use procedures under the Executive order for the use of M–44 for predator control and gained EPA approval for an experimental use permit for the device on public lands.

There has been much debate on overall livestock losses due to predators, the effectiveness of chemical toxicants in reducing these losses and whether chemicals represent imminent hazard to the environment. There is also a question as to whether they have secondary poisoning effects and kill animals quickly and painlessly.

In the hearings, the Texas Sheep and Goat Raisers Association and the National Wool Growers Association were sharply critical of the restrictions placed by EPA on chemicals used for predator controls. They claimed that they had been imposed without a balanced risk-benefit study.

Committee members contended that predators, such as coyotes, have caused critical conditions to sheep herds warranting emergency measures, that sheep production was dropping precipitously as a result of losses to predators thereby jeopardizing food and fibre production.

USDA scientists have estimated that livestock losses to predators may be as great as $150 million annually. Increased coyote predation is also known to be responsible for dwindling deer numbers in many areas. Many believe that the M–44 cyanide gun is not objectionable because it has no secondary lethal effect. The EPA Administrator was questioned when he would make a decision as to issuance of registration for the cyanide gun based on information accumulated from the experimental use program. Members asserted that sufficient study had been given the matter and it was time for decision.

Mr. Train gave his assurance that a decision would be reached in mid-September 1975, that by then sufficient information from the experimental use program would be available. The Administrator announced a decision on September 17, 1975 in which he modified the ban on the use of sodium cyanide. The decision would provide for registration of sodium cyanide for use in the M–44 gun and permit the sale of capsules to State and Federal registrants who in turn would be

allowed to sell or distribute sodium cyanide capsules to individual private applicators. Use by private applicators would be allowed but only after a period of training and subject to supervision by State and Federal registrants.

The decision is helpful but the Committee is concerned with the large number of restrictions governing its use. Further, more work needs to be done by EPA and other agencies to find other effective means of controlling predators. For example, the modification does not affect the existing ban on the chemical 1080.

At the hearings, Mr. Johnson of Colorado called EPA's attention to a report prepared by the Department of Interior in 1971 which said that the chemical 1080 is canine selective if used properly and has no secondary effects on eagles or other forms of wildlife. He stated that although the manufacturer may not have asked for a review of EPA's decision, it was essential to authorize its use for protection of the welfare of farmers and ranchers.

F. Dual Jurisdiction With Food and Drug Administration

The Animal Health Institute called attention to confusion and delays arising from dual jurisdiction of certain pesticides by EPA and the Food and Drug Administration. It claimed that the dual jurisdiction continues to result in registration delays and contradictions long after a product fulfilled the stringent safety and efficacy requirements of the two agencies. The problem has been addressed by a House Appropriations Subcommittee in hearings on FDA and EPA budgets-for fiscal years 1973, 1974, and 1975. An interagency agreement was entered into by EPA and FDA in December 1971 and amended in September 1973 in order to cope with the problem. The Animal Health Institute claimed that, notwithstanding, the difficulties have continued. In amplification of its testimony, it provided two specific examples—one a product under the primary jurisdiction of FDA (with EPA having secondary jurisdiction)—the other under the primary jurisdiction of EPA and relating to a product manufactured by one company, repackaged by another and marketed by both under different names.

It suggested that EPA make use of its authority under section 25(b) of FIFRA which permits exemption from the requirements of the act of any pesticide which the Administrator of EPA determines is adequately regulated by another Federal agency.

In the hearing held before the committee on June 3, 1975, representatives of the FDA and EPA appeared to respond to the issue of dual jurisdiction. The following statement was presented by the Honorable Sam D. Fine, Associate Commissioner for Compliance, Food and Drug Administration:

> Mr. Chairman, we welcome this opportunity to discuss with your Committee the responsibilities of the Food and Drug Administration (FDA) with respect to drugs which are also, by definition, pesticides.
>
> *Background*
>
> The FDA, in discharging its responsibilities under the Federal Food, Drug, and Cosmetic Act, protects the public health of the Nation by assuring that:

(1) Drug products intended for use in man or other animals are safe and effective.

(2) Edible products derived from animals treated with such drugs are safe for consumption.

For products that are new drugs (human or animal), the sponsor is required by law to submit an application to FDA for review and approval prior to marketing the product. The purpose of the application is to satisfy the requirements of the Act as to the safety and effectiveness of the drug. For an old drug, one that has been marketed prior to the New Drug Amendments, or one that is generally recognized as safe and effective, the manufacturer does not need to obtain approval from FDA prior to marketing, but the product must, among other things, be safe, effective, and properly labeled for its intended use.

The Environmental Protection Agency (EPA) in fulfilling its responsibilities under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, regulates the marketing of pesticides by requiring that such products be registered with EPA based on their proven effectiveness and safety to man, other animals, and the environment. This is accomplished by the manufacturer submitting a petition for EPA review and registration of the product.

FDA–EPA interagency agreement

Certain products fall within the applicable statutory definitions of both drug and pesticide and, as such, are subject to the requirements of both laws. Because of this dual jurisdiction, FDA and EPA entered into an agreement which, among other things, described the procedures to be followed in the review and approval of these products. The agreement was published in the *Federal Register* of December 22, 1971 (36 FR 24234).

The agreement was intended to resolve the jurisdictional overlap which resulted from the two agencies having the authority and responsibility for regulating the same products. The agreement informed manufacturers seeking approval of these products:

(1) which agency has primary jurisdiction;

(2) that the product will be referred to the other agency for a decision under its law; and

(3) that approval will not be granted unless both agencies approve the product under their respective authorities.

In time, both agencies did encounter other jurisdictional problems with respect to the review of certain products. These problems primarily involved animal drugs which are also pesticides. These problems, in part, identified the need for further elaboration of the interagency procedures. Thus, an amendment to the 1971 agreement was developed and published in the *Federal Register* of September 6, 1973 (38 FR 24233).

The amendment provided more information on each agency's responsibilities:

(1) by identifying which types of products would be considered primarily a pesticide or primarily a drug; and

(2) by listing certain products which, based on mode of action and method of application when used on animals, would be considered solely a pesticide, and not subject to FDA requirements.

The amendment also stated that the format of submissions for products, including information and data on manufacturing, formulation, and labeling would be governed by the agency of primary jurisdiction.

Following the publication of this amendment, the Animal Health Institute, because of its members' interests, provided both FDA and EPA with its views on the amendment. The Institute stated that it was encouraged by the FDA/EPA publication. It, however, expressed the opinion that certain ambiguities were contained in the amendment and presented an interpretation of those provisions considered ambiguous.

On January 7, 1974, the Food and Drug Administration, in consultation with the appropriate officials in the Environmental Protection Agency, provided the Animal Health Institute with our views on the interpretative statements. A copy of both letters will be made available for the printed record.

Since the publication of the September 1973 amendment, other problems have been identified. As a result, the two agencies have made further changes in the interagency procedures and FDA adopted new internal policies relative to the review of applications for drug/pesticide products intended for use on animals.

Recently, FDA drafted a major revision to the interagency agreement. The draft deals exclusively with the problem of drug/pesticide products and consolidates, into a single document, the two previous publications as well as other changes in policy and procedures. The draft is presently under review by EPA and FDA.

In our review, we are considering alternative approaches which may be more effective in clarifying the responsibilities of both agencies, as well as those of the regulated industry. One possible approach would be to publish parts of the revised agreement as proposed regulations. In this way, the affected industry will have an opportunity to formally comment on these interagency requirements before they are finally adopted.

We believe that this rulemaking approach would provide clear guidance to industry on what it must do. This should eliminate many of the problems experienced in the past. For example, sponsors of products have not always followed the procedures contained in the interagency agreement. Contrary to the agreement, they have submitted separate applications and petitions to FDA and EPA without advising the other agency. In other instances, applications submitted to one agency were inadequate in that they did not satisfy the other agency's data requirements. In part, these deficiencies have contributed to some of the delays and confusion experienced by industry.

I do not want to leave the impression that a new agreement and regulations will completely assure that all problems cited in the testimony of the Animal Health Institute on May 15, 1975, will be resolved. The measures being implemented and considered have been, and will continue to reduce such delays and misunderstandings.

* * * * * * *

Exemption under FIFRA

FDA shares the view expressed in the Animal Health Institute's testimony that consideration be given by EPA regarding the utilization of section 25(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This section allows the Administrator of EPA to exempt from requirements of FIFRA by regulation, any pesticide which he determines could be adequately regulated by another Federal agency. The FDA feels that this provision would overcome many of the problems that have occurred in the past because of dual jurisdiction.

Invoking this exemption, however, may not be as simple as it appears. It would be necessary for EPA to issue in the *Federal Register* a proposed regulation for the implementation of section 25(b). Such a proposed regulation would necessarily describe the principles and procedures which EPA would follow in exempting products from registration.

It is our opinion that those products regulated as old drugs under the Act, and hence, not subject to premarketing approval, should not be exempt from the registration requirements of FIFRA, since registration would provide a premarketing clearance and control of the product.

It should also be pointed out that a pesticide manufacturing company not now regulated by FDA would come under FDA jurisdiction because of an exemption obtained under section 25(b). Therefore, that company would have to register as a drug firm under the Act and fully comply with the requirements of that law, including its Current Good Manufacturing Practice Regulations. We are uncertain as to what impact, if any, these FDA requirements would have on the pesticide industry.

Therefore, any consideration given to urging EPA to employ section 25(b) of FIFRA should be done cautiously.

Thank you, Mr. Chairman. My colleagues and I will be happy to answer any questions you and other members of the Committee may have.

At the June 3 hearing, members of the committee expressed the view that there was a need for a new regulation and that the two agencies should move expeditiously in that direction. On July 29, 1975, Mr. Train was queried again as to resolution of the problem of dual jurisdiction with FDA. EPA responded that they were still trying to write the necessary regulations. They were working on arrangements whereby one agency would review the matter; namely, the agency having primary jurisdiction. There was the problem that while EPA has the authority to exempt pesticides which are adequately regulated by another agency, FDA does not have comparable authority. The committee concurs with the view expressed by Mr. Quarles. "It is important for the Federal Government to try to reduce what may be a multiplicity of demands on any individual citizen and to provide a one-stop procedure for obtaining whatever governmental approvals are required insofar as that is possible." For this reason, it adopted the amendment proposed by Mr. Melcher to exempt from FIFRA certain animal drugs and feeds.

G. Section 3. Registration of Pesticides

This section of the act provides that no person may distribute or receive a pesticide which has not been registered with the Administrator. It provides authority for the Administrator to classify pesticides—for general use and for restricted use, and under certain circumstances for denial of registration. One of the key tests is whether the pesticide will cause unreasonable adverse effects on the environment.

The act requires regulations for this section to be promulgated by October 21, 1974. They were not issued, however, until July 3, 1975. As indicated above, the deadline for registration and classification of all pesticide products is October 21, 1976.

A significant number of witnesses were concerned over action EPA might take regarding registration and classification of pesticides into "general" and "restricted" use categories. Many of these witnesses (for example, the USDA, Commissioners of Agriculture for Ohio, Washington, the American Farm Bureau and the Iowa Fertilizer and Chemical Association) expressed hope that only a small number of pesticides would be classified "restricted". They made reference to the legislative history, Senate Report No. 92–838, page 5, which reads "few pesticides which are now registered would be classified for restricted use." There was a fear among some of these witnesses that as much as 50 percent of current pesticide products might fall under the "restricted use" category in which event they stated congressional clarification of the intent of the law would be needed.

In response to this concern, in a May 22, 1975, letter to Chairman Foley, EPA explained that a list of 117 active ingredients had been drawn up based upon the most important crops and upon the amounts of the various pesticides used in each State. Although a final determination will be made during the registration process, EPA estimated at that time that agricultural uses of 76 percent of the active ingredients from this list will likely fall into the "general" use category and agricultural uses of 16 percent of the active ingredients will be classified either general or restricted.

This was supplemented by a letter of July 15, 1975, from EPA upon completion of the initial review by the Registration Division on the classification of active ingredients in all registered pesticides. The assesment was made to assist EPA and the States in planning the necessary scale of certification programs. Final classification decisions will, of course, be made only as products are re-registered as provided for by section 3 of FIFRA. It stated that a summary of the results of its review was as follows:

Pesticide uses	Estimated total number of active ingredients	Presumptively restricted active ingredients					
		Total		Some uses general, some uses restricted		All uses restricted	
		Number	Percent	Number	Percent	Number	Percent
Disinfectants	225	0		0		0	
Fungicides	200	11	5.5	8	4.0	3	1.5
Herbicides	275	2	.7	1	.5	1	.5
Rodenticides	100	4	4.0	2	2.0	2	2.0
Insecticides	400	38	9.5	27	6.7	11	2.7
Total	1,200	55	4.6	40	3.3	17	1.4

In testimony on other registration issues, the spokesman for the National Agricultural Chemical Association objected to EPA philosophy that total knowledge is necessary to resolve each question of registration and that the proposed registration regulations made no distinction between pesticides whose use results in a residue in foods and feed and those whose use results in a measurable but negligible residue. He stated that 2-year toxicity studies should not be required when products leave insignificant residues and that EPA should allow their scientists to exercise scientific judgment in evaluating the potential hazard to the public.

The Health Research Group, on the other hand, called for tightening of testing and labeling requirements.

The Environmental Defense Fund asked for substantial support of scientific literature as a prerequisite for registration and testing of inert ingredients in pesticides, and the National Wildlife Federation called for the burden of proof of safety to rest with manufacturers, users, or dischargers of chemical substances.

Abolition of recertification requirements was requested by Orkin Exterminating Company and Terminix International.

The representatives of the Western Forestry and Conservation Association and the Northwest Forest Pest Action Council testified that EPA has the responisbility to assist research on alternative methods of pest control by establishing performance requirements and developing safety protocols for registration of microbial insecticides and other alternatives.

H. Section 3(c)(1)(D). Exclusivity of Data

A subject of discussion during the hearing was the EPA administration of section 3(c)(1)(D) of FIFRA—more particularly, whether EPA is required to apply this provision to data which it had received prior to enactment of the 1972 amendments and which applicants (other than the applicant which furnished it to EPA) wished to use as a basis for registration or reregistration. This section provides 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 on and the data is not protected from disclosure by section 10(b). If the parties cannot agree on the amount and method of payment, the Administrator, after opportunity for a hearing, shall make the determination and fix reasonable terms and conditions with the owner of the test data having the right to appeal the determination.

At the time of the hearings and even at this time, EPA has not yet implemented section 3(c)(1)(D) but is operating under an interim policy statement which recognizes no property rights to basic supporting data submitted prior to October 21, 1972. Thus, data submitted prior to this date could be used without compensation to establish a pattern of use under which a new registrant could gain registration.

The representative of NACA testified that under the Act test data submitted prior to October 21, 1972, as well as test data submitted after that date, are subject to provisions of this section. The matter was pressed in questioning of EPA's representatives by Mr. Poage and other members of the Committee. It was the Committee's intent at the time of the 1972 amendments and it is the Committee's intent now that section 3(c)(1)(D) of the Act be applied to all test data submitted to EPA for registration purposes under this Act in the possession of EPA, regardless of whether it was submitted after the it within his power to prevent monopolization of the pesticide market by basic manufacturers as some formulators have feared might occur if the basic manufacturer were to set as unreasonably high price for use of his data. Under this section of the act, the Administrator has authority to step in, and after opportunity for a hearing, determine the amount and terms of reasonable compensation that is fair to both parties.

I. Section 4. Certification

The Act requires that pesticides restricted for use by certified applicators may be applied only "by or under the direct supervision of a certified applicator." If a State desires to certify applictors, the Governor must submit a State plan for this purpose. The Administrator will approve the plan if it meets standards set forth in the act.

Although the Act required EPA to publish regulations for the certification of applicators by October 1973, these were not issued until 1974. EPA regulations governing State plans were finalized only on March 12, 1975. Under current law, States must submit their plans by October 1975.

A considerable amount of frustration was expressed to the committee by State representatives present and by some commercial applicators over EPA's certification regulations. State witnesses generally testified to the difficulty in developing State certification and training programs without knowing the extent to which pesticide uses would be restricted. They claimed that the State cannot make an intelligent judgment as to training mechanisms until it has an idea of what pesticide uses will be registered as restricted use.

At the time of the hearings, H.R. 4952 and H.R. 5972 had been introduced in Congress to provide that the certification standards for private applicators would be deemed fulfilled by signing self-certification forms which contained adequate information and affirmations. This program for self-certification was supported by testimony of Congressmen Roncalio and Evans, the Colorado, Ohio, Wyoming and Washington Departments of Agriculture, the Society of American Florists, the Agri-products Division of CENEX, and the spokesman for the Louisiana Agricultural Interests. This procedure was also supported by the representatives of the Wisconsin Legislature's Com-

mittee on Agriculture, the Wisconsin Plant Food and Pest Management Association, and the Wisconsin Federation of Cooperatives.

Generally, they stated that providing for States to certify private applicators imposed a tremendous financial burden on the States while the self-certification program would provide substantial dollar savings at the Federal and State levels and cut administrative red tape that would otherwise be involved in conducting training programs for the hundreds of thousands of farmers throughout the country. They claimed that farmers have a history of safe and proper use of pesticides and recognize their responsibility to the land and the environment; that there is a need to maintain the greatest possible flexibility in the certification program; and that it is not necessary for farmers to pass a formal test to establish their competency to use pesticides.

Many witnesses contended that refusal by EPA to provide for a self-certification program is not consistent with the intent of Congress as reflected in Senate Committee Report 92–838, page 21, and elsewhere in the legislative history.

The North Carolina Commissioner of Agriculture recommended an amendment deleting the provision requiring certification of private applicators.

The Illinois Fertilizer and Chemical Association and FS Services witnesses saw the need for some type of interim certification to allow farmers to purchase restricted use pesticides until they became certified. The former witness recommended a minimum 5-year automatic certification upon attending an Agricultural Extension training session.

The California Agriculture Department testified that EPA must allow greater flexibility in State programs, and the National Canners Association recommended simplifying applicator training, certification and the control of restricted pesticide uses.

The National Wildlife Federation, the Environmental Defense Fund, the National Audubon Society and the United Farmworkers spokesmen expressed strong opposition to H.R. 4952 and H.R. 5972 stating self-certification would undermine the purpose of use classification.

EPA testified that it believed the self-certification procedure would not be in the best interest of pesticide users, the environment or the agricultural industry, that it requires some approval by a person other than the applicator himself to arrive at the result Congress intended. Mr. Quarles stated that the private applicator would be able to obtain certification through a reasonable and relatively limited effort on their part, that EPA was sensitive to the need for the program to be run on a basis of practicability and that most States contemplate programs that will certify a farmer in a 2- or 3-hour period during the winter months when the farmer is not heavily committed. He stated that the goal of EPA is to provide flexibility to States to develop programs tailored to their specific needs but which would still upgrade substantially the knowledge of farmers as to the restrictions on the label, their understanding of what it means and what they should be using. Mr. Quarles reiterated that EPA's guideposts would be first that there be a meaningful certification and that testing should be carried out in a moderate way—that a small amount of reading in advance

of taking a simple test would be typical and that the program could be administered by the county agent or by the State Agricultural Department or other agency and that certification would be in the general locality where the farmers live. Programmed instruction, home instruction, successful completion of training programs, and other mechanisms may be utilized as well as written or oral exams in the case of private applicators.

The committee was not persuaded by this testimony and voted to include a requirement for a self-certification program in H.R. 8841, as amended, with broad authority in the Administrator to require on the form adequate information and affirmations to carry out the intent of the act.

Federal funding for State certification programs was strongly urged by the Missouri, California and New York Departments of Agriculture.

The spokesman for the National Pesticide Chemicals Association testified that standards for commercial applicators should vary little from those for private applicators with the entrusting of certification regulations more fully to the States. NPCA also recommended a shift of $1.5 of the $3.5 million requested for enforcement to the development of affirmative action education and training programs to facilitate certification. The Illinois Department of Agriculture supported a similar proposal for Federal funds to aid State testing and training of farmers. Terminix also asked for emphasis on training programs rather than accident reporting.

Representatives from the Health Research Group and Rural America, Inc., advocated the strengthening of the law and regulations governing EPA's certification procedures. Their suggestions included testing of commercial applicators working under the direct supervision of a certified applicator, limiting the sale of restricted use pesticides to only identifiable certified applicators, and setting up a reporting system and accountability of certification procedures.

The proposal to limit the sale of restricted use pesticides to certified applicators was opposed by the FS Services and the Wisconsin Plant Food and Pest Management Association spokesmen.

J. Section 5. Experimental Use Permits

Section 5 of the Act provides for issuance of experimental use permits, by which a pesticide can be tested to obtain data necessary for a registration application. Experimental use regulations were to be promulgated by October 1973. EPA published final regulations on April 30, 1975.

The witness for the National Wildlife Federation testified that it is especially important that adequate oversight be provided the experimental use permit program, that Congress should provide ongoing review and clear direction on the legislative intent that such experimental permits are not intended to facilitate large-scale use of pesticides which exceed the scientific parameters of an experiment.

The New York Department of Agriculture and Markets spokesman recommended that State issuance of experimental use permits under section 5(f) should not be unnecessarily limited in the future.

On July 29, 1975, Mr. Henson Moore asked Mr. Train as to his

views on the experimental use by bona fide agricultural institutions of pesticides whose registration has been suspended or canceled. In particular, he inquired whether it could be tested experimentally in the field—not merely in the laboratory. Mr. Train stated that it appeared unobjectionable provided that there were adequate safeguards in carrying it out to insure gainst environmental and human hazards that there was a limit to its use so that it was not being used for purposes other than experimentation and that the testing was performed by a bona fide institution. Mr. Moore subsequently proposed an amendment which would accomplish this objective. The amendment with some modification was adopted by the Committee.

K. Section 6 (b) and (c). Cancellation and Suspension

FIFRA provides for two processes by which registrations can be terminated: cancellation and suspension. EPA must cancel the registration of a pesticide after 5 years unless the registrant requests registration to be continued in accordance with the prescribed regulations. The Administrator may cancel a pesticide's registration or change its classification if after opportunity for a hearing it is determined that when used in accordance with recognized practice, it "generally causes unreasonable adverse effects on the environment." In order to prevent an "imminent hazard" as defined by the Act during the time required for cancellation or change in classification proceedings, the Administrator may upon prior notification of the registrant suspend the registration of a pesticide immediately.

Both State and industry spokesmen questioned the procedures used by EPA in making decisions on the suspension and cancellation of pesticides registrations. They questioned the scientific basis for some decisions and contended that insufficient account was taken of the benefits of the use of the pesticides on the agricultural economy in decisions reached; that this essential factor for the benefit-risk equation was inadequately developed.

The National Pest Control Association recommended ceasing the suspension and cancellation of pesticides without indisputable proof.

The Wyoming Department of Agriculture representative recommended that determination of "imminent hazard", "protection of health and the environment," and "unreasonable adverse effects in the environment" must be factually supportable based on a past use of pesticides. He also suggested that effective and feasible alternatives should be developed prior to cancellation of a registration.

The Director of the Ohio Department of Agriculture recommended that USDA develop cost/benefit standards for EPA cancellation and suspension proceedings. The Northwest Forest Pest Control Action Council and the Western Forestry and Conservation Association felt that more technical input was needed at EPA decisionmaking level for benefit/risk analysis.

To solve the disputes arising over the validity of scientific data presented during cancellation proceedings, the representative of the Orkin Exterminating Company recommended that all scientific questions should be settled on an impartial third-party basis, perhaps by the National Academy of Sciences.

The spokesman for the Louisiana Agricultural Interests recommended that section 24(c) be amended to permit a State to issue special

local need registration on pesticides previously canceled or denied registrations.

The Health Research Group representative called for a special label to be affixed to a pesticide container informing the public that the product is no longer safe if EPA has initiated cancellation proceedings for the product's registration.

The general sense of the testimony on this aspect of the Act resulted in the Vigorito amendment requiring that in issuing notices of intent and taking final action on registration, cancellations, or changes in classification there be taken into account, among other factors, and published in the *Federal Register*, the impact of the action on the agricultural economy—as well as the provisions requiring consultation with the USDA. In addition, concern for adequate scientific data as a basis for decision making gave rise to the provision for the establishment and use of a scientific advisory panel.

L. Section 10. Protection of Trade Secrets

Section 10(b) of the act prohibits the Administrator of EPA (with certain limited exceptions) from making public any information "which in his judgment contains or relates to trade secrets or commercial or financial information obtained from a person and privileged or confidential."

The representative of the National Agricultural Chemicals Association testified that all test data submitted to EPA should be protected under the provisions of section 10(b), including data submitted to USDA or EPA prior to enactment of 1972 amendments to FIFRA and that EPA should not ignore this provision of law when it re-registers pesticides that had been registered prior to 1972. He also stated that protection should not be limited to the formula or the manufacturing process but should apply as well to all research data.

This section of the Act makes it unlawful for any person in any State "to use any registered pesticide in a manner inconsistent with its labeling."

M. Section 12(a) (2) (g). Use Inconsistent With Label

Commissioners for Ohio Department of Agriculture, the New York Department of Agriculture and Markets, Washington State Department of Agriculture, National Forest Products Association and several industry spokesmen such as Orkin, NACA, the Iowa Fertilizer and Chemicals Association and the American Association of Nurserymen testified that because of the data requirements and high costs of Federal registration they feared many pesticides would not be registered for use on minor crops or for occasional pests, and that because section 12(a)(2)(G) prohibits the use of a pesticide inconsistent with its label, these essential uses would become illegal.

Representatives of the United Pesticide Formulators and Distributors Association, the Society of American Florists, the National Forest Products Association and National Cotton Council suggested the need for greater flexibility in registration of labels to solve the minor use problem. Recommendations included criteria to be established to allow low-volume or limited usage registrations; allowable use on similar products without being subject to fines; the grouping of pests and the grouping of crops on the label; and increasing Federal funding to

help offset industry research costs. Another recommendation was for EPA to allow broad spectrum insecticides to control occasional pests and to permit the industry to follow the common practice of combining pesticides in one application, provided no incompatibility would result. This would avoid the time consuming practice of applying in different applications several different insecticides to effectively cover a particular area. Many were concerned with possible penalties for use at a lower rate than specified on the label and cited a comment of Mr. Kirk of April 1974. The representative for the Washington State Department of Agriculture also suggested that one way to accommodate the problem was by implementation of section 24(c) which provides for a State registering use for special local needs. He states this would be a practical way of accommodating minor uses.

The National Pest Control Association spokesman called for a directive to EPA to resolve the "use inconsistent with its label" problem within 45 days.

In the legislative history of the 1972 amendments to FIFRA it was recognized that the wording of Section 12(a)(2)(G) is broad, and the reports of the committees on H.R. 10729 attempted to clarify the meaning of this section. (See H.R. Report No. 92–511, p. 16; S. Report No. 92–838, pp. 15–16; S. Report No. 92–838 (Part II), p. 51). However, according to the testimony received by the committee there are uncertainties with respect to the manner in which this section is being administered. The committee understands that it is the view of EPA that any deviation from label directions is a civil or criminal violation, but that certain deviations may be excused by the Agency in the exercise of its prosecutorial discretion.

The committee again recognizes the need to apply the standard of use "inconsistent" with respect to labeling in a common sense manner (H.R. Report No. 92–511, p. 16). It is not the intention of the committee that every deviation from the strict wording of the labeling no matter how minor is unlawful and considered a violation of the act. For example, there may be circumstances where use of a pesticide at less than label dosage is not only safe and efficacious, but is the more appropriate use from the standpoint of environmental protection. Such a use should not be considered violative of the act. In addition, there are many words and phrases used in labeling which are subject to differing interpretations. Some method of administration of the law should be established to apply this section in a reasonable manner and for the issuance of informal advisory opinions or interpretative statements, so that users are informed of those uses which although technically "inconsistent" with the labeling are considered as not unlawful and in accordance with the intent of the act. In applying this section, consideration should be given to the suggestions provided in the testimony to the committee, many of which we believe have substantial merit.

In testimony on a related matter, the Commissioner of Agriculture for Colorado and NACA, Southern Cotton Growers, Georgia Cotton Commission, American Farm Bureau Federation complained that EPA was attempting to regulate pesticide by regulating *possession* instead of *use*, and that this compounds the problem of "use inconsistent with the label."

NACA objected to a proposal of EPA that "use" include storage, handling, and disposal of excess pesticides and containers, and other deviations from the strict wording of the label. It asked that use be restricted to "intentional" application of a pesticide.

N. Section 14. Penalties

The act provides for both civil and criminal penalties.

Both the spokesmen for the Wisconsin Plant Food and Pest Management Association and the F.S. Services testified in support of H.R. 4812 which would require official warnings before civil penalties are assessed on applicators.

The United Pesticide Formulators and Distributors Association representative objected to the civil penalties being levied by EPA against several manufacturers and producers of pesticides. The witness recommended a comprehensive program of free on-site consultative inspections that would provide support to the formulators and pesticides users in their efforts at voluntary compliance with FEPCA. He called for assistance in education of the industry in the requirements and interpretation of FIFRA. This suggestion was supported by the Orkin Exterminating Co.

The National Pest Control Association's spokesman advocated the abolishment of EPA's formula scheme used in assessing fines.

O. Section 15. Indemnities

Spokesmen for the National Wildlife Federation, the Environmental Defense Fund, the Health Research Group, and the *Organic Gardening and Farming* magazine called for the repeal of section 15 which provides for indemnity payments to manufacturers or holders of a pesticide suspended or cancelled to prevent an "imminent hazard."

P. Section 19. Pesticide Disposal and Storage

The Environmental Defense Fund recommended that a legislative deadline be established for promulgating regulations governing disposal of excess pesticides and money be given to States for the development of programs for the disposal of pesticides and their containers.

In addition, EDF called for a congressional-mandated deadline for publishing regulations on pesticides to be used in the home environment. On the other hand, NACA objected to EPA regulation of storage and disposal of pesticides and pesticidal containers.

Q. Section 20. Research and Monitoring

The act provides that the EPA can conduct research necessary to carrying out the Act, with priority assigned to the development of "biologically integrated alternatives for pest control." A national monitoring plan is authorized.

Strong opposition was voiced by members of the committee regarding justification of the "hotline" as a research activity. The "hotline" is discussed in greater detail above.

Several other recommendations were made concerning EPA's research and monitoring activities.

The State of Louisiana urged that continued research on pesticides be permitted even after registration is canceled. This suggestion was embodied in an amendment proposed by Mr. Moore and adopted by

the committee to section 5 of FIFRA. National Forest Products Association asked for research devoted to pesticides that control a broad spectrum of insects.

The Environmental Defense Fund called for a congressional deadline, if necessary, for the achievement of EPA's long-delayed monitoring and research goals for the National Pesticides Monitoring Program. The Health Research Group suggested that the Delaney clause be applied to pesticide residues in raw agricultural products as well as in processed foods, while others called for repeal of Delaney amendment.

The Rural America spokesman recommended that EPA assume responsibility for all research into the adverse effects on health of pesticides. He stated that tests performed on animals that produce adverse effects should be considered an adequate indication of danger to human beings. The organization also suggested that EPA monitor and evaluate all tests by chemical companies.

The Rural America and *Organic Gardening and Farming* witnesses recommended long-term Federal support be provided for farmers turning from total chemical control programs to an integrated pest management program. The Health Research Group and the National Wildlife Federation representatives recommended that Congress provide economic incentives for the development and use of biological pest control methods and require an education program in integrated pest management for farmers in State certification programs.

R. Section 24. Authority of States

The act authorizes State registration of pesticides to meet special local needs if the State is certified by EPA as capable of exercising controls to assure registration will be in accord with the purposes of the act.

The Washington State Agriculture Department called for the implementation of section 24 as did the Minnesota Department of Agriculture. The New York Department of Agriculture and Markets recommended a liberal interpretation of section 24 to permit States continued authority, responsibility and freedom in registering pesticides to meet local needs and problems. The Wyoming Department of Agriculture testified that this authority should be carried out at the discretion of the State lead agency.

Proposed regulations to implement sections 24(c) and 5(f) of FIFRA were published in the Federal Register on September 3, 1975. When the regulations are finalized, taking account of suggestions from the public, the committee hopes that it will prove of assistance in resolving the "minor use" pesticide problem.

The committee is pleased that the Agency has recognized the significance of this issue. Further, the committee urges the Agency to develop research activities to assist in this effort of providing pesticides for use on a narrow scale such as that involved in minor crops.

S. Federal Funding of State Programs

Many witnesses asked for adequate Federal funding of State agencies involved in implementation of pesticides regulations (National Association of State Departments of Agriculture. Georgia, Washington, and Ohio Departments of Agriculture, National Cotton Council, National Pest Control Association).

T. General

Several additional recommendations were made for improving EPA's overall regulations and for providing a greater degree of coordination among various interests as follows:

(1) EPA's proposed regulations should be subject to review and approval by congressional committees before published in the *Federal Register*, according to the Ohio Department of Agriculture. This suggestion was considered but rejected in favor of a proposal requiring copies of proposed and final form of regulations to be filed with the committees prior to publication in the *Federal Register*.

(2) An agriculture advisor should be appointed to EPA's Assistant Administrator for Water and Hazardous Materials, and to each regional administrator, according to the Ohio Department of Agriculture.

(3) The Pesticide Administration for Indiana suggested that the committee provide for a 3-year task group made up of members from EPA, industry, State regulatory officials and leading educational institutions to work with EPA and provide a policy overview. Similarly, Terminix International, Inc., and Orkin Exterminating Co. indicated an Industry-Public Advisory Committee should be formed to advise EPA on FIFRA implementation.

In this connection, the committee is pleased to note that the Administrator has established a broad-based Pesticide Policy Advisory Committee to provide advice on matters relating to policy and functions of EPA under FIFRA.

(4) Programs and regulations under FIFRA, the Water Act, the Clean Air Act, and the Solid Waste Disposal Act should be coordinated. (Ohio Department of Agriculture.)

(5) Economic impact statements should be required prior to issuance of proposed regulations. (Ohio Department of Agriculture.)

(6) Section 18—Emergency Conditions: State Departments of Agriculture of Washington and Louisiana asked for clarification of emergency use permits by Federal and State agencies.

Committee Markup

H.R. 8841, as originally introduced, provided funding authorization of FIFRA from October 1, 1975, through September 30, 1976, at a level of $47,868,000. At an open business meeting on July 30, 1975, Congressmen Poage and Wampler offered a substitute to H.R. 8841. The first two sections would have required the concurrence of the Secretary of Agriculture on major decisions made by the Administrator of EPA. The Secretary's approval would be required prior to issuance of a notice of intent to cancel the registration of pesticides or change its classification or prior to a notice of intent to hold a hearing to determine whether such actions should be taken. The issuance of a notice of intent triggers an administrative hearing process. The Secretary's approval would also have been required prior to a final determination as to registration or change in classification after the hearing had been concluded. Finally, his approval would have been required prior to the issuance of regulations under the Act. Other provisions of the amendment would have included extension of the funding authority of FIFRA, as provided in H.R. 8841, and would have extended for one more year various deadline dates under the Act. These include the

dates: (i) for implementing the full effect of the act; (ii) for registration and classification of pesticides; (iii) on the requirements for certified applicator use; (iv) on the requirements for the certification of applicators; and (v) on the requirement for submission of State applicator certification plans.

Mr. Vigorito offered an amendment on July 30, 1975, to delete the provisions of the Poage-Wampler amendment requiring the concurrence of the Secretary of Agriculture on the decisions made by the Administrator of EPA. The committee continued its consideration of H.R. 8841 on September 3, at which time Mr. Vigorito, with unanimous consent, withdrew his original amendment and substituted a proposal to improve on the requirements in the Act for consultation by the Administrator with the Secretary of Agriculture but to leave with the Administrator responsibility for making final decisions.

The Vigorito amendment appears in sections 1 and 2 of H.R. 8841, as amended. Basically it provides for notices of intent relating to cancellation of a registration or a change in the classification of a pesticide and proposed and final forms of regulations to be submitted to the Secretary of Agriculture for comment within prescribed time limits prior to issuance. The Secretary's comments and the Administrator's response would be published in the *Federal Register* together with the actions to which they related. Notices of intent would have to take into account among other considerations the impact of the proposed actions on the agricultural economy. Mr. Vigorito's amendment would still retain those sections of the substitute offered by Mr. Poage and Mr. Wampler which would extend for one year the effective dates for carrying out various provisions of the law as well as the funding authorizations.

In the discussions that ensued a number of members spoke in support of Mr. Vigorito's amendment because of the fragmentation of the decisionmaking authority that would be caused by the original Poage-Wampler amendment. Also, Mr. Poage spoke in support of the bill because of his view that it had a greater likelihood of acceptance by the House rather than the original proposal and because of his belief that it represented a real change in current procedures in requiring full consideration to be taken of the impact of the decisions on the agricultural economy. After discussion, the amendment was adopted by a vote of 23 yeas—18 nays.

Mr. Jones of North Carolina then submitted a further amendment to the Poage-Wampler substitute to add a new section to require that the certification standards for pesticide applicators would be deemed fulfilled by his signing a self-certification form. Under his proposal the Administrator would have authority to assure that the form contained adequate information and affirmation to carry out the intent of the act. This was accepted by a committee vote of 29 to 3.

An amendment was then offered by Mr. Mathis to the Poage-Wampler substitute to add a new section 6 which would have required that no regulation could become effective until approved by resolution adopted by the House Committee on Agriculture and the Senate Committee on Agriculture and Forestry. Because of the workload it would impose on the committee, Mr. English suggested instead an amendment which would provide that the regulation would become effective unless dis-

approved by either committee within 30 days following publication. With unanimous consent Mr. Mathis withdrew his original proposal in favor of this amendment. The proposal raised controversy in committee and after discussion, Mr. Findley offered a substitute which provided instead that the regulation could not be published until 30 days after it had been presented to both committees.

Chairman Foley then amended the Findley substitute to provide that proposed and final form of regulations should be submitted to the two committees at the time that they were required to be submitted to the Secretary of Agriculture. This would give the committee the same notice requirements, as provided the Secretary and afford it an opportunity if it wished to comment to the Administrator. It did not, however, impose any affirmative obligation to act on the committee. The committee voted in favor of Mr. Foley's proposal by a vote of 22 to 14.

The Committee reconvened on September 11, 1975, for the further consideration of amendments to H.R. 8841, at which time after discussion, the Committee agreed to accept amendments which appear as sections 7 through 11 on H.R. 8841.

One of these amendments as offered by its sponsor, Mr. Melcher, would have refused entry into the United States of any lot of an agricultural commodity or product from a country or area which permits the use of any pesticide which has been banned in this country unless the lot was examined and it is determined that there are no pesticide residues in excess of tolerances established for agricultural commodities or products produced within the United States.

The Melcher amendment was amended to clarify that the provision applied only if the country permitted use of the banned pesticide on the particular article arriving in the United States and if the banned pesticide had been refused registration or cancelled because of a possible health hazard resulting from possible residues of the pesticide. The latter amendment clarifying Committee intent was agreed to by voice vote. The Melcher amendment, as amended, was then agreed to by the Committee by a vote of 30 ayes to 2 nays.

An amendment that appears as section 11 of H.R. 8841, as amended, as offered by its sponsor, Mr. Moore, would have directed the Administrator of EPA to grant experimental use permits to any public (federal or state) or private agricultural research agency or educational institution subject to certain conditions and restraints established by the Administrator. By unanimous consent the Moore amendment was amended so as to apply to "any public or private agricultural research agency," omitting reference to Federal or State agency so as to include other public research agencies. The Moore amendment was further amended by striking the word "shall" and inserting the word "may" prior to the word "issue."

In its consideration of H.R. 8841, as amended, the Committee rejected a number of proposed amendments to FIFRA. One would have authorized a state to seek administrative review under section 6 of FIFRA if the State wished to register a pesticide because of specific circumstances existing in the State when the registration had been denied or cancelled. Another rejected amendment would have exempted State or Federal agencies from any provision of the Act if the eradication of an agricultural pest is declared an emergency by the

Secretary of Agriculture. Also rejected was a proposed amendment to exclude from the definition of pesticide "biological parasites, living organisms, and predators of pests" other than microorganisms such as bacteria, fungi or viruses and a proposal to require that final actions of the Administrator must be supported by the preponderance of evidence when the final action has an impact on production and prices of agricultural commodities and retail food prices.

Finally, the Committee refused to approve an amendment to mandate the inclusion of material on integrated pest management in any offering of instruction associated with certification of private applicators because of concern over the possibility that this amendment might serve as a limitation on the amendment earlier accepted dealing with self-certification, and an amendment which would have required that a person who was applying a restricted use pesticide under the direct supervision of a certified applicator must have received training in, and been tested with regard to, the labeling and safety of restricted use pesticides.

On motion of Mr. Poage of Texas, the Committee approved by roll call vote of 37 ayes to 3 nays in the presence of a quorum the bill H.R. 8841, as amended, and ordered it reported to the House with the recommendation that it do pass.

Section-by-Section Analysis

Section 1 would amend Section 6(b) of FIFRA which relates to the issuance of notices of intent with respect to cancellation of a registration or a change in its classification. The issuance of a notice of intent triggers an administrative proceeding, including a hearing, if requested by the person adversely affected. The Committee Amendment would require that in determining whether to issue any such notice, the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days prior to sending such notice to the registrant or making public such notice, whichever occurs first, the Administrator would be required to provide the Secretary of Agriculture with a copy of such notice and an analysis of such impact on the agricultural economy. If the Secretary comments in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator must publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator may notify the registrant and make public the notice at any time after such 30-day period notwithstanding the foregoing 60-day requirement. The time requirements imposed by the preceding 3 sentences may be waived or modified to the extent agreed upon by the Administrator and the Secretary.

Section 1 would also require that in taking any final action under section 6(b) the Administrator must include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise

on the agricultural economy, and publish in the Federal Register an analysis of such impact.

The procedure described above would not be applicable in connection with suspension orders issued after issuance of a notice of intent of action proposed to be taken with regard to cancellation of a registration or a change in its classification. Most, if not all, of the suspension orders issued under the 1972 amendments for pesticides used on agricultural commodities fall into this category. If the Administrator wished to order a suspension concomitant with the issuance of a notice of intent, he could short circuit the time requirements on notices of intent with the approval of the Secretary of Agriculture and the scientific panel. Under this provision, at most the order of suspension would be delayed by 60 days, and in cases that truly present an imminent hazard, there should be no difficulty in securing the necessary concurrences for waiver of the time requirements.

Section 2 would amend Section 25(a) of FIFRA to provide new procedures requiring consultation with the Secretary of Agriculture prior to issuance of proposed and final form of regulations.

At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator is required to provide the Secretary of Agriculture with a copy of the regulation. If the Secretary comments in writing to the Administrator within 30 days after receiving the regulation, the Administrator must publish in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator within 30 days, the Administrator may sign the proposed regulation for publication in the Federal Register any time after such 30-day period notwithstanding the foregoing 60-day time requirement.

The Administrator is required to follow the same procedure in the issuance of the final form of regulations, except that the 60- and 30-day requirements are reduced to 30 and 15 days and the comments of the Secretary are required to be published in the Federal Register only if requested by the Secretary. The foregoing time requirements may be waived or modified to the extent agreed upon by the Administrator and the Secretary.

Section 3 would amend section 27 of FIFRA to authorize appropriations to carry out the provisions of the Act for the period beginning October 1, 1975, and ending September 30, 1976, in the amount of $47,868,000.

Section 4 would amend section 4 of the Federal Environmental Pesticide Control Act of 1972 to extend by one year a number of deadline dates for actions implementing the 1972 amendments to FIFRA. These include extending to October 21, 1977, the deadline (a) for issuing regulations that complete the implementation of the 1972 amendments to FIFRA, (b) for registration and reclassification of pesticides, (c) for implementing requirements that pesticides classified restricted use be applied only by a certified applicator, and (d) for completing the process of certifying applicators. It would also extend to October 21, 1976, the deadline on the requirement for those states wishing to certify applicators to submit a state plan to the Administrator for review and approval.

Section 5 would amend section 4 of FIFRA which relates to the standards the Administrator may prescribe for certification of private applicators. They would be required to provide that the certification standard for a private applicator shall be deemed fulfilled by his signing a self-certification form. The Administrator, however, is given broad discretion under this provision to assure that the form contains adequate information and affirmations to carry out the intent of this Act. The Committee's intent in administration of this provision is described more fully in the "Purpose and Need" of this report.

Section 6 would amend section 25(a) of FIFRA to require that at such time as the Administrator is required under paragraph (2) of this subsection to provide the Secretary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, he shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate.

The Committee will have an opportunity to bring to EPA's attention problems that may occur to it as a result of information brought to its attention—in particular as a result of comments of the Secretary of Agriculture and the scientific panel. However, failure of the Committee to comment on a regulation should not necessarily be construed as Committee approval. The Committee is not always in a position to make quick judgments about complicated regulations dealing with complex technical or scientific issues—and frequently problem areas may be latent and not apparent from a reading of the regulation but develop as regulations are implemented.

Section 7 amends section 17 of FIFRA to impose special entry requirements on the arrival of any lot of an agricultural commodity or product produced in a country or area which permits the use on such commodity or product of pesticides which the Administrator has refused to register or the registration of which has been suspended or canceled because of possible health hazards resulting from possible residues of such pesticide on the commodity or product. In such case, the Secretary of the Treasury shall refuse entry to such commodity or product until and unless the lot has been examined and it has been determined that no residues in excess of established United States tolerances are present of any such pesticide; *provided*, in the absence of an established tolerance an action level or enforcement guideline shall be enforced. The examination is to be carried out by the Administrator, or the Department of Agriculture in the case of meat and poultry products and the Food and Drug Administration in the case of other food products, acting for the Administrator. Dairy products would be included among those products covered by this section.

An examination would not be required by this section in the case of a herbicide which had been refused registration under the Act as a result of harmful effects on the environment but which was accepted as leaving no residues on the commodity or product.

Section 8 would further amend section 25 of FIFRA to require the Administrator to submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 6(b) and of the proposed and final form of regulations issued under section 25(a) within the same

time periods as provided for the comments of the Secretary of Agriculture under such sections.

The time requirements for notices of intent and proposed and final forms of regulation could not be modified or waived unless in addition to meeting the requirements of section 6(b) or 25(a), as applicable, the advisory panel has failed to comment on the proposed action within the prescribed time period or has agreed to the modification or waiver.

The comments of the advisory panel and the response of the Administrator are required to be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The panel referred to in this subsection would consist of seven members appointed by the Administrator from a list of 12 nominees, six nominated by the National Institute of Health, and six by the National Science Foundation. Each member of the panel would receive per diem compensation at a rate not in excess of that fixed by GS–18 of the General Schedule as may be determined by the Administrator, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this subsection.

In the view of the Committee the provisions for the scientific panel meet the requirements of section 5 of the Federal Advisory Committee Act. It has been determined by the Committee that the functions of the proposed scientific panel are not being performed by an advisory committee already in existence and could not be performed by enlarging the mandate of an existing advisory committee.

It is believed that the best scientific inputs could be achieved by persons nominated by the National Institute of Health and the National Science Foundation as required by the Committee amendment and within the manner provided for in the bill. Section 6 sets out clearly the purposes of the scientific advisory panel, provides for balanced membership drawn from the scientific community, assures that the advice and recommendations will be the result of the committee's independent judgment and will be given due consideration through the provision for publication of its opinion in The Federal Register. The authorization of appropriations provided in H.R. 8841 for implementation of FIFRA is sufficient to provide authorization of funds for the scientific advisory panel and its necessary expenses. EPA is expected to provide it with quarters and any staff needed to assist it in carrying out its functions. The bill specifies time limits for submission of its reports—the same as applicable to the Secretary of Agriculture—and for publication in The Federal Register of its comments on actions proposed by the Administrator. Under the Committee Amendment, the scientific advisory panel would be permanent and would continue to perform its functions during the lifetime of FIFRA. It is intended that members would be appointed to fixed terms, as determined by the Administrator—with nominations for successors made by NIH and NSF as a member's term expires.

Section 9 would amend Section 18 of FIFRA to require that in determining whether or not an emergency condition exists which would

warrant exempting a Federal or State agency from any provision of the Act, the Administrator must consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination.

Section 10 would amend section 2(u) of FIFRA to change the definition of a pesticide to exclude any article (1)(a) that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), or (b) that has been determined by the Secretary of Health, Education and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article or (2) that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x) bearing or containing an article covered by clause (1).

Section 11 would amend section 5 of FIFRA to authorize the Administrator to issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution which applies for such permit.

Each permit cannot exceed more than a one-year period or such other specific time as the Administrator may prescribe. The permit would be issued under such terms and conditions restricting the use of the pesticide as the Administrator may require: *Provided*, That the pesticide may be used only by the research agency or educational institution for purposes of experimentation.

This amendment would specifically allow the Administrator, in his discretion and subject to terms and conditions that he may prescribe, to authorize a research agency or educational institution to conduct experimental testing of a pesticide the registration of which has been suspended or cancelled.

Views of the Department of Agriculture

The following letter dated September 18, 1975 was received by Chairman Foley from the Honorable Robert Long, Assistant Secretary of Agriculture, expressing the Department's views on H.R. 8841 as reported by the Committee:

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., September 18, 1975.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for comments relating to a committee amendment in the nature of a substitute to H. R. 8841.

The Department recommends enactment of this substitute to H. R. 8841.

Section 6(b), as amended by committee action, will allow some consideration of the effects on agricultural production of the continuing and expanding constraints on pesticide use. The expertise of this Department will also be utilized in the drafting of proposed regulations. The fact that the Department of Agriculture will comment on the impact of proposed actions and regulations on agricultural production and prices, and hence the problems created for consumers in this country and other nations of the world, will provide an additional needed viewpoint for more effective decisions.

It is the Department's feeling that the committee amendment in the form of this substitute is generally workable except for Section 7, which calls for the inspection of any lot of agricultural commodity or products produced in a country or area which permits the use on such commodity or product of pesticides which the Administrator has refused to register or the registration of which has been suspended or cancelled because of possible health hazards. Tihs will have serious adverse impact on our international trade in agricultural commodities.

Sincerely,

ROBERT W. LONG,
Assistant Secretary.

Views of the Environmental Protection Agency

The following letter dated 19 September was received by Chairman Foley from the Honorable Russell Train, Administrator of the Environmental Protection Agency, expressing the Agency's views on H. R. 8841 as reported by the Committee:

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., September 19, 1975.

Hon. THOMAS S. FOLEY,
Chairman, Committee on Agriculture,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I appreciate this further opportunity to provide the views of the Environmental Protection Agency on legislation to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The Committee's extensive hearings and numerous business meetings which have been attended by senior Agency officials have made a profound impression upon EPA. I am keenly aware of concerns within the agricultural community which require my personal attention, just as I am conscious of the need to expand upon the dialogue which has been renewed with your Committee in recent months. I still believe that the comprehensive pesticide program (which was enacted by the 92nd Congress) provides a sound basis for regulating pesticide use in a way that gives proper recognition to the divergent interests of all Americans who have a stake in the way pesticides are used. The many interrelated features incorporated in the 1972 amendments were devised over a period of many months by the executive and legislative branches in close cooperation and in response to serious needs which are no less real today than then.

Mr. Quarles, EPA Deputy Administrator stated in his initial testimony before the Committee, and emphasized in his three subsequent appearances, Congress provided an appropriate phasein period to accommodate adjustments to the changes required by the new program. Some provisions of the Act which were the subject of great controversy in your hearings are not yet effective under the statute, and will not be fully effective until October 21, 1976. As a result, the

Committee could not judge the impact of these provisions on agriculture on the basis of the Agency's record in administering the Act. The Committee considered and passed certain amendments which addressed the concerns of the regulated industry and agricultural organizations about possible future impacts. The Committee responded to these concerns by adopting the amendments now before the House. I would point out that I have recognized these concerns and have taken action to provide greater participation by the agricultural community in the evolution of EPA administrative procedure and policy. This action is discussed in detail in my letter to you of September 10 and reflects my commitment to cooperative action while at the same time avoiding undesirable dilution of accountability. In view of the actions taken in response to expressed concern, there is no reason to include cumbersome or duplicative procedures in an already complex statutory scheme.

Accordingly, I must now oppose the Committee bill, as I have previously stated opposition to many of its separate features. I am confident that many of the difficulties predicted by critics of EPA's administration of FIFRA can be avoided through the Agency's adherence to the objectives mandated by Congress in 1972 and the continuing constructive oversight role which your Committee has assumed in recent months. We all recognize and the statute makes explicit that pesticides have substantial benefits for the public at large, as well as for agriculture, and EPA is firmly committed to assuring that Americans continue to enjoy the benefits of pesticides without unreasonable risk to human health and welfare. I continue to urgethat the Congress adopt the simple extension of authorities requested by the Administration in February 1975.

I have attached detailed comments on many features of the Committee bill.

Sincerely yours,

RUSSELL E. TRAIN.

Enclosure.

Detailed Comments on Committee bill

Section 6: This proecdure is analogous to the well established executive branch "Quality of Life Review" procedure, which affords *all* interested departments and agencies an opportunity for review of EPA regulations. The procedure in the bill has the disadvantage, however, of requiring that a rigid time schedule be followed even for routine matters. This necessarily results in further delays of the administrative process. Moreover, the Agency is fully committed to developing greater participation from the Department of Agriculture in early stages of pesticide decision-making, including actions which may lead to cancellation or reclassification of pesticides. The Department of Agriculture has consistently participated in cancellation hearings as an active party in the presentation of evidence, in cross-examination and in the filing of briefs before the Administrator. The Department's views and scientific evidence have become a part of the formal record upon which the ultimate decision is made.

I am gravely concerned that this section may preclude suspension of a registration involving emergency threats to public health until the 60 day notice requirement has been satisfied. Though apparently not

intended, this result would seem to be the effect of the language. The plain language of section 6(c)(1), which is unchanged by the Committee bill, reads as follows:

> 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.

If a safety hazard came to our attention which required immediate action to protect against serious human hazards, the bill would require adherence to the 60 day notification procedures of section 1 and may prohibit emergency action to avert the hazard.

While we recognize the legitimate interest of the Department of Agriculture in EPA's pesticide program, it is significant that less than half the pesticide products registered with this Agency under the statute are for agricultural use. The majority of pesticide products registered are intended for industrial, household and institutional use.

Section 6: Requires an assessment of the impact of cancellation on the agricultural economy. Such a requirement is already imposed by the current law, which provides that a pesticide registration cannot be cancelled unless it causes unreasonable adverse effects on the environment. This standard is defined in the Act to require a balancing of the risks and benefits of pesticide use. "Unreasonable adverse effect" is defined by FIFRA to mean "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." The impact on the agricultural economy is a key consideration in this balancing process.

Section 25(3)(d): Congress provided for extensive public hearings to consider the scientific facts relating to potential cancellation of registrations. Our experience shows that these hearings provide interested parties with the opportunity to submit all relevant scientific data and expert opinions on the issues.

In addition, the authors of the 1972 amendments wisely provided that when a question of scientific fact arises in a section 6 hearing, the Administrative Law Judge may refer it to the National Academy of Science for review when he finds such referral to be necessary or desirable in the context of the case. I also have available to me a highly regarded body of scientists and health experts among the permanent staff of the Agency as well as outside expert consultants. Moreover, a permanent panel of distinguished scientists headed by Dr. Emil Mrak has been assembled since January 1974 as a Science Advisory Board to advise me on technical and scientific matters. This Board continues and enlarges greatly the scope of scientific capabilities and disciplines represented on its predecessor the Hazardous Materials Advisory Committee established in 1971. The Hazardous Materials Advisory Committee had over the years looked extensively at the conduct of the pesticide programs.

I have recently announced the establishment of a more broadly based Pesticide Advisory Committee to bring outside talent from many disciplines and backgrounds to bear on FIFRA matters. Its membership will include specialists in environmental health, medicine, and other scientific disciplines, as well as representatives of industry, farm organizations, other user organizations, and public interest organizations.

During recent months a State-Federal Implementation Committee on FIFRA has been organized to participate in the resolution of many

important technical issues posed by provisions of the 1972 Act to be implemented in coming months. I have met with this group and believe it will make valuable contributions toward furthering Federal-State cooperation in mentating FIFRA.

With these established provisions for scientific advice and review presently available to me, the utility of Section 2 is questionable. As a practical matter, requiring a meaningful review of complex scientific questions within 30 days by a body of intermittent consultants, appears to be an impossible task for even a most expert group of individuals.

Section 25(3): Whether or not the section is enacted, it is our intention to notify and consult with the appropriate Committees in a timely fashion on all significant future actions taken under the amended FIFRA. I therefore believe this section is unnecessary.

Section 4(a)(1): I strongly object to the self-certification provision contained in this Section. It removes from the Act the requirement for even the most minimal demonstration of competence by private applicators, and thus raises serious questions about the utility of classifying pesticides for use by this group. When the Administration proposed certification procedures, it was generally recognized that a few negligent or inexperienced persons were responsible for most accidents, overuse, and resulting environmental damage involving pesticides. The concept of private applicator certification was introduced so as not to deprive the vast majority of responsible farmers of highly effective pesticides. If this provision of the bill becomes law, any person, however unskilled, may purchase and use a restricted use pesticide by merely signing a form. Authorization of such a procedure would make it very difficult to justify the registration of certain particularly hazardous pesticides for use by private applicators, because the Agency would be unable to assure private applicators possessed adequate knowledge and skills to use such pesticides without injuring themselves or others.

Section 4(a): Since the Agency first opposed extending the lengthy implementation schedule of the amended FIFRA, it has become clear that some states will not have submitted certification plans to EPA by this October. While there is no sanction for states failing to comply with this deadline, a six-month extension of the date for submission of state applicator certification, rather than the 12 months provided, would provide ample additional time for states to satisfy this requirement.

The effective date of the requirement that an applicator be certified to purchase and use restricted pesticides has been a subject of considerable discussion with the Committee. Because the Agency has been unable to utilize additional funds in the first quarter of this fiscal year to accelerate state applicator training activities, this could suggest to some a basis for extending this date for one year (until October 1977). However, an extension at this time will have the effects of slowing the considerable momentum toward implementation of certification programs that has been generated. I am advised that many states share this concern and oppose these extensions.

Section 17(d): Since the inspection of agricultural commodities is currently the responsibility of other agencies, EPA is unable to estimate accurately the resources which would be required to implement a program for lot-by-lot inspection of imported foodstuffs. In any event,

the Agency would oppose taking on these additional responsibilities without additional authorization of appropriations to fund increased resource requirements. In addition, the Agency has serious misgivings concerning the appropriateness of its undertaking responsibilities in this area in view of the existing involvement of other agencies and the fact that no lot-by-lot inspection is provided for domestic food supplies.

CURRENT AND FIVE SUBSEQUENT FISCAL YEARS 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 estimates that the cost of the bill to the U.S. Government would, in no event, be in excess of the estimate of the three government agencies concerned and would likely be significantly less.

For Environmental Protection Agency, the cost during the 12-month period ending September 30, 1976, would be $47,868,000. The bill does not provide an authorization for activities under FIFRA beyond September 30, 1976, and thus there would be no cost incurred by EPA under this bill beyond that date.

The authorization provided in the bill is the amount requested by EPA.

Additional costs would be incurred by the Department of Agricultuer and the Food and Drug Administration as a result of inspection requirements placed upon those agencies by section 7 of the Committee bill which relates to refusal of entry to certain agricultural commodities and products. The Office of Legislative Affairs of the Department of Agriculture has informally advised the Committee that the cost to the Department from this provision for each of the current and five subsequent years would be in the neighborhood of $4.4 million. The Food and Drug Administration through its Office Legislative Services has estimated that the cost that would be incurred by that agency for each of such years would be approximately $136 million. This figure represents the cost involved in increasing the personnel of that agency by 6,200 persons as a result of its estimate of the need to inspect approximately 500,000 lots of agricultural commodities and products entering the United States annually.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4), Rule XI of the Rules of the House of Representatives, the Committee estimates that enactment of H.R. 8841 will have no inflationary impact on the national economy. The provisions of section 7 may have an inflationary impact on the economy to the extent it would result in additional costs to the Government but this will be counterbalanced by the salutary effect it has on the health of the nation. In addition, any inflationary impact will be offset by other provisions contained in the bill which require the EPA Administrator in taking action under the Act to take into consideration, among other factors, the impact on production and prices of

agricultural commodities, retail food prices, and otherwise on the agricultural economy.

BUDGET ACT COMPLIANCE (SECTION 208 AND SECTION 403)

The provisions of clause 1(3)(B) and clause 1(3)(C) of Rule XI of the House of Representatives and section 308(a) and section 403 of the Congressional Budget Act of 1974 (relating to estimates of new budget authority or new or increased tax expenditures and the estimate and comparison prepared by the Director of the Congressional Budget Office), are not considered applicable at this time.

OVERSIGHT STATEMENT

No summary of oversight findings and recommendations made by the Committee on Government Operations under clause 2(b)(2) of Rule X of the Rules of the House of Representatives was available to the Committee with reference to the subject matter specifically addressed by H.R. 8841, as amended.

The Committee held oversight hearings concerning the administration of the Federal Insecticide, Fungicide and Rodenticide Act in the Committee's consideration of H.R. 8841, and related bills as discussed in detail in this report under "Committee Consideration". The oversight findings and recommendations of the Committee are reflected in the provisions of H.R. 8841, as amended, and in the foregoing parts of the Committee Report.

Changes in Existing Law

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

The Federal Insecticide, Fungicide, and Rodenticide Act, as Amended

* * * * * * *

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 exists 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.

(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 the 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 impractical 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 is 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 case 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 incorported 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.]

(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: Provided, That the term "pesticide" shall not include any article (1) (a) that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), or (b) that has been determined by the Secretary of Health, Education, and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing an article covered by clause (1) of this proviso.

(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. 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[.] *: Provided, That the certification standard for a private applicator shall be deemed fulfilled by his signing a self-certification form. The Administrator shall assure that such form contains adequate information and affirmations to carry out the intent of this Act.*

(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 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.

(g) Exemption for Agricultural Research Agencies.—Notwithstanding the foregoing provisions of this section, the Administrator may issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution which applies for such permit. Each permit shall not exceed more than a one year period or such other specific time as the Administrator may prescribe. Such permit shall be issued under such terms and conditions restricting the use of the pesticide as the Administrator may require: Provided, That such pesticide may be used only by such research agency or educational institution for purposes of experimentation.

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. *In determining whether to issue any such notice, the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days prior to sending such notice to the registrant or making public such notice, whichever occurs first, the Administrator shall provide the Secretary of Agriculture with a copy of such notice and an analysis of such impact on the agricultural economy. If the Secretary comments in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator shall publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator may notify the registrant and make public the notice at any time after such 30-day period notwithstanding the foregoing 60-day time requirement. The time requirements imposed by the preceding 3 sentences may be waived or modified to the extent agreed upon by the Administrator and the Secretary.* 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 registrationor classification issued after completion of such hearing shall be final. *In taking any final action under this subsection, the Administrator shall include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and he shall publish in the Federal Register an analysis of such impact.*

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) REFUSAL OF ENTRY TO CERTAIN AGRICULTURAL COMMODITIES AND PRODUCTS.—*The Secretary of the Treasury shall notify the Administrator of the arrival of any lot of an agricultural commodity or product produced in a country or area which permits the use on such commodity or product of pesticides which the Administrator has refused to register or the registration of which has been suspended or canceled because of possible health hazards resulting from possible residues of such pesticide on the commodity or product and the Secretary shall refuse entry to such commodity or product until and unless the lot is examined by the Administrator, or the Department of Agriculture in the case of meat and poultry products and the Food and Drug Administration in the case of other food products, acting for the Administrator, and it has been determined that no residues in excess of established United States tolerances are present of any such pesticides; provided, in the absence of an established tolerance an action level or enforcement guideline shall be enforced.*

[(d)] *(e)* 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)] (*f*) 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. *The Administrator in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination.*

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 *in accordance with the procedure described in section 25(a).*

(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. 25. AUTHORITY OF ADMINISTRATOR.

(a) (1) REGULATIONS.—The Administrator is authorized, *in accordance with the procedure described in paragraph (2)* 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.

(*2*) *Procedure.—*

"(*A*) *Proposed Regulations.—At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such regulation within 30 days after receiving it, the Administrator shall publish in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 30 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register any time after such 30-day period notwithstanding the foregoing 60-day time requirement.*

(*B*) *Final Regulations.—At least 30 days prior to signing any regulation in final form for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such final regulation within 15 days after receiving it, the Administrator shall publish in the Federal Register (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 15 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register at any time after such 15-day period notwithstanding the foregoing 30-day time requirement.*

(*C*) *Time Requirements.—The time requirements imposed by subparagraphs (A) and (B) may be waived or modified to the extent agreed upon by the Administrator and the Secretary.*

(*3*) *Congressional Committees.—At such time as the Administrator is required under paragraph (2) of this subsection to provide the Secretary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, he shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate.*

(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.

(*d*) *Scientific Advisory Panel.—The Administrator shall submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 6(b) and of the proposed and final form of regulations issued under section 25(a) within the same time periods as provided for the*

comments of the Secretary of Agriculture under such sections. The time requirements for notices of intent and proposed and final forms of regulation may not be modified or waived unless in addition to meeting the requirements of section 6(b) or 25(a), as applicable, the advisory panel has failed to comment on the proposed action within the prescribed time period or has agreed to the modification or waiver.

The comments of the advisory panel and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The panel referred to in this subsection shall consist of seven members appointed by the Administrator from a list of 12 nominees, six nominated by the National Institutes of Health, and six by the National Science Foundation. Each member of the panel shall receive per diem compensation at a rate not in excess of that fixed for GS–18 of the General Schedule as may be determined by the Administrator, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this subsection.

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. There is hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning July 1, 1975, and ending September 30, 1975, the sum of $11,967,000. *There is hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1975, and ending September 30, 1976, the sum of $47,868,000.*

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1972

* * * * * * *

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] *five 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] *five 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 year] *five years* from the date of enactment of this Act.

(4) A period of [four years] *five 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] *four 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.

SUPPLEMENTAL VIEWS OF HON. KEITH G. SEBELIUS, HON. CHARLES THONE, AND HON. JERRY LITTON

Although we support the basic provisions of H.R. 8841 as reported by the Committee, we are opposed to the suggested interpretation of Section 3(c)(1)(D). It appears that this would be burdensome to the small formulators and would jeopardize competition in the sales and distribution of farm chemicals.

The Committee report would declare the Committee's intent now and at the time of the 1972 amendments to FIFRA, that Section 3(c)(1)(D) of the Act be applied to all test data in the possession of EPA, regardless of whether it was submitted after October 21, 1972, or prior to such date. Such intent had never been previously expressed by this Committee and was the subject of very limited and inadequate discussions and review by this Committee during the past few months. It should not be the intent now. If adopted by Congress and implemented by the EPA, requiring compensation for test data submitted prior to October 21, 1972, would have a most devastating effect upon pesticide formulators and many manufacturers. Information supplied to Committee members by farmer cooperatives and other chemical formulator companies would suggest that the Committee ought to more carefully review the overall potential impact of Section 3(c)(1)(D) and, if appropriate modify that section. At a minimum, the Committee should establish clearer guidance for the EPA in implementation of Section 3(c)(1)(D), particularly in defining the scope of "reasonable compensation" as those words are used in the Act. If the interpretation of Section 3(c)(1)(D) being advocated by the large basic manufacturers would prevail, it is doubtful that any independent formulator, or smaller basic manufacturer could remain in business.

With considerable opposition, Section 3(c)(1)(D) was incorporated in the 1972 amendments to the law. This Section provides, in pertinent part, 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 above-quoted language attempts to resolve two policies: one, to foster pesticide research and development by preventing others from "free" use of data; the other, to prevent monopolization of the pesti-

cide industry by virtue of the "mandatory licensing" provision. Neither of these goals appears to have been achieved, and it has become even more apparent that the concerns and criticisms of that provision as expressed in the legislative history of the 1972 amendments continue to be valid. Specifically, the following concerns remain:

(1) Section 3(c)(1)(D) of the Act will not definitely encourage or discourage future R & D in the pesticide industry. This was a conclusion in an EPA contract report dated September 10, 1974 entitled "Economic Methodolgy for the Determination of Reasonable Compensation under 3(c)(1)(D) of Public Law 92-516 (FIFRA as Amended)." A similar, if not identical, conclusion was reached in an EPA contract report by Arthur D. Little, Inc. entitled "Evaluation of the Possible Impact of Pesticide Legislation on Research and Development Activities of Pesticide Manufacturers" [EPA-540/9-75-018, dated February, 1975]

(2) Section 3(c)(1)(D), even with the mandatory licensing provision, will not prevent further monopolization of the pesticide industry. A current picture of the industry is illustrated in the following excerpt from the September 10, 1974 EPA contract report referred to above:

> "An N.A.C.A. *Cost of Research Survey* submitted during the hearings on H.R. 10729 indicated that 33 companies accounted for about 81% of the total pesticide sales. Of these only seven companies accounted for more than 50% of the pesticide research and development in 1969.
>
> "It should be noted additionally that the bulk of the pesticide industry is represented by a relatively small portion of the activities of such large chemical companies as Dow, Eli Lilly, Stauffer, Hercules, Monsanto, Rohm and Haas, Ciba-Geigy, Shell, and Chevron."

In the report[1] of the Senate Commerce Subcommittee on the Environment, considerable attention was focused on the anti-competitive aspects of 3(c)(1)(D), in particular, that 3(c)(1)(D) could seriously and substantially lessen effective competition in the pesticide field by preventing or delaying the entrance of qualified manufacturers because of their inability to purchase data from the first applicant or to bear the expense of duplicating the research data. Even with the compulsory licensing provision, the adverse effect upon competition is not fully minimized. Mr. Russell Train, Administrator of EPA, in a letter[2] dated August 25, 1975 to Mr. Foley, Chairman of the House Agriculture Committee, stated:

> "The burden of this added complexity [of Section 3(c)(1)(D)] will fall primarily upon those registrants who do not engage in their own research and development. Section 3(c)(1)(D) also entails a greater expense for these same registrants in bringing a product to the market.
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> * * * * * * *
>
> "So many factors bear on the competitive structure of the pesticide industry that we can't estimate with confidence either how much adverse effect on competition or what magnitude of end-user price increases might result, over time, from the provisions of Section 3(c)(1)(D). We believe that *there will be some such adverse effects* and it has been our policy to try to minimize them." [Emphasis added.]

(3) If not administratively impossible, the difficulties in administering Section 3(c)(1)(D) have been substantial. EPA, in their letter dated August 25, 1975 and referred to previously, stated:

> "After struggling with its complexities for nearly three years, the Agency feels that it can only be implemented with equity to all concerned at the cost of much increased complexity in the process of pesticide registration.
>
> * * * * * * *
>
> "Workload impact on the Office of Pesticide Programs is not negligible, but is supportable."

Additional examples of the difficulties in administering Section 3(c)(1)(D) are evident in other answers furnished by Administrator Train in the August 25, 1975 letter. This view is also supported by the February, 1975 Arthur D. Little study, previously cited, wherein it states:

> "Originally strongly supported and now only partially supported by industry, this section of FIFRA, as amended, will probably *provide administrative and procedural problems for both EPA and industry* but will have little impact on research and development activities." [Emphasis added.]

EPA has suggested that review of applications has proceeded without delay when claims for compensation have been filed against pesticide applicants. Pesticide formulators, however, have expressed a contrary view citing examples of numerous delays once a claim for compensation has been filed which has prevented them from entering new markets. Some companies have reported that registrations have been delayed for a year and a half solely because of compensation claims.

Additionally illustrative of the inherent delays caused by Section 3(c)(1)(D) is the following excerpt from the testimony of Mr. Robert Hamman, Agricultural Division, CIBA-GEIGY Corp., at the EPA Conference on Implementation of Section 3(c)(1)(D) on June 11, 1974:

> "Of the approximately one thousand applications filed in the *Federal Register* between November 19, 1973 [date of EPA Interim Policy on Section 3(c)(1)(D)] and June 1, 1974, none have been processed to registration by EPA, to our knowledge."

(4) The inflationary impact of Section 3(c)(1)(D) would be obvious. If subsequent applicants for registration are required to compensate for the use of data or develop the data on their own, the added cost will necessarily be added to the price the farmer pays for the product. This added cost will ultimately be borne by the consumer.

Interpretation of two aspects of the implementation of Section 3(c)(1)(D) sought by the large basic manufacturers, as evidenced in the testimony of the N.A.C.A.[3] before the Committee and in litigation

[1] S. 92-970, 92d Cong., 2d Sess. 1972.
[2] Copy of letter attached as Appendix A.
[3] Testimony of Dr. Jack Early, N.A.C.A. Vice President, May 16, 1975.

commenced by several large chemical companies,[4] involve (1) the effective date of Section 3(c)(1)(D) and (2) whether data submitted prior to October 21, 1972 is compensable. As to the effective date, it would appear to be the Committee's intent that Section 3(c)(1)(D) would be effective when implementing regulations are adopted by EPA. The so-called "Interim Policy" published on November 19, 1973 did not afford an opportunity for comment as to the effective date or other aspects of the interim policy on Section 3(c)(1)(D) consistent with the Administrative Procedures Act. In fairness to all, it would be appropriate for this Committee, after public hearings, to establish a future date in which Section 3(c)(1)(D) would be effective thus giving fair notice to all concerned.

Requiring compensation for data submitted prior to October 21, 1972 would be grossly unfair. Pesticide formulators had relied upon the practice of the EPA (and the USDA, previously) to grant registrations based upon previously established use patterns and generally not requiring duplication of safety and efficacy data. To suddenly "change the rules" is inequitable and to require compensation for *all* data is a price few companies could afford to pay. It is also an established legal principle not to apply a statute retroactively unless Congress expressed a clear intent to do so. Such an intent was never previously expressed, and should not now be so expressed.

Certain past industry practices would make compensation for data submitted prior to October 21, 1972 an even greater travesty. For example, smaller manufacturers have purchased plants from large basic manufacturers at great expense to produce pesticides which have been on the market for 20–30 years. Such investment was done upon reliance that registration was based upon established use patterns. Such investments are threatened with total extinction due to Section 3(c)(1)(D) if now required to pay for all data submitted over a period of two to three decades. In addition, formulator/distributors were encouraged to expand operations and build new plants to aid in the expanded marketing of a major company's product and are now having claims filed against them by the same major companies who encouraged their expansion. In many cases, the formulators developed the market for expanded use of the product, e.g. designing and conducting efficacy testing for these major companies. In a sense, formulators are being asked to pay for data they helped develop.

The net effect of such actions will subject formulators to undue pressure by and make them totally dependent upon the major companies who could selectively choose their customer-formulators. Formulators will tend to purchase only from certain major companies who permit use of their data, rather than to purchase technical products on the basis of price competition. Further, the wide line of products that formulators provide for farmers in localized areas will have to be withdrawn because they cannot pay compensation claims for all of these products. Rather than declare data submitted prior to October 21, 1972 to be compensable, it would seem more equitable for this Committee to establish a future date after which data submitted would be compensable. In light of the above, it would be unjust to apply the statute retroactively.

[4] *Amchem Products, Inc.* v. *GAF, EPA; Pennwalt, Inc.* v. *EPA; Rohm and Haas, Inc.* v. *EPA.*

It is important to note that many chemical formulators have expressed approval of the concept of "data compensation" *provided* that such compensation is truly an equitable sharing of the cost of producing the governmentally required data and the method of payment is reasonable. If Section 3(c)(1)(D) is not modified, more specific guidance as to the scope and intent of "data compensation" has been requested of this Committee by the EPA and by pesticide formulators. To date, neither the EPA, nor the pesticide industry (either manufacturers or formulators) has been able to resolve what constitutes "reasonable compensation." This issue needs to be more fully explored by the Committee; however, the following would appear to be consistent with "reasonable compensation":

(1) Reasonable compensation should be an equitable *sharing* of the direct costs of producing governmentally required test data. It should not be based upon a "value" basis. No profit should accrue to the original applicant and the original applicant should not selectively treat subsequent applicants differently.

(2) The method of payment could either be a lump sum payment or royalty payment.

(3) Both parties should be able to appeal the decision of the Administrator as to what constitutes "reasonable compensation"; not just the owner of the data as is currently provided by Section 3(c)(1)(D). Also, the court should be able to fix a lesser amount for compensation if appropriate. Present law does not permit this.

(4) The law should clearly state that registration or reregistration should not be delayed pending negotiations for compensation or the determination of reasonable compensation by the Administrator or the courts.

(5) Formulators who develop a use for a special local need should not be required to pay compensation for all data submitted in conjunction with the many uses for which that product is registered.

(6) Less value should be attributed to "old" data since companies have benefited from various write-offs for tax purposes or for other reasons.

KEITH G. SEBELIUS.
CHARLES THONE.
JERRY LITTON.

ADDITIONAL VIEWS OF HON. GEORGE E. BROWN, JR., OF CALIFORNIA, HON. JOHN KREBS, HON. BERKLEY BEDELL, HON. PETER PEYSER, AND HON. NORMAN D'AMOURS

The Committee report would declare the Committee's intent now and at the time of the 1972 amendments to FIFRA, that Section 3(c)(1)(D) of the Act be applied to all test data in possession of EPA, regardless of whether it was submitted after October 21, 1972, or prior to such date.

Any requirement of compensation, retrospectively, for data submitted prior to October 21, 1972 would be impolitic and unjust. Clearly, the precedent established by EPA (and USDA, previously) granting registrations based upon previously established use patterns and generally not requiring duplication of safety data is a practice which pesticide formulators had relied upon. Now, to suddenly act "retrospectively," to "change the rules," is unconscionable conduct, only possible of passage when void of serious consideration by this Committee. Nowhere in the legislative history can it be found that this Committee intended or that Congress intended payments retroactively for test data prior to 1972. Any retroactive requirement of compensation for all data is a price few companies could afford to pay. Retroactivity would clear the way for monopolistic control of the pesticide industry by a handful of large chemical corporations.

Finally, the issue of the true legislative intent on the question of retroactive compensation prior to October 21, 1972 creates serious long and short term problems left unanswered by the Committee. The seriousness of this issue deserves more consideration than to be brought up late in the evening on the final day of committee action, with no consideration or discussion of the impact of the report's language to be visited upon the small pesticide formulators and ultimately upon our farmers and consumers.

GEORGE E. BROWN, Jr.
JOHN KREBS.
BERKLEY BEDELL.
PETER PEYSER.
NORMAN D'AMOURS.

ADDITIONAL VIEWS OF HON. MATTHEW F. McHUGH

This bill began as a simple one-year extension of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). As the hearings proceeded, however, many members of the Committee expressed concerns about FIFRA and its implementation by EPA. The amendments which comprise H.R. 8841 derive from those concerns.

The proposed amendments to FIFRA have been described as "weakening" amendments and in some measure this is true. However, in most instances, they represent compromise which in my view are generally reasonable. More extreme amendments were offered in Committee and had significant support. For example, one initially put forward by Mr. Poage and Mr. Wampler would have given the Secretary of Agriculture a veto over any significant action of EPA. This amendment would have rendered FIFRA virtually unenforceable and was wholly unacceptable to a number of us on the Committee. Section — was offered by Mr. Vigorito as a compromise and was adopted. This would require EPA to give the Department of Agriculture notice of proposed actions and afford the Department an opportunity to submit a formal response for publication in the Federal Register, but it would not give the Department veto power. Although Section — may serve to delay final action somewhat, it represents a reasonable balance between opposing views without unduly compromising EPA. On the whole, therefore, I support H.R. 8841 and, with one important exception, urge its adoption.

The exception is Section —, which authorizes a private applicator to certify himself as competent to apply a restricted pesticide simply by signing an affirmation to that effect. This procedure, referred to as "self-certification," is at cross purposes with one of the FIFRA's basic goals and should therefore be stricken from the bill.

In 1972 Congress passed a series of amendments which gave the Administrator of EPA authority to classify pesticides into two categories: those for general use and those for restricted use. General use pesticides were to be those determined as safe for use by the general public when following the instructions on the label. Restricted use pesticides were to be those determined so highly toxic that they should be used only by or under the direction of one who has been certified as competent to apply them safely.

The 1972 amendments recognized the need and desirability of pesticides for our agricultural production, but they sought to insure that those who used potentially harmful pesticides (i.e., restricted pesticides) would do so in a manner which did no damage to themselves or to the environment. The Administrator of EPA was directed to prescribe standards for certifying applicators. He thereafter promulgated regulations which established guidelines for the states to follow in preparing their own plans for training and certifying applicators. The states were required to submit their plans to EPA for approval.

The clear intent of FIFRA is that applicators of potentially dangerous pesticides be educated as to their hazards. The basic problem with self-certification is that there is no assurance that education will take place. All that an applicator must do under Section — is sign a form which in effect says that he is competent. While EPA may prescribe the form to be used, there is no requirement that the applicator be instructed or that there be some independent, objective method of determining whether he is in fact competent to use the hazardous substance.

Many states have already developed plans designed to provide applicators with some meaningful instruction. They have relied upon the clear intent of Congress when it passed the 1972 amendments to FIFRA. If Section — is not stricken from this bill, there is some question whether their plans can be implemented. The Administrator may be precluded from approving a plan which requires more from a private applicator than his self-serving statement that he is competent.

Those favoring self-certification argue that most private applicators are farmers and that many of them have used pesticides for years without incident. No doubt this is true. However, it can hardly be said that all farmers are fully knowledgeable about the restricted pesticides or that they will universally understand how to safely apply the pesticides without some meaningful instruction. It is true that a training program may involve some inconvenience which many of our farmers would prefer to avoid. It is also true that most of our farmers are quite responsible and may not need any additional education. Unfortunately, however, we have no method of distinguishing the informed from the uninformed, the responsible from the careless. Given the potential hazard to human health and the environment, Congress was correct in 1972 to provide for the classification of pesticides and the education of all applicators in the use of those which are hazardous.

Section — should therefore be stricken from this bill, which otherwise deserves favorable consideration on the part of the House.

MATTHEW F. MCHUGH.

DISSENTING VIEWS OF HON. DAWSON MATHIS

During the final deliberations on H.R. 8841, I made a commitment that while I was certainly not satisfied with the actions of the Environmental Protection Agency, I would support the bill reported from the Committee because I felt it was the most workable compromise solution that could be reached at this time.

I want to commend the Chairman for his diligent work in furnishing leadership during a sometime heated and emotional deliberation. I do want to be on record, however, that I am extremely discouraged with the apparent attitude and direction of the Environmental Protection Agency. I believe they are recommending decisions that are not representative of the majority of the American people and they are placing too much credence on test-tube experiments. I have strongly urged Administrator Train to carefully evaluate the evidence being given him by his professional staff, and I am very concerned that their actions are being counter-productive to the well being of our country.

DAWSON MATHIS.

DISSENTING VIEWS OF HON. GEORGE E. BROWN, JR., OF CALIFORNIA, AND HON. PETER PEYSER

The extension of the Federal Insecticide, Fungicide and Rodenticide Act, as reported by the House Agriculture Committee, is a compilation of many questionable, if not disturbing, sections which were substituted for the original, simple one year extension of the Act. Certain Members of the Committee felt that the EPA was not truly considering the economic effects of its pesticide regulations, restrictions and suspensions on the agricultural community. This concern manifested itself in the form of a substitute and amendments to the substitute which 1) directed the EPA to consult with the USDA in a specific manner before issuing any pesticide regulation or restriction, 2) established a system of self-certification for private applicators which only requires such an applicator to sign a document assuring his competence in this area, and 3) established an advisory panel composed of members from the scientific and health communities to comment on the environmental and health impact of any suspension order to be issued by EPA.

We oppose these weakening amendments to FIFRA, not only because they are in direct opposition to the intent of Congress as expressed in the 1972 amendments to FIFRA, but for the more serious reason of the inhibitory effects such amendments may have on the authority of EPA to regulate the application of restricted pesticides. In 1972, Congress realized that the pesticide problem had reached a dangerous level.

Evidence was clearly displaying the hazardous, carcinogenic qualities of many of the pesticides that were being applied in an unregulated, over-used, and misused fashion. Cases of serious illness and even death among farm workers were presented to the House Agriculture Committee at the time.

The Pesticide Regulation Division of the USDA had the authority to restrict the use of such pesticides since 1947, but had not even moved to establish a formal recall procedure until 1969.

The Agriculture Committee responded admirably to the emergency by reporting a bill entitled "The Federal Environmental Pesticide Control Act of 1972" which amended FIFRA by giving EPA the authority, in outlined form, to certify all applicators and to regulate, restrict and generally oversee the use of pesticides. This bill clearly expressed the concern of the House Agriculture Committee and the entire Congress and the Administration, as it passed the Senate with a few amendments and was signed into law. Since that time, EPA has established a system of state certification of all private and commercial applicators of restricted perticides; it has begun the time-consuming task of re-registering all previously registered pesticides, numbering over 40,000, to ensure their safety; it has established procedures to monitor the use of pesticides to ensure that applicators

follow the explicit directions on the label of the pesticide container. There are many other sections of the 1972 Act which have also been implemented.

THE DEFECTS OF SELF-CERTIFICATION

Now, the House Agriculture Committee has seen fit to amend FIFRA so that any private applicator (defined as an 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 and rented by him or his employer) can simply sign a form designating himself to be a competent applicator of pesticides. There will be no way of discovering whether the private applicator is knowledgeable in the art of applying pesticides so as to minimize the hazards involved or whether he understands the label instructions on the pesticide container. This policy, if enacted, will destroy the core of EPA's movements to control the misuse of pesticides. The agricultural community uses approximately 40% of the pesticides sold in this country. If there is no way to oversee these applications, then the health of many farm workers and farm families will be placed in jeopardy. We are dealing with poisons, many of which have been shown to produce cancer in laboratory animals, or to contain inert ingredients that build up in our environment and have possible long-term toxic effects. There must be some method of oversight to protect the public from the consequences of the misuse of such poisons. The 1972 FIFRA Amendments required that all states submit a plan for certification of all applicators. At the present time, two states have had their plans approved (Iowa and Georgia), sixteen states are in the final stages of approval, twenty-one states and territories have submitted their plans for approval, and the remaining are preparing plans, and the self-certification provision will only serve to disrupt these plans, thereby stimulating a justifiable degree of questioning by the states as to the permanence of the laws we enact.

OTHER UNNECESSARY SECTIONS

In addition to the self-certification provision, the Agriculture Committee has included an amendment that establishes an advisory panel, composed of members from the scientific and health communities, to act as a consultation body for any cancellation decision of EPA. Though we are proponents of consultation, we feel that this amendment is unjustified and unnecessary because EPA had already expressed the intent to establish an advisory panel composed of farm organizations, the pesticide industry, the general public, health officials, state representatives, and environmentalists. Such a panel should satisfy the desire of any Member of Congress to see EPA in direct consultation with those sectors of the population affected by its decisions regarding pesticides.

For this same reason, we do not see the need for outlining a specific manner in which EPA must consult with the USDA on every single step of the decision-making process concerning pesticide regulations, restrictions, or cancellations. The advisory panel that EPA wishes to establish would ensure the representation of the farming community,

while it would not detract from EPA's ability to move quickly where it was necessary to do so. This USDA consultation provision will encumber every decision of EPA regarding pesticide regulation and it places an undue emphasis on the opinions of a department that has been one of the strongest promoters of pesticide use and deregulation over the last 20 years.

If this bill passes in its present form with the provisions for self-certification, an advisory panel, and USDA consultation intact, the Congress may be seriously curtailing the ability of EPA to gain a strong margin of control over the misuse of pesticides. By doing so, we will be taking a large step backward in our slow progress towards providing a safe environment for the people of this nation. Pesticides, when applied improperly, contaminate our land, our food, our water, our sea life, our animals, and our people. Even when applied carefully, there are serious questions about their safety. We must not falter in our determination to protect our environment for future generations. For all these reasons, we urge that our colleagues in the House support a simple extension to FIFRA, if it is offered.

During the entire course of deliberations on this bill, we had hoped we could achieve a reasonable compromise that would be acceptable to the farming community, to environmentalists and to the general public. Hoping for a reasonable compromise, we voted for some of the amendments which we have listed, even though we were not convinced of their necessity. But after studying the bill in its final form, we feel that the combined effects of all the amendments would weaken EPA's authority to control pesticide application and product safety to a degree that endangers public health. A simple extension of FIFRA would ensure the continuation of EPA's plans to gradually control the application and production of pesticides so their hazardous qualities are minimized to the greatest extent possible. In our opinion, this is the best course that Congress can take at the present time.

GEORGE E. BROWN, JR.
PETER PEYSER.

DISSENTING VIEWS OF HON. TOM HARKIN

I oppose some sections of H.R. 8841 because of the many amendments which serve no useful purpose except to increase the size of an already burgeoning bureaucracy. The Administrator of the Environmental Protection Agency is required by law under the various sections of FIFRA to consult with the Secretary of Agriculture and to sign agreements of cooperation with other federal and state agencies for the purpose of carrying out the purpose of the Act.

The many amendments to H.R. 8841 require the Administrator to seek the comments of these agencies regarding rules and regulations. This is already an accepted practice. Regulations are not written over night, but formulated over the span of a year or more. During the entire process, opinions are sought from industry, state departments of agriculture, and the U.S. Department of Agriculture.

H.R. 8841, as finally passed by the Committee on Agriculture, makes statutory requirements for formal consultation. Each one of these amendments will add new employees to the payroll of EPA and will add new expense to the American taxpayer. They are written, not out of the need, but because of a distrust that EPA will not carry out actions that it has promised the Committee that it will do. I feel that EPA was quite responsive to the requests made by the Committee regarding the "Pesticide Hot-Line," seeking the opinions of the pesticide industry, and gaining a broader understanding of the economic consequences of their action on the American farmer.

One example of this mistrust is worth discussing in detail. One amendment to H.R. 8841 would establish an advisory panel in EPA to comment on the health and environmental implications of Agency pesticide action. The provisions also require publication for public review and comment of any panel comments and Agency response.

In light of the number of panels, boards, committees and commissions already advising the Administrator, I submit that this amendment would only increase bureaucratic time and waste. Bureaucratic delays help no one, and the Committee heard testimony from many individuals regarding the failure of EPA to act promptly at this time. Our goal should be to decrease rather than increase these delays. Presently, to help the Administrator carry out his regulatory authorities under FIFRA, he has a Science Advisory Board and the Pesticide Policy Advisory Committee. In addition, during the continuing implementation of the 1972 amendments to FIFRA, the Administrator is also advised by a Federal-State FIFRA Implemenation Advisory Committee. The Act itself in section 6(d) assures that when questions of scientific fact arise in the course of a hearing on a pesticide registration, cancellation, or change in classification, such questions will be referred to a Committee of the National Academy of Sciences for "an objective and competent scientific review." This same Committee is to

be available to provide such other scientific advisory services as the Administrator may need to carry out the Act—a broad mandate.

The Committee-proposed panel would be comprised of persons nominated by the National Institutes of Health and the National Science Foundation, access to both of which the Administrator already has and uses.

Impartial, expert scientific advice has been available to the Administrator since EPA was established in 1970. The present Chairman of the Scientific Advisory Board, which can advise on a broad range of scientific matters, including pesticides and other hazardous chemicals, is Dr. Emil Mrak, author of the 1969 Report of the (HEW) Secretary's Commission on Pesticides and their Relationship to Environmental Health, which resulted in immediate establishment of a Hazardous Materials Advisory Committee which went with EPA when it was created.

That Committee has remained available to the Administrator throughout and advised him on pesticide matters. It is now a committee of the Science Advisory Board which was established in March of this year and placed in the Office of the Administrator. The Board is presently working on two pesticide matters: mutagenicity testing as a registration requirement, and a report on herbicides.

The Pesticide Policy Advisory Committee was established last month by the Administrator to assure that he had the viewpoint of interested pesticide constituencies, including manufacturers, users, and environmentalists. Most industry witnesses during the Committee hearings on FIFRA indicated that no change in the law was needed; however, all that was desired by industry was input into the decision-making process. This new Committee should meet that request.

I think it is clear the Administrator is sufficiently advised already, and that another advisory panel will serve no useful purpose and will increase governmental confusion, delay, and waste. I urge the defeat of this section of H.R. 8841 and all other amendments which add nothing new except additional bureaucratic expense.

TOM HARKIN.

DISSENTING VIEWS OF HON. STEVEN D. SYMMS

"DOZENS DIE FROM ENCEPHALITIS IN CHICAGO"

"THOUSANDS DIE FROM FAMINE IN BANGLADESH"

"FOOD PRICES JUMP AGAIN"

These are three headlines that are sure to be printed in the not too distant future, thanks in large part to the EPA.

Why, one might ask, will EPA be largely responsible for such sad events? Does not that agency and its leadership seek only a clean environment?

They don't get involved in public health, foreign policy, domestic inflation or humanitarian concern about people, do they?

Or do they?

The consideration of H.R. 8841 is bringing into sharper focus the real issue involved in continuing the policies that EPA currently is committed to... and that issue simply stated is:

> Are we going to sacrifice modern American agriculture on an altar of environmental aestheticism?

The present Administrator of EPA has articulated his perception of his role in forming agricultural policy in a recent article appearing in the September, 1975, issue of the Florida Grower and Rancher" in which he said in part:

> "We have, so to speak, put far too many of our agricultural eggs in far too few baskets," said Train. "We can no longer count on plentiful supplies of cheap fertilizer, pesticides, land and water."
>
> He said EPA has initiated some intensive new studies on the trade-offs between so-called "cosmetic" quality standards for fresh and for processed foods and the use of pesticides. This study will help determine if the need to use pesticides for essentially cosmetic purposes can be reduced.
>
> The EPA Administrator suggested two ways to improve diets and increase the world supply of grain for human consumption. He called for a "moderate" shift from the production and consumption of grain-fed beef to the production and consumption of meat substitutes such as soybeans. The second would be to shift as much as possible from the production and consumption of grain-fed to grass-fed beef.

His agency has taken to heart the notion that they are some sort of "super-USDA" that has been invested with the mission of "reforming" our agricultural economy and not just sticking to the job of making the use of pesticides as safe and effective as possible.

It is this zeal to return to the simple life of the "good old days" that had led us to H.R. 8841.

And what were those "good old days" of farming like? In a recent speech Dr. John J. McKetta, Schoch Professor of the Department of Chemical Engineering, University of Texas, Austin, provided this description:

> Let's consider what life was really like in America just 150 years ago. For one thing, we didn't have to worry about pollution very long—because life was very brief. Life expectancy of males was about 38 years of age—a grueling 38 years. The work week was 72 hours. The women's lot was even worse. They worked 98 hours a week scrubbing floors, making clothes by hand, bringing in fire wood, cooking in heavy iron pots, fighting off insects without pesticides. Most of the clothes were rags by present-day standards. There were no fresh vegetables in winter. Vitamin deficiency diseases were prevalent. Homes were cold in winter and sweltering in the summer.
>
> Epidemics were expected yearly and chances were high that they would carry off some members of the immediate family. If you think the water pollution is bad now, it was deadly then. In 1793 one person in every five in the city of Philadelphia died in a single epidemic of typhoid as a result of polluted water. Many people of that time never heard a symphony orchestra, or traveled more than 20 miles from their birth place during their entire life time. Many informed people do not want to return to the "paradise" of 150 years ago. Perhaps the simple life was not so simple.

This bill has not enjoyed a simple life either. It has suffered greatly on its tortured path toward enactment. First, Congress extended FIFRA only 90 days earlier this year as a signal to the EPA that it had better begin to realize the consequences of its well-intentioned mischief.

When the Committee started its deliberations, the Agency's Nazi-like "hot line" was burning a searing sore not only on farmers and gardeners, but on every American who cherishes liberty. That awful thing conceived under the guise of "research" has now been safely interred, we trust.

The hearing process, however, exposed example after example of excessive and distortive interpretation of the language of the FIFRA law.

As the hearings and consideration of this measure continued and EPA moved to cancel chlordane and heptachlor, it became apparent that many other existing pesticides were headed for oblivion.

Based on informal communications with both EPA and USDA people, I understand that future cancellations will be based on the assumption that additional chemicals will reflect a positive reaction in producing tumors in experimental animals. EPA makes no meaningful distinction as to whether the tumors induced in these test animals are benign or malignant. Aldrin, dieldrin and DDT have been canceled on this basis, and this is also the basis for the attempts to cancel heptachlor, chlordane, and Mirex.

The following list of chemicals represents those which seem certain to be canceled:

Lindane
Toxaphene
Aramite

Chlorobenzilate
Strobane
Amitrole
Viallate
PCNB
Bis (2-chloroethyl) ether
N-(2-hydroxyethyl) hydrazine

The following chemicals are strong possibilities for cancellation:

Perthane
Piperonyl butozide
Piperonyl sulfoxide
Azobenzene
CCC
Chloranil
Cianammide
Vancide BL
Zectron

The following chemicals listed below are likely to be canceled as well, but for different reasons. These chemicals are suspected of causing birth defects:

BHC
Zineb
Folpet
Captan
2,4,5–T and its generic relative, 2,4–D
Silvex

Only time will tell whether these materials will be removed from the inventory of modern agricultural tools, but we submit, if they are our national food, fibre and wood production will decline materially.

It finally became apparent that there was at least one way the Committee could move to stem the merciless march toward primitive agriculture that EPA was (and is) committing our nation to. And that was to make EPA share with the Department of Agriculture some of its usurped agricultural policy power. This effort became codified as the "Poage-Wampler" amendment, whereby both USDA and EPA would be required to concur in the issuance of new regulations and in the inauguration of any new cancellation proceedings.

There was a clear majority of the Committee in favor of that amendment, but some of its supporters felt it could not be passed in the House. Perhaps not, but does that fear alone make the amendment any less sensible or important?

I contend that this amendment is the very minimum that is needed to establish and maintain a reasonable degree of balance between the lives and happiness of real people on one hand and the maintenance of a worm-infested, mosquito-laden and fire ant-eating environment on the other.

The time is coming when more and more Americans will realize that fear, ignorance, and misinformation about the tools of modern agricultural science applied carefully to alter the ravages of nature are more dangerous to humans than the famine and pestilence they seek to mitigate.

Let that time begin on the Floor of the House on H.R. 8841!

STEVEN D. SYMMS.

DISSENTING VIEWS OF HON. RICHARD KELLY

The Federal Insecticide, Fungicide and Rodenticide Act, as amended, is the most comprehensive law now on the books to regulate pesticides for the protection of human beings and the environment. No one disputes the intent of this law, for the unregulated, continuous use of dangerous chemicals by unqualified or uninformed persons will clearly lead to an unprecedented degree of hazard to all living things. Concern for the environment is a valid national priority.

Unfortunately, it appears that the implementation of this law is being conducted in a vacuum, without regard for the importance of the most significant use to which the environment is put—the production of food. Current food production is predicated upon the use of pesticides and any abrupt change in such use is going to result in high prices and reduced quality.

The concepts of a healthy environment and of high quality food at prices we can afford are not mutually exclusive. We are not dealing with an either/or proposition. There is a proper balance to be struck between the necessary protections for the environment and the necessary goal of agricultural production adequate to meet our domestic needs and our foreign commitments. It seems to me that the Department of Agriculture, whose primary responsibility is a concern with food production, should play a complementary role in decision making related to pesticides, farming and the environment. For this reason, I regret that the Poage-Wampler amendment, as originally proposed, was watered down by the Agriculture Committee.

There was a clear majority sentiment in the Agriculture Committee that the balance had tipped in favor of environmental considerations and is likely to go even further in that direction, to the detriment of food production. Many members of the Committee who favored Poage-Wampler voted against it because they feared it could not be passed on the House floor.

This question is too important to drop at this point. Clearly, all House Members should have an opportunity to vote and participate in the achievement of a meaningful position to protect both of these vital interests. We will be endangering the economy, the consumer and the future of this nation if we take the wrong road on this issue.

RICHARD KELLY.

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Calendar No. 438

94TH CONGRESS, 1st Session | SENATE | REPORT No. 94 452

EXTENSION OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

NOVEMBER 10, 1975.—Ordered to be printed

Mr. ALLEN, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany H.R. 8841]

The Committee on Agriculture and Forestry, to which was referred the act (H.R. 8841) to extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

SHORT EXPLANATION

H.R. 8841, as amended by the Committee on Agriculture and Forestry, extends for two years the authorization of appropriations for the Environmental Protection Agency to carry out the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act and makes needed amendments in the Act.

SUMMARY OF PRINCIPAL PROVISIONS OF H.R. 8841, AS AMENDED BY THE COMMITTEE ON AGRICULTURE AND FORESTRY

H.R. 8841, as amended by the Committee, extends and amends the Federal Insecticide, Fungicide, and Rodenticide Act. The major provisions of the bill would—

(1) Extend for two years the appropriations authorization for the Environmental Protection Agency to carry out the provisions of FIFRA. The bill authorizes to be appropriated $47,868,000 for the period October 1, 1975, through September 30, 1976, and $47,200,000 for the period October 1, 1976, through September 30, 1977.

(2) Require the Administrator of EPA to provide the Secretary of Agriculture with copies of proposed changes in pesticide classification or cancellation actions 60 days prior to publication. The Secretary would have 30 days in which to comment. The proposed action, the Secretary's response, and EPA's reply to the Secretary's response are to be published together in the Federal Register. Such procedures

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do not apply in the case of suspension actions when an imminent hazard to public health has been determined. (The time requirements may be waived or modified to the extent agreed upon by the Administrator and the Secretary.)

Basically, the same procedure would apply with respect to proposed regulations and final regulations, except that the periods for notice and comment for final regulations would be 30 days and 15 days, respectively. However, public notice in the Federal Register is to be made with respect to advance notification to the Secretary of any proposed or final regulation.

(3) Require the EPA to provide the House and Senate Agriculture Committees with advance copies of proposed regulations and final regulations.

(4) Authorize the Administrator of EPA to consider the completion of a certification form as fulfillment of the private applicator certification provision. The Administrator may require an affirmation on the form that the applicator has completed an EPA approved training program, and that pesticide dealers are licensed under an approved State program. The Administrator may not require an applicator to pass an examination.

(5) Amend the provision in the Act requiring that an applicant for registration of a pesticide pay reasonable compensation if he relies on the test data submitted by another applicant. The amendment provides that only data submitted on or after October 21, 1972, is compensable; the data compensation provision applies to all applications for registration submitted on or after October 21, 1972; both parties to a dispute on compensation of data are given the same rights in the courts; and registration of a pesticide is not to be delayed pending the determination of a dispute on reasonable compensation.

(6) Require the EPA to assess the impact of proposed changes in classification or cancellations on production and prices of agricultural commodities, retail food prices, or other effects on the agricultural economy. The impact statement is to be submitted to the Secretary of Agriculture and published in the Federal Register.

(7) Establish a scientific advisory panel consisting of 7 members appointed by the Administrator from a list of 12 nominees from the National Institute of Health and the National Science Foundation. The EPA is required to submit proposed changes in classification, cancellations, and regulations to the panel for comment as to the impact on health and environment of the action proposed. In addition, the panel's comments and the Administrator's response are to be published in the Federal Register.

(8) Require the EPA—in exempting any Federal or State agency from any provision of FIFRA because of emergency conditions—to consult (at their request) the Secretary of Agriculture and the Governor of any State concerned in determining whether emergency conditions exist.

(9) Add a new provision requiring the EPA and States to develop materials on integrated pest management techniques and advise interested individuals of their availability.

(10) Provide that experimental use permits may be issued to agricultural research institutions for cancelled pesticides.

(11) Extend for an additional year the time for implementation of certain provisions of FIFRA.

Committee Amendments

1. On page 5, line 9, strike the quotation marks and the period at the end of the line and insert the following:

"'(D) Publication in the federal register.—The Administrator shall, simultaneously with any notification to the Secretary of Agriculture under this paragraph prior to the issuance of any proposed or final regulation, publish such notification in the Federal Register.'."

The *Committee* amendment retains the provisions of the *House* bill regarding consultation with the Secretary of Agriculture on the issuance of proposed and final regulations but provides for public notice of any advance notification to the Secretary of proposed or final regulations.

2. On page 5, line 16, strike the word "is" and insert in lieu thereof the word "are".

On page 5, line 19, insert immediately after "$47,868,000" the following: ", and for the period beginning October 1, 1976 and ending September 30, 1977, the sum of $47,200,000".

The *Committee* amendment extends FIFRA through the 1977 fiscal year and authorizes appropriations in the amount of $47,200,000 for such fiscal year.

3. On page 6, line 17, strike the word "shall" and insert in lieu thereof the word "may".

On page 6, line 24, strike the word "take" and insert in lieu thereof the word "pass".

The *Committee* amendments retain the basic provisions of the *House* bill regarding the certification of private applicators of pesticides *but* make clear that (a) the completion of a certification form is not the only acceptable certification procedure which a State may elect to exercise and (b) a State, at its option, may give an examination or require the completion of a set of study questions as a part of its training program.

4. On page 8, line 13, insert immediately before the word "Each" the following: "The Administrator may require such information from the nominees to the advisory panel as he deems necessary, and he shall publish in the Federal Register the name, address, and professional affiliations of each nominee."

On page 8, line 21, insert immediately after the period the following: "In order to assure the objectivity of the advisory panel, the Administrator shall promulgate regulations regarding conflicts of interest with respect to the members of the panel."

The *Committee* amendment retains the provisions of the *House* bill establishing a Scientific Advisory Panel but adds language authorizing the Administrator to require of nominees information necessary for determining their fitness for appointment. Under the *Committee* amendment, the Administrator is required to publish certain identifying information on nominees in the Federal Register and issue regulations regarding conflicts of interests relative to panel members.

5. On page 10, line 21, insert immediately before the comma the following: "in accordance with the provisions of section 23(c) of this Act".

The *Committee* amendment retains the provisions of the *House* bill requiring the Environmental Protection Agency and States to develop and make available materials on integrated pest management tech-

niques. Under the *Committee* amendment, the materials are to be provided to interested individuals in cooperation with the Extension Service of the United States Department of Agriculture.

6. On page 11, insert immediately after line 3 the following new sections 12 and 13:

"SEC. 12. Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended to read 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 on or after October 21, 1972, 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). This provision with regard to compensation for producing the test data to be relied upon shall apply with respect to all applications for registration submitted on or after October 21, 1972. 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 either party 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. Registration shall not be delayed pending the determination of reasonable compensation between the applicants, by the Administrator or by the court.'.

"SEC. 13. Section 16(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by inserting after 'public hearing' in the first sentence thereof the following: 'pursuant to section 6 of this Act'."

Section 12 added by the *Committee* amendment amends the provision in FIFRA requiring that an applicant for registration of a pesticide pay reasonable compensation if he relies on the test data submitted by another applicant. The amendment provides that only data submitted on or after October 21, 1972, is compensable; the data compensation provision applies to all applications for registration submitted on or after October 21, 1972; both parties to a dispute on compensation of data are given the same rights in the courts; and registration of a pesticide is not to be delayed pending the determination of a dispute on reasonable compensation.

Section 13 added by the *Committee* amendment amends FIFRA to provide that judicial review in the Court of Appeals of orders issued by the Administrator are to follow formal public hearings as described in section 6 of FIFRA.

BACKGROUND AND NEED

I

The Federal Environmental Pesticide Control Act of 1972 significantly modified the basic Federal Insecticide, Fungicide, and Rodenticide Act. The provisions for complete reregistration, classification of pesticides in regard to degree of potential hazard, and certification of both commercial and private applicators for restricted use pesticides represent major departures from the previous law.

The original authorization of appropriations was for three years and terminated on June 30, 1975. In consideration of the pending termination of authorizations, both the Senate Committee on Agriculture and Forestry and the House Committee on Agriculture convened hearings during May of this year.

In the original hearings, testimony was received from the Environmental Protection Agency, the United States Department of Agriculture, environmental groups, representatives of several State departments of agriculture, farm organizations, and industry representatives.

Although there was virtual consensus that the basic objectives of FIFRA were appropriate and that, in general, the law was sound, there was significant concern voiced about the administration, implementation, and interpretation of the law.

The greatest share of the concern was directed toward EPA, and dissatisfaction was indicated by the entire spectrum of witnesses.

This widespread concern is understandable because the question of pesticide control was an important issue in 1972, and pesticide control continues to be a highly controversial issue. EPA is in the unenviable position of choosing a course that must have trade-offs between the conflicting objectives of environmental protection, and the economic advantages that pesticide uses afford. When a third factor—human health and safety—is included, the issue becomes even more complex.

The difficulties of administering this complex legislation are evident in the high incidence of court actions in reaction to EPA's efforts to carry out FIFRA. With a high level of regularity, suits have been filed charging that EPA actions went too far and at the same time, and in regard to the same actions, other suits have been filed charging that EPA failed to go far enough.

II

To provide adequate time to consider fully the conflicting views, apparent inadequacies in the law or its implementation by EPA, and to explore and assess possible solutions, Congress twice passed interim extensions of funding. This provided adequate time for deliberations without unduly interrupting EPA's implementation of FIFRA.

Further hearings, analysis, and consideration occurred in the interim period and the House passed H.R. 8841, which provided several amendments to FIFRA that address the principal questions regarding the intent of the Act, as well as its implementation.

The end of the second interim extension of FIFRA is rapidly approaching, and thus there is a real need to move expeditiously. However, of even greater consequence is the need to provide the means to

implement fully this vital legislation. During the past three years, there have been a host of unforeseen difficulties and administrative bottlenecks that have seriously delayed implementation. The amendments offered in H.R. 8841 should solve a large share of these problems. The extension of authorization of appropriations for two years should also facilitate the implementation of the law in order that the industry and agriculture can get on with their regular responsibilities while assuring the well-being of the environment and health of our people.

Committee Consideration

The House passed H.R. 8841 on October 9, 1975.

The Subcommittee on Agricultural Research and General Legislation held hearings on this bill on October 28 and 29, 1975. The bill was considered by the subcommittee on November 3, 1975, and ordered reported without amendment to the full Committee.

On November 5, 1975, the Committee considered the bill and ordered it reported to the Senate, with amendments. The following outline summarizes the Committee's consideration of H.R. 8841 and the issues raised during the public hearings.

A. Extension of the authorization

The original Administration request bills, S. 1629 and H.R. 6387, called for a two-year extension of FIFRA. This became a focal point of controversy because of concern about the administration of FIFRA by the Environmental Protection Agency. Many witnesses called for a shorter extension to assure responsiveness while others called for a longer extension to permit full implementation.

H.R. 8841, as passed by the House, contains substantive amendments and limits the extension to one year. In fact, the effective extension is only about ten and one-half months.

In the Committee hearings on H.R. 8841, there was a significant number of witnesses who called for a longer extension. In addition, Senators Hart and Nelson proposed that authorization be extended for three years.

In considering this question, the Committee appreciated the need to assure responsiveness in the administrating agency, but also recognized the need to afford EPA adequate time to achieve implementation of the law. A longer authorization hopefully will provide a continuity which previously has been lacking.

In balancing these positions, the Committee determined that a two-year extension would provide elements of each. Legislative oversight hearings in the interim can assure responsiveness to the Congress, but will not interfere with the implementation of the law.

It should also be noted that the two-year extension would put the authorization in line with the amended deadlines for final implementation of many of the basic provisions of the law. This provides a natural point for general review.

B. Certification of private applicators

The House amendment to section 6(b) of FIFRA is directed to the question of private applicator certification—an area of serious concern by State departments of agriculture, State lead agencies for State certification, and farmers.

This amendment is intented to insure flexibility in the certification of private applicators and was patterned after the "Minnesota Plan." The Committee concurs in the objective. However, several States would prefer not to follow the "Minnesota Plan" and are concerned that the House provision, as worded, would force all States into this pattern.

Many States are interpreting the provision in section 5 of the House bill "that the certification standard for a private applicator *shall* be deemed fulfilled by his completing a certification form" to mean that this is the only acceptable certification procedure. For this reason, the

Committee changed "shall" to "may" to indicate that this is one of a number of options that a State may elect to exercise. Even though the Committee has used the permissive "may", it is the Committee's intent that the Administrator not apply a higher standard than the "Minnesota Plan".

There was a similar problem of interpretation relative to the passage of examinations as a prerequisite for private applicator certification. The Committee substituted "pass" for "take" to indicate that it was a State's prerogative to give an examination or require the completion of a set of study questions as a part of the training program. Such procedures have been shown to bolster and reinforce any learning experience and also provide feedback which enables the trainers to improve the effectiveness of the training program.

Under the Committee amendment, the Administrator may not require private applicators to pass an examination for certification under a State plan. However, it is not the Committee's intent to prohibit the State itself from requiring the passage of an examination as a condition for private applicator certification.

C. Advance notification of the Secretary of Agriculture

The provisions in the bill for advance notification of the Secretary of Agriculture of proposed cancellations and changes in classification and of regulations, are in response to the often-stated concern that EPA has not adequately considered the impact of its actions on agriculture.

Opponents to these provisions have argued that this gives undue consideration to the agricultural interests and provides an unfair advantage to the Secretary of Agriculture. It was further argued that EPA's policies already provide for such consultations between EPA and USDA. Section 21 of FIFRA requires that the Administrator, before publishing regulations, shall solicit the views of the Secretary of Agriculture.

The Committee believes that more effective consultation is necessary. EPA has noted that further formalization of this process is not a major problem.

In response to the question of unfair advantage for the Secretary of Agriculture, the Committee added a new provision in section 2 of the bill, which would, in addition to the formal publication already required under the rulemaking procedures and the notification required by the House bill, require that simultaneously with any advance notification to the Secretary of Agriculture, the Administrator would also publish such notification in the Federal Register. It is the intent of this provision to provide the public with advance notification of regulations contemplated by the Administrator at the same time notice is given to the Secretary. This first publication in the Federal Register would be intended for public informational purposes only and would not constitute the publication required for proposed rulemaking.

It is evident that the only waiver from the advance notice requirement should be for an imminent hazard to human health.

D. Economic impact

The requirement that EPA prepare an analysis of the impact upon agricultural production and prices and the prices of food at retail

of any action it takes is a critical feature to assure the fundamental balance that is the intent of this law.

The Committee concurs in the House position that EPA has not always given adequate consideration to agriculture in its decisions. This concern was also voiced by many witnesses appearing before the Committee.

The basic well-being of the American people depends upon adequate supplies of reasonably priced food. Failure to consider carefully the costs, as well as the benefits of pesticide actions, could deprive the Nation of essential food and fiber.

The strength of the Nation's economy is highly dependent on the efficiency of our agricultural economy. During the last fiscal year, agricultural exports made a net contribution of $12 billion to our balance of payments.

Because the basic thrust and principal responsibility of EPA are to protect the environment, the Committee does not see a need to broaden the impact statement to include the environment. There is clearly a need to consider the impact of EPA's decisions on agriculture if balance is to be achieved.

The Committee, after due consideration, rejected proposals to amend the requirement that EPA, in determining whether to issue a notice of cancellation or change in classification, take into account the impact on the agricultural economy and retail food prices.

E. Scientific advisory panel

The creation of a Scientific Advisory Panel and notification of this panel of proposed cancellation or suspension actions and any proposed regulations are intended to further assure balance and objectivity in EPA actions. The purpose of this provision is to assure that the EPA obtains unbiased objective scientific opinion in making its decisions.

The Committee considers this to be a desirable provision. To ensure against possible bias or conflicts of interest, the Committee amended this section to authorize the Administrator to require such information as necessary from nominees to the panel, to publish the name, address, and professional affiliation of the nominees in the Federal Register, and to promulgate regulations regarding conflicts of interest for panel members.

F. Compensation for data

Through testimony delivered at the hearings by the Administrator, representatives of the pesticide chemical industry, and others, it became apparent that there were several critical problems concerning section 3(c)(1)(D) of FIFRA which required the attention of the Congress.

Section 3(c)(1)(D) contains important restrictions on the Administrator's consideration of data previously submitted by one applicant for registration, in support of a subsequent application filed by another applicant. These restrictions were included in the amendments to the FIFRA which were enacted in 1972. These provisions prohibit the Administrator from considering in support of any application data submitted previously by another applicant without permission of the prior applicant or an offer by the new applicant to pay him reasonable compensation. Essentially, these provisions established a mechanism for "mandatory licensing" of test data, by giving the

Administrator authority to determine reasonable compensation in cases where the parties could not agree. The only exception to mandatory licensing is in the case of data subject to confidential treatment under section 10(b) of the Act; with respect to such data, a subsequent applicant must obtain the permission of the prior applicant, or the Administrator may not consider the data.

As noted above, it became apparent at the hearings that a number of important problems had arisen during the implementation of this section. While litigation is in progress which may resolve some of the problems, the time required to resolve these matters in the courts would needlessly prolong uncertainty, and unnecessarily hobble the efforts of EPA to implement the Act. Accordingly, it was determined to be in the public interest to remove any doubt concerning the proper resolution of some of the key issues by amendments to section 3(c)(1)(D) of the statute.

The first important problem concerns the definition of data which is subject to the compensation provision; i.e., should all data in EPA's possession, regardless of when it was submitted, be so subject, or should the provision only cover data submitted after the enactment of the 1972 amendments (when the provision was added to the Act). This issue has proven to be very controversial, as evidenced by the several strongly contested pending law suits which raise the issue. The bill as amended by the Committee would resolve the question by providing that only data first submitted to the Agency on or after October 21, 1972, the date of enactment of the 1972 amendments, is subject to the provision.

In the Committee's view, this resolution best serves the primary purpose for inclusion of section 3(c)(1)(D) in the Act. As developed more fully in the Committee reports accompanying the 1972 amendments, this provision was added to provide for equitable sharing among industry members of the cost of producing data necessary to obtain or continue a registration under the Act. It was apparent that new data requirements would be imposed by the Administrator, and that satisfaction of these data requirements would involve considerable expense. The provision reflects the sound conclusion that all persons who wish to profit from the fruits of this expense should have to bear a fair share of the financial burden. In view of its purpose, it would seem sound not to require cost sharing with respect to "old data". To make the provision applicable to "old data" could create a windfall for producers of this data since such data was prepared without any reasonable expectation that the law would require sharing of the costs of production.

The second key issue which the Committee amendments resolve concerns the applications to which the provision applies; i.e., does it apply to all applications, or only those submitted after a particular date. This, too, is an issue which is currently being contested in several district court cases. In 1973, EPA considered section 3(c)(1)(D), in conjunction with the effective date provisions accompanying the 1972 amendments, and concluded that section 3(c)(1)(D) was not effective on October 21, 1972, but rather would become effective when regulations implementing section 3 were promulgated. Under the effective date provisions, this event was not required until October 21, 1974. However, the Agency exercised discretion and implemented section 3(c)(1)(D) on November 19, 1973, by publication of its "Interim Policy Statement" in the Federal Register. The Interim Policy Statement, among other things, provided that section 3(c)(1)(D) would apply to all applications submitted on or after the date of the Interim Policy Statement. EPA has proceeded to register pesticides since that date (and until the present) consistent with the Interim Policy Statement.

The Committee has considered the question, and has resolved that the more desirable course is to treat section 3(c)(1)(D) as being effective on October 21, 1972. Thus, the provision with regard to compensation for test data applies with respect to all applications for registration submitted on or after October 21, 1972. However, it is now some three years later, and it is neither desirable nor possible to unravel the past, and cast doubt on the validity of the thousands of registrations which the Administrator has issued since October 21, 1972, which have not been subject to section 3(c)(1)(D), pursuant to the Interim Policy Statement. However, since it is possible that the Administrator has still not acted on some applications which were first submitted before the date of the Interim Policy Statement, the Committee amendment would resolve any remaining dispute by requiring the Administrator to apply 3(c)(1)(D) in approving any such applications in the future.

It should be noted that any applications granted without application of the 3(c)(1)(D) provisions, under the interpretation reflected in the Interim Policy Statement, resulted in registrations under the 1947 Act, and hence must be "reregistered" under the 1972 amendments and the Administrator's implementing regulations. "Reregistration" is about to commence; in accordance with section 4 of the bill, the reregistration process must be completed by October 21, 1977. Pursuant to section 2(z) of the Act, registration is defined to include reregistration. Accordingly, section 3(c)(1)(D) is applicable to the reregistration process. Reregistration will therefore require subjecting persons to section 3(c)(1)(D) who received registrations after October 21, 1972, but who were not subject to the provisions of section 3(c)(1)(D) under the then-prevailing interpretation of the Administrator.

The Committee bill resolves problems which surfaced in the hearings concerning the provisions for appeal to the district courts for compensation determinations by the Administrator. These amendments effectuate fairness and evenhandedness by allowing both parties to the compensation determination the right of appeal, and by removing the limitation on the district court's authority to reduce the Administrator's determination.

Finally, the Committee bill prohibits the Administrator from delaying any registration action pending resolution of a claim under section 3(c)(1)(D). This provision ensures that the availability of pesticide products to the American farmer will not in any way be delayed because of litigation arising under the section.

Section-by-Section Analysis

Section 1. Advance notice to the Secretary of Agriculture of changes in pesticide classification or cancellation actions; "impact" statement

Section 1 would amend section 6(b) of FIFRA, which relates to the issuance of notices of intent with respect to cancellation of a registration or a change in its classification. The issuance of a notice of intent triggers an administrative proceeding, including a hearing, if requested by the person adversely affected.

The amendment would require that, in determining whether to issue any such notice, the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days prior to sending such notice to the registrant or making public such notice, whichever occurs first, the Administrator would be required to provide the Secretary of Agriculture with a copy of such notice and an analysis of such impact on the agricultural economy. If the Secretary comments in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator must publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator may notify the registrant and make public the notice at any time after such 30-day period notwithstanding the foregoing 60-day requirement. The time requirements imposed by the preceding 3 sentences may be waived or modified to the extent agreed upon by the Administrator and the Secretary.

In addition, if the Administrator determines that the registration must be immediately suspended to prevent an imminent hazard to human health, he may waive the notice and consultation requirements as they apply to the Secretary and the Scientific Advisory Panel established by section 7 of the bill.

Section 1 would also require that, in taking any final action under section 6(b), the Administrator must include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and publish in the Federal Register an analysis of such impact.

Section 2. Consultation procedures with the Secretary of Agriculture on issuance of regulations

Section 2 would amend section 25(a) of FIFRA to provide new procedures requiring consultation with the Secretary of Agriculture prior to issuance of proposed and final form of regulations.

At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator is required to provide the Secretary of Agriculture with a copy of the regulation. If the Secretary comments in writing to the Administrator within 30 days after receiving the regulation, the Administrator must publish

in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator within 30 days, the Administrator may sign the proposed regulation for publication in the Federal Register any time after such 30-day period notwithstanding the 60-day time requirement.

The Administrator is required to follow the same procedure in the issuance of final regulations, except that the 60- and 30-day requirements are reduced to 30 and 15 days, and the comments of the Secretary are required to be published in the Federal Register only if requested by the Secretary. The foregoing time requirements may be waived or modified to the extent agreed upon by the Administrator and the Secretary.

Section 2 also requires the Administrator simultaneously to publish in the Federal Register any advance notice to the Secretary of proposed or final regulations.

Section 3. Authorization of FIFRA appropriations for two additional years

Section 3 would amend section 27 of FIFRA to authorize appropriations to carry out the provisions of the Act for the period beginning October 1, 1975, and ending September 30, 1976, in the amount of $47,868,000, and for the period October 1, 1976, through September 30, 1977, in the amount of $47,200,000.

Section 4. Extension of deadlines for implementing 1972 amendments to FIFRA

Section 4 would amend section 4 of the Federal Environmental Pesticide Control Act of 1972 to extend by one year a number of deadline dates for actions implementing the 1972 amendments to FIFRA. These include extending to October 21, 1977, the deadline (a) for issuing regulations that complete the implementation of the 1972 amendments to FIFRA, (b) for registration and reclassification of pesticides, (c) for implementing requirements that pesticides classified for restricted use be applied only by a certified applicator, and (d) for completing the process of certifying applicators. It would also extend to October 21, 1976, the deadline on the requirement for those states wishing to certify applicators to submit a state plan to the Administrator for review and approval.

Section 5. Certification standards for private applicators of pesticides

Section 5 would amend section 4 of FIFRA which relates to the standards the Administrator may prescribe for certification of private applicators. The amendment provides that the certification standard for a private applicator may be deemed fulfilled by his completing a certification form. The Administrator is given broad discretion under this provision to assure that the form contains adequate information and affirmations to carry out the intent of the Act, including the affirmation that the applicator has completed an approved training program. Section 5 prohibits the Administrator from making the passing of an examination a requisite for certification, and authorizes him to require the licensing of pesticide dealers for certification purposes.

Section 6. Advance copies of regulations to the House and Senate Agriculture Committees

Section 6 would amend section 25(a) of FIFRA to require that at such time as the Administrator is required to provide the Secretary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, he shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate.

Section 7. Establishment of Scientific Advisory Panel

Section 7 would amend section 25 of FIFRA to require the Administrator to submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 6(b) and of the proposed and final form of regulations issued under section 25(a) within the same time periods as provided for the comments of the Secretary of Agriculture under such sections.

The time requirements for notices of intent and proposed and final forms of regulation could not be modified or waived unless, in addition to meeting the requirements of section 6(b) or 25 (a), as applicable, the advisory panel has failed to comment on the proposed action within the prescribed time period or has agreed to the modification or waiver.

The comments of the advisory panel and the response of the Administrator are required to be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The panel would consist of seven members appointed by the Administrator from a list of 12 nominees, six nominated by the National Institute of Health, and six by the National Science Foundation. Each member of the panel would receive per diem compensation at a rate not in excess of that fixed by GS–18 of the General Schedule as may be determined by the Administrator, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by section 7.

The Administrator is authorized to require of nominees to the panel information necessary for determining their fitness for appointment; is required to publish certain identifying information on nominees in the Federal Register; and is to issue regulations regarding conflicts of interests relative to panel members.

Section 7 specifies time limits for submission of advisory panel reports—the same as applicable to the Secretary of Agriculture—and for publication in the Federal Register of its comments on actions proposed by the Administrator.

Section 8. Consultation with the Secretary of Agriculture and Governors with respect to "emergency" conditions

Section 8 would amend section 18 of FIFRA to require that, in determining whether or not an emergency condition exists which would warrant exempting a Federal or State agency from any provision of

the Act, the Administrator must consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination.

Section 9. Exclusion of "new animal drugs" from the definition of a pesticide

Section 9 would amend section 2(u) of FIFRA to change the definition of a pesticide to exclude any article (1)(a) that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), or (b) that has been determined by the Secretary of Health, Education and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article or (2) that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing an article covered by clause (1).

Section 10. Experimental use permits for research agencies

Section 10 would amend section 5 of FIFRA to authorize the Administrator to issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution which applies for such permit.

Each permit cannot exceed more than a one-year period or such other specific time as the Administrator may prescribe. The permit would be issued under such terms and conditions restricting the use of the pesticide as the Administrator may require. The pesticide may be used only by the research agency or educational institution for purposes of experimentation.

This amendment would allow the Administrator, in his discretion and subject to terms and conditions as he may prescribe, to authorize a research agency or educational institution to conduct experimental testing of a pesticide the registration of which has been suspended or cancelled.

Section 11. Integrated pest management instructional programs

Section 11 would amend section 4 of FIFRA to require the Administrator to require State certification programs to provide integrated pest management instructional materials to individuals in cooperation with the Extension Service of the United States Department of Agriculture.

Section 12. Compensation for test data

Section 12 would amend section 3(c)(1)(D) of FIFRA, which authorizes the Administrator to require the submission of test data and results in support of an application for registration, and which further provides that an applicant wishing to use another's data must offer to pay reasonable compensation for its use.

Section 12 provides that the compensation provision applies to test data submitted on or after October 21, 1972, and to all applications for registration submitted on or after such date; allows either party in a dispute as to reasonable compensation to appeal the Administrator's determination to the district court; makes it clear that registration should not be delayed by the need for such a determination; and allows a court to find that payment should be less than that determined by the Administrator.

Section 13. Judicial review in the Court of Appeals

Section 13 amends section 16(b) of FIFRA, which provides for judicial review in the Court of Appeals in the case of an actual controversy as to the validity of any order issued by the Administrator following a "public hearing". Section 13 of the bill provides that review in the Court of Appeals is to follow a formal public hearing as described in section 6(d) of FIFRA.

Administration Views

I

Statement of Hon. Russell E. Train, Administrator, Environmental Protection Agency

Mr. Chairman and members of the committee, I appreciate this opportunity to address you on the proposed amendments to and extension of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. I am accompanied by Deputy Administrator John Quarles and Deputy Assistant Administrator for Pesticide Programs Edwin Johnson.

The bill H.R. 8841 passed by the House on October 9, 1975 and being considered by you provides a one-year extension of the FIFRA. There are also a number of amendments to that Act which reflect the intense debate in Congress over our administration of the Act.

Implementation of the 1972 amendments has raised questions, as interests to be affected by new or increased regulation try to envision potential impact on their operations. Proposed regulations governing State programs for the certification of private and commercial applicators have generated the greatest response, particularly from those who fear burdensome requirements and overregulation of private applicators, most of whom will be farmers. Actions on a few agricultural pesticides, by cancelling them or restricting their use, and the effects of these controls have also generated questions.

We believe that our pesticide regulatory program is strong, sound and, although somewhat behind the implementation schedule, truly effective in achieving its goal of health and environmental protection. We have moved with consummate deliberation and great regard for the very legitimate concerns of all affected parties in our actions against a very few pesticide registrations.

As then-Assistant Administrator Agee testified before your Subcommittee in May, we believe that the sweeping 1972 amendments, enacted after almost two years' of thorough consideration and debate in the Congress, have resulted in a program which, on the one hand, promises to be solid and comprehensive, and on the other hand, has not had a chance to be tested and evaluated. The procedural regulations for reregistration of all pesticide products have only just been published and we are now receiving the first State program submissions for the certification of applicators.

While we regard several of the amendments in H.R. 8841 as unnecessary, in that present EPA procedures accomplish their purpose, the most objectionable provisions of the bill were removed in House floor action. I particularly have in mind the Poage-Wampler amendment which, in different forms, was defeated twice on the floor.

Simply stated, that amendment would require EPA to share with the Department of Agriculture our authority to change the classification of a pesticide, suspend and cancel a registration, and write regulations. We question whether two different agency heads with two different missions could effectively administer the FIFRA under this amendment. We believe decisions could be interminably deferred, or never made; public confidence might be lost; and our mission would

suffer. Further, it should be noted that less than half of all registered pesticides are for agricultural purposes. We urge your rejection of any such amendment if it is proposed.

The basic concern behind the amendment is not without merit. For this reason I have recently ordered some changes in the procedures by which our pesticide decisions are made. These involve the role to be played in the decision-making process by the evaluation of risks and benefits, the adjudicatory hearing process, discovery of facts before adversary hearings, and making available risk/benefit analyses for review by users, manufacturers, environmentalists, and the academic community.

The House Committee reported bill would have allowed a private applicator to certify himself and use the more dangerous restricted-use pesticides by simply signing a form containing pesticide use information and affirmations. Such a provision would for all practical purposes gut the pesticide use control requirements of the FIFRA contained in the pesticide classification and applicator certification provisions. This self-certification amendment could possibly have rebounded against its proponents by forcing me to decide against the registration of hazardous pesticides which are controllable only by assuring that users are qualified to use them safely. This provision was sufficiently modified on the floor to enable us to carry out the intent of the applicable provisions of law.

We have tried to develop the FIFRA's application certification requirements so as to provide maximum flexibility. The States are developing a variety of certification programs which we do not believe will place burdensome requirements on farmers and in particular will not require a farmer to leave his own County to get certification.

With the removal of those provisions and keeping in mind the concerns of the Congress, we are able to conclude that the bill is workable, and that the best course is approval of the bill as now written. However, I would like to elaborate on our position that some provisions are potentially redundant.

The bill would establish a panel of seven persons to advise the Administrator on pesticide registration actions, including suspension and cancellation, and when promulgating regulations. The members would be appointed from a group nominated by the National Institutes of Health and the National Science Foundation. EPA is already awash in scientific advisory panels, and we are committed to obtaining every bit of outside advice we can when considering questions of scientific fact. The FIFRA presently provides that when a question of scientific fact arises during the course of a hearing on a pesticide registration, it can be referred by the Administrative Law Judge to a committee of the National Academy of Sciences for a report. We receive scientific data during hearings on registration actions. The Agency has many scientists and health experts and an outside Science Advisory Board whose predecessor Hazardous Materials Advisory Committee predates EPA.

In addition to all those sources of scientific knowledge, I recently set up a Pesticide Policy Advisory Committee to provide broader comment on the public policy aspects of our administration of the FIFRA.

The Committee will not only include distinguished scientists but representatives of the pesticide chemical industry, farm and other user groups, State environmental officials, and representatives of public interest groups. Further, during our implementation of the 1972 amendments, we are being assisted by a State-Federal Implementation Committee.

In light of the range and quality of advice already available to me, I view the advisory panel proposed under the House-passed bill as unnecessary.

The requirement to consult with the USDA and the appropriate State Governor when determining if emergency conditions exist which support an exemption from FIFRA is important, but may also be unnecessary in that we presently consult fully with involved parties when an exemption is sought.

I appreciate the concerns which were conveyed to me by members of Congress and the agricultural community. They are serious matters, deserving our immediate attention. I would like to enumerate the many actions I have taken in recent months to meet these concerns.

I have moved to assure that the Agency is receiving the views of all interested parties by establishing the Pesticide Policy Advisory Panel and State-Federal Implementation Committee already described. I have also instructed our Regional Administrators to seek closer cooperation with State agricultural officials, and have met with interested groups such as the National Association of State Departments of Agriculture and the American Association of Pesticide Control Officials. In addition, I have formed an EPA Task Force to evaluate and improve our pesticide decision-making process.

I have decided upon these other actions as well: registration of sodium cyanide for predator control, clarification of practical problems associated with the FIFRA prohibition against use of a pesticide in a manner "inconsistent with the label," and establishment of a new policy allowing experimental use permits for canceled pesticides under appropriate conditions. Just last week the Agency signed an agreement with USDA governing the control of the fire ant.

To conclude, Mr. Chairman, we are aware of and working to alleviate concerns about our program, and while portions of the proposed legislation are largely unnecessary in my view, we will fully comply with its requirements. The one-year extension will give us further opportunity to solve any problems and report back to Congress on our progress. It is essential that in protecting health and the environment from the adverse effects of certain pesticides that EPA take into consideration the importance of these pesticides for the production of wholesome and inexpensive food for this Nation. These two national goals—protection of public health and production of adequate food supplies—must be put into appropriate balance by our Agency. I do not think that these two goals need be in conflict. It is possible for us to have an adequate food supply while protecting public health and the environment at the same time.

I would be pleased to answer any questions you may have.

II

STATEMENT OF J. PHIL CAMPBELL, UNDER SECRETARY, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the committee: I appreciate the opportunity to meet with this Committee to discuss the proposed amendments to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. On May 20 of this year it was our privilege to meet with this Committee and to discuss some of the major points of concern that we had with pesticides and their use. We indicated the necessity for American agriculture to have available a wide spectrum of pesticides which through their proper use would permit the fulfillment of the responsibility for the production and protection of the food, feed, fiber, and forestry products needed by this and other nations.

The real issue before us last May, and still of prime concern, is how best to achieve a balance between our need to control the wide variety of pests, that jeopardize our agriculture, and at the same time maintain a safe, clean, and livable environment. Progress has been made toward a better balance. Additional progress will be made.

We agree with the need for an adequate regulatory program, from the standpoint of efficacy, human safety, and environmental acceptability. We believe that such a program can and will be developed. The combined expertise of public and private agencies must be marshalled in the development and implementation of the program.

The Department supports H.R. 8841 and suggests certain minor modifications.

The House amendments provide for the appointment of a Scientific Advisory Panel to assist the Administrator. As we have indicated, we strongly support the mechanisms that will permit additional inputs into the decision base. The bill proposes that the Advisory Panel shall be composed of seven members selected from 12 nominees, six from the National Institutes of Health and six from the National Science Foundation. It is suggested that consideration be given to broadening the base for the Panel by having three nominees from the National Institutes of Health, three from the National Science Foundation, three from the National Academy of Sciences and three from appropriate science societies.

The House bill also was amended to provide for the issuance of experimental permits to a public or private agricultural research agency or an educational institution. We believe that the present regulations permit the issuance of experimental permits to these groups. While the Department has experienced some problems in obtaining experimental use permits, it has not experienced these problems because it is a public research agency. If language is needed to permit issuance of experimental use permits under conditions not covered by the present regulations it would be most helpful if these conditions could be indicated.

The language of the House bill provides that within the standards prescribed by the Administrator for the certification of applicators, and in the State plans approved by the Administrator, there must be provisions for making instructional materials concerning integrated

pest management techniques available to individuals at their request. While the term "integrated pest management," or IPM, may be relatively recent the concept of IPM is very old and the principles have been practiced in agriculture for many years. The control of pests by choice of varieties, cultivation practices, selective use of pesticides and other provisions for maximizing other inputs have been a major factor in the success of American agriculture. The Department will welcome the opportunity to continue our cooperative work with EPA in the IPM programs.

Mr. Chairman, I thank you for the opportunity to bring to the attention of this Committee our comments regarding the proposed amendments to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. I shall be pleased to answer any questions you may have.

COST ESTIMATE

In accordance with section 252 of the Legislative Reorganization Act of 1970, the following is the Committee's estimate of the costs which would be incurred in carrying out the provisions of the bill.

For the period beginning November 15, 1975, and ending September 30, 1976, the cost would be $41,884,500; and for the period beginning October 1, 1976, and ending September 30, 1977, the cost would be $47,200,000. These estimates are in line with the original authorization requests as set forth in S. 1629, which was a bill introduced at the request of the Administration.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill 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):

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

* * * * * * *

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 artifically 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.

(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 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.

(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[.]*: Provided, That the term "pesticide" shall not include any article (1)(a) that is a "new animal drug" within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 (w)), or (b) that has been determined by the Secretary of Health, Education, and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing an article covered by clause (1) of this proviso.*

(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 *on or after October 21, 1972*, 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). *This provision with regard to compensation for producing the test data to be relied upon shall apply with respect to all applications for registration submitted on or after October 21, 1972.* 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] *either party* 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]*: Registration shall not be delayed pending the determination of reasonable compensation between the applicants, by the Administrator or by the court*;

(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.

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[.]*: Provided, however, That the certification standard for a private applicator may be deemed fulfilled by his completing a certification form. The Administrator shall further assure that such form contains adequate information and affirmations to carry out the intent of this Act, and may include in the form an affirmation that the private applicator has completed a training program approved by the Administrator so long as the program does not require the private applicator to pass any examination to establish competency in the use of the pesticide. The Administrator may require any pesticide dealer participating in a certification program to be licensed under a State licensing program approved by him.*

(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.

(c) INSTRUCTION IN INTEGRATED PEST MANAGEMENT TECHNIQUES.—Standards prescribed by the Administrator for the certification of applicators of pesticides under subsection (a), and State plans submitted to the Administrator under subsections (a) and (b), shall include provisions for making instructional materials concerning integrated pest management techniques available to individuals at their request in accordance with the provisions of section 23(c) of this Act, but such plans may not require that any individual receive instruction concerning such techniques or be shown to be competent with respect to the use of such techniques. The Administrator and States implementing such plans shall provide that all interested individuals are notified of the availability of such instructional materials.

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 be reasonably 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.

(g) EXEMPTION FOR AGRICULTURAL RESEARCH AGENCIES.—Notwithstanding the foregoing provisions of this section, the Administrator may issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution which applies for such permit. Each permit shall not exceed more than a one-year period or such other specific time as the Administrator may prescribe. Such permit shall be issued under such terms and conditions restricting the use of the pesticide as theAdministrator may require: Provided, That such pesticide may be used only by such research agency or educational institution for purposes of experimentation.

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. *In determining whether to issue any such notice, the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days prior to sending such notice to the registrant or making public such notice, whichever occurs first, the Administrator shall provide the Secretary of Agriculture with a copy of such notice and an analysis of such impact on the agricultural economy. If the Secretary comments in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator shall publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator may notify the registrant and make public the notice at any time after such 30-day period notwithstanding the foregoing 60-day time requirement. The time requirements imposed by the preceding 3 sentences may be waived or modified to the extent agreed upon by the Administrator and the Secretary. Notwithstanding any other provision of this subsection (b) and section 25(d), in the event that the Administrator determines that suspension of a pesticide registration is necessary to prevent an imminent hazard to human health, then upon such a finding the Administrator may waive the requirement of notice to and consultation with the Secretary of Agriculture pursuant to subsection (b) and of submission to the Scientific Advisory Panel pursuant to section 25(d) and proceed in accordance with subsection (c).* 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. *In taking any final action under this subsection, the Administrator shall include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and he shall publish in the Federal Register an analysis of such impact.*

(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.

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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 *pursuant to section 6 of this Act*, 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. 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. *The Administrator, in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination.*

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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[.] *in accordance with the procedure described in section 25(a).*

(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.

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SEC. 25. AUTHORITY OF ADMINISTRATOR.

(a) (1) REGULATIONS.—The Administrator is authorized, *in accordance with the procedure described in paragraph (2)*, 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.

(2) Procedure.—

(A) Proposed Regulations.—At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such regulation within 30 days after receiving it, the Administrator shall publish in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 30 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register any time after such 30-day period notwithstanding the foregoing 60-day time requirement.

(B) Final Regulations.—At least 30 days prior to signing any regulation in final form for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such final regulation within 15 days after receiving it, the Administrator shall publish in the Federal Register (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 15 days after receiving it, the Adminis-

trator may sign such regulation for publication in the Federal Register at any time after such 15-day period notwithstanding the foregoing 30-day time requirement.

(C) Time Requirements.—The time requirements imposed by subparagraphs (A) and (B) may be waived or modified to the extent agreed upon by the Administrator and the Secretary.

(D) PUBLICATION IN THE FEDERAL REGISTER.—The Administrator shall, simultaneously with any notification to the Secretary of Agriculture under this paragraph prior to the issuance of any proposed or final regulation, publish such notification in the Federal Register.

(3) Congressional Committees.—At such time as the Administrator is required under paragraph (2) of this subsection to provide the Secretary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, he shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate.

(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 of 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.

(d) Scientific Advisory Panel.—The Administrator shall submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 6(b) and of the proposed and final form of regulations issued

under section 25(a) within the same time periods as provided for the comments of the Secretary of Agriculture under such sections. The time requirements for notices of intent and proposed and final forms of regulation may not be modified or waived unless in addition to meeting the requirements of section 6(b) or 25(a), as applicable, the advisory panel has failed to comment on the proposed action within the prescribed time period or has agreed to the modification or waiver. The comments of the advisory panel and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The panel referred to in this subsection shall consist of seven members appointed by the Administrator from a list of 12 nominees, six nominated by the National Institutes of Health, and six by the National Science Foundation. The Administrator may require such information from the nominees to the advisory panel as he deems necessary, and he shall publish in the Federal Register the name, address, and professional affiliations of each nominee. Each member of the panel shall receive per diem compensation at a rate not in excess of that fixed for GS-18 of the General Schedule as may be determined by the Administrator, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this subsection. In order to assure the objectivity of the advisory panel, the Administrator shall promulgate regulations regarding conflicts of interest with respect to the members of the panel.

* * * * * * *

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. There is hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning July 1, 1975, and ending September 30, 1975, the sum of $11,967,000. There is hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1975, and ending November 15, 1975, the sum of $5,983,500. *There are hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1975, and ending September 30, 1976, the sum of $47,868,000, and for the period beginning October 1, 1976, and ending September 30, 1977, the sum of $47,200,000.*

FEDERAL ENVIRONMENTAL PESTICIDE CONTROL ACT OF 1972

* * * * * * *

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] *five 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] *five 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] *five years* from the date of enactment of this Act.

(4) A period of [four years] *five 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] *four 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.

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94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-668

EXTENSION OF THE FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

NOVEMBER 15, 1975.—Ordered to be printed

Mr. FOLEY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 8841]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8841) to extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 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 Senate recede from its amendments numbered 1, 2, and 13.

That the House recede from its disagreement to the amendments of the Senate numbered 3, 4, 5, 9, 10, and 11, and agree to the same.

Amendment numbered 6:

That the House recede from its disagreement to the amendment of the Senate numbered 6, and agree to the same with an amendment, as follows:

On page 2, lines 5 and 6 of the Senate engrossed amendments, strike out "September 30, 1977, the sum of $47,200,000" and insert the following: *March 31, 1977, the sum of $23,600,000*,

And the Senate agree to the same.

Amendment numbered 7:

That the House recede from its disagreement to the amendment of the Senate numbered 7, and agree to the same with an amendment as follows:

On page 2, line 8 of the Senate engrossed amendments, strike out "may" and insert the following: *shall, under a State plan submitted for approval*,

And the Senate agree to the same.

Amendment numbered 8:

That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment as follows:

On page 2, line 8 of the Senate engrossed amendments, strike out "pass" and insert the following: *take, pursuant to a requirement prescribed by the Administrator*,

57-006 O

And the Senate agree to the same.

Amendment numbered 12:

That the House recede from its disagreement to the amendment of the Senate numbered 12, and agree to the same with an amendment, as follows:

In lieu of the matter proposed by said amendment insert:

SEC. 12. Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended to read 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 on or after January 1, 1970, 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). This provision with regard to compensation for producing the test data to be relied upon shall apply with respect to all applications for registration or reregistration submitted on or after October 21, 1972. 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 either party 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. Registration shall not be delayed pending the determination of reasonable compensation between the applicants, by the Administrator or by the court.".

And the Senate agree to the same.

THOMAS S. FOLEY,
W. R. POAGE,
E. DE LA GARZA,
JOSEPH P. VIGORITO,
WALTER B. JONES,
ED JONES,
JOHN MELCHER,
WILLIAM C. WAMPLER,
RICHARD KELLY,
Managers on the Part of the House.

HERMAN E. TALMADGE,
GEORGE MCGOVERN,
JAMES ALLEN,
DICK CLARK,
PATRICK LEAHY,
ROBERT DOLE,
HENRY BELLMON,
JESSE HELMS,
Managers on the Part of the Senate.

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 amendments of the Senate to the bill (H.R. 8841) to extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 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:

(1) *Consultation with the Secretary of Agriculture on proposed notices of intent.*

(a) The *House* bill required that prior to issuance of notices of intent of proposed action regarding cancellation of registration on changes in classification, the Administrator of EPA must submit the proposed notice to the Secretary of Agriculture for comment. The *House* bill authorized the Administrator to waive the requirement for notice to and consultation with the Secretary of Agriculture if the Administrator determines that suspension of pesticide registration is necessary to prevent an imminent hazard "to human health".

The *Senate* amendment deleted the limitation that the imminent hazard must be to human health, so that the waiver would apply to an imminent hazard to the environment and to an endangered species as well as an imminent hazard to human health.

The *Conference* substitute adopts the *House* provision.

(b) The *Senate* amendment also provided that simultaneous with submission of the proposed notice of intent to the Secretary for comment, the proposed notice must be published in the Federal Register.

The *Conference* substitute deletes the *Senate* amendment.

(2) *Consultation with the Secretary of Agriculture on proposed or final form of regulations.*

The *House* bill required the Administrator of EPA to provide the Secretary of Agriculture with copies of proposed regulations and the final form of regulations within a prescribed time period prior to publication for his comment prior to issuance.

The *Senate* amendment retained this provision of the *House* bill but provided for publication in the Federal Register of any advance notification to the Secretary of proposed or final regulations simultaneous with the notification to the Secretary.

The *Conference* substitute adopts the *Senate* amendment.

(3) *Extension of funding authorization.*

The *House* bill provided a one-year extension of the authorization for appropriations through September 30, 1976, at a level of $47,868,000 for the year.

The *Senate* amendment extended the authorization another year through September 30, 1977, at a level of $47.200,000 for the second year.

The *Conference* substitute adopts the *House* provision with an amendment to extend the authorization through March 31, 1977, at a level of $23,600,000 for the period October 1, 1976, through March 31, 1977.

(4) *Self-certification form for private applicators.*

The *House* bill provided that the standards prescribed by the Administrator for certification of a private applicator "shall" be deemed fulfilled by his signing a self-certification form with information and affirmations to carry out the Act, and may include an affirmation that the private applicator completed an approved training program, so long as the program does not require the private applicator to "take" any examination.

The *Senate* amendment provided, instead, that the certification "may" (rather than "shall") be deemed fulfilled by his signing a self-certification form, and that the training program completed by the private applicator cannot require the private applicator to "pass" (rather than "take") an examination.

The *House* bill provided for certification standards for a private applicator to be fulfilled by his signing a self-certification form with the affirmations stated above. According to the *House* Committee report, it was intended that if a State were to submit for approval a more rigorous plan for certification of private applicators, the Administrator would be authorized to approve the plan, although the plan could not be required by the Administrator if it were not requested by the State. Under the *House* bill, no person could be required to take an exam as a condition of self-certification, unless a State were to mandate it.

The *Senate* amendment retained the basic provisions of the *House* bill regarding the certification of private applicators of pesticides. According to the *Senate* Committee report, the changes were designed to make clear that—

(a) the completion of a certification form is not the only acceptable certification procedure which a State may elect to exercise, and

(b) a State, at its option, may give an examination or require the completion of a set of study questions as a part of its training program.

The *Conference* substitute adopts the *House* provision with an amendment to make clear that a State plan shall qualify for approval if it provides for certification standards for a private applicator to be deemed fulfilled by his completing a certification form with the information and affirmations as specified in the *House* provision, but that a State would have the option, at is election, to submit for approval a different plan which comports with the requirements of the Act.

(5) *Scientific Advisory Panel.*

The *House* bill provided for appointment of a scientific advisory panel with which the Administrator of EPA must consult on notices of intent issued under section 6(b) and on proposed and final form of regulations.

The *Senate* amendment provided that the Administrator—

(a) may require of nominees information necessary to determine their fitness for appointment;

(b) shall publish in the Federal Register their name, address and professional affiliation; and

(c) shall issue regulations regarding conflicts of interest.

The *Conference* substitute adopts the *Senate* amendment.

The Conferees note that the procedure in section 7 establishing a Scientific Advisory Panel is not retroactive and would not apply to any ongoing section 6(b) or section 25 proceeding begun before the date of enactment of H.R. 8841. Nevertheless, in keeping with the spirit of section 7, the Conferees believe that EPA should utilize appropriate scientific advisory committees in order to obtain independent scientific and medical advice in connection with any actions it takes. For example, the Conferees believe that the Administrator and the American public should have the most complete record possible with respect to the pending heptachlor/chlordane cancellation matter. According to a letter to the Conferees from Senator Fong, the principal agricultural crop in Hawaii, pineapple, faces extinction within ten years if the only effective existing pesticides, heptachlor and mirex, are no longer available to control ants and mealybug wilt.

(6) *Integrated pest management.*

The *House* bill provided for EPA and the States to make available to individuals at their request instructional materials on integrated pest management.

The *Senate* amendment added to this a provision that this be done in accordance with section 23(c) of the Act; namely, in cooperation with the Extension Service.

The *Conference* substitute adopts the *Senate* amendment.

(7) *Data compensation.*

New section 12 added by the *Senate* amended section 3(c)(1)(D) of FIFRA which requires that an applicant for registration of a pesticide pay reasonable compensation if he relies on the test data submitted by another applicant. The amendment provides that only data submitted on or after October 21, 1972, is compensable; the data compensation provision applies to all applications for registration submitted on or after October 21, 1972; both parties to a dispute on compensation of data are given the same rights in the courts; and registration of a pesticide is not to be delayed pending the determination of a dispute on reasonable compensation.

The *House* bill had no specific language amending section 3(c)(1)(D). However, in the discussion of the bill on the *House* Floor, it was stated that it was the Committee's intent that on new registrations, the reasonable compensation data provision be applied regardless of when the data relied on was originally received by EPA. If, however, a reregistration is made of a pesticide registered originally prior to October 21, 1972, and data to support the reregistration was in the files of EPA prior to such date, no compensation would be required at the time of reregistration.

The *Conference* substitute adopts the *Senate* amendment with a modification which (a) provides that all data submitted in support of an application on or after January 1, 1970 (in lieu of October 21, 1972, as provided in the *Senate* amendment), is compensable, and (b) makes clear that the provision with regard to compensation for producing test data to be relied upon shall apply with respect to all applications

for both registration and reregistration submitted on or after October 21, 1972.

(8) *Review by Court of Appeals.*

New section 13 added by the *Senate* amends section 16(b) of FIFRA to confine review by the Court of Appeals to cases following a public hearing "for which there is a reviewable record". Review of all other EPA actions would be confined to the District Courts.

The *Conference* substitute deletes the *Senate* amendment. It is the intent of the Conferees, however, that an adequate reviewable record be developed by the Environmental Protection Agency in each of its public hearings although such hearings need not necessarily be adjudicatory in nature.

THOMAS S. FOLEY,
W. R. POAGE,
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Managers on the Part of the House.

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DICK CLARK,
PATRICK LEAHY,
ROBERT DOLE,
HENRY BELLMON,
JESSE HELMS,
Managers on the Part of the Senate.

○

H. R. 8841

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To extend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended—

(1) by inserting the following new sentences immediately after the second sentence thereof: "In determining whether to issue any such notice, the Administrator shall include among those factors to be taken into account the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy. At least 60 days prior to sending such notice to the registrant or making public such notice, whichever occurs first, the Administrator shall provide the Secretary of Agriculture with a copy of such notice and an analysis of such impact on the agricultural economy. If the Secretary comments in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator shall publish in the Federal Register (with the notice) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the notice and analysis within 30 days after receiving them, the Administrator may notify the registrant and make public the notice at any time after such 30-day period notwithstanding the foregoing 60-day time requirement. The time requirements imposed by the preceding 3 sentences may be waived or modified to the extent agreed upon by the Administrator and the Secretary. Notwithstanding any other provision of this subsection (b) and section 25(d), in the event that the Administrator determines that suspension of a pesticide registration is necessary to prevent an imminent hazard to human health, then upon such a finding the Administrator may waive the requirement of notice to and consultation with the Secretary of Agriculture pursuant to subsection (b) and of submission to the Scientific Advisory Panel pursuant to section 25(d) and proceed in accordance with subsection (c).."; and

(2) by adding the following new sentence at the end of such section 6(b): "In taking any final action under this subsection, the Administrator shall include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and he shall publish in the Federal Register an analysis of such impact.".

SEC. 2. (a) Section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended—

(1) by inserting "(1)" immediately after "(a)";

(2) by inserting ", in accordance with the procedure described in paragraph (2)," immediately after "is authorized" in the first sentence; and

(3) by adding the following new paragraph at the end thereof:

"(2) PROCEDURE.—

"(A) PROPOSED REGULATIONS.—At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such regulation within 30 days after receiving it, the Administrator shall publish in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 30 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register any time after such 30-day period notwithstanding the foregoing 60-day time requirement.

"(B) FINAL REGULATIONS.—At least 30 days prior to signing any regulation in final form for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such final regulation within 15 days after receiving it, the Administrator shall publish in the Federal Register (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 15 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register at any time after such 15-day period notwithstanding the foregoing 30-day time requirement.

"(C) TIME REQUIREMENTS.—The time requirements imposed by subparagraphs (A) and (B) may be waived or modified to the extent agreed upon by the Administrator and the Secretary.

"(D) PUBLICATION IN THE FEDERAL REGISTER.—The Administrator shall, simultaneously with any notification to the Secretary of Agriculture under this paragraph prior to the issuance of any proposed or final regulation, publish such notification in the Federal Register.".

(b) Section 21(a) of such Act is amended by inserting the following immediately before the period: "in accordance with the procedure described in section 25(a)".

SEC. 3. Section 27 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by adding at the end thereof the following:

"There are hereby authorized to be appropriated to carry out the provisions of this Act for the period beginning October 1, 1975, and ending September 30, 1976, the sum of $47,868,000, and for the period beginning October 1, 1976, and ending March 31, 1977, the sum of $23,600,000.".

SEC. 4. Section 4 of the Federal Environmental Pesticide Control Act of 1972 is amended—

(i) In subsection (b) by striking the words "four years" and inserting in lieu thereof the words "five years";

(ii) In paragraph (c)(2) by striking the words "four years" and inserting in lieu thereof the words "five years";

(iii) In paragraph (c)(3) by striking the words "four years" and inserting in lieu thereof the words "five years";

(iv) In paragraph (c)(4) by striking the words "four years" and inserting in lieu thereof the words "five years"; and

(v) In paragraph (c)(4)(B) by striking the words "three years" and inserting in lieu thereof the words "four years".

SEC. 5. Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by deleting the period at the end of subsection (a)(1) and inserting the following: ": *Provided, however*, That the certification standard for a private applicator shall, under a State plan submitted for approval, be deemed fulfilled by his completing a certification form. The Administrator shall further assure that such form contains adequate information and affirmations to carry out the intent of this Act, and may include in the form an affirmation that the private applicator has completed a training program approved by the Administrator so long as the program does not require the private applicator to take, pursuant to a requirement prescribed by the Administrator, any examination to establish competency in the use of the pesticide. The Administrator may require any pesticide dealer participating in a certification program to be licensed under a State licensing program approved by him.".

SEC. 6. Section 25(a) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by adding a new paragraph (3) at the end thereof as follows:

"(3) CONGRESSIONAL COMMITTEES.—At such time as the Administrator is required under paragraph (2) of this subsection to provide the Secretary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, he shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture and Forestry of the Senate."

SEC. 7. Section 25 of the Federal Insecticide, Fungicide, and Rodenticide Act is amended by the addition at the end thereof of the following new subsection (d):

"(d) SCIENTIFIC ADVISORY PANEL.—The Administrator shall submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 6(b) and of the proposed and final form of regulations issued under section 25(a) within the same time periods as provided for the comments of the Secretary of Agriculture under such sections. The time requirements for notices of intent and proposed and final forms of regulation may not be modified or waived unless in addition to meeting the requirements of section 6(b) or 25(a), as applicable, the advisory panel has failed to comment on the proposed action within the prescribed time period or has agreed to the modification or waiver. The comments of the advisory panel and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The panel referred to in this subsection shall consist of seven members appointed by the Administrator from a list of 12 nominees, six nominated by the National Institutes of Health, and six by the National Science Foundation. The Administrator may require such information from the nominees to the advisory panel as he deems necessary, and he shall publish in the Federal Register the name, address, and professional affiliations of each nominee. Each member of the panel shall receive per diem compensation at a rate not in excess of that fixed for GS–18 of the General Schedule as may be determined by the Administrator, except that any such member who holds another office or position under the Fed-

eral Government the compensation for which exceeds such rate may elect to receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this subsection. In order to assure the objectivity of the advisory panel, the Administrator shall promulgate regulations regarding conflicts of interest with respect to the members of the panel.".

SEC. 8. Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by adding at the end thereof the following new sentence:

"The Administrator, in determining whether or not such emergency conditions exist, shall consult with the Secretary of Agriculture and the Governor of any State concerned if they request such determination."

SEC. 9. Section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is hereby amended to read as follows:

"(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: *Provided*, That the term 'pesticide' shall not include any article (1)(a) that is a 'new animal drug' within the meaning of section 201(w) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(w)), or (b) that has been determined by the Secretary of Health, Education, and Welfare not to be a new animal drug by a regulation establishing conditions of use for the article, or (2) that is an animal feed within the meaning of section 201(x) of such Act (21 U.S.C. 321(x)) bearing or containing an article covered by clause (1) of this proviso."

SEC. 10. Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by adding at the end thereof the following new subsection:

"(g) EXEMPTION FOR AGRICULTURAL RESEARCH AGENCIES.—Notwithstanding the foregoing provisions of this section, the Administrator may issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution which applies for such permit. Each permit shall not exceed more than a one-year period or such other specific time as the Administrator may prescribe. Such permit shall be issued under such terms and conditions restricting the use of the pesticide as the Administrator may require: *Provided*, That such pesticide may be used only by such research agency or educational institution for purposes of experimentation."

SEC. 11. Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended by adding at the end thereof the following new subsection:

"(c) INSTRUCTION IN INTEGRATED PEST MANAGEMENT TECHNIQUES.—Standards prescribed by the Administrator for the certification of applicators of pesticides under subsection (a), and State plans submitted to the Administrator under subsections (a) and (b), shall include provisions for making instructional materials concerning integrated pest management techniques available to individuals at their request in accordance with the provisions of section 23(c) of this Act, but such plans may not require that any individual receive instruction concerning such techniques or be shown to be competent with respect to the use of such techniques. The Administrator and States implementing such plans shall provide that all interested individuals are notified of the availability of such instructional materials."

SEC. 12. Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, is amended to read 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 on or after January 1, 1970, 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). This provision with regard to compensation for producing the test data to be relied upon shall apply with respect to all applications for registration or reregistration submitted on or after October 21, 1972. 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 either party 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. Registration shall not be delayed pending the determination of reasonable compensation between the applicants, by the Administrator or by the court.".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

November 21, 1975

Dear Mr. Director:

The following bills were received at the White House on November 21st:

H.R. 12
H.R. 2343
H.R. 3922
H.R. 8841
H.R. 9472

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.