

## REGISTRATION OF ECONOMIC POISONS

# HEARINGS

BEFORE THE

SUBCOMMITTEE ON DEPARTMENTAL  
OVERSIGHT AND CONSUMER RELATIONS

OF THE

COMMITTEE ON AGRICULTURE  
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

## FIRST SESSION

ON

H.R. 6828, H.R. 6913, and H.R. 7336

AUGUST 21 AND 22, 1963

### Serial Y

Printed for the use of the Committee on Agriculture



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1963

23-664

AY  
1/8/81  
5/25/9

COMMITTEE ON AGRICULTURE

HAROLD D. COOLEY, North Carolina, *Chairman*

W. R. POAGE, Texas, *Vice Chairman*

GEORGE GRANT, Alabama  
E. C. GATHINGS, Arkansas  
JOHN L. McMILLAN, South Carolina  
THOMAS G. ABERNETHY, Mississippi  
WATKINS M. ABBITT, Virginia  
PAUL C. JONES, Missouri  
HARLAN HAGEN, California  
LESTER R. JOHNSON, Wisconsin  
D. R. (BILLY) MATTHEWS, Florida  
FRANK A. STUBBLEFIELD, Kentucky  
RALPH R. HARDING, Idaho  
G. ELLIOTT HAGAN, Georgia  
GRAHAM PURCELL, Texas  
JAMES H. MORRISON, Louisiana  
BENJAMIN S. ROSENTHAL, New York  
ROBERT B. DUNCAN, Oregon  
ALEC G. OLSON, Minnesota  
ROBERT L. LEGGETT, California  
SPARK M. MATSUNAGA, Hawaii

CHARLES B. HOEVEN, Iowa  
PAUL B. DAGUE, Pennsylvania  
PAGE BELCHER, Oklahoma  
CLIFFORD G. MCINTIRE, Maine  
CHARLES M. TEAGUE, California  
ALBERT H. QUIE, Minnesota  
DON L. SHORT, North Dakota  
CATHERINE MAY, Washington  
DELBERT L. LATTA, Ohio  
RALPH HARVEY, Indiana  
PAUL FINDLEY, Illinois  
ROBERT DOLE, Kansas  
RALPH F. BEERMANN, Nebraska  
EDWARD HUTCHINSON, Michigan

RESIDENT COMMISSIONER

A. FERNÓS-ISERN, Puerto Rico

Mrs. CHRISTINE S. GALLAGHER, *Clerk*  
HYDE H. MURRAY, *Assistant Clerk*  
JOHN J. HEIMBURGER, *General Counsel*  
ROBERT C. BRUCE, *Assistant Counsel*  
FRANCIS M. LEMAY, *Staff Consultant*

SUBCOMMITTEE ON DEPARTMENTAL OVERSIGHT AND CONSUMER RELATIONS

PAUL C. JONES, Missouri, *Chairman*

HARLAN HAGEN, California  
LESTER R. JOHNSON, Wisconsin  
FRANK A. STUBBLEFIELD, Kentucky  
THOMAS G. ABERNETHY, Mississippi  
SPARK M. MATSUNAGA, Hawaii  
A. FERNÓS-ISERN, Puerto Rico

PAUL B. DAGUE, Pennsylvania  
RALPH HARVEY, Indiana  
ROBERT DOLE, Kansas  
RALPH F. BEERMANN, Nebraska



# CONTENTS

|                                                                                                                                                                                                                                              | Page |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| H.R. 6828, a bill to amend the Federal Insecticide, Fungicide, and Rodent-icide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes..... | 1    |
| Department of Agriculture report on H.R. 6828, letter of July 12, 1963 from Hon. Orville L. Freeman, Secretary of Agriculture.....                                                                                                           | 3    |
| Statement of—                                                                                                                                                                                                                                |      |
| Brinkley, Parke C., president, National Agricultural Chemicals Association.....                                                                                                                                                              | 45   |
| Buckley, John L., staff specialist, pesticides, Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, U.S. Department of the Interior.....                                                                                      | 29   |
| Clarkson, Dr. M. R., Associate Administrator, Agricultural Research Service, U.S. Department of Agriculture.....                                                                                                                             | 22   |
| Datt, John C., assistant to the director, Washington office, American Farm Bureau Federation.....                                                                                                                                            | 67   |
| Delaney, Hon. James J., a Representative in Congress from the State of New York.....                                                                                                                                                         | 44   |
| Dingell, Hon. John D., a Representative in Congress from the State of Michigan.....                                                                                                                                                          | 37   |
| Halpern, Hon. Seymour, a Representative in Congress from the State of New York.....                                                                                                                                                          | 40   |
| Kirk, J. K., Assistant Commissioner, Food and Drug Administration, U.S. Department of Health, Education, and Welfare.....                                                                                                                    | 30   |
| Noone, Joseph A., technical director, Agricultural Chemicals Association.....                                                                                                                                                                | 69   |
| O'Connell, Richard T., secretary, National Council of Farmer Co-operatives.....                                                                                                                                                              | 65   |
| Ribicoff, Hon. Abraham, a U.S. Senator from the State of Connecticut.....                                                                                                                                                                    | 5    |
| Rodda, John A., ass'tant to the president, F.M.C. Corp.....                                                                                                                                                                                  | 62   |
| Rosenthal, Hon. Benjamin S., a Representative in Congress from the State of New York.....                                                                                                                                                    | 10   |
| Sullivan, Hon. Leonor K., a Representative in Congress from the State of Missouri.....                                                                                                                                                       | 43   |

## CONCLUSION

The results of the present study indicate that the use of a computerized system for the analysis of data from a large number of experiments is a very efficient and reliable method. The system is capable of handling a large amount of data and can produce results in a very short time. The use of a computerized system is also very convenient, as it allows the user to perform the analysis from a remote location. The system is also very flexible, as it can be adapted to handle a wide range of data. The results of the present study also indicate that the use of a computerized system for the analysis of data from a large number of experiments is a very efficient and reliable method. The system is capable of handling a large amount of data and can produce results in a very short time. The use of a computerized system is also very convenient, as it allows the user to perform the analysis from a remote location. The system is also very flexible, as it can be adapted to handle a wide range of data.



# REGISTRATION OF ECONOMIC POISONS

WEDNESDAY, AUGUST 21, 1963

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON DEPARTMENTAL OVERSIGHT AND  
CONSUMER RELATIONS OF THE COMMITTEE ON AGRICULTURE,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 1310, Longworth House Office Building, the Hon. Paul C. Jones (chairman of the subcommittee) presiding.

Present: Representatives Jones (presiding), Johnson of Wisconsin, Stubblefield, Abernethy, Matsunaga, Dague, Dole, and Beermann.

Also present: Representatives Matthews and Rosenthal.

Christine S. Gallagher, clerk.

Mr. JONES (presiding). The subcommittee will come to order.

This is a meeting of the Departmental Oversight and Consumer Relations Subcommittee of the House Committee on Agriculture.

We are here this morning to hear from witnesses who are interested in a number of bills that have been introduced to amend the Federal Insecticide, Fungicide and Rodenticide Act.

(The following bill, H.R. 6828 by Mr. Rosenthal, is similar to H.R. 6913 by Mr. Dingell and H.R. 7336 by Mr. Halpern:)

[H.R. 6828, 88th Cong., 1st sess.]

A BILL To amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, 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 2.z(2) (b) of the Federal Insecticide, Fungicide, and Rodenticide Act (61 Stat. 163, as amended, 7 U.S.C. 1958 ed., Supp. III, 135(z) (2) (b)) is hereby amended by inserting before the semicolon at the end thereof the following phrase: "other than the registration number assigned to the economic poison".

SEC. 2. Section 3 of said Act (61 Stat. 166; 7 U.S.C. 135a) is hereby amended by deleting the word "and" at the end of section 3.a.(2) (b), changing the period at the end of section 3.a.(2) (c) to a semicolon, and adding after section 3.a.(2) (c) a new provision reading as follows: "and (d), when required by regulation of the Secretary to effectuate the purposes of this Act, the registration number assigned to the article under this Act".

SEC. 3. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby amended by changing the word "registrant" wherever it appears in subsection a. and in the first sentence of subsection c. to "applicant for registration" and by deleting the remainder of subsection c. and inserting in lieu thereof the following:

"If, upon receipt of such notice, the applicant for registration does not make the corrections, the Secretary shall refuse to register the article. The Secretary, in accordance with the procedures specified herein, may require the modification of the claims or labeling of, or cancel the registration of, an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of this Act. Whenever



the Secretary determines that registration of an economic poison should be refused, or that an economic poison that is registered does not appear to warrant the claims made for it or that the article or its labeling or other material required to be submitted does not comply with the provisions of this Act, he shall notify the applicant for registration or the registrant of his determination and the reasons therefor. Within thirty days after service of such notice, the applicant for registration or the registrant may file a petition requesting that the matter be referred to an advisory committee to be appointed by the Secretary. Each such advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Secretary. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Secretary shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Secretary shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Secretary shall forthwith submit to such committee the application for registration in the article and all relevant data before him. The petitioner, as well as representatives of the United States Department of Agriculture, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Secretary for an additional sixty days, the committee shall, after independent study of the data submitted by the Secretary and all other pertinent information available to it, make a report and recommendation to the Secretary as to the registration of the article. After due consideration of the views of the committee and all other data before him, the Secretary shall make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. Any person adversely affected thereby may file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Secretary shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Secretary by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 7(c) of the Administrative Procedure Act (5 U.S.C. 1006(c)). The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Secretary, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, the Secretary shall act upon such objections and issue an order granting, denying, or canceling the registration or requiring the modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Secretary by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. All data submitted to the Secretary or to an advisory committee in support of a petition under this section shall be considered confidential by the Secretary and by such advisory committee until final action is taken concerning registration of the product. Until such final action such data shall not be revealed to any person other than those authorized by the Secretary or by an advisory committee in the carrying out of their official duties under this section. Notwithstanding any other provision of this section, the Secretary may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory



committee and for an expedited hearing under this section. Final orders of the Secretary under this section shall be subject to judicial review, in accordance with the provisions of subsection d. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 3 of this Act."

SEC. 4. Section 4 of said Act (61 Stat. 167; 7 U.S.C. 135b) is hereby further amended by redesignating subsections d. and e. as subsections e. and f., and by adding a new subsection d., as follows:

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

SEC. 5. Subsection 8.b. of said Act (61 Stat. 170; 7 U.S.C. 135f. (b)) is hereby amended by deleting the second proviso therein.

SEC. 6. Subsection 3.a. (1) and subsection 9.a. (1) (b) of said Act (61 Stat. 166, 170; 7 U.S.C. 135a. (a) (1), 135g. (a) (1) (b)) are hereby amended by changing the phrase "has not been registered" wherever it appears therein, to read "is not registered."

SEC. 7. This Act and the amendments made hereby shall become effective upon enactment.

(The Department of Agriculture report on H.R. 6828 follows):

DEPARTMENT OF AGRICULTURE,  
Washington, D.C., July 12, 1963.

Hon. HAROLD D. COOLEY,  
Chairman, Committee on Agriculture,  
House of Representatives.

DEAR MR. CHAIRMAN: We wish to thank you for your letter of June 19, 1963, giving us the opportunity to report on H.R. 6828, entitled "A bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes."

The bill would permit the labels of economic poisons registered under the act to bear the registration numbers and would authorize the Secretary of Agriculture to require by regulation that registration numbers appear on such labels. It would delete the provisions now in the act for registration of economic poisons under protest and would prescribe the procedures to be followed in refusing or



canceling registrations, or requiring modification of claims or labeling of registered economic poisons. Provision would be made for referral of the question of the eligibility of an economic poison for registration to an advisory committee; for public hearing, if requested, with respect to the Secretary's order issued after consideration of the views of the committee and other data; and for judicial review of the order issued by the Secretary after such hearing.

In fulfilling its responsibilities under the act, this Department is hampered by a provision in the act which gives the applicant the right to demand and receive registration under protest when regular registration is denied, even though the denial is based upon a hazard to the public involved in its use. The net effect of a registration under protest is to shift the burden of proof from the applicant to the Department. Thus a chemical formulation not acceptable to the Department for registration might be marketed for an extended period on a "registration under protest" basis before proof of its harmfulness could be developed. The intent of H.R. 6828 is to eliminate registrations under protest and to give this Department authority to deny or cancel any registration or require modification of claims or labeling in any case, after opportunity for referral of the matter to an advisory committee and a public hearing, but with authority for immediate suspension of any registration when the Secretary of Agriculture finds that such action is necessary to prevent an imminent hazard to the public or any portion thereof.

This Department recommends enactment of the bill if the following changes are made:

In section 3 of the bill, page 3, line 7, after "Secretary," insert the following new sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory committee." It is believed that this authority in the Secretary is desirable.

In section 3 of the bill, page 3, line 19, preceding the period, insert the following: "all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition". This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

The bill provides that all data submitted to the Secretary or an advisory committee shall be considered confidential until final action is taken concerning registration of the product. However, the bill also provides for such data to be included in the record at the public hearing provided for in the bill. To eliminate this apparent inconsistency, it is suggested that in section 3 of the bill, page 5, lines 20-21, the phrase "final action is taken concerning registration of the product." be deleted and the following be substituted therefor: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him." In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action". It is contemplated that under this language the Secretary would be authorized to make such data available to other executive agencies that have an official interest.

Since the provisions of the act for registration under protest would be deleted by the bill, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bill become effective. However, to avoid any possible question in this respect, it is proposed that in section 7 of the bill, page 8, line 16, the following be inserted preceding the period: "and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate".

The Bureau of the Budget advises that there is no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

ORVILLE L. FREEMAN, *Secretary.*

Mr. JONES. Our first witness this morning will be the Honorable Abraham Ribicoff, the Senator from Connecticut, former Secretary of the Department of Health, Education, and Welfare and a former colleague of some of the members of this committee.

We are very happy to have you here this morning and we are pleased to have the opportunity of hearing from you at this time.



STATEMENT OF HON. ABRAHAM RIBICOFF, A U.S. SENATOR FROM  
THE STATE OF CONNECTICUT

Senator RIBICOFF. Thank you very much, Mr. Chairman. It is a pleasure for me to be here.

I appreciate this opportunity to appear here this morning in support of H.R. 6828, H.R. 6913, and H.R. 7336. The sponsors of these bills and the subcommittee have done and are doing the Nation a real service by the speedy action that is being taken on this important legislation.

My comments will be brief, this morning, as I know you have many expert witnesses to hear in the next 2 hours. I do want to emphasize the importance of the legislation before you. Since its introduction two additional products have reached the market without satisfactory proof of safety—both were the so-called continuous-action lindane vaporizers which have never been proven safe for home use.

As you know, the bills would end the practice of protest registration whereby the manufacturer of a pesticide can market a product despite Department of Agriculture doubts as to its effectiveness or safety.

Fortunately, we have been able to avoid a national tragedy while this gap in consumer protection remained in the law. Only a very few products out of the thousands registered have been "protest registered" over the past 16 years. Even these have been too many and it is time to close the gap.

Despite our relatively good fortune in the past, the danger of an unsafe product coming on the market is always with us under existing law. We must remember that no manufacturer of a pesticide wants to put a harmful product on the market. He wouldn't be in business long. My concern is with the responsible manufacturer of such a product who has absolute faith in his product and whose research has turned up no dangerous side effect whatever. This man is a businessman—convinced he is right—and having good reason to believe so on the basis of what is known about the product at the time. He is confronted with a doubting Federal employee who shouldn't approve the product without adequate proof of its safety.

The policy of this Nation is, and should always be, that a pesticide should not come on the market until adequate proof of safety has been established and it should not be left for the public to play the role of guinea pig while the true facts of toxicity are brought out. Today, it is possible under the law to subject the public to that role when the Government is not satisfied with the manufacturer's proof of safety and yet lacks definite evidence of lack of safety. That gray area must be decided in favor of the public—the consumer. He should not be the testing ground. With the sole exception of the Federal Insecticide, Fungicide, Rodenticide Act of 1947, as amended, all our consumer protection laws are either based on this principle or proposals have been submitted to accomplish this. It is time this act, too, be brought into the 1960's.

As you know, protest registration was supposedly a technique to force a court review whenever the manufacturer and the Government disagreed on the safety or effectiveness of the product in question. What we should remember is that time often must elapse before a body of evidence is accumulated justifying a seizure action by the Government and a subsequent court case.



The proposed legislation rejects this archaic concept of consumer protection and substitutes a system under which the public's interest and a manufacturer's rights are protected. And this protection runs from the initial decision, through an advisory committee, through a hearing on the record, through judicial review.

In addition, the legislation requires that every pesticide formulation carry its official registration number on the label. In this way the public will be able to tell at a glance that the product on the shelf has satisfied the requirements of Federal law as to its effectiveness and safety when used according to the directions on the label.

This legislation is recommended by the President's Science Advisory Committee. It has been endorsed by the heads of the various affected Federal agencies, the regulated industry, and by every witness to appear before our Senate subcommittee now studying the problem of the use of pesticides. I know the cosponsors of S. 1605—Senator Pearson of Kansas, Senator Pell of Rhode Island, and Senator Javits of New York—join me in urging your favorable consideration of this important measure.

Mr. JONES. Thank you, Senator.

As I understand it, as you have pointed out in your statement, the Fungicide, Pesticide, and Rodenticide Act is the only act which does require different procedure than is required for some other products that are put on the market, like those covered by the Food, Drug, and Cosmetic Act and things like that?

Senator RIBICOFF. That is right. Drugs, color and food additives, and the like, require premarketing clearance. Proposals to extend this procedure to cosmetics and devices are now pending.

Mr. JONES. And this bill proposes to bring that field into conformity with the procedures that are followed as to other products?

Senator RIBICOFF. That is correct, Mr. Chairman.

Mr. JONES. Do you have any questions, Mr. Dole?

Mr. DOLE. Senator Ribicoff, I know that it probably takes some time before a court, for example, makes a final decision. Is there anything which can be done to speed up the time so the consumer may be certain products may or may not be safe?

Senator RIBICOFF. No. It depends upon the product, but you take the thalidamide situation. The manufacturer had faith in this drug and yet if we had a pesticide in the same situation the manufacturer of that pesticide could have put it on the market under protest.

To me, when we are dealing with any product that is potentially dangerous and potentially poisonous, all doubts should be resolved in favor of the consumer. Now I am sure that the industry representatives who will testify before you will indicate that industry recognizes this. The legitimate manufacturer, the manufacturer who has any responsibility to the public and to his stockholders and employees is not seeking this advantage.

They recognize that in the orderly procedures of the Department of Agriculture, there is no indication that there is too long a delay in getting the product approved. In 16 years there have only been some 25 or 30 products sold under protest registration, even though thousands upon thousands of products have been sent to the Department of Agriculture for approval. Yet this is a gap in the law which creates a potential hazard. I think we should close it. In talking



to manufacturer representatives of almost every major company they recognize that this is a loophole that should be closed, Congressman Dole.

Mr. DOLE. Is there any specific pesticide on which there is any particular concern?

Senator RIBICOFF. Well, basically, we are concerned with all of them. I mean at the present time we are in the process of conducting hearings on the whole problem of pesticides. It is a problem about which not enough is known. We are conducting extensive and patient hearings today before the subcommittee. The chancellor of the University of California, Davis Branch, is testifying right now. We have had scientists, we have had doctors, industry representatives—we will have the public—in an effort to determine where we should be going in this country in the whole field of pesticides. We have not come up with any firm conclusions. I do not think that we should until all of the testimony is in, but I do believe that before we are through with our Senate hearings we will have as definitive an understanding of departments and the potential hazards or potential safety of pesticides as has ever been gathered together in this country before.

Of course, as you know this matter was brought to the forefront through Rachel Carson's book "Silent Spring," which caused quite a furor and a great controversy. We are trying to determine who is right and who is wrong—is there a right, is there a wrong, what role should the chemical manufacturers play, what role should be played by the Government, what role should be played by the States.

It has been the thought of our committee that as we develop this program and this testimony, when we come across a problem that should be taken care of, we would recommend that it be done.

The first problem we came across was protest registration in which we recognized there was a loophole that should be closed immediately. And talking to the manufacturer representatives they agree that this is a loophole that should be closed. The Department of Agriculture recognizes this. I think that the public recognizes this. That is why this was the first recommendation to come out of our Senate hearings.

I doubt very much whether there will be any testimony adduced before this committee in opposition to this particular procedure.

Mr. DOLE. Thank you. That is all.

Mr. JONES. Mr. Johnson?

Mr. JOHNSON of Wisconsin. Is this particular legislation backed by the conservation groups, also?

Senator RIBICOFF. It certainly is.

Mr. JOHNSON of Wisconsin. I know that there was talk about it among them.

Senator RIBICOFF. Yes.

Mr. JOHNSON of Wisconsin. They were very much interested at the start of the session.

Senator RIBICOFF. I would say that they are very anxious for this. I would say that the conservation people, the wildlife people, the medical people are for it. To my knowledge there has been no opposition to this particular piece of legislation from them.

I wish that other legislation that comes before us would have such unanimity, but I do believe that this particular piece of legislation



does have the unanimous support of everybody in this field, even though they may differ in their conclusions upon the safety of pesticides as a whole.

Mr. JOHNSON of Wisconsin. Thank you.

Mr. JONES. Mr. Beermann?

Mr. BEERMANN. Mr. Chairman, by the enactment of this legislation, Senator, will there be more responsibility on the manufacturers than there is the way the law is presently written?

Senator RIBICOFF. Yes. The responsibility is such that it will place the burden of proof on the manufacturer. If the Department of Agriculture does not approve his pesticide he will not be able to market it until he runs through the gamut of approval. This is similar to the application of the law to drugs and the various other laws that we have on the books dealing with problems that affect the consumer.

I think that this is something that will be good for the chemical manufacturers themselves, because I personally believe that the chemical manufacturers want to be responsible. And the responsible ones look askance at the thought that there may be a pesticide on the market that the Department of Agriculture will not approve; because, if something happened, if some great tragedy takes place, then, of course, it casts opprobrium and doubt on every pesticide. And that is why I think in recognizing this they, too, are anxious to have this loophole plugged.

Mr. BEERMANN. In the same light, this will be relieving the Department of Agriculture of its responsibility?

Senator RIBICOFF. No, it will not relieve the Department of Agriculture of the responsibility, because I think that they make their decision after they research and look into the pesticide application. What it does, then, is shift the burden of responsibility to the manufacturer of the rejected product until he can prove it safe, instead of waiting for the public to find out that it is unsafe over a period of time. I think this is a potential danger that we have when we are dealing with toxic substances.

Mr. BEERMANN. Thank you.

Mr. JONES. Mr. Stubblefield?

Mr. STUBBLEFIELD. Do the manufacturers, in general, Senator, agree on this recommendation?

Senator RIBICOFF. It is my understanding that the various associations represented in this field have agreed that this is a good piece of legislation. And I do believe before your hearings are over that you will have representatives of the manufacturers associations here to testify. And it is my understanding that they do approve of this piece of legislation.

Mr. STUBBLEFIELD. None of them have appeared in opposition to it?

Senator RIBICOFF. To my knowledge, none have appeared in opposition and none have written in opposition. As a matter of fact, we have received some letters from manufacturers definitely in favor of this, because they recognize that if they are responsible they do not want to have an irresponsible manufacturer cast doubt upon the legitimate responsible manufacturers.

Mr. STUBBLEFIELD. Thank you.



Mr. JONES. I would like to say, for the benefit of the gentleman though they may differ in their conclusions upon the safety of manufacturers, and it is my impression that—as that of the Senator—that they are supporting this legislation.

Mr. STUBBLEFIELD. What would be the process if there was a rejection—what would be necessary to be done by the manufacturer?

Senator RIBICOFF. If there was a rejection, there could be an advisory committee set up by the National Academy of Sciences, which would then pass upon the dispute. Then, if the manufacturer was dissatisfied, he could go to an administrative hearing and then to court—he could take his case to court for review, but the burden would really be upon him.

I think when you are dealing with toxic substances that this is fair. The fact remains that while protest registration is not a great problem, because it only affects a few products, this is proof that the average responsible manufacturer is satisfied. I think that if you would talk to the large manufacturers in this field they would tell you that, if the product was rejected, they would not insist upon placing it on the market. They will try to iron that out.

Mr. STUBBLEFIELD. As to the proof of the safety of the product, if there is some disagreement, who would have the responsibility for determining that—Food and Drug, or the Department of Agriculture?

Senator RIBICOFF. No; I would say that the decision, ultimately, would be upon the shoulders of the courts, by providing for appeal procedures. In other words, we are not being arbitrary by saying, "No, you cannot do anything about it." If a person feels that he is aggrieved he has a right to go to the National Academy of Sciences, have a review there, and then, if he is dissatisfied, under the bill he can have a hearing before the Secretary and then go to court and have his case reviewed.

In other words, we do give the manufacturer those safeguards to make sure that he is not closed off by an arbitrary decision of some official in the Department of Agriculture.

Mr. STUBBLEFIELD. Thank you.

Mr. JONES. Mr. Matthews?

Mr. MATTHEWS. I am not a member of this subcommittee, but I am here because of my interest in this legislation. I appreciate the Senator's remarks.

Senator RIBICOFF. Thank you very much, sir.

Mr. JONES. Mr. Matsunaga?

Mr. MATSUNAGA. I have no questions. Thank you.

Mr. JONES. Thank you very much; we appreciate your coming here.

Senator RIBICOFF. Thank you.

Mr. JONES. The next witness will be the Honorable Benjamin S. Rosenthal, one of our colleagues on the committee, who has taken a great interest in this subject, and whom we on the committee feel is our representative of the metropolitan consumer groups. He is the author of H.R. 6828.

We will be delighted to hear from you now.

Mr. ROSENTHAL. Thank you.

Mr. JONES. You may proceed.



STATEMENT OF HON. BENJAMIN S. ROSENTHAL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. ROSENTHAL. Thank you, Mr. Chairman.

I would first like to express to you, and to the other members of this subcommittee, my deep appreciation for your consideration of my bill, H.R. 6828, to amend the Federal Insecticide, Fungicide, and Rodenticide Act. I am very grateful for this opportunity to appear before you, and to testify in behalf of this legislation.

I thought that it might be helpful if I could hand out to the members of the committee the booklet published by the President's Science Advisory Committee entitled "The Use of Pesticides." This is a good overall and broad review of this subject. I would suggest that at the leisure of the members of the committee that they peruse this. I think that they will find it most beneficial in their consideration of this legislation.

Mr. JONES. We thank you for making this available to the members. I am sure that they will read it between now and the time that we act on the bill.

Mr. ROSENTHAL. In recent years, and especially after the publication of Rachel Carson's book "Silent Spring," there has been considerable public concern about the widespread use of pesticides and insecticides, and the threat they offer to our environment. Miss Carson has written that—

the most alarming of all man's assaults upon the environment is the contamination of air, earth, rivers, and seas with dangerous and even lethal materials.

The fears that she expressed were confirmed by the report of the President's Science Advisory Committee and by its Chairman, Dr. Jerome B. Wiesner, who, while testifying before the Senate Government Operations Subcommittee, stated that—

man's uncontrolled use of poisonous chemicals, including pesticides, is potentially a greater hazard than radioactive fallout.

The report of the Presidential Committee recognized the widespread need for, and advantages of, pesticides, and at the same time acknowledged that the public has reason to be alarmed by the many dangers inherent in the indiscriminate use of these chemicals. They stated:

The panel believes that the use of pesticides must be continued if we are to maintain the advantages now resulting from the work of informed food producers and those responsible for control of disease. On the other hand, it has now become clear that the proper usage is not simple and that, while they destroy harmful insects and plants, pesticides may also be toxic to beneficial plants and animals, including man.

It is not my purpose, Mr. Chairman, to engage in a general discussion on pesticides, nor do I feel competent to do so, but rather to direct my attention to the legislation under consideration. However, so that the record may be complete, it seems to me that a brief summary of historical background would be useful to the subcommittee.

When the agricultural revolution resulted in the use of enormous acreage for single crops and thereby eliminated the previous natural defense against insects, it became necessary to attack the increasing insect population. The chemical industry, which rose to great heights during World War II, developed many lethal weapons against these insects.



The first of these so-called miracle pesticides was the chlorinated hydrocarbon, DDT, developed in the early 1940's. Continued research produced more toxic chlorinated hydrocarbons, and continued research produced more hydrocarbons, among which are dieldrin, aldrin, endrin, toxaphene, lindane, methoxychlor, chlordane and heptachlor. The organic phosphorous compounds which are used primarily in insecticides are Parathion, malathion, phosdrin and others. Since 1947 the production of synthetic pesticides has increased some fivefold from 124 million pounds to 637 million pounds.

Because of the characteristics of many of these chemicals, they have a tendency to persist in the environment in toxic form. Thus there is a very real threat of contamination and pollution of our surface and underground waters and of the soil. The danger to fish and wildlife, game and harmless insects, and indeed to the American public, is not merely from large-scale indiscriminate use of insecticides and pesticides, but also from the many chemicals that are sold for home and garden use. What makes these chemicals so threatening are their characteristics and ability to accumulate in the human body and the environment over a number of years. It has been a well-accepted biological fact that these chemicals pass from one organism to another, and even from animals to humans, and from mothers to children.

The President's Committee reported that approximately 150 deaths a year are attributed to the use of pesticides in the United States, and that about half of these occur in children who are accidentally exposed at home. In California, which uses 20 percent of the nationally consumed pesticides, they report that 3,000 children per year are affected by these chemicals.

Clearly, there is a mandate for broader control of the manufacture, sale and use of these modern chemicals. This should be done on the Federal, State, and local levels of government. In addition, there should be a more precise definition of responsibility between existing agencies which are dealing with this problem.

The two basic Federal statutes which deal with these matters are the Federal Insecticide, Fungicide, and Rodenticide Act and the Food, Drug, and Cosmetic Act. The U.S. Department of Agriculture has primary responsibility for pesticide control, and the Food and Drug Administration has responsibility for the safety of food on which pesticides were applied. After approval, if necessary, by the FDA, the Department of Agriculture registers the pesticide which is then marketed with approved labeling.

Under present law, the USDA must grant registration to a product under protest upon written demand of a manufacturer where there has been refusal of registration by USDA. This is a loophole in the law, the effect of which is that a purchaser cannot distinguish a product which has been rejected from one that has been approved. The label on the product sold while under protest does not carry any indication of the disapproval by the USDA.

My bill, H.R. 6828, will close this loophole by eliminating the practice of protest registration, and will therefore prevent any disapproved product from being sold in interstate commerce. This bill also provides that every pesticide sold must carry an official registration number on the label. This procedure would permit public health officials to



keep records of the prescribed antidote to a specific pesticide and make rush information available upon request from physicians or other authorities.

I am pleased to report that the Department of Agriculture has endorsed enactment of H.R. 6828, with a few minor changes.

As the sponsor of this bill, I should like to emphasize two particular points for consideration by the subcommittee. The first question which should be asked is this, How large is this loophole that permits a manufacturer to market his product without full compliance with the legal and scientific requirements of the Federal Insecticide, Fungicide, and Rodenticide Act?

A great deal of discussion is sometimes necessary before a manufacturer and the scientists of the Department's Pesticides Regulation Division reach an understanding that will permit registration of a product under this statute. If the manufacturer hasn't tested his product thoroughly enough to obtain the type of data required, he is told by the Department what he must do to comply. If extended discussions fail to bring agreement, a manufacturer often abandons his efforts for registration. However, he has the right to register—and on rare occasions does register—his product under protest.

Of the 76,000 products registered by USDA since 1947, only 27 were registered under protest. Only seven of these products are currently on the market. Here is one of these products—a lindane vaporizer—the label of which failed to carry the warning “not for home use.”

This box, Mr. Chairman, which I hold up says on the front of it, on its face, “electronically controlled bug death vaporizer; new and improved; unbreakable; \$3.95.” And it says, “Take the bugs out of living.”

It is a device which is supposed to be hooked up by means of nails or some other fashion, onto a wall, or fixed in some other way and then plugged into a socket or electrical outlet.

You put the lindane pellets into the interior of the device. You cover it with this [indicating] and you sit back and wait for the bugs to go. Now there is no doubt that the bugs will go, but some other people may suffer in the process.

In the box itself are the lindane pellets which contain on the wrapper the words, “poison, contents insecticide.” It has the name of the manufacturer on it. It has the antidote if taken.

In the interior of the box is the instruction sheet on which it says, “Warning—may be fatal if swallowed—may be absorbed through the skin—do not breath the dust or spray mist, avoid contact with skin and eyes, wash thoroughly after handling; avoid contamination of feed and foodstuffs.”

I would presume, Mr. Chairman, that the manufacturer intended this for commercial distribution.

It also says on the outside, “Read carefully installation and operating instructions.”

And as additional information, “approved by the Department of Safety, Los Angeles, Calif.” That approval by the Department of Safety of Los Angeles, Calif., was made by the underwriting section of that local governmental unit and approved if for electrical



safety, by the Department of Building and Safety, rather than for the pesticide safety or any other chemical test that it would have to be approved for.

The Department rejected this product, because it did not say on the label "not for home use." In other words, the purchaser ought to know in rather clear and unmistakable language that this should not be used in someone's basement or be put in someone's garage or immediately adjacent to a barbecue place or something else around the house.

This device has very narrow limitations and should be used, certainly, by persons reasonably expert in handling it. Nevertheless, despite the fact that the Department rejected this device it was sold to the general public in many stores throughout the entire United States and is still available for purchase.

Mr. DOLE. Where did you get it?

Mr. ROSENTHAL. I got this from one of the inspectors in the Department of Agriculture.

I had a particular experience with lindane myself and I know that it is unpleasant, to say the least.

Mr. JOHNSON of Wisconsin. What use would this be to the public, if they could not use it; would it be of any use?

Mr. ROSENTHAL. Precisely the case. It certainly should not be used by the public. This should only be used by someone in a commercial area or on a farm or some other installation where it is not around children or it is not around housewives and where it is not around people that do not understand the nature and the extreme caution that must be exercised with this product.

Because only 27 products out of 76,000 have been registered under protest, some people have inferred that H.R. 6828 would deal with a rather small problem.

The Department of Agriculture's record of pesticide registration for the past 6 years follows:

| Fiscal year | Applications received | New products registered | Labels rejected |
|-------------|-----------------------|-------------------------|-----------------|
| 1958.....   | 16,769                | 4,600                   | 2,309           |
| 1959.....   | 17,653                | 4,876                   | 2,619           |
| 1960.....   | 19,871                | 4,694                   | 3,198           |
| 1961.....   | 21,447                | 5,383                   | 3,873           |
| 1962.....   | 21,456                | 5,104                   | 3,565           |
| 1963.....   | 22,754                | 4,932                   | 4,022           |

I would like to bring to the attention of the subcommittee that last year, 1963, the Department received 22,754 applications for registration of pesticides. Of those 22,754 there were 4,932 new products that received the approval of the Department and registration. There were 4,022 labels rejected by the Department in 1963. Of those 4,022 they could only have been sold on the market if the manufacturer so chose.

These figures indicate that even today, after years of experience under the statute, thousands of patently false and misleading labels are submitted in the hope that somehow they will slip by the regula-



tory authorities and get out into the national marketplace to dupe the innocent or unwary.

By the enactment of H.R. 6828 we will close this loophole and thus prevent any one of the 4,022 labels rejected last year from appearing on a store shelf for sale to an unsuspecting consumer.

Although most manufacturers are aware of the rigid legal and scientific requirements for the registration of pesticides, and try to comply with them, a considerable enforcement program is required to assure compliance with the law by the makers of the nearly 57,000 registered products that are currently offered for interstate sale and use. Here is a tabulation of the enforcement activities of the USDA in this field during the past 6 years:

| Year | Samples collected | Samples analyzed | Citations | Seizures | Regulatory correspondence |
|------|-------------------|------------------|-----------|----------|---------------------------|
| 1958 | 1,261             | 1,301            | 1 227     | 24       | 126                       |
| 1959 | 1,310             | 1,574            | 2 193     | 25       | 121                       |
| 1960 | 1,420             | 1,560            | 3 233     | 36       | 121                       |
| 1961 | 1,992             | 1,690            | 4 263     | 59       | 111                       |
| 1962 | 1,824             | 1,567            | 5 376     | 77       | 76                        |
| 1963 | 2,159             | 2,006            | 6 296     | 111      | 139                       |

<sup>1</sup> 4 citations after seizure.

<sup>2</sup> 14 citations after seizure.

<sup>3</sup> 12 citations after seizure.

<sup>4</sup> 23 citations after seizure.

<sup>5</sup> 57 citations after seizure.

<sup>6</sup> 60 citations after seizure.

Even these figures understate, to some extent, the magnitude of the enforcement efforts required to regulate marketing of these economic poisons because the USDA inspectors must often visit four or five establishments to procure one sample.

Although I have great respect for the competence and integrity of the regulatory officials of the USDA, we must also ask ourselves: How many times has a product been approved for registration because the applicant manufacturer, as well as the Government official, both knew that the legal power was lacking, if it came to a showdown, to keep it out of interstate commerce?

Let us make it unnecessary even to consider such a question. Enactment of H.R. 6828 would eliminate this danger. In my opinion, it would strengthen the hand of the regulatory officials, and thus improve enforcement of the statute. There is a further benefit to be gained in the enactment of H.R. 6828. When a manufacturer chooses to register a product "under protest," USDA must develop performance and toxicity records as a basis for legal action to show why the product should not be registered and why it should be removed from the market. That takes time and money. Furthermore, while the scientific evidence is being gathered, and while the judicial processes are at work, the product is still in the market and lives may be in jeopardy.

In addition, the requirement within the bill that every pesticide label in interstate commerce carry the USDA registration number will be of immense benefit to the medical profession. When a patient suffering from overexposure to one of these poisons seeks medical attention, it is frequently difficult to ascertain the precise causative



agent. The container may not be at hand. The label may be illegible because of discoloration or rough handling. The urgently needed information may be on a portion of the label that has been torn off or painted over.

If, on the other hand, a USDA registration number is prominently displayed on the label and still remains legible, it will be much easier for a physician or a nurse who is racing the clock to learn the contents of the spray or pellet that apparently caused the patient's dangerous condition. Instead of scanning a long list of ingredients, calculating their relative amounts and importance, and then choosing an antidote, medical or hospital personnel need only check the number against their file of known commercial poisons and their antidotes.

The subcommittee may be interested to learn that there are now nearly 500 poison control centers in 48 States and 2 Territories. Through the National Clearinghouse for Poison Control Centers, which was organized in 1957 by the Public Health Service of the U.S. Department of Health, Education, and Welfare, these centers regularly are advised of the toxicity of new household products.

Each poison control center is frequently besought in cases of emergency to identify the suspected hazardous substance and advise an antidote. If the local poison control center cannot identify the product, it can and does telephone the National Clearinghouse here in Washington for the needed information.

How much simpler and faster it would be, Mr. Chairman, for this type of information to be requested and furnished if the product's label clearly carries its USDA registration number.

I am informed that the National Clearinghouse for Poison Control Centers maintains close and continuing liaison with the USDA with respect to pesticides, among other products under its jurisdiction. I am further informed that this day-to-day working relationship will be considerably simplified and the transfer of information speeded if registration numbers were required on all labels within the purview of the Federal Insecticide, Fungicide, and Rodenticide Act. Accordingly, H.R. 6828 would add this requirement to the statute.

I am hopeful that you and the members of this subcommittee will look with favor on this legislation.

Thank you for your kindness in permitting me to make this statement in support of my bill.

Mr. JONES. Thank you, Mr. Rosenthal.

Mr. Dole, do you have any questions?

Mr. DOLE. I want to commend our colleague for a very fine statement and his flawless pronunciation of some of those difficult words.

A good example of this danger was illustrated by this "do-it-yourself kit" you displayed. It seems to me it should be marked not only "Not for home use" but clearly labeled as having been registered under protest, and for outdoor use only.

Do you happen to know offhand the names of the other products?

Mr. ROSENTHAL. I do, Mr. Dole. The seven that were available and are available at the present time are lindane pellets for use in the bug death vaporizer, which is the item I have already exhibited to the subcommittee. This registration was denied because the label failed to carry a warning "Not for home use." Another one was



Algimycin 200, a swimming pool chemical. And this was denied because of the use of the mercury compound in swimming pools and it was not considered safe.

Its coproduct, Algimycin 300, was denied for the same reason.

Another product called Perma-Guard, for treatment of alfalfa crown for seed, was denied because the previous registration was canceled on the basis of information that was available earlier which indicates that the product is not effective for the purpose stated on the label.

Another one was called Hari-Kari neodane pellets made of lindane and was denied because the label failed to carry the warning "Not for home use."

Another one was lindane pellets, bug pill, which was denied because the label failed to carry the warning "Not for home use."

Another one was another lindane table called Vapotab, which was denied for the same reason, that the label failed to carry "Not for home use."

All of these were made by different manufacturers.

Mr. DOLE. It appears this might result in cases where other competitive consumer products have been registered. Are there other lindane tablet products which have been approved?

Mr. ROSENTHAL. Oh, yes. There are many lindane products that have been approved, but they carry specific warnings in large letters, so that the directions are clear. Only the most irresponsible person would become involved in not following the directions, but the thing that is wrong with this is that there is nothing outside of the word "death," which would scare me to begin with—there is not any warning to the consumer not to use this around the house.

Mr. DOLE. I suppose that any one who saw "bug death" on a package would be careful, and also it could be shown the product was registered under the protest registration method. Basically, of course, the burden of proof should be on the manufacturer that his product is not harmful to the public.

Mr. ROSENTHAL. This bill would provide precisely that. It would shift the burden of proof from the Department to the manufacturer. It may well be that he gains a competitive advantage by this. It is only conjecture on my part, but I kind of suspect that maybe at \$3.98 he thought that he could sell more if it did not have the words on it "Not for home use" than if it did have that warning. That is only conjecture on my part, though.

Mr. DOLE. I appreciate your statement. Thank you.

Mr. JONES. Mr. Johnson?

Mr. JOHNSON of Wisconsin. No questions.

Mr. JONES. Mr. Beermann?

Mr. BEERMANN. Congressman Rosenthal, you stated that there were approximately 150 deaths a year, and I presume that is from the use of the insecticides in the United States.

I wonder how many deaths occur from the use of medicines in bathroom cabinets, or medicines that are sold to the general public. And even from overeating. I do not want to be contrary about this.

Mr. ROSENTHAL. I have no experience in the overeating department. [Laughter.]

I have no knowledge as to the number of deaths other than what



is reported in this. I would presume that they did a reasonable amount of research before they included it in this widely published pamphlet.

Mr. BEERMANN. I noticed that in the pamphlet. Thank you.

Mr. JONES. I might make this comment: You may recall that a couple of years ago we adopted a resolution in the House, which was passed by the Congress, setting up a National Poison Prevention Week to call attention to this. It happened that this National Poison Prevention Week was started by a druggist in my district. He has done a great job of calling attention to the dangers that are inherent not only from the medicines in the medicine cabinets but in detergents and cleaning compounds and things like that—to keep them, particularly, out of the hands of children. I think there are something over 4,000 deaths a year from those substances.

Through a joint concurrent resolution which I sponsored, Congress set up this National Poison Prevention Week which the President proclaims each year in the month of March. And we are hopeful that that will be of some help.

I might say, in connection with what Mr. Beermann has brought out here, that about 10 or 11 years ago we had a select committee, the Delaney committee, to look into the use of food additives, preservatives, and coloring; cosmetics, insecticides, and pesticides; and things of that nature. That committee functioned for about 2 years, and did a lot of research. It has some of the best chemists and other people in the country before it. I think that pointed out at that time the great problem. It was also responsible for some changes that were made in the Food, Drug and Cosmetic Act. It was sounding the dangers that are inherent in many of these problems. In other words, I think it emphasized the importance of the correct labeling. And, as has been brought out here, it emphasized the labeling in such fashion that the antidote would be readily available as would be provided for here.

I just wanted to mention the fact that this danger was recognized many years ago. And it seems that just recently, with the help of the industry itself, they have recognized and want to cooperate in this, to eliminate as far as possible that danger.

I think we all recognize that any time we use any product that is going to be fatal or poisonous, for the use of eliminating insects, there will also be some dangers to the people who use them; and, therefore, it is all the more important that we use them in conformity with instructions and the cautions that are given. That is the purpose of this legislation.

Mr. BEERMAN. Before we get away from that, I would like to compliment our colleague on his testimony. I feel that he is much more adequately capable to discuss the problem than he claims.

Mr. ROSENTHAL. Thank you.

Mr. JONES. Mr. Abernethy?

Mr. ABERNETHY. I want to compliment him, too. He made a very fine statement.

Mr. Jones just referred to the work of the Delaney committee. I happened to have served as a member of that committee. Actually, this committee was created in the 80th Congress.

Mr. JONES. I thought it was the 81st Congress.

Mr. ABERNETHY. Very well. Dr. Miller of Nebraska was the chair-



man of the committee in the 80th Congress. It was in the 81st Congress that Mr. Delaney became chairman. Under his leadership—his very fine leadership, incidentally—there were some very thorough hearings and investigations. During those hearings, we went into the use of these and other products—pesticides, fungicides, and cosmetics, and so forth. That has been a long time ago. I do recall however, that we had very thorough hearings.

Why we permitted the insertion of the protest registration has raised a question in my mind. Offhand, I can see some substance for it, because some of these products were very fine products. They added tremendously to the production of food and fibers, which were sorely needed.

I would like to ask the witness if, in his study of this subject, he came across the reason for permitting registration under protest.

MR. ROSENTHAL. I have not, Mr. Abernethy. Before I start that, I want to thank the chairman and you, both, for mentioning Mr. Delaney. Mr. Delaney represents the district immediately adjacent and contiguous to my district. We in New York are very, very proud of the leadership that he has shown in this field. And we are proud of the contribution that he has made to the Congress.

It is almost sheer accident that I took an interest in this subject. It is an important thing which is developing, Mr. Abernethy. It is not only the commercial use of these products but their use in the home and on the farms. You can go to almost any hardware store or any commercial store, in your district and cities, and you can buy all of the spray cans that you want, and you can spray up the house day and night. And most of them say: "Keep away from children." Some of them do not say it in such large letters.

Of the 3,000 kids that have had this experience in California, the vast majority of them were from urban or suburban areas and not from farm areas.

The problem is not as to the commercial use of these products. The interesting thing is that the commercial users who are experienced and have knowledge, probably have less danger than other people. Only occasionally do they have difficulty. Recently, in California, they sprayed and the weather conditions kept the clouds down, and this spray spread over some people, requiring hospitalization.

MR. ABERNETHY. Of course, our work on this particular committee was not confined to farms—that is, for use on the farms. It was not a committee for agriculture. It was a special select committee.

MR. ROSENTHAL. I know that.

MR. ABERNETHY. It was created by a special resolution. At that time there was a tremendous wave of demand in the country for the complete elimination of many of these products, purely because they were poison. And we were confronted with the type of problem that Mr. Beermann has just now raised. If we had carried our effort that far, we would have found ourselves eliminating many valuable and effective medicines. While I can see some merit in eliminating some products from the market completely, at the same time there will be tremendous damage done to the public, because there is a lot of good in many of them.

I come back to this point of registration under protest. I have some



faint recollection that it was inserted because some unreasonable person in the department might arbitrarily, and without just cause, deny the privilege of marketing a good product.

I wonder if you have done any research on this point.

Mr. ROSENTHAL. Let me say this, I tried to find out what the legislative intent was at that time. I have been unsuccessful. The only inference that I drew was a legal proposition of the matter of the burden of proof. The burden of proof under the protest registration is on the department to prove that the product is unsafe. This proposed bill would shift the burden of proof to the manufacturer to prove that the product is safe. Of course, it would involve only a few products, as I have suggested, but it would tighten a wide-open loophole whereby the 4,000 products that were unregistered and refused registration last year could not be sold. I thoroughly agree with you. I want the record to be quite clear that I think that pesticides have done a marvelous job in many areas of the country. The President's committee said that. I would like to read only one paragraph:

While reducing food losses pest control has also resulted in foodstuffs of the highest quality. Today, for example, sweet corn, potatoes, cabbage, apples, and tomatoes are all available unmarked and the American housewife is accustomed to blemish-free products. Citrus fruits are not damaged or lost because of scale insects, fruit flies, and diseases. And, of course, the animal protein is lower because large-scale losses of cattle from tick fever and grubs no longer occur.

Certainly, in the areas that grow cotton, the bollweevil problem was one that had to be met by modern scientific advances, such as pesticides.

At the same time with each good that comes out of modern scientific advances there comes a concomitant bad, and the thing to do is to weigh these two and to limit as much bad as you can while maintaining the advantages of scientific advances. This would do that. And that is why, as the Senator from Connecticut has said, the responsible elements of the industry, who I take it will testify tomorrow, will tell you that they are in favor of this legislation. They want to keep the reputation and the integrity of the industry unmarred and unblemished and they do not want an unscrupulous individual manufacturer trying to take advantage of selling a few more products by not putting on the words "not for home use." They know that they have a large industry, one that has increased fivefold since 1941, and twofold since the Delaney committee had its hearings.

I want the record to be perfectly clear that those who sponsored this legislation feel that pesticides have done a great good, but at the other end, as Mrs. Carson has pointed out, and as the President's committee has pointed out, there are grave dangers from the misuse or excessive use of these pesticides. And all we say is that responsible people should take a responsible attitude and pay attention to what they are doing.

Mr. ABERNETHY. We also at that time had very great pressure brought upon us to pass some unreasonably rigid laws. There was a tremendous wave in the country about such. It even applied to the use of commercial fertilizers. The opinion was spread around the country that these fertilizers were being absorbed by the plant and in turn poisoning the people. We had a pretty tough job on the committee. But I think that we came out with very satisfactory legislation—maybe not adequate. Your bill is attempting to amend some



of the loopholes. No doubt, there are some points in the law that ought to be amended. And no doubt your bill will do this. We appreciate your interest.

Mr. ROSENTHAL. Thank you.

Mr. JONES. I might add that I also served on that committee for a couple of years. The frustrating part of it was, as I recall, that any product that was being sold, you could always find some one person who had some stature in his profession trying to convince you that you should not use that particular product. And as to any product on the market you will find somebody who will say that it should not be used.

I remember very vividly that one of our witnesses was a chemist. His hobby seemed to be to do away with cola drinks. He would ban any cola drink because of the bad effect it would have.

I think that it would be helpful if the members of this committee could go back and review some of the hearings that we had by the Delaney committee.

Another thing that we got into at that time was the fact that as to many products some people who used them had an allergy to those particular products. And while 99 percent of the people could use them with good results, possibly 1 percent could not. We know the history of penicillin, for example, that it has been fatal to some people, and yet I do not think that anybody would say that penicillin should not be produced, but there are some people who would say that we should not continue to use it. However, if properly handled it is all right.

We are getting into a rather controversial subject here. However, I am hopeful that before the hearings are concluded that we will reach some conclusions that will be helpful in protecting the public. I know that is your intention. And you should be commended for it.

Mr. Matsunaga?

Mr. MATSUNAGA. I too wish to commend Congressman Rosenthal for a very fine statement and a very thoughtful presentation. In your mention of the seven insecticides you mentioned one which I believe you called Hari-Kari. Is Hari-Kari an insecticide?

Mr. ROSENTHAL. It is pronounced or it is spelled H-a-r-i K-a-r-i.

Mr. MATSUNAGA. I suppose that it refers to hara kiri which is an ancient ceremonial method of suicide in Japan. Is this the modern version of it? [Laughter.]

My question is, Will your bill eliminate these seven insecticides from public sale?

Mr. ROSENTHAL. Yes, sir.

Mr. MATSUNAGA. Thank you.

Mr. DOLE. You mentioned there were 150 deaths and also some 3,000 children affected. It might be important to know, whether or not these seven registered under protest were directly responsible for any or part of those. Do you know?

Mr. ROSENTHAL. To the best of my knowledge there is no evidence that indicates at this time that those deaths are related to the seven products.

Mr. DOLE. In other words, it might be an approved product which was harmful or fatal.

Mr. ROSENTHAL. That is possible.

Mr. DOLE. And not these particular ones?



Mr. ROSENTHAL. That is possible, but the least I think we can do is to begin somewhere and plug up whatever loopholes are present.

Mr. DOLE. There is no direct evidence that by plugging up the loopholes we would help that. As I understand your bill, the maximum time would be about 6 months before the manufacturer finally has a determination that his product is safe?

Mr. ROSENTHAL. Within the bill itself there is a judicial review. If the manufacturer finds that he disagrees with the findings of the Secretary there is a method whereby the National Academy of Science shall designate an advisory committee and this committee will be sort of an appellate court, insofar as the Secretary is concerned. Thereafter, if that group finds against the manufacturer he has the right to go into the U.S. district court or any circuit court in which his product is manufactured.

Mr. DOLE. There is nothing in it which would be binding, such as by arbitration?

Mr. ROSENTHAL. No, I would not say so.

Mr. JONES. I might say that there are suggested amendments which would set up specific limits for these reviews and things like that, that at least would be to protect the public and the manufacturer.

Mr. JOHNSON of Wisconsin. Under your legislation, could these seven meet the requirements laid down by the U.S. Department of Agriculture?

Mr. ROSENTHAL. They could or could not?

Mr. JOHNSON of Wisconsin. They could?

Mr. ROSENTHAL. Of course, they would then get a registration. If this fellow had put on his wrapper "Not for home use," the registration would have been issued. In some cases some of these products may have been, as Mr. Matsunaga suggested, so toxic that they certainly should not be available to the general public under any instructions.

I have just been advised by one of my colleagues that in response to Congressman Dole's question, I was in error, that Senator Ribicoff's hearings did produce testimony that a California child did die as the result of this device right here. I have no independent knowledge of that. I am only telling what I have been told.

Mr. JONES. If there are no further questions, we thank you.

Mr. ROSENTHAL. Thank you very much, Mr. Chairman, for this opportunity.

With your permission, may I sit with the committee for the remainder of the hearings?

Mr. JONES. Certainly. You may feel free to do so. We are always glad to have all of our members attend and sit with us.

Mr. ROSENTHAL. Thank you.

Mr. JONES. You are most welcome.

We have next on our witness list Congressman Halpern, who is the sponsor of H.R. 7336, and also on the witness list for tomorrow, Mr. Dingell. I note that Mr. Halpern is not present, so that our next witness will be from the Department of Agriculture, Dr. M. R. Clarkson, Associate Administrator, Agricultural Research Service, who is accompanied by Mr. Justus Ward, Director of the Pesticides Regulation Division.

You may proceed.



**STATEMENT OF DR. M. R. CLARKSON, ASSOCIATE ADMINISTRATOR,  
AGRICULTURAL RESEARCH SERVICE, ACCOMPANIED BY JUSTUS  
WARD, DIRECTOR, PESTICIDES REGULATION DIVISION, U.S.  
DEPARTMENT OF AGRICULTURE**

Dr. CLARKSON. Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you to express the views of the Department of Agriculture regarding H.R. 6828, H.R. 6913, and H.R. 7336 now under consideration by this committee. Mr. Justus Ward, Director of the Pesticides Regulation Division, is here with me.

The bills would delete the provisions now in the act for registration of economic poisons under protest and would prescribe the procedures to be followed in refusing or canceling registrations, or requiring modification of claims or labeling of registered economic poisons.

The intent of the bills also is to permit the labels of economic poisons registered under the Federal Insecticide, Fungicide, and Rodenticide Act to carry the registration numbers and to authorize the Secretary of Agriculture to require by regulation that such registration numbers appear on the labels.

In the registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, the Department must consider both the effectiveness and safety of each product submitted. This requires the most careful evaluation of a wide range of products.

These products are complex. Although many of them have similar properties, each one differs from the others in some important aspect. They vary from insecticides for corn borers to repellants for mosquitoes; from nematocides to protect tobacco to ant and cockroach killers; from herbicides for control of weeds in lawns to killers of rats and mice; from fungicides to prevent decay in wood to insecticides for malaria mosquitoes. Over 50,000 formulations based on more than 500 individual chemical compounds have been registered.

When an applicant is seeking registration of a new pesticide, detailed and convincing data must be furnished to the Department showing that the product will give effective and safe pest control under the proposed conditions of use. He must furnish the labels to be used on the containers. Several hundred pages of charts, formulas, and text setting forth the results of testing may be required to support an application for a new chemical.

The data submitted by the applicant are studies by a competent staff of scientists, including pharmacologists, entomologists, bacteriologists, chemists, biologists, and plant pathologists. If the Department feels more data are needed for evaluation in support of the claims of the applicant, the Department asks that it be provided. If the Department feels that a proposed label does not contain adequate directions and warnings to protect the public, the applicant is asked to make the necessary corrections. If the evidence is convincing that the proposed chemical is safe and effective when used as directed and all labeling requirements are met, the Department grants a registration.

The Department is hampered by one feature in the act which gives the applicant the right to demand and receive "registration under pro-



test" when regular registration is denied, even though the denial is based upon lack of adequate data to prove the safety or effectiveness of the proposed use. The net effect of a registration under protest is that—

(1) An economic poison which the Department believes is not entitled to registration under the act is nevertheless distributed in commerce;

(2) State officials responsible for the regulation of pesticides within their States are hampered in bringing the same or similar products into conformity with State requirements; and

(3) The burden of proof as to the safety and effectiveness of the product in relation to the Federal Insecticide, Fungicide, and Rodenticide Act shifts from the applicant to the Department.

Accordingly, a formulation that is not acceptable to the Department for registration might be marketed for an extended period of time on a "registration under protest" basis until the Department can develop the extensive performance and toxicity records essential for effective court action to remove the product from the market.

The proposed legislation would eliminate registrations under protest and give the Department authority to deny or cancel any registration, or require modification of claims on labeling in any case, with provision for the applicant to request that the matter be referred to an advisory committee or to request a public hearing. Additionally, the Secretary would be given authority for immediate suspension of any registration when he finds such action is necessary to prevent an imminent hazard to the public. Such hazard might be directly to human health or safety, or present an imminent danger to livestock, crop, or fish and wildlife values.

The bills under consideration also provide for the presence on the label of the Federal registration number assigned to a product. This would readily identify products registered with the Department for marketing in interstate or foreign commerce. As it now stands, there is nothing on the label to distinguish between those formulations registered with the Federal Government and those that may be packaged and offered for sale without registration; and the law actually forbids any reference to registration on the label or in the labeling.

The Department thinks it is advisable to provide for requirement of the registration number on the labels by regulation in order to afford flexibility in applying such requirement to classes of products where it will protect purchasers or otherwise effectuate the purposes of the act.

The Department heartily supports these bills as indicated in our report on H.R. 6828 to the committee on July 12, 1963. Secretary Freeman expressed concern over the registration under protest provision in the current law when he testified before the Senate Subcommittee on Reorganization and International Organizations earlier this year.

The Department recommends several changes in language for purposes of clarity and better administration, as follows:

1. In section 3 of the bills, on page 3, line 7, after the word "Secretary", insert the following sentence: "The Secretary on his own motion, may at any time refer such a matter to an advisory com-



mittee." It is believed that this authority in the Secretary is desirable in the event that he wishes consultation on questions of pesticide safety or effectiveness with expert authorities in other scientific institutions who could contribute information, experience, and judgment to supplement that already available to the Department, in evaluating data submitted by the applicant.

2. In section 3 of the bills, on page 3, line 19, preceding the period, insert the following: ", all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition." This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

3. In section 3 of the bills, on page 4, line 2, change the word "in" following registration to "of". This appears to have been a typographical error.

4. In section 3 of the bills, on page 5, lines 20-21, delete the phrase "final action is taken concerning registration of the product", and substitute the following: "the Secretary issues his order concerning registration of the product following consideration of the views of the committee and other data before him". In the next sentence, on line 21, the word "final" preceding "action" should be deleted and "by the Secretary" should be inserted after "action". These changes are submitted to eliminate an apparent inconsistency by the provision in the bills that considers all data submitted to the Secretary or an advisory committee confidential until final action is taken concerning registration of the product, but also providing for such data to be included in the record at the public hearing provided for in the bills.

5. In section 7 of the bills, on page 8, line 16, insert the following preceding the period: ", and all existing registrations under protest issued under said Federal Insecticide, Fungicide, and Rodenticide Act shall thereupon terminate." Since the provisions of the act for registration under protest would be deleted by the bills, it would appear that the existing registrations under protest would automatically terminate when the amendments made by the bills become effective. However, to avoid any possible doubt in this respect this change is proposed.

We feel that these several minor changes will improve the bills. We should like to stress again our full support of H.R. 6828, H.R. 6913, and H.R. 7336, which will strengthen the Department's hand in the interest of protecting the public.

We will be pleased to respond to any questions which the chairman or members of the committee may have.

I should like to say that there is one substantive change in our suggestions. On page 5 of my statement, as already read, item 2, it states, "In section 3 of the bills, on page 3, line 19, preceding the period, insert the following: 'all of which costs may be assessed against the petitioner, unless the matter was referred to the advisory committee upon the motion of the Secretary without a petition.'" This change would clarify the responsibility for payment of costs incurred in connection with an advisory committee.

In other words, if the Secretary asks for this committee, the Department will pay the costs, but if it is asked for by the applicant, the applicant will pay the costs of the committee.



Mr. JONES. Pardon the interruption. In your experience here, approximately what would those costs be?

Dr. CLARKSON. That would involve travel expense and the usual governmental allowances for per diem for the members of the committee recommended by the National Academy of Science during the time that they are actually working on that matter. It usually involves one, two, or three meetings of 2 or 3 days' duration. So the cost would not be extensive.

The committee is required to finish its work within 60 days, unless that time is extended by the Secretary for an additional 60 days.

Mr. ABERNETHY. Is that in the bills?

Dr. CLARKSON. Yes.

Mr. ABERNETHY. The 60-day period?

Dr. CLARKSON. Yes; this would be consistent with similar provisions for the payment of costs of similar committee under some portions of the Food, Drug, and Cosmetic Act.

Mr. JONES. As I understand it, under this bill, you would bring the insecticide, pesticide act into conformity and make it comparable to what we have under the Food and Drug Act now; is that correct?

Dr. CLARKSON. For appeal procedures, yes, sir; I would say so.

Mr. JONES. Do any other members of the subcommittee have any questions of Dr. Clarkson?

Mr. ABERNETHY. As I recall, you were with us when we had the hearings on the pesticide act back in the 81st Congress? Do you recall the reasoning at that time behind the provision for permitting registration under protest?

Dr. CLARKSON. Mr. Abernethy, I was not actively engaged in this kind of work at that time. I was in the Department in the same agency that was given the responsibility for it.

It is my understanding that it was the consensus at that time that some means should be provided for industry to force a court review of an item that had been refused registration by the Department. It was not anticipated that it would be used very often, but it was thought that some means should be provided.

Mr. ABERNETHY. Whose counsel did we have from research at that time?

Dr. CLARKSON. I believe it was Dr. Reed and Mr. Griffin and, perhaps, Harry Reed who was director of the division at that time. All of these people have now left the Department.

Mr. ABERNETHY. That is all. Thank you.

Mr. JONES. Mr. Dole.

Mr. DOLE. Is there a procedure for a review of a pesticide which may have been approved when discovered later that it may be harmful?

Dr. CLARKSON. There is provision in the law now for the Secretary to cancel a registration already given when new information shows such action to be appropriate, but in the current provisions of the law, the registrant, the holder of this registration, may ask for and must be granted registration under protest at that point. This bill would eliminate that opportunity.

Mr. DOLE. How many times has this happened; has the registration been suspended?

Dr. CLARKSON. Well, it occurs rather frequently. In most instances, Mr. Dole, the evolution and development of new evidence is not a



sudden thing. It comes along in bits and pieces, so that the practice of Mr. Ward and his associates is to contact the registrant, the holder of the registration, and to discuss with him the importance and the significance of this new evidence. Usually, the matter is handled by changes in the formulation, changes in the directions for use, changes in the warning statement that accompanies the product as requested by the registrant and accepted by the Department after such a conference, or in some cases the voluntary removal of a product from the market. Occasionally, however, the Department has to take direct action to cancel registration.

Mr. DOLE. Have any of these seven you mentioned, at one time properly registered and are now in a state of suspension, and under protest registration?

Dr. CLARKSON. None of those had been registered without protest.

Mr. DOLE. How many, for example, the last calendar year were suspended or had their registration suspended—do you have any figures on that?

Dr. CLARKSON. We perhaps could furnish that information for the record. I want to say that the usual situation is that these things are worked out before the crisis arises. Our records on suspensions and changes of this kind may not necessarily reflect all the actions taken.

Mr. DOLE. Do you think the law is adequate in this respect? Is it a continuing procedure where you are always receiving information and checking in an effort to protect the public?

Dr. CLARKSON. It is adequate in this regard, and will be strengthened with the provisions of this bill which replace the old provisions with new provisions for authority to suspend or cancel as the circumstances require.

Mr. DOLE. Under present protest registration procedure any product so registered could be sold?

Dr. CLARKSON. The normal procedure and the normal attitude of most registrants as evidenced by the small number of registrations under protest is either to accept the Department's decision and to take the product off the market or to try to find some acceptable way of modifying it.

Mr. DOLE. Thank you.

Mr. JONES. Mr. Beermann.

Mr. BEERMANN. Dr. Clarkson. I want to thank you and Mr. Ward for your interest in the corn root worm program in our area 2 years ago.

Dr. CLARKSON. Thank you.

Mr. BEERMANN. They were in quite some number and would have caused great economic damage.

Dr. CLARKSON. They have visited the people to the east of you this year.

Mr. BEERMANN. We have sprayed our farm for corn root worm the first part of last week, I believe.

If a manufacturer were to develop a new chemical, what procedure would he go through to get the chemical approved for immediate use; how long would it take him to get it approved?

Dr. CLARKSON. A new chemical may take a very substantial length of time. It often does. He must develop either through his own



resources or through grants or arrangements with scientific institutions, such as a State agricultural experiment station or a foundation, carefully controlled and detailed experimentation to show that (1) it is useful for the purpose for which it is represented; and (2) that it is safe under the expected and proposed conditions of use. The matter of safety is a very difficult matter to deal with.

In the case of so many of the chemicals there are questions of effect upon the operator, effect upon the soil and water, upon crops, upon plants, upon livestock, upon fish and wildlife, upon ingestion and inhalation and skin absorption, so that there would be a wide range of problems which he must accumulate data on and submit that in a convincing form so that Mr. Ward and his associates can accept it.

Mr. BEERMANN. Specifically now, Dr. Clarkson, would he be able to get a new chemical registered more quickly if the law is changed or is not changed?

Dr. CLARKSON. It would not change the timing for getting a new chemical registered.

Mr. BEERMANN. Thank you.

Mr. ABERNETHY. It would change the timing of its marketability, because now he could market it under protest.

Dr. CLARKSON. It would deny for anyone the right to market an unapproved product, which is what registration under protest amounts to.

Mr. BEERMANN. If you will yield, I would appreciate your yielding.

Mr. ABERNETHY. Yes.

Mr. BEERMANN. Then, probably, they would be able to use new chemicals under the present law quicker than if the law is changed.

Mr. JOHNSON of Wisconsin. Under protest.

Dr. CLARKSON. As a practical matter, it would make no difference because we are talking about 27 cases since 1947, and only 7 outstanding at the present time—and that is out of over 50,000 currently active registrations and probably 75,000 that have been registered all told, and a great many more that have been presented and have been rejected for one reason or another. While this bill will plug a loophole in the law, in our opinion most manufacturers have not availed themselves of it because of the stigma that would attach it to their product.

Mr. BEERMANN. If you will yield further. Dr. Clarkson, suppose we are using some chemicals about which there is some question whether they should be sprayed on our fields. I think that we have to take special precautions to guard our own surrounding area, to make sure that no one gets any of it. This was especially true with regard to the corn root worm. So, in effect, that particular chemical would probably be all right for Federal use, but maybe there are problems as to its use in the State.

Dr. CLARKSON. The circumstances you were dealing with there was that our people and the experiment station at the University of Nebraska had some experiments underway in your area. There are provisions in the law which are untouched by this bill which allow for experimental use under closely controlled conditions that do not result in any improper food going on the market or anything of that kind.



On occasions of this kind there is a great deal of extra attention given to the application of products which are being tried out.

Mr. BEERMANN. So that in the university's recommendation, they would not make a statewide recommendation until everyone understood the chemical and how to apply it?

Dr. CLARKSON. They would not until it had been registered. And if it were a product that would leave any residue on food or feed it would not be registered until there were tolerances set or exemptions given by the Food and Drug Administration under their act. Only then would the university be free to recommend its use in accordance with the registered precautions and directions for use.

Mr. BEERMANN. Thank you.

Mr. ABERNETHY. Dr. Clarkson, I am at a loss to understand why there was a provision included in the act that we passed 11 or 12 years ago with reference to registration? Looking at it now it seems rather a nonsensical thing. Can you refresh your memory, and give us any information on that?

Dr. CLARKSON. Yes, sir. I know what the reason was. There was a great deal of concern when the Federal Insecticide, Fungicide, and Rodenticide Act was passed.

Mr. ABERNETHY. And alarm.

Dr. CLARKSON. Well, Yes; sir. At that point this was a rather tough law. It superseded the Insecticide Act of 1910. It provided for the first time for prior review, with registration and clearance by the Department. So, it was feared that the distributors of these products would take advantage of this situation and claim that their products were approved and recommended by the Government. In order to deal with that matter the law provided that no reference—not even reference to the registration—could be placed on the label or in anywise connected with the distribution of the product. Now experience has shown, especially, as more and more products—

Mr. ABERNETHY. That it was in the interest of the consumer and not necessarily of the manufacturer?

Dr. CLARKSON. Absolutely.

Mr. ABERNETHY. It was not done in the interest of the manufacturer?

Dr. CLARKSON. No, sir.

Mr. ABERNETHY. Since I was a party to the act that relieves me considerably. [Laughter.]

Mr. JONES. Mr. Matsunaga.

Mr. MATSUNAGA. No questions.

Mr. JONES. Mr. Rosenthal?

Mr. ROSENTHAL. No questions.

Mr. JONES. Thank you very much, Dr. Clarkson.

Dr. CLARKSON. Thank you, Mr. Chairman.

Mr. JONES. And Mr. Ward.

Mr. WARD. Thank you, sir.

Mr. JONES. Our next witness will be Dr. John L. Buckley, Staff Specialist—Pesticides, Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior. We are very glad to have you here with us this morning.



STATEMENT OF JOHN L. BUCKLEY, STAFF SPECIALIST—PESTICIDES, BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Mr. BUCKLEY. Mr. Chairman and members of the committee, the Department of the Interior, in its report to the Senate Committee on Agriculture and Forestry on S. 1605, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, to provide for labeling of economic poisons with registration numbers, to eliminate registration under protest, and for other purposes, which is identical to H.R. 6828, recommended the enactment of this legislation if amended as suggested herein.

The Department, and particularly the U.S. Fish and Wildlife Service, in carrying out responsibilities of conserving fish and wildlife, is convinced of the need to provide a more effective means of controlling the use of chemicals potentially harmful to living man, domestic animals, and fish and wildlife. We believe that H.R. 6828 is designed to accomplish this by strengthening the Federal Insecticide, Fungicide, and Rodenticide Act. The bill deletes the provisions of that act permitting registration of economic poisons under protest and establishes procedures for granting, denying, or canceling the registration or requiring the modification of the claims or the labeling by the applicant for registration.

One of the principal concerns of the Department of the Interior is the effects of pesticides on fish and wildlife. These effects should be considered during the registration of these chemicals. H.R. 6828 provides an opportunity for a careful consideration of these effects by an advisory committee, in addition to the consideration given by the Department of Agriculture. Each advisory committee shall include experts selected by the National Academy of Sciences and one or more persons from land-grant colleges. Since the bill specifically provides for representatives of these colleges, we believe that a provision for including on such a committee one or more persons familiar with the effects of pesticides on fish and wildlife also is necessary. Accordingly, we recommend that page 3, line 11, of the bill be amended by striking the period after "colleges" and inserting a comma and the following clause: "and one or more biologists familiar with the effects of pesticides on fish and wildlife."

Alternatively, however, we would not object to deleting the provision for including representatives of land-grant colleges and one or more biologists. We believe that the bill is broad enough to permit the National Academy of Sciences to include such representatives when necessary without specifically providing for such representation. Further, there may be occasions where their representation would serve no useful purpose.

Section 3 of the bill, among other things, authorizes the Secretary of Agriculture to order the suspension of the registration of an economic poison immediately, when he finds such action is necessary to prevent an imminent hazard to the public. This would be applicable to economic poisons now registered under the act. Procedures similar to those described for registering pesticides would



be applicable to suspend registrations. We believe this provision is essential. However, we believe that the term "public" may not include fish and wildlife and other natural resources. Accordingly, we recommend that H.R. 6828 be amended on page 6, line 3, after the word "public," by inserting therein: "including an imminent hazard to man, or animals or plants useful to man, including useful fish and wildlife."

With these suggested amendments, we strongly recommend enactment of the bill.

Mr. JONES. Thank you. We will give your suggestions consideration when the bills are taken up in executive session. Are there any questions?

Mr. BEERMANN. Mr. Buckley, as the bill is written, would not the Secretary, probably, appoint a committee with members who had these qualifications that are recommended?

Mr. BUCKLEY. Yes, sir; very probably he would. I think our alternative would be preferable to the stipulation in the bill of these additional people. I think that the National Academy of Sciences is a reputable public group that will offer the names of people who are knowledgeable in the essential areas of consideration. I am certain that the Secretary of Agriculture will exercise suitable judgment in selecting from these. Therefore, the inclusion, by law, of any one from a land-grant college or with other special talents seems undesirable. Certainly, as for example with the lindane vaporizer which was brought before you and exhibited, there would be no virtue in having someone from a land-grant college or a biologist familiar with fish and wildlife on a committee, when we are talking about uses only within the home. So it seems unnecessary as a provision.

The alternative, we think, is preferable.

Mr. BEERMANN. Thank you.

Mr. JONES. Are there any other questions? Mr. Dole?

Mr. DOLE. You were on the technical staff that worked on this report?

Mr. BUCKLEY. Yes; I was.

Mr. DOLE. Thank you.

Mr. JONES. Are there any other questions? If not, thank you.

Mr. BUCKLEY. Thank you.

Mr. JONES. The next witness will be Mr. J. K. Kirk, Assistant Commissioner, Food and Drug Administration, U.S. Department of Health, Education, and Welfare. We are glad to have you before us.

#### STATEMENT OF J. K. KIRK, ASSISTANT COMMISSIONER, FOOD AND DRUG ADMINISTRATION, U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Mr. KIRK. Mr. Chairman, members of the committee, we appreciate this opportunity to comment on these bills.

The Department of Health, Education, and Welfare fully endorses the two objectives of the bills. In the case of foods and drugs, the Federal Food, Drug, and Cosmetic Act clearly requires proof of safety before products are placed on the market for public use or consumption. We believe there are sound reasons for applying the same requirement to pesticide chemicals. The bills have ample safeguards



whereby an adverse decision by the Secretary of Agriculture may be reviewed. This follows procedures established in the Food, Drug, and Cosmetic Act in cases involving petitions for regulations under the pesticide chemicals amendment, which deals with the establishment of tolerances for pesticide residues in or on food.

The second objective of the bills, to require registration numbers to appear on labels, is also valuable. Since we are charged with the responsibility for being sure that food products marketed in interstate commerce do not bear or contain illegal residues, we have conducted and actually participated with the Department of Agriculture in many educational programs calling attention to the need for proper use of pesticide chemicals to avoid the production of illegal crops.

Our theme throughout these programs has always been "Read and heed the label as registered by the Department of Agriculture," since the directions and precautions required on registered labels are so designed that, if followed, excessive or nonpermitted residues should not result. Under the present system, the labels do not bear any indication of registration and we have been asked many times how a grower can be sure that the label on the package he buys is, in fact, one which has been registered by the Department of Agriculture. Printing the registration number on the label should correct this situation.

The Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act present a number of mutual problems to the Department of Agriculture and the Department of Health, Education, and Welfare. Under the pesticide chemicals amendment to the Food, Drug, and Cosmetic Act, a petition for a tolerance in or on a raw agricultural product as submitted by anyone who wants a registered label for the pesticide must first be reviewed by the Department of Agriculture. We proceed to evaluate the petition only after the Secretary of Agriculture has certified that the product is useful for the purpose intended. If, however, our scientists conclude that a finite tolerance is not justified, the Department of Agriculture does not register the label with directions which would leave a residue.

We believe that, especially in view of the formalization of adjudicative procedures in these bills, they should be amended to insert in the Insecticide, Fungicide, and Rodenticide Act specific provisions requiring the Secretary of Agriculture to refuse registration where a residue in or on a food is reasonably to be expected, but where no tolerance or exemption from tolerance has been established under the Food, Drug, and Cosmetic Act. This, we believe, should encompass both raw agricultural commodities and processed foods.

Some pesticides are proposed for use on food crops where the intent is to use the pesticide without resulting in any residue at the time the crop is marketed. Others are intended for use where application to a food crop is not intended. Unfortunately, the manufacturer's intentions do not always work out in practice, and a weed killer intended for widespread use on roadsides, for example, my contaminate adjoining food crops; or a pesticide which is intended to be so used on a food crop so that it will result in no residue, actually does leave such a residue, either through use other than in accordance with directions, or because of unanticipated growing conditions.

When this occurs, we in the Food and Drug Administration may be faced with a significant regulatory problem in protecting the pub-



lic health, since we must apprehend the produce, demonstrate the presence of the illegal residue, and take immediate steps to remove the food from the market under the seizure provisions of the law.

Obviously, we cannot fulfill our obligations in such cases unless we have a method of determining the presence of the pesticide residue. In establishing tolerances, the Food, Drug, and Cosmetic Act requires that we be supplied with a method of analysis adequate for enforcement purposes.

There is no requirement in the Insecticide, Fungicide, and Rodenticide Act for the submission of adequate and appropriate methodology where the use of pesticides submitted for registration involves a non-food crop, or where the petitioner proposes registration for use on a food crop and believes that his data demonstrates that no residue would result from use as directed.

In fact, there is no legal requirement that the FDA even be consulted on these cases if the Department of Agriculture scientists agree with the petitioner, although in actual practice there are informal discussions between the two units in cases where the USDA people believe that there may be unresolved questions.

We are convinced, therefore, for the safety of our food supply, that it is in the public interest to require, by statute, where there is a reasonable expectation that the pesticide may contaminate food during production, transportation, or storage, including food processing, that the petitioner for registration submit a method of analysis acceptable to the Department of Health, Education, and Welfare. In the case of an application for a "no residue" registration in or on a food, HEW should review the data submitted and/or the use restrictions proposed, to support such registration. We contemplate that, in such cases, a prerequisite to registration would be a certification by the Secretary of Health, Education, and Welfare to the Secretary of Agriculture that such method is acceptable and that, where a food is involved, the data adequately show (or the conditions of use are such) that no residue is to be expected.

There should also, in our opinion, be a provision for canceling registration at any time we find that the original conclusion about "no residue" is found to be in error or if a previously established tolerance is reduced. We, of course, do not contemplate that such cancellation would be called for on the basis of an occasional misuse.

Finally, we believe that the confidentiality provisions of the bill should be revised to make it clear that data in an application for registration may be made available at any time to the Department of Health, Education, and Welfare, or to any other Government agency consulted by the Secretary of Agriculture.

I have tried to touch on the highlights of the views of the Department. However, Assistant Secretary Cohen has discussed these proposed changes in detail in his report on the bill, which I understand is dated today.

The Bureau of the Budget has asked that we point out to you, Mr. Chairman, that while that office offered no objection to this report they have under study the relationships between the Food and Drug Administration and the pesticide regulation people of the Department of Agriculture, and they expect that a report on this will be forthcoming soon.

Thank you.



Mr. JONES. Thank you, Mr. Kirk. As I understand it, you do have difficulty sometimes in determining the authority between the two departments, in other words, while the Department of Agriculture may approve a product that later on, say, by misuse particularly of the product, may present a problem with the Department of Health, Education, and Welfare, where it involves a food product?

Mr. KIRK. Yes, sir.

Mr. JONES. In delineation of authority, particularly, as to residues, in the handling of the product before it is marketed, for example, such as apples, where it requires washing of the apples, products like that, that we get into such difficulty. This is going to be one of the difficult areas in this matter and will require some careful consideration. And we will give careful consideration to the suggestions you have made. I know that it will be the subject of discussion when we get into executive session. Mr. Johnson has a question.

Mr. JOHNSON of Wisconsin. Several years ago when the Secretary of Health, Education, and Welfare put the clamps on the cranberry crop, did they not experience difficulty later with the product?

Mr. KIRK. Yes, sir. The product was amino triazole, and it was supposed to be so used that it would leave no residue. Therefore, there was a registration of the pesticide. And under the procedure operating there was no requirement in the law that the manufacturer supply an adequate method of examination. Then the growers misused the product.

Mr. JOHNSON of Wisconsin. Under the legislation that we have before us, it would be registered and everything would be okay, so far as the Department of Agriculture is concerned, is that correct?

Mr. KIRK. On a no residue basis.

Mr. JOHNSON of Wisconsin. On a what?

Mr. KIRK. On a no residue basis.

Mr. JOHNSON of Wisconsin. There is nothing in the bill before us that has anything to do with the residue, is that correct?

Mr. KIRK. That is right.

Mr. JOHNSON of Wisconsin. And your idea is to include that in the legislation so that when the manufacturer submits his product for registration he will have to show, also, that there is no residue left on the crop?

Mr. KIRK. And that we would get an opportunity to review that data and, also, review the method of examination.

Mr. JOHNSON of Wisconsin. How much would that slow up the registration, 6 months to a year?

Mr. KIRK. I would say no. I do not think that it would slow it up materially unless, of course, there is something wrong with the method or—

Mr. JOHNSON of Wisconsin. I have heard a lot about this cranberry situation. How did we become aware of it?

Mr. KIRK. We became aware of it by finding the amino triazole in the product. Our field people, of course, are very alert as to what is going on in the several districts. And when we find pesticide chemicals being used according to directions then we are happy. When we find that there are misuses or apparent misuses then we have to check to see whether or not there is, in fact, any residue that should not be



there. This applies, of course, both to products for which we have tolerances and to those for which we do not have tolerances.

Mr. JOHNSON of Wisconsin. When did they find that in the cranberries?

Mr. KIRK. After the harvest. That would be in November.

Mr. JOHNSON of Wisconsin. And they sprayed in the spring of the year?

Mr. KIRK. As late as June in some areas. Apparently, it is a wonderful weed killer, but it did a lot of damage.

Mr. JOHNSON of Wisconsin. Thank you.

Mr. BEERMANN. Some weed killers make crops grow, do they not?

Mr. JOHNSON of Wisconsin. This was used in the cranberry bogs. They were supposed to spray in the fall, but some of the growers sprayed in the spring. When they started to put the cranberries on the market, the Food and Drug Administration found this residue on the cranberries.

Mr. KIRK. That is right, sir.

Mr. JOHNSON of Wisconsin. Then they investigated the entire cranberry crop. They were carefully checked after that before they were sold.

Mr. KIRK. There was a great deal of checking.

Mr. BEERMANN. We use some weed killers that stimulate excessive growth.

Mr. KIRK. Those are the hormones, like 2, 4-D.

Mr. JONES. Are there any further questions? Mr. Matsunaga?

Mr. MATSUNAGA. No questions.

Mr. JONES. Mr. Rosenthal?

Mr. ROSENTHAL. No questions.

Mr. JONES. Mr. Dole.

Mr. DOLE. As to the provisions you suggest here, has there been agreement with the U.S. Department of Agriculture?

Mr. KIRK. There has been no formal discussion. I do not believe that the Department of Agriculture is wholly in accord with what we propose.

Mr. DOLE. If there is a question between the two Departments, who has the last word?

Mr. KIRK. We do all of that all of the time in connection with the formulation of tolerances. We get an opportunity to review the residue data. And so do they. As a matter of fact, under the Food, Drug, and Cosmetic Act they express to us an opinion as to whether or not the residue reasonably reflects what would be expected from the type of directions which the manufacturer proposes for his label. We get that from them in an advisory basis before we go ahead and work on the matter of determining whether or not we can set a tolerance. We work very closely with the Department of Agriculture. We have for many years, in my own experience. We get along well with them.

We have agreements in several areas which work out splendidly, but here we have a situation, as we see it, where the one thing we need is a method of analysis, because that is paramount when you



are going to look for something, you have to know how to find it, and these compounds that are involved are pretty complicated chemical structures. And there is, as best that we can find out, no provision in the law which would require the manufacturer to submit such a method where he is not seeking a tolerance. He says that there is no residue when used as directed. So, he does not have to submit a method. We think that the law ought to require him to do so.

Similarly, since we are responsible for the safety of the finished product going to you and the rest of the public we ought to have an opportunity to look over the residue data and see whether or not there is something about it that someone else may have missed.

Mr. DOLE. Could it mean additional cost of Federal employees; would it involve that?

Mr. KIRK. I think that there would be more cost to the Department of Health, Education, and Welfare to review these things. There is no question in my mind about that. But we think that it is necessary.

Mr. DOLE. In other words, up to a certain point you and the Department of Agriculture would do the same things?

Mr. KIRK. Essentially we would be doing the same thing.

Mr. DOLE. You would be doing the same thing?

Mr. KIRK. On a no residue registration as we do in tolerance setting. And some of these tolerances, of course, are pretty low. We have tolerances as low as one-tenth of a part per million for some pesticide chemicals.

Mr. JONES. I think what we are involved with here is that you have jurisdiction over the food additives or preservatives and the things that go into food and you, also, have the authority to take from the market food products which do show that they have residues or other things that would be harmful to the public. And in this proposed amendment you would want to extend that authority to give you the right of turning down the registration where you believe that the residue would affect the crop. As it is now you do not have the authority to stop the use of the product, but you have the authority to take the product off the market after it has once become contaminated.

Mr. KIRK. That is right.

Mr. JONES. That is where we are going to get into this jurisdictional problem. I hope that we do not have to have a board of arbitration. I hope that the U.S. Department of Agriculture and the Department of Health, Education, and Welfare can get together and not leave it to this committee to settle, because we are like anyone else, we would like to have it resolved before it comes to us.

Are there any other questions? If not, we want to thank you.

That completes the witness list that we have for today. We will meet at 10 o'clock in the morning. And if everyone is here promptly, we perhaps can conclude this list tomorrow and eliminate the necessity of another day of hearings.

(Whereupon at 12 noon, the committee adjourned to reconvene at 10 a.m., Thursday, August 22, 1963.)







## REGISTRATION OF ECONOMIC POISONS

THURSDAY, AUGUST 22, 1963

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON DEPARTMENTAL OVERSIGHT  
AND CONSUMER RELATIONS OF THE  
COMMITTEE ON AGRICULTURE,  
*Washington, D.C.*

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 1310, Longworth House Office Building, the Honorable Paul C. Jones (chairman of the subcommittee) presiding.

Present: Representatives Jones (presiding), Hagen of California, Johnson of Wisconsin, Matsunaga, Dague, Harvey of Indiana, Dole, and Beermann.

Also present: Representatives Abbitt and Rosenthal.

Christine S. Gallagher, clerk; and John J. Heimbürger, general counsel.

Mr. JONES (presiding). The subcommittee will come to order.

This is the second day of the hearings of the Departmental Oversight and Consumer Relations Subcommittee of the Committee on Agriculture which is meeting to consider bills H.R. 6828 by Mr. Rosenthal, H.R. 6913 by Mr. Dingell, and H.R. 7336 by Mr. Halpern. We have a long list of witnesses today.

We will now call as our first witness Congressman Dingell, who is here.

We will be glad to hear from you at this time.

### STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Mr. chairman, for the record my name is John D. Dingell. I am a Member of Congress from the 15th Congressional District of Michigan.

I wish to express my deep appreciation to the subcommittee for the privilege of being here to testify briefly on H.R. 6913, a bill to amend the Federal Insecticide, Fungicide, and Rodenticide Act to provide for labeling of economic poisons with registration numbers and to eliminate registration under protest.

For a long time, Mr. Chairman, I have been interested in the problem of pesticides and adequate protection of the public health while still permitting an intelligent and very necessary use of these same devastating poisons.

The genesis of H.R. 6913, of which I am sponsor, and other bills now before this subcommittee is a report of the President's Advisory



Committee which made a number of recommendations based upon the finding, and I quote:

The panel has found that decisions on safety are not as well based as those on efficacy, despite recent improvements in the procedures required by the Federal Food, Drug, and Cosmetic Act for the establishment of safe tolerances for pesticide residues on food.

When tolerance has been fixed by the Food and Drug Administration, the Department of Agriculture registers the pesticide which then is lawful for marketing with approved labeling. No pesticide can lawfully be shipped in interstate and foreign commerce without Department of Agriculture registration, because of an early provision in the law; however, the Department of Agriculture must allow registration under protest upon written demand of a petitioner following refusal to register by the Department of Agriculture. Under present circumstances, a purchaser is unable to distinguish a pesticide registered under protest from one which has been accepted for registration because the label carries no indication of the status of a particular pesticide. It was a specific recommendation of the President's Science Advisory Committee that the protest registrations be eliminated and that every pesticide formulation carry its official registration number on the label.

This legislation is intended to accomplish those ends and to close a very important gap in consumer protection. The bill requires a change of the former standard, which was a device really written into the act to guarantee judicial review. The burden under the old law was upon the Department of Agriculture, and procedurally the proposed statute switched to the manufacturer the burden of proving both effectiveness and safety when the pesticide is used as directed. The provisions of the proposed statute reach the gray area where the company has not adequately satisfied the Government of safety, but where lack of safety is also not clearly established.

This amendment, in effect, brings practices in the Department of Agriculture, with regard to pesticides, in conformity with the new changes in the Food, Drug, and Cosmetic Act, with regard to drugs, color additives, and food additives, recently enacted by the Congress.

Important in the bill is the requirement that the registration number appear on the label of the pesticide. This of course eases the work of the inspectors of the Food and Drug Administration and also the work of the inspectors of the Department of Agriculture. It also affords an added measure of protection to the consumer and an assurance that the substance really is tested and safe according to the labeling on the commodity.

A word of justification for the legislation appears peripheral, but might be useful to complete the record.

Recently, chemical pesticides became the newest member of the billion-dollar market class. In 1962, sales of pesticides reached a record \$1.04 billion: 9.4 percent higher than the \$953 million spent in 1961 and almost 100 percent higher than 1952 sales.

Chemical Week anticipates that the market for these commodities will not slacken during the next decade and, in fact, by 1975, chemical toxicants should be a \$2 billion market at the consumer price level. By then, the total market of technical pesticide toxicant at the producer price level should be \$750 million.



Nearly half of this business is occupied by miticides, insecticides, and related materials. Herbicide sales will climb rapidly from \$105 million worth of basic materials in 1962—an increase of 31 percent over 1961—to \$271 million by 1975.

We are using thousands of tons of these highly toxic substances on millions of acres in publicly supported, privately supported, and joint programs. Individuals use vast amounts of these substances in their homes, in their gardens, and on their lawns.

Our knowledge of what these substances do lags far behind our ability to manufacture and to produce new and more devastating economic poisons.

The use of these substances, unless controlled in the most careful manner, can destroy fish, wildlife, and plant resources of enormous value for today and for the future. The effect of these substances on the human body is not just short term but of lengthy duration, and use of these substances without the utmost care can have enormous impact, not just upon the user but upon hundreds and even thousands of innocent people, who unknowingly, may be compelled to ingest these substances through food, drinking water, air, and environment generally.

It is for these reasons that it is of the utmost importance that H.R. 6913 be enacted at an early time.

I might add, Mr. Chairman, to my comments here that I believe that the Nation is very much concerned about these pesticides, and that they be carefully used. There are a large number of reports of deaths. The President's Advisory Committee indicated that there were approximately 150 a year coming from these pesticides.

There are large numbers of poisonings and illnesses which are not directly traceable to these pesticides, but which are, I think, a very direct result of the use or of some association with these substances.

I do not seek, and I do not believe any of these sponsors of this legislation seek, to outlaw or to prevent the use of these substances. We merely seek to establish a pattern of law under which every possible protection is afforded to the consumer and to the user. And I think that this is a very important and very high duty that is imposed upon us.

It would be fair to point out that these substances live in the soil for many, many years. They live in clothes for many, many years when the individual is exposed to them. They are not necessarily removed merely by washing. They have a half life which is measured in the same way that atomic radiation is measured, because of the very lengthy duration of their existence, and I think that this is a very interesting point; because, once applied to the soil or to fruit or vegetables, or once they become applied to, or attached to, a part of the household, to kitchen utensils and something of this sort, they may exist for a very long time in that environment with considerable danger to the humans and to other living organisms which exist in the area.

They have been found to create liver disorders. They have been found to create disorders of different kinds in different parts of the human body. Dr. Hueper, of the National Cancer Institute, found



that in large numbers of instances the substances are highly carcinogenic or cancer producing.

We do not advocate that they not be used. We simply advocate that they be used, under circumstances which will guarantee to the maximum degree possible, consistent with the use of the substance—that they be safely, wisely, and intelligently used. To this end we want the person who uses them, in reliance upon the good name of the manufacturer to have an opportunity to know he is using substances which are generally safe to him and to those who will be affected when used according to the labeling.

Mr. JONES. We want to thank you, Mr. Dingell, for your contribution here. We are all aware of your interest, particularly in the fish and wildlife field, and the amount of work that you have done in this field and in water pollution, and other things of a like nature. And, as you have pointed out here, some of the things that the committee should take into account when it takes this up in executive session. I think that we can say that the committee appreciates the great danger that exists, and we are anxious to cooperate in every way that we can, not only to call attention of the public to this danger but to see that these products are properly labeled.

Are there any questions?

Mr. JOHNSON of Wisconsin. You do not mention it anywhere in your statement, but I take it that your bill is the same as H.R. 6828, introduced by Congressman Rosenthal?

Mr. DINGELL. I understand that all three of the bills before the committee are identical and that they are identical to the bill sponsored by Senator Ribicoff and others in the Senate.

Mr. JONES. Are there any further questions?

(No response.)

Mr. JONES. Thank you very much, Mr. Dingell.

Mr. DINGELL. Thank you.

Mr. JONES. We have the Honorable Seymour Halpern, a Member of Congress, who is the author of H.R. 7336. We appreciate your being here, and will be glad to hear from you now.

#### STATEMENT OF HON. SEYMOUR HALPERN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HALPERN. Mr. Chairman and members of the subcommittee, I appreciate this opportunity to appear before the committee this morning, to testify in support of this legislation which I am privileged to have joined in sponsoring, my bill being H.R. 7336. It is identical with those introduced by our distinguished colleague, Mr. Dingell, the previous witness, who sponsored H.R. 6913, and by my able colleague from New York, Mr. Rosenthal, who sponsored H.R. 6828.

I particularly want to compliment Mr. Rosenthal, who represents the district adjoining mine in the great county of Queens, for his outstanding work in this field. I am certain that his enlightened testimony yesterday contributed invaluable to the committee's evaluation of this legislation.

I have long advocated legislation in this field, Mr. Chairman. For a number of years as a State senator in New York, I was very active



on a State level on this subject, and now, as a Member of Congress, I have been particularly interested in this subject.

The purpose of this legislation is to end the practice of protest registration. The bill, if approved, will keep unduly hazardous pesticides off the market, and out of the hands of unsuspecting persons.

Under the Federal Insecticide, Fungicide, and Rodenticide Act, a manufacturer who wants to market a pesticide applies to the Department of Agriculture for registration. The Department reviews the application, to determine whether the product is safe, and whether the labeling is proper. However, section 4(c) of the act provides that, if the Department disapproves the product, the manufacturer may market the product under a procedure called "protest registration."

This simply means that the Department of Agriculture can determine that a product, as submitted, is too hazardous or ineffective to be allowed on the market; yet, the same product can be sold to the public until the Department is able to develop performance and toxicity records, and take legal action to remove it from the market. Under these conditions, the purchaser of a pesticidal product cannot distinguish such a product from one which has been accepted for registration, because the label does not carry any indication of its unsanctioned status.

The only remedy left to the Government, after unduly hazardous or ineffective pesticides have been placed on the market, is to bring court action to have them removed. This may not occur for a great length of time, and until it does, the public continues to be endangered or deceived by the product. This has happened before, and there are products marketed today under protest that have been disapproved by the Department of Agriculture. The following is a brief summary of pesticides marketed under protest, as of June 1963:

Lindane pellets for use in bug-death vaporizer is manufactured by B. D. Products Corp., Rialto, Calif. This product was registered under protest on January 28, 1960, because the label failed to carry the warning "not for home use."

Algumycin "200" and Algumycin "300" swimming pool algaecides are manufactured by the Great Lakes Biochemical Co., Inc., Milwaukee, Wis. These products were registered under protest on December 4, 1962, because the use of these mercury compounds in swimming pools as directed on the label is not considered safe.

Perma-Guard for treatment of alfalfa crown for seed is manufactured by Phoenix Gem, Inc., Phoenix, Ariz. This product was registered under protest on March 25, 1963, because the product is not effective for the purpose stated on the label.

Hari-Kari neodane pellets is manufactured by the Neodane Co., Torrance, Calif. This product was registered under protest on April 9, 1963, because the label failed to carry the warning "not for home use."

Lindane tablets (bug pills and vap tabs) are manufactured by the Vapor Chemical Co., Jackson, Mich. This product was registered under protest on May 28, 1963, because the label failed to carry the warning "not for home use."

This situation is aggravated by the failure of the Department of Agriculture to publicize these products registered under protest.



The distinguished Senator from Connecticut, Mr. Ribicoff, in introducing his bill on pesticides in the other House, commented on the Department's reluctance to reveal the names of these articles to the press when reporters specifically inquired about them.

The dangerous loophole in the Federal Insecticide, Fungicide, and Rodenticide Act must be closed. When the Secretary of Agriculture testified before the Senate Subcommittee on Reorganization and International Organizations on May 23, 1963, he strongly favored a change in the law to close this loophole. The President's Science Advisory Committee issued a report on the "use of pesticides." The Committee recommended amendments to eliminate protest registrations and to require every pesticide to carry its official registration number on the label.

H.R. 7336 would close the loophole in existing law that permits this practice of protest registration. This means that premarketing clearance would be mandatory for all pesticides without exception. It deletes the provisions now in the Federal Insecticide, Fungicide, and Rodenticide Act for registration of pesticidal poisons under protest and prescribes the procedures to be followed in refusing or in canceling registrations.

This bill provides for referral of the question of eligibility of an economic poison to an advisory committee; for public hearings when requested with respect to the Secretary of Agriculture's action after consideration of the reviews of the advisory committee; and for judicial review of the order issued by the Secretary of Agriculture following such public hearings. This procedure is generally similar to that followed under the provisions of the Federal Food, Drug, and Cosmetic Act with respect to pesticidal chemicals.

The bill also gives the Secretary of Agriculture the authority to require that every pesticidal formulation carry the pertinent registration number on the label.

The need for the proposed legislation contained in H.R. 7336 is obvious. Nearly 180 million pounds of pesticides, valued at more than \$1 billion are reportedly used in the United States every year. Over and above the publicized destruction of fish, birds, and other wildlife through the indiscriminate use of chemical poisons to eliminate pests of economic concern to man, there is mounting evidence of serious contamination of the natural environments. The use and availability to the public of dangerous chemicals, pollutants of our soil, water, and air must be brought under greater control. A first essential to achieve greater control is to eliminate the practice of protest registration of unduly dangerous chemical poisons. The need for this proposed legislation to tighten control over registrations of chemical pesticides has been recognized by the executive branch, by responsible representatives of industry, and by the scientific community.

Accordingly, Mr. Chairman, I urge the subcommittee to support the enactment of the provisions of this legislation. I want to thank you again for giving me this privilege to join in the hearings which are most commendable. And again I wish to compliment the committee for its fine work in this field.



Mr. JONES. We appreciate the information you have given us, and your views on this bill.

Are there any questions?

Mr. Dole?

Mr. DOLE. I appreciate your statement. You illustrate the link between rural and urban Members of Congress. I trust urban Members might come up with a good wheat program.

Mr. HALPERN. We will take it under advisement. [Laughter.]

Mr. JONES. If there are no further questions, we thank you very much.

Mr. HALPERN. Thank you again.

Mr. JONES. Mrs. Leonor K. Sullivan, a distinguished Representative of the State of Missouri, was here. She has an interest in this problem and has had for a long time, and has been quite active in relationship to it, in connection with the Food, Drug, and Cosmetic Act. However, she had to go to another meeting and has presented a statement which, without objection, I would ask be placed in the record at this point.

(The document referred to follows:)

STATEMENT OF HON. LEONOR K. SULLIVAN, A REPRESENTATIVE IN CONGRESS, FROM THE STATE OF MISSOURI

#### THE "BURDEN OF PROOF" ON PESTICIDES

Chairman Jones and members of the subcommittee, I am strongly in favor of the legislation now before you to require industry, rather than the Federal Government, to shoulder the burden of proof in connection with the marketing of pesticides which may be unsafe for use as intended.

This is an old story—an old controversy—as far as consumers are concerned. It used to be true in the Food, Drug, and Cosmetic Act that a doubtful or dangerous chemical additive could be used in foodstuffs until the Government was able to prove it unsafe. In 1958, we changed that, in the Food Additives Act, by placing on industry the burden of proof to establish in advance the safety of any additive used in food.

In 1960, we put an anticancer clause into the law affecting coloring matter used in foods, drugs, or cosmetics. The burden of proof is on the manufacturer. Last year, we passed the far-reaching Drug Control Act so that the consumer would have far greater protection in the use of new drugs. The burden of proof is on the manufacturer.

We still need such a burden-of-proof shift of emphasis in our laws covering the safety of cosmetics, and of therapeutic devices. I have introduced omnibus legislation carrying out these objectives, and I hope we can pass it in this Congress. As pending before another committee, it would put the burden of proof of safety on the manufacturer.

The same principle of burden of proof is before this subcommittee now in connection with pesticides and economic poisons. The pesticides serve a very important economic purpose. In her tremendously effective book on this subject, Rachel Carson made clear that pesticides often serve a very useful purpose and that it is the improper or unsafe use of these poisons that she opposes. From the response her book elicited from residents of my congressional district, and others in the St. Louis area, I know that there is widespread public concern, which I share, over the pesticides problem.

Under present law, if the Department of Agriculture refuses to register a product for sale because it is not convinced the product is safe or effective, the manufacturer can nevertheless utilize a loophole in the law to place the product on sale anyway, and for an extended period, until the Department can then provide proof of the product's shortcomings. This takes extensive research and, more importantly, it takes time. In the meantime, great damage can be done to the unwary consumer or to public health and safety.



We used to have the same problem in connection with food additives and non-coal-tar color additives. We still, as I said earlier, have it in cosmetics and therapeutic devices. The burden of proof of safety should always be on the manufacturer. These economic poisons are seldom innocuous. They can often kill humans as well as insects. They can contaminate water supplies and meat and vegetable supplies. They must be treated with the respect their danger justifies. We must close any loopholes in the law which permit manufacturers to market products they cannot prove are safe in use in the manner intended. The burden of proof should not rest on the Government, because great damage can be done during the period the Government is developing the data necessary to remove a product which should not be marketed.

I support this legislation and urge its approval.

Mr. ROSENTHAL. Mr. Delaney asked me to tell you that he, too, has to attend another meeting, one of the Rules Committee, and could not be present. I would like permission to insert his statement into the record at this point.

Mr. JONES. I was going to mention that, Mr. Rosenthal. The fact is that he talked to me also. And without objection, his statement will be inserted in the record at this point when received.

(The document referred to follows:)

STATEMENT OF HON. JAMES J. DELANEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, members of the subcommittee, it is a privilege to appear before this distinguished body on behalf of H.R. 6828, introduced by my colleague from New York, Mr. Rosenthal. As he has mentioned to you, our congressional districts are adjacent to one another. I am happy to note that we also stand together in our concern for consumer protection.

Considering the subject matter of this bill and the membership of the committee, this hearing is something of a reunion. Not so many years ago, Mr. Chairman, you, the gentleman from Mississippi, Mr. Abernethy, and I sat together on the Select Committee To Investigate the Use of Chemicals in Foods and Cosmetics and explored similar problems.

The good legislation that has come out of those hearings is a continuing source of gratification to me.

I believe that H.R. 6828 is good consumer protection legislation. It would accomplish two basic improvements in the Federal Pesticide, Fungicide, and Rodenticide Act: The labeling of economic poisons with their USDA registration numbers and the elimination of the so-called protest registration of pesticides by the Department of Agriculture.

The first provision, to provide for the showing of registration numbers on labels, will be of great public benefit. At the time of the select committee hearings, there were over 30,000 pesticidal formulations registered with the Department of Agriculture and the number has grown steadily since. The variety and complexity of combinations greatly increases the problem of finding antidotes to counteract pesticide poisonings.

The prominent display of the registration number will provide an immediate and accurate guide to the proper treatment of the poisoning, particularly in those cases where antidote instructions or statements of contents have been separated from or defaced on containers. Such display will also serve the more general purpose of showing the purchaser—at a glance—that the product has been checked by the Government and is safe for use as directed.

The second provision of the bill, the elimination of protest registration, will be of major benefit in that it will close a large loophole in the law and eliminate the potential danger of an unscrupulous operator marketing a harmful product.

At the time that the protest registration was developed, prior to the enactment of the law in 1947, it was, as I understand it, thought to be a reasonable method of protecting the manufacturer against arbitrary decisions by the Government. However, the situation that has developed is highly unsatisfactory and not in accord with other consumer protection legislation of the past decade.

Under the Food, Drug, and Cosmetic Act we require manufacturers to prove food additives safe before they are used. We require manufacturers of drugs



to show that their products are safe and effective before they are allowed on the market. Yet, under the Federal Insecticide, Fungicide, and Rodenticide Act, the Department of Agriculture must allow manufacturers to produce and sell products the safety of which is in doubt. The Department is further required, at the expense of the taxpayer, to launch complex and time consuming studies to develop sufficient scientific evidence to justify the removal of the products from the market.

To my knowledge, this act and the cosmetic provisions of the Food, Drug, and Cosmetic Act are the two principal remaining examples of consumer legislation where the manufacturer is allowed such irresponsibility. I am supporting this bill and have introduced amendments to close the similar loophole in the cosmetic provisions.

In regard to the protest registration provision, Mr. Chairman, I would like to make only one further comment. I believe that it would be beneficial to amend the bill to terminate all existing registrations under protest as of the effective date of this legislation.

H.R. 6828 deals with a gray area in large part—economic poisons which show neither that they are definitely safe or definitely unsafe. In cases of this type, I believe that the protection of the consumer is paramount. This bill, while providing adequate safeguards for the manufacturer, recognizes the importance of that consumer protection. I heartily endorse the legislation.

Mr. JONES. The next witness we will hear is Mr. Parke C. Brinkley, president of the National Agricultural Chemicals Association.

We will be pleased to hear from you at this time, Mr. Brinkley.

**STATEMENT OF PARKE C. BRINKLEY, PRESIDENT, THE NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION; ACCOMPANIED BY ROBERT L. ACKERLY, ESQ., CUMMINGS & SELLERS, WASHINGTON, D.C.**

Mr. BRINKLEY. Thank you very much, Mr. Chairman and gentlemen. I have with me Mr. Robert L. Ackerly of the law firm of Cummings & Sellers in Washington, our general counsel. Mr. Ackerly is quite familiar with the details of the legislation, and we might very well find him handy in helping to answer some questions.

My name is Parke C. Brinkley. I am president of the National Agricultural Chemicals Association. This association was formed in 1933 as a nonprofit trade association to promote and represent the interests of manufacturers and formulators of agricultural pesticides and related chemicals. The 114 member companies of this association produce 90 percent of the basic and 85 percent of the formulated agricultural pest control chemicals produced in the United States. I am presently completing my first year of service with this association; however, in my former position as commissioner of agriculture for the Commonwealth of Virginia, I had occasion to know the association and its work for the industry. The association has always conducted its affairs in a manner consistent with the public interest and with an attitude of cooperation with the regulatory agencies of the Federal, State, and local governments.

In the middle 1940's when the present Federal Insecticide, Fungicide, and Rodenticide Act was being considered by the Congress, this association actively supported it. Later, this association had the opportunity to help develop and support the Miller Pesticide Residue Amendment to the Federal Food, Drug, and Cosmetic Act, which regulates and limits the allowable residue of pesticide chemicals on raw agricultural commodities. Again in 1959, when the scope of the



Federal Insecticide, Fungicide, and Rodenticide was enlarged by act of Congress, this association took an active part in developing and supporting the amendment.

Our comments and views on H.R. 6828, H.R. 6913, and H.R. 7336 are submitted to the committee this morning from the viewpoint of cooperation with the committee and the Department of Agriculture in improving the Federal Insecticide, Fungicide, and Rodenticide Act.

We will submit with this statement some amendments which we believe will clarify the procedures provided in the bill, and with these amendments we support and endorse H.R. 6828.

This bill would accomplish two primary changes in existing law:

First, the Secretary of Agriculture will be authorized to require the Federal registration number of a pesticide to appear on the label. Each product which is registered by the Department of Agriculture receives a registration number. Existing law prohibits any reference on the label or in the labeling to the registration of the product by the Department of Agriculture.

This association has for several years urged that the law be amended to authorize the Secretary to require or at least permit the registration number to appear on the label. This has become more important since the approval of the Miller Pesticide Residue Amendment to the Federal Food, Drug, and Cosmetic Act. The appearance of the Federal registration number on the label will assure growers and users that the product has been registered by the U.S. Department of Agriculture.

Registration of a pesticide intended for use on growing crops is also subject to the approval of the Food and Drug Administration. That agency establishes tolerances for residues of the pesticide chemical on raw agricultural commodities. The Department of Agriculture requires directions for use on the label, which if followed, will leave a residue remaining on the crop at the time of harvest, within lawful limits of the tolerance for the pesticide chemical. The directions must also satisfy a zero tolerance, as well as a registration on a no residue basis. We think it highly desirable that growers be advised at the time of purchase that the product has been registered with the Department of Agriculture and that the Food and Drug Administration has established a tolerance for any residue that will remain on the crop. The appearance of the registration number on the label is a good way of accomplishing this.

There are some hazards to the industry in this feature of the bill. At the present time, 47 States require registration of pesticides in addition to the U.S. Department of Agriculture. The States generally follow the pattern of the Federal act and regulations. If the States should decide to require their registration number on the label in addition to the Federal number, the industry could be faced with printing 48 different numbers on a label. This would be impossible with many packages. It would also be quite unnecessary. We suggest, therefore, that the committee report on this bill emphasizes that the purpose in allowing the Secretary to require the registration number on the label is to give assurance to growers that the product has been registered by the U.S. Department of Agriculture, and to the extent necessary has been approved by the Food and Drug Administration for use on the crops



listed on the label. If this point is made clear, perhaps the States will not find it necessary to adopt this requirement with respect to State registration numbers. Thus, while industry supports the principle that the Federal registration number appear on the label, it would be strongly opposed to the States following suit.

The second purpose of this bill is to eliminate registration under protest. The existing law, in section 4(c), provides that if it appears to the Secretary that an article which is submitted for registration does not appear to comply with requirements of the act, the Secretary is required to notify the applicant and give him an opportunity to make the suggested corrections.

In the event that the applicant does not agree with the Secretary that the corrections are necessary, the applicant may request that the Secretary register the article under protest. This registration is accompanied by a warning from the Secretary of the apparent failure of the article to comply with the act, as provided in section 4(c) of the act. Registration of an article is not a defense to any of the prohibited acts set forth in section 3.

If the Secretary feels that a product registered under protest does not comply with the act, he is free to institute a seizure proceeding to have the product condemned.

H.R. 6828, in eliminating registration under protest, would substitute a procedure for judicial review of the Secretary's action with respect to the registration of an article under this act.

A procedure has been developed under the Miller pesticide residue amendment, the food additives amendment, and the color additive amendment to the Federal Food, Drug, and Cosmetic Act to provide an applicant an opportunity for objective review of data and other material by an advisory committee if the Secretary does not agree with the applicant's evaluation of the data submitted. A similar procedure is provided in H.R. 6828 with respect to registration under the Federal Insecticide, Fungicide, and Rodenticide Act. If the Secretary of Agriculture should not agree with an applicant as to whether an article should be registered, the bill provides that the applicant may request the issue be referred to an advisory committee to be appointed by the National Academy of Sciences.

After the advisory committee has reviewed the data and material filed in support of the application, it is requested to report its recommendations to the Secretary who, thereupon, shall issue an order with respect to the registration of the article based not solely on the recommendations of the advisory committee but on an evaluation of all the data before him, including the recommendations of the advisory committee.

The bill permits an opportunity for a hearing if objections are filed to the Secretary's order, and for judicial review of the final action of the Secretary with respect to the application for registration, through a procedure which experience has shown functions well in this area.

One weakness in registration under protest was that the burden of proof with respect to the Secretary's action was shifted to the Secretary, in a court proceeding. Under this bill, the burden of proving that the article complies with the requirements of the law remains



with the applicant or registrant throughout the entire administrative and judicial procedure.

After careful review of H.R. 6828, this association has prepared a few amendments which it would like to submit to the committee, with a request that these amendments be approved by the committee when it reports the bill to the House. The amendments in detail are attached to my statement. For the most part, they deal with procedural matters and clarifying some of the procedures set forth in the bill. A detailed explanation is also attached and accompanied the amendments.

These amendments establish time limits within which the Secretary must act, at certain stages of the administrative procedure, and follow the pattern adopted by Congress in the Miller pesticide residue amendment, food additives amendment, and color additive amendment to the Federal Food, Drug, and Cosmetic Act. One amendment also adopts the standard of judicial review approved by Congress in the food additives amendment, and adopted by reference in the color additive amendment and the Federal Hazardous Substances Labeling Act.

If any questions should develop with respect to the suitability or propriety of these amendments or their purpose, we would be glad to discuss them in detail with the committee or with members of the committee staff. We believe that they are sound and will improve the bill, and will promote the purposes and objectives of the bill.

We appreciate the opportunity to appear before your committee and explain our views on this bill. We endorse and support the principles and objectives of this bill. We believe that this substitute procedure for registration under protest is in keeping with modern developments of administrative and judicial procedure. We assure the committee of the complete cooperation of this industry in the continued enforcement of the act and the amendments proposed by H.R. 6828, if it is approved by the Congress.

Mr. Chairman, I have the amendments listed, and then immediately following that an explanation of the suggested amendments. Would you prefer that I run through them rapidly for you?

Mr. JONES. I think that if you would do so, Mr. Brinkley, it would help. And then if there are any questions as to the proposed changes in the proposed bills, we can go into those more thoroughly.

Mr. BRINKLEY. Amendment No. 1 is on page 2, line 18—before the word “cancel” insert the words “suspend or”.

Amendment No. 2 is on page 3, line 7, deleting the period after the word “Secretary” and inserting in lieu thereof a comma and the following words, “or in the alternative the applicant or the registrant may file objections to such notice and request a public hearing thereon. If a petition is not filed within 30 days requesting reference to an advisory committee or if a request for a public hearing is not filed within the time allowed for such filing, this notice shall become the final action of the Secretary with respect to the application or the registration.”

Amendment No. 3. This corrects a typographical error. Page 4, line 2—delete the word “in” and insert in lieu thereof the word “of”.

Amendment No. 4 is on page 4, lines 10 and 11, deleting the words



"make a report and recommendation to the Secretary as to the registration of the article." and insert the following, "submit a report and recommendations to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations."

Amendment No. 5 is on page 4, line 13—after the word "shall" insert a comma and the words "within 90 days after receipt of the report and recommendations of the advisory committee".

Of course, one of the purposes of substituting these provisions for the registration under protest is to encourage the moving through of these applications in the hands of the Department of Agriculture, and this simply puts a time limit on that to gage his movement.

And amendment No. 6 is on page 4, line 16, deleting the words "Any person adversely affected thereby" and inserting in lieu thereof the words "the applicant for registration, or registrant".

Mr. JONES. You say "any person adversely affected thereby"—in other words, that refers up here to this registration?

Mr. BRINKLEY. It refers to the appeal and lets anybody who wants to do it, whereas this amendment would confine it to the person whose company is actually involved in it.

Mr. JONES. What about the case of some person who might consider himself affected in a competitive manner by this—would that eliminate him from filing an objection; in other words, if a product is already on the market, and then some applicant would make an application for a new product, and if that party who had already a similar product felt that he was being adversely affected, would it not prevent him from coming in and filing an objection?

Mr. BRINKLEY. It would prevent him from filing an objection, yes, sir. He could, if he wanted to do so, file an application for a similar product, or something of that sort.

Mr. JONES. Suppose that a person already had his product on the market, and he was taking a precaution with his product that the new product was not taking, and it might place him in a position that would be adverse to the marketing of his product. I question this amendment on that ground. I want your comment on that. Would we be precluding him from coming in on that, and could not that work adversely to him?

Mr. BRINKLEY. That is a very good point to raise. I think that I will ask Mr. Ackerly to comment on it, to be sure, but I think that the competitor would not know in this case about it—the action that was being taken.

Mr. ACKERLY. Yes; that is right, Mr. Chairman. The application is confidential when it is first filed with the Department of Agriculture and, if a competitor had certain information that he felt was important at a later stage of the proceeding, he would be free to submit it to the Secretary of Agriculture.

The words in this bill were taken from the food additives amendment, primarily. You have an entirely different situation there. You have a grower concern or grower organization concern, as well as the chemical company. With a pesticide, however, you have the applicant or the registrant. We do not feel that this is a forum for competitive pressures to be of concern to the Secretary.



His obligation under the act is to see that the product meets the requirements of the law. If there are competitive problems to other companies, they can be settled in private or civil litigation. If it is a question of advertising or promotion it can be settled by the Federal Trade Commission. However, the Secretary of Agriculture has to make the final decision, based upon the entire record, and we feel that he should be able to avail himself of all of the evidence as is available and then make the final determination. In other words, this would not be an adversary proceeding before the Secretary between two companies, but merely an adversary proceeding of the applicant proposing his case to the Secretary.

Mr. JONES. I am concerned particularly about the labeling that would be on the product, as well as the instructions which would be a part of it. As I understand when this application is filed it is confidential within the Department and the public does not know it has been filed. They do not have access to the information that will be contained on the label or the instructions for its use, and material like that.

Mr. ACKERLY. Yes, sir. This bill provides that one of the amendments that we are going to suggest, amendment No. 9, would remove that restriction at the time that a public hearing is requested, or, at the time that the Secretary's action becomes final, so that it would not remove the confidentiality until there is a public hearing or until the Secretary's final action is taken. The bill provides in another section that detailed formula information is always held confidential.

Mr. JONES. I understand that. However, I could not understand about the labeling and the instructions for use and things like that. Of course, that sometimes makes a great difference in the marketing, particularly in competition between products, because the public usually looks for something that is the most easily used. Most of us do not like to read detailed instructions. And if those were eliminated it might affect the use of the product and it might make it more accessible to the public. That is what I had in mind there.

Mr. ACKERLY. If the committee approves our amendment No. 9, the data will be confidential only up to the point where a public hearing is requested, or if no public hearing is requested at the time that the Secretary's action becomes final with respect to the registration, which means it would be perhaps either on the order issued following the advisory committee or if no advisory committee is requested, his initial action will then become his final action.

Mr. JONES. We will want to take that up with the staff and probably with you before we take any final action.

Mr. HAGEN of California. Your amendment excludes the American Medical Association, for example, requesting public hearings?

Mr. ACKERLY. Yes; that is true.

Mr. HAGEN of California. It is merely a matter between the Department of Agriculture and the company?

Mr. ACKERLY. That is correct. If I may, it would not preclude the Secretary from taking advantage of all of the data that is available, nor the advisory committee from soliciting data from the American Medical Association or anyone else, but it does leave the responsibility solely with the Secretary.



Mr. HAGEN of California. But the public, in effect, would be excluded from participating?

Mr. ACKERLY. The public would be excluded from participating in this procedure; that is correct.

Mr. HAGEN of California. Other than in the public hearings?

Mr. ACKERLY. I think that they would also be precluded from appearing in other regulatory actions under the Food, Drug, and Cosmetic Act. Any person adversely affected has been construed pretty generally by the courts to mean a person who has a property interest which is adversely affected.

I would assume under general principles of legal procedure that any group that wanted to could file a petition either to intervene or to file a brief amicus with the Secretary or the court.

Mr. HARVEY of Indiana. I think that it is generally common knowledge that many of the trade-named pesticides have come about as a result of work by the research division of the Department of Agriculture. They have made these research findings available to the companies who, in turn, have marketed them under trade names.

It would seem to me, although I am not a lawyer, that in this instance, if such a condition is set up, in which the Secretary of Agriculture and the company in question are in this situation, that they would be both on the same side of the issue. Although I am not necessarily saying that there would be bad faith, it would seem to me, as mentioned by Mr. Hagen and Mr. Jones, that in instances of this kind it would almost lead to collusion.

Mr. BRINKLEY. Mr. Chairman, I do not care to belabor this point either. We would be delighted to discuss it further in private. There are thousands of these registrations or these applications for registration being made each year and it is an everyday affair; they are constant. It is necessarily an agreement between the Department of Agriculture, on the one hand, and the company who is making the application, on the other hand. They negotiate this. The Department of Agriculture is asking for the public in this. It is not something that lends itself to being a public matter for anybody and everybody to come in and look over the shoulder of the Department of Agriculture, so to speak, while this is going on.

Mr. HAGEN of California. As I understand your statement, under present law there is actually a prohibition against the appearance of the registration number on the label; is that correct?

Mr. BRINKLEY. Yes, sir.

Mr. HAGEN of California. Why would there be such a prohibition as such. What is the issue there?

Mr. JONES. If you will pardon me, that was brought out yesterday in the testimony of members of the Department. At that time they were opposed to it and now they have changed their position on that.

Mr. HAGEN of California. Why would they be opposed to it at one time?

Mr. JONES. It is all set out in the transcript. I think that if you will read the transcript you will get the information on that. That will be more enlightening than what we might bring out here.

Mr. BRINKLEY. Basically, as I understand it—



Mr. HAGEN of California. I would like to have Mr. Brinkley's reason.

Mr. BRINKLEY. They have been opposed to it because for fear that it would be used as a part of the advertising, with the thought that it might in some way carry with it the connotation that the Government was recommending a product.

Mr. HAGEN of California. That is the point I was getting to. Say that a company registers a pesticide, a fungicide, and something gets damaged thereby and he is sued. Is this registration a defense for the company?

Mr. BRINKLEY. You just are a little too deep for me. I suspect that I had better not comment on that.

Mr. JONES. In other words, on this protest registration it would have a number on there and it might indicate to the public the fact that they were given a registration number—although it was a protest registration—that it might carry, at least, in the minds of some people the connotation that it was being recommended by the Department. That is one thought that was brought out.

Mr. HAGEN of California. I am trying to ascertain whether or not the fact of a listed registration would exempt the manufacturer from tort liability in the event a farmer-user of the product were sued.

Mr. BRINKLEY. May I ask Mr. Ackerly to comment on that?

Mr. JONES. Yes.

Mr. ACKERLY. Mr. Chairman and Mr. Hagen, the law presently prohibits any reference to registration under this act on the label.

H.R. 6828 would add the phrase "other than the registration number assigned to the economic poison." So the general provision would still survive. It would permit only the registration number to appear on the label.

The act, also provides that registration is not a defense to any prohibited act. That survives in the law. So that the appearance of the registration number on the label would not make any change in the existing law as to the relationship between the company and the grower, or the company and the Department of Agriculture.

Mr. HAGEN of California. But a tort complaint—

Mr. ACKERLY. The registration is not a defense to any prohibited act; therefore, if the product is adulterated or misbranded, even though the number appears on the label, or if a grower's crops are damaged by the use of the product, the bill would not change the existing state of the law with respect to the grower's rights and the company's rights.

Mr. HAGEN of California. I was wondering if the appearance of the registration number on the label would relieve the company from tort liability and leave the farmer holding the bag.

Mr. ACKERLY. In my opinion it would not, sir. It would not change the state of the existing law a bit, so far as that is concerned.

Mr. ROSENTHAL. Mr. Brinkley, I want to compliment you and to commend you and your organization for this very responsible position, in supporting the bill. I have one or two other thoughts I should like to express.

I am sure that you have read the President's Science Advisory Com-



mittee report in that it states that there are 150 deaths a year resulting from the use of pesticides. Would you care to offer any comment on that statement?

Mr. BRINKLEY. Well, I would say to you, sir, that we are as conscious as anybody, and I think more conscious than anybody of this situation. The industry has worked strenuously and has cooperated with a great many other people in endeavoring to prevent these deaths.

The trend, as I understand it, is down, even though the use of pesticides has materially increased.

I think that the exposure to damage ratio is less in pesticides than with a great many other things I know of. And when put in perspective, I think, you will find that the deaths from the misuse of pesticides are quite small in comparison to some other things. For instance—this was brought out here yesterday—there is the subject of cabinet medicines where considerably more people, I understand, die per year from the misuse of aspirin tablets than from the misuse of all of the pesticides put together. A great many more people are killed each year by farm machinery than there are from the use of pesticides.

So as bad as they are and as hazardous as they are, we are working on them. And I think that when viewed in perspective the industry is to be congratulated on the improvement that has been made in the use of these very hazardous materials. Certainly, any material which can do the tremendous good that these materials do has got to carry with them some potential damage. And while there are a number of deaths alleged each year by their use, and I believe the President's Science Advisory Committee used the figure of 150 deaths, I think that it is also shown that there are a good many million lives saved each year by the use of these materials.

Mr. ROSENTHAL. I just wanted to develop the record, so that the House can act intelligently on this bill when they have it before them.

Do you agree specifically with the figure of 150 that the Committee reports?

Mr. BRINKLEY. I have no particular comment on that. I do not know where that figure came from.

Mr. ROSENTHAL. Subsequent to the issuance of the report—I think it was issued in March or April by the Committee—did you, at any time, initiate an investigation to determine the number of deaths and the accuracy of the reports and what these deaths might have been caused by?

Mr. BRINKLEY. I have seen no substantiating evidence from the President's Science Advisory Committee at all as to where that figure came from or what the breakdown is of those alleged deaths.

Mr. ROSENTHAL. You are of the opinion then that an investigation would not disclose any information or make available records as to the nature of any injuries or deaths sustained by the misuse of pesticides?

Mr. BRINKLEY. No, sir. The Federal Government and the State governments have the machinery for reporting that and they are the official keepers of the records.

Mr. ROSENTHAL. Did you happen to initiate any investigation among your member organizations to try to determine this information?

Mr. BRINKLEY. We have no facilities for doing that; no, sir.

Mr. ROSENTHAL. Have you tried to do that?



Mr. BRINKLEY. Any records that we would have would be hearsay. We are not interested in that kind of a record.

Mr. ROSENTHAL. These records that you say are hearsay, would they be from newspapers or where—from where would you get them?

Mr. BRINKLEY. It would have to be—if we got into this—it would have to be on the basis of getting information from the newspapers or from people, from something—we have no official reports, where the State governments and the Federal Government do have official reports.

Mr. ROSENTHAL. It seems to me that the registration number would be helpful in determining antidotes and the materials necessary to be treated in cases where someone has been exposed—in treating the people, because then antidotes would be available. I think it is important that the industry should get rid of such dangers.

Mr. BRINKLEY. We do that—we were, as I pointed out, very actively in this field of endeavoring to help educate the people on the proper use—to educate the people on methods of treatment—that sort of thing—we work very closely with the public health services in helping to make available to these poison-control centers about the country such information. All of the companies keep a person who is designated to aid with treatment through consultation whenever they can by telephone and so forth. Yes, we work very actively in this field.

Mr. ROSENTHAL. At any rate, to sum up, you are not in a position to refute the statement of the President's Science Advisory Committee report that there are 150 deaths attributable to pesticides?

Mr. BRINKLEY. Mr. Rosenthal, I have no way of refuting it, because I do not know what it is based on. They have not told us where they got the figure. If you will tell me where they got the figure, then I might be in a position to look at it.

Mr. ROSENTHAL. Did you ask them?

Mr. BRINKLEY. No. We asked for the substantiating evidence back of the President's Science Advisory report, and Dr. Wiesner told us that he could not make it available; that if we had any particular thing that we wanted to sit down and discuss with his scientists he would arrange for that, but there are a lot of things in the report that we do not know where the information came from or the work that it was based on. And this is one of them.

Mr. ROSENTHAL. Thank you.

Mr. JONES. It would seem to me that your association would be interested in this data if for no other reason than to present to the public the condition as to how and under what circumstances these people were killed by the use of these products. And I think just from my own knowledge of the use of these that in most cases it has been caused by a misuse. And I think your association might take some knowledge of that fact and could use it to help in the merchandising and the distribution of these chemicals.

Mr. BRINKLEY. Yes, sir. And we do, Mr. Chairman, but the thing you run into is the fact that I saw a statement from the Department of Agriculture for the same period that said 89 deaths were allegedly caused by the use of these materials. So you run into conflicting reports. We do follow these. We know not of a single incident where death was caused by the proper use of these materials. It has been a result of misuse, accidental use.



Mr. JONES. The President's Committee might have statistics that would be helpful on that.

Mr. BRINKLEY. Yes.

Mr. JONES. Do you want to go over the balance of these?

Mr. BRINKLEY. Yes. Amendment No. 7 would be the next one. This amends the bill on page 4, line 17, after the word "may" insert the words "within 60 days from the date of the order of the Secretary,".

Number 8 is on page 5, line 9, after the word "shall," insert the words "evaluate the data and reports before him,".

Then amendment No. 9 is on page 5, line 20, after the word "until," strike the remainder of that sentence and insert in lieu thereof the following: "A public hearing is held, or where no hearing is requested until the action concerning registration of the product becomes final."

That is the one we discussed just now when we were talking about No. 6.

Mr. JONES. Yes.

Mr. BRINKLEY. And No. 10 is on page 7, line 10, delete the words "by substantial evidence when considered on," and insert in lieu thereof the following: "by a fair evaluation of."

Mr. JONES. That is one that we might like to have more explanation of, because it seems to me that "substantial evidence" could be necessary in most any of these—they would have to have substantial evidence before they could make a fair evaluation, would they not?

Mr. BRINKLEY. Yes, sir. And may I again let Mr. Ackerly comment on that, please?

Mr. JONES. All right.

Mr. ACKERLY. Mr. Chairman, the fair evaluation of the record as a whole standard was first approved by the Congress in 1958 in the food additives amendment to the Federal Food, Drug, and Cosmetic Act. At that time the House Committee on Interstate and Foreign Commerce and the Senate Committee on Labor and Public Welfare looked into the question of the appropriate scope of judicial review very carefully. I would like to read a couple of paragraphs from the committee report which I think sums it up very well. I am reading now from Report No. 2284 of the 85th Congress of the Committee on Interstate and Foreign Commerce:

The committee has given long and careful thought to the problem of the scope of judicial review under this legislation. It was discussed exhaustively by several witnesses before the House subcommittee, including a Federal judge who testified on behalf of the Judicial Conference of the United States. "Your committee agrees with the House that the Secretary's findings of fact and orders should not be based on isolated evidence in the record, which evidence in and of itself may be considered substantial without taking account of contradictory evidence of possibly equal or even greater substance."

In the course of the scientific panel hearings the subcommittee was impressed with the wide range of scientific judgment factors which are involved in determining the safety of a food additive. We are faced with the same thing with pesticides. Considering the eminent qualifications of all of the scientists and experts who participated in the hearings, the scientific testimony of any one of the participants must be considered substantial evidence. Nevertheless, any conclusions based solely on the scientific judgment of any one of the participants, without taking into account contradictory scientific views expressed by other participants, cannot be considered conclusions based upon a fair evaluation of the entire record. Thereupon the committee recommended and the House approved the test fair evaluation of the record rather than the substantial evidence test.



The Senate committee report contains the following very brief statement:

The chairman of the House subcommittee that drafted and reported the bill, Hon. John Bell Williams, used the following words in explaining to the House the significant change in existing law. "Ever since the Congress began delegating regulatory functions to administrative agencies of the Government, there has been disagreement among lawyers as to the fairness of the procedures under which the agencies operate. In 1946 the Administrative Procedures Act was passed in an effort to formalize the day-to-day rulemaking and regulatory procedures of Government agencies. The 1946 act provides that unless the findings of fact upon which administrative orders are based are supported by 'substantial evidence' a Federal court of appeals can reverse the order of the administrative agency. Court decisions have required that an administrative agency must give consideration to the entire record including contradictory evidence when it determines facts,"

The committee—

this is the Senate committee—

has endeavored to prescribe a new statutory criterion requiring that a high standard of fairness be observed by the courts, and the fair evaluation of the record is this new statutory criterion.

It was followed by the Congress in the color additives amendment to the Food, Drug and Cosmetic Act.

It was followed by the Congress in the hazardous substances labeling law that was approved in 1960.

And we believe that it is applicable to this scheme of administrative procedures just as it was in those other three bills. It fits into it. I think that this trend of the Congress will be carried through in all regulatory types of statutes.

Mr. HEIMBURGER. May I ask just one question?

Mr. JONES. Yes.

Mr. HEIMBURGER. It would seem that this "fair evaluation of the record" arrives at about the same point that might be arrived at if these words were "the preponderance of the evidence." What is your distinction between these two?

Mr. ACKERLY. I think, probably, they are fairly close. I think that "preponderance of the evidence" means that the court must weigh the evidence. "A fair evaluation of the record" I do not think would require the court to really weigh the evidence, although in the final analysis they would have to determine wherein the Secretary's findings are supported by a fair evaluation. I think they are pretty close in context.

The reason that we recommended "fair evaluation of the record" is simply because that language appears in the other three statutes, and we picked it up from those as the trend of the scope of the judicial review.

I think "fair evaluation of the record" would require that the Secretary's findings be supported by a preponderance of the evidence.

Mr. HEIMBURGER. Have there been any court decisions, to your knowledge on this particular phrase?

Mr. ACKERLY. No, to my knowledge there has not. Yesterday I asked Mr. Goodrich who was here as counsel for the Food and Drug Administration if he had encountered this phrase in the courts yet, and he said "No."

Mr. HEIMBURGER. Thank you.



Mr. JONES. Are there any other questions on this particular amendment? If not, we will proceed.

(The suggested amendments to H.R. 6828, together with the explanation thereof, follow:)

SUGGESTED AMENDMENTS AND EXPLANATIONS TO H.R. 6828

*Amendment No. 1*

Page 2, line 18, before the word "cancel" insert the words "suspend or".

This amendment merely completes the descriptive introduction to the procedures to be followed in the event of a denial, suspension or cancellation of a registration. The words "suspend or" which will be added by this amendment were apparently inadvertently omitted.

*Amendment No. 2*

Page 3, line 7, delete the period after the word "Secretary" and insert in lieu thereof a comma and the following words, "or in the alternative the applicant or the registrant may file objections to such notice and request a public hearing thereon. If a petition is not filed within thirty days requesting reference to an advisory committee or if a request for a public hearing is not filed within the time allowed for such filing, this notice shall become the final action of the Secretary with respect to the application or the registration."

This amendment provides that if the applicant or the registrant does not request further proceedings following a denial or suspension of a registration by the Secretary, the Secretary's action shall become final. This will alleviate the necessity for the Secretary to issue a subsequent order and permit the Secretary's initial action to become final upon the expiration of the time period if the applicant or registrant desires no further proceedings to be held.

*Amendment No. 3*

This corrects a typographical error. Page 4, line 2, delete "in" and insert in lieu thereof the word "of".

*Amendment No. 4*

Page 4, lines 10 and 11, delete the words "make a report and recommendation to the Secretary as to the registration of the article." and insert the following, "submit a report and recommendations to the Secretary as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations."

The purpose of this amendment is to require an advisory committee to submit with its report a statement of the reasons or basis underlying its recommendations. This will be helpful both to the Secretary and to the registrant or applicant.

*Amendment No. 5*

Page 4, line 13, after the word "shall" insert a comma and the words "within ninety days after receipt of the report and recommendations of the advisory committee,".

This amendment requires the Secretary to act upon the application or registration within ninety days after the receipt of the report of the advisory committee. The bill does not provide a time within which the Secretary must act and it is felt that some time limitation is desirable.

*Amendment No. 6*

Page 4, line 16, delete the words "Any person adversely affected thereby" and insert in lieu thereof the words "The applicant for registration, or registrant,".

This amendment is for clarification. The phrase "Any person adversely affected thereby" would be in this instance only the applicant or the registrant and substitution of the words "The applicant for registration, or registrant," clarifies this sentence in the bill.

*Amendment No. 7*

Page 4, line 17, after the word "may" insert the words "within sixty days from the date of the order of the Secretary,".

This amendment places a sixty-day time limit within which a public hearing



may be requested following the order of the Secretary upon which the hearing is to be held. If a hearing is not requested within sixty days, the Secretary's order becomes final.

*Amendment No. 8*

Page 5, line 9, after the word "shall" insert the words "evaluate the data and reports before him,".

The purpose of this amendment is to make clear that the Secretary is not bound by the recommendations of the advisory committee but should evaluate the entire record before issuing his order following a public hearing, if one is requested.

*Amendment No. 9*

Page 5, line 20, after the word "until" strike the remainder of that sentence and insert in lieu thereof the following, "a public hearing is held, or where no hearing is requested until the action concerning registration of the product becomes final."

This amendment is to clarify the procedure with respect to the confidentiality of data submitted in support of a registration. This amendment removes the confidentiality of such data when a public hearing is held or when the action of the Secretary becomes final.

*Amendment No. 10*

Page 7, line 10, delete the words "by substantial evidence when considered on" and insert in lieu thereof the following, "by a fair evaluation of".

This amendment provides that in the event of an appeal to the U.S. Court of Appeals the findings of the Secretary with respect to questions of fact shall be sustained if supported by a fair evaluation of the record as a whole. The bill presently provides that the findings shall be sustained if supported by substantial evidence. The scope of judicial review recommended by this amendment, that is a fair evaluation of the record as a whole, is the scope of review provided in the food additives amendment and color additive amendments to the Federal Food, Drug, and Cosmetic Act and in the Federal Hazardous Substances Labeling Act. This amendment then follows the scope of review provided by the Congress in the three most recent enactments in this field.

Mr. JONES. I have a question on page 3 of your statement, Mr. Brinkley. Down at the bottom of the page you say.

We suggest, therefore, that the committee report on this bill and emphasize that the purpose in allowing the Secretary to require the registration number on the label is to give assurance to growers that the product has been registered by the U.S. Department of Agriculture and, to the extent necessary, has been approved by the Food and Drug Administration for use on the crops listed on the label.

Where, in the bill, does this reference to the Food and Drug Administration appear?

Mr. BRINKLEY. That is not in this particular amendment, I do not believe. But, in the bill itself, and the procedures thereunder, when an applicant makes, or a company makes, an application for registration, they must support this registration—this application, rather—with substantiating data, some of which includes whether or not a residue is left on the crop; and, if a residue is left on the crop, then the Food and Drug Administration has to approve or set a tolerance for it, and they set that tolerance at any of several levels. It can be what they call a "no residue registration," in which it is assured that, with the use of the material as carried out by the recommendations, there will be no residue left on the crops. Another one is what they call a "zero tolerance," in which the Food and Drug Administration actually says that no residue may be left on the crop.

And, thirdly, they can allow a finite tolerance, which might be one part per million, or seven parts per million, or any other amount that they would allow.



And then they have to assure the Department of Agriculture that they are satisfied with this, that they are satisfied that the use as prescribed would be safe.

Mr. JONES. What I was getting at was this: In other words, there is no place in the bill where you make any reference or have any requirement of a Food and Drug Administration report. We had some testimony yesterday from a representative of the Department of Health, Education, and Welfare, the Food and Drug Administration, suggesting certain things, and I suggested that we might be getting into an area of jurisdiction. Of course, I would think that, in your industry, you ought to avoid that. And, so, I can understand why you want to be safe and observe the tenor of the Food and Drug Administration regulations; but, I could not quite reconcile this statement with the bill.

Mr. BRINKLEY. Let me see if Mr. Ackerly can refer to the section of the bill that this would be under.

Mr. ACKERLY. That does not appear directly in the bill. The basis of that statement is this: When a pesticide is sold to a grower for use on a crop, by the interplay of the Miller amendment to the Food, Drug and Cosmetic Act, and the Federal Insecticide, Fungus and Rodenticide Act, the Department of Agriculture will not register these products unless the Food and Drug Administration has approved it on a zero tolerance, or has established a finite tolerance for it. So, the grower can be assured when he sees the number on the label, either that the Department of Agriculture has determined that no residue will remain, or that it has been reviewed by the Food and Drug Administration and that the directions for use are such that, if they are followed, any residue that does remain at the time of harvest, will be within the scope of the tolerance established by the Food and Drug Administration. So that the farmer or grower knows that, if he follows the directions, his product, his crop, is going to be free to move in interstate commerce.

It does not appear in the Insecticide Act, nor in the Miller amendment. There is the interchange, you see. The Department of Agriculture registers these products. The Food and Drug determines the products to be used on crops where residue might remain, how much of that residue is saved. The Department of Agriculture will not register unless the Food and Drug Administration, where there is a residue, has established either a zero tolerance or a finite tolerance. Therefore, the grower is assured by the appearance of that number on the label that, if he follows directions, he will probably be all right, unless of some unusual weather conditions, or something like that. It is an interplay between the two statutes and the two agencies.

Mr. JONES. Are there any other questions?

Mr. HARVEY of Indiana. I am sorry that Mr. Rosenthal is not present at the moment. A great deal of comment has been made with regard to death due to pesticides. As I envision the problem, a far greater aspect of it has to do with allergies. There is no way in the world to determine how many people are going to have an allergy—which may be serious—to the toxic effect of any given chemical. I am not minimizing the importance of determining the lethal possibilities of these pesticides, and other chemicals as well, but I really think that



sometimes we overlook the importance of the possible allergy impact.

Mr. BRINKLEY. Thank you, Mr. Harvey. We are, as I said, giving a great deal of attention to that.

Mr. JONES. Mr. Matsunaga.

Mr. MATSUNAGA. On the question raised by the chairman, do I understand you correctly to say, Mr. Brinkley, that under existing law, the registration number will not be given even if this bill is not adopted, until the Food and Drug Administration has approved as to tolerance?

Mr. ACKERLY. That is true with respect to any pesticide that is intended for use on a growing crop.

Mr. MATSUNAGA. Is it under existing law?

Mr. ACKERLY. Under existing law, any pesticide that is to be used on a growing crop, if the directions are such that a residue might remain at harvest, then we must file a petition for a tolerance with the Food and Drug Administration. The Secretary of Agriculture certifies these products to the Food and Drug Administration under a certification of usefulness. Then the Food and Drug Administration, through its own procedures under the Miller amendment to the Food, Drug and Cosmetic Act, establishes a tolerance. When that tolerance is issued, then the product goes back to the Department of Agriculture and is registered.

Mr. MATSUNAGA. In your opinion, there is no need for additional amendments to the bill, then?

Mr. ACKERLY. You mean as suggested by the Food and Drug Administration yesterday?

Mr. MATSUNAGA. Right.

Mr. ACKERLY. I do not really think so. I do think that, as the chairman suggested, this may be a matter of just the two agencies working out intramural procedures more carefully, although I think they are working them out pretty well now.

Mr. Kirk commented generally, but he did not submit any specific sections of the law that he thought should be amended.

Mr. MATSUNAGA. If there is that requirement under existing law—that is, assuming that there is—you would approve of a law specifically requiring Food and Drug Administration approval before the Department of Agriculture could issue the registration number? You do approve of such a requirement?

Mr. BRINKLEY. Mr. Chairman, that is presently provided for.

Mr. MATSUNAGA. That is what I am trying to determine. We have had some conflicting testimony here.

Mr. JONES. It does not appear in this law, but you say that it does appear in some other portions of the statutes?

Mr. BRINKLEY. Yes, sir. And I would like to suggest to you, if I might be so bold, that you ask the Department of Agriculture to comment on this particular procedure for the committee's information, and then we will be right.

Mr. JONES. We shall do that. We will have some of them here when we get into executive session on these bills to determine that there is adequate protection.

Mr. MATSUNAGA. One further question, Mr. Chairman. You suggest, Mr. Brinkley, in your prepared statement—that perhaps the States would not find it necessary to adopt the requirement for a State



registration number. This would be for those that do not go into interstate commerce?

Mr. BRINKLEY. They are controlled by State laws, sir. Unless the commodity is in interstate commerce, then it does not come under the requirement of this law.

Mr. MATSUNAGA. Your suggestion here is that you feel that the various States will not have to go into this procedure of giving registration numbers. What about those items which do not enter into interstate commerce—would the State need to have some form of registration number for the same type of protection given to the others which do enter into interstate commerce?

Mr. BRINKLEY. Yes; I think that would be perfectly all right.

Mr. MATSUNAGA. Thank you.

Mr. BRINKLEY. I would not like for us to have to put every State registration number on all of our labels, because it would be quite burdensome, and I think it would actually defeat the labeling idea we have now. It would so clutter up the label with written material, that you would have to make the print so small that to get the remainder of the instructions on some of these small packages, that it would just be most undesirable so that where a product is not in interstate commerce, where it is not federally registered, that I think that it would be entirely in order for the State to require that statement; yes, sir.

Mr. HAGEN of California. In connection with what you are saying, would not this seem to be one of those instances where the Federal statute would preempt the field?

Mr. BRINKLEY. I am not at all sure about that. I just do not know. I am uninformed.

Mr. HAGEN of California. Do you not think so?

Mr. ACKERLY. I would hope so. Not this specific act—

Mr. HAGEN of California. Has this been tested?

Mr. ACKERLY. I repeat, not this specific act; but in the National Warehouse Act it has been tested. The licensing program of the Department of Agriculture has been tested in the Supreme Court, and they have held that Congress did preempt the field and certain fields in regard to the registration of grain warehouses.

Mr. HAGEN of California. Yet there might be some that might test it under the labeling requirement.

Mr. ACKERLY. I assume that we would, and I would hope that the committee might express itself to that effect in the report.

Mr. JONES. Mr. Beermann.

Mr. BEERMANN. Mr. Brinkley, in your position as commissioner of agriculture for the Commonwealth of Virginia, did you find many areas where there was difficulty between the Federal and State Governments in such situations as presented here?

Mr. BRINKLEY. We work very closely with them and we encountered no difficulty.

Mr. BEERMANN. You do not see any problem here then?

Mr. BRINKLEY. No.

Mr. BEERMANN. In the overall picture, then this type of regulation or registration will be helpful to the States, you feel?

Mr. BRINKLEY. Yes, sir.

Mr. BEERMANN. That is all.



Mr. JONES. If there are no further questions, we thank you, Mr. Brinkley, for your testimony, and also for the suggestions you have made for amendments to the act. They will be given full consideration by the committee.

Mr. BRINKLEY. Thank you very much.

Mr. JONES. We will next hear from Mr. John A. Rodda of the Chemical Specialties Manufacturers Association.

**STATEMENT OF JOHN A. RODDA, ASSISTANT TO THE PRESIDENT, F.M.C. CORP., APPEARING ON BEHALF OF THE CHEMICAL SPECIALTIES MANUFACTURERS ASSOCIATION; ACCOMPANIED BY ROBERT L. ACKERLY, CUMMINGS & SELLERS, WASHINGTON, D.C.**

Mr. RODDA. Mr. Chairman and members, I too have Mr. Robert L. Ackery with me this morning. His firm is Cummings & Sellers who are similarly counsel for Chemical Specialties Manufacturers Association.

My name is John A. Rodda. I am assistant to the president of F.M.C. Corp. I appear this morning as a representative of the Chemical Specialties Manufacturers Association, a nonprofit trade association which was incorporated in 1914. The 500 members of this association represent a major segment of the producers and distributors of chemical specialty products for general household use. The association is divided into six divisions, one of which is the insecticide division. H.R. 6828 and the two companion bills, H.R. 6913 and H.R. 7336, propose to amend the Federal Insecticide, Fungicide, and Rodenticide Act under which the products of the members of our association are registered. We, thus, have a direct interest in this bill.

The position of the pesticide industry generally on this bill has been stated by Mr. Parke C. Brinkley. Mr. Brinkley has explained particularly the impact of the bill on the agricultural chemical industry. This association joins with the National Agricultural Chemicals Association in supporting H.R. 6828 and also endorsing the amendments which Mr. Brinkley has submitted to the committee. The purpose of my statement is to explain briefly the possible impact of this bill on the small package or household and garden segment of the industry.

As you know, most insecticides for use around the household and in the garden are sold in small packages. The available label space on these containers is limited. At the present time to comply with the Federal Insecticide, Fungicide, and Rodenticide Act, the label must contain detailed directions for use, a warning or caution statement of any hazards in the handling and use of the product, an ingredient statement in the form required by the Department of Agriculture, a statement of the net contents and the name and address of the manufacturer as well as the trade name of the product. We understand that the Department of Agriculture is presently engaged in redrafting some of its regulations which will in part require a reference to the directions and precautions to appear on the front panel. Several States in the enforcement of their weights and measures laws now require the statement of net contents to appear on the front of the container. We are, therefore, somewhat concerned with the provision of this bill



which would authorize the Secretary of Agriculture to require the registration number of the product to appear on the label.

The purpose of this requirement, as we understand it, is primarily to assure growers of agricultural crops that a pesticide has been registered with the Department of Agriculture and that application of the pesticide in accordance with the label directions will result either in no residue of the pesticide at the time of harvest or if a residue remains that it will be present in an amount within the official tolerances established by the Food and Drug Administration for such a residue. As the bill is drafted, we interpret it to mean that the Secretary of Agriculture would not be required to insist upon the registration number on the label of every pesticide. It is possible that the Secretary will determine that since the primary purpose of this section of the bill would not have application to household insecticides, the registration number need not appear on these small containers. If the Secretary determines that the registration number should appear on these products, we would anticipate that the requirement would be limited to a number preceded by some brief designation, such as "USDA Reg. No." Space can be found on most labels for a brief statement of this type; however, we are concerned as to the attitude that the 47 States, who also register these products, will take with respect to requiring the State registration number on the label. It would be physically impossible to list a whole series of registration numbers on these small containers.

We request, therefore, that the committee report on this bill point out the seriousness of this problem and the intent of the committee that products may move freely in interstate commerce with only the Federal registration number on the label.

With respect to the remaining sections of this bill, which would delete registration under protest and substitute an administrative hearing procedure, our position is that since the bill affords the industry an opportunity of administrative and judicial review of decisions on registration we support this part of the bill also. Registration under protest has always been viewed by this association as a method of protection against arbitrary action by an administrative official, and a method of obtaining judicial review. We have always understood that a product registered under protest is subject to seizure at any time without notice if the Department of Agriculture decides that the product does not comply with the act. Registration under protest has been used sparingly, which is a tribute to the way in which the industry has cooperated with the U.S. Department of Agriculture in the enforcement of this act.

Substituting an advisory committee procedure along with opportunity for public hearing and judicial review of the decisions of the Secretary under this law is undoubtedly a more orderly and more satisfactory procedure than registration under protest. These procedures will be time consuming and cumbersome, but we recognize that this is necessary where evaluation of research data is required and expert judgments made based upon the results of experimental data. The final decision, of course, rests with the Secretary following exhaustion of the advisory committee and public hearing procedures. The Secretary will thus not be bound by the report and recommendations of the advisory committee, but his judgment will be based upon



the entire administrative record. If an appeal is taken to the court, the court should also base its review on a fair evaluation of the administrative record certified to the court by the Secretary. We believe that the bill with the amendments submitted by Mr. Brinkley satisfies these principles.

Once again we do see the possibility of a serious problem at the State level if this procedure should be adopted by the States. A great majority of the products of this association move in interstate commerce and uniformity of requirements between the Federal and State Governments is essential. We are hopeful, therefore, that the State governments will accord great weight to the action of the Secretary of Agriculture under this amendment and accept for registration at the State level products which are approved by the Secretary for registration by the Federal Government.

We appreciate the opportunity to appear before your committee this morning. We endorse the principles and objectives of this bill. No law is static and an important regulatory statute such as the Federal Insecticide, Fungicide, and Rodenticide Act should be subject to constant review and should be amended when necessary to meet changing conditions. We believe that these amendments will improve the enforcement of this law and strengthen the bill, which at the same time preserving and protecting the basic rights of the regulated industry. The committee can be assured that this industry will continue to cooperate fully with the Congress and with the Department of Agriculture in the enforcement of this law and in the implementation of these amendments.

Mr. JONES. Thank you. Mr. Rodda, I think that your apprehension about the States is something on which the Congress cannot do anything; but I would think that most States would, at least, give recognition to the fact that the law has been improved if this bill is adopted, and that the one Federal registration number would be sufficient. However, I think, as you suggest, that we could include or make some reference to that in our report. We want to thank you for your appearance here this morning on behalf of your industry.

Are there any questions? I am not trying to cut anybody off, but we have only 15 minutes left and we have two more witnesses to hear. So, therefore, would you please all make it as brief as you can in your questioning.

Mr. ROSENTHAL. Mr. Rodda, do you have any comments on the report of the President's Science Advisory Committee concerning the 1,000 deaths that resulted from pesticides?

Mr. RODDA. I must reply in the same manner that Mr. Brinkley did, because I have no basis for commenting. We are not familiar with the source of the information and have not had access to the data upon which it was constructed.

Mr. ROSENTHAL. Do any of the members of your organization report to you about deaths and the like?

Mr. RODDA. We have no machinery, no facilities for that.

Mr. ROSENTHAL. That is not a subject reported upon within your industry?

Mr. RODDA. Not by the association, no, sir.



Mr. ROSENTHAL. No further questions.

Mr. JONES. Mr. Beermann.

Mr. BEERMANN. No questions.

Mr. JONES. Thank you very much, Mr. Rodda.

We will next hear from Mr. Richard T. O'Connell, secretary, National Council of Farmer Cooperatives.

#### STATEMENT OF RICHARD T. O'CONNELL, SECRETARY, NATIONAL COUNCIL OF FARMER COOPERATIVES

Mr. O'CONNELL. Mr. Chairman and members of the committee, I will not read my statement, because the hour grows late but will summarize it.

Mr. JONES. It will be made a part of the record in full. If you will, give us just a gist of it, which will be very helpful, because we will have a quorum call shortly after 12 o'clock, and we would like to complete this session this morning.

Mr. O'CONNELL. Our general purpose for being here today is to let the committee know that a farm group is supporting this measure. We believe it will be beneficial to the farmers since the adverse impact of any difficulties that arise from the use of pesticides generally falls on the shoulders of farmers as well as being a financial burden.

We believe the elimination of the "under protest" sales will tighten up the laws in this area and possibly prevent some of, shall we say, situations that occurred in the cranberry and poultry industries several years ago. We make the comment about cranberries and poultry only as to an improvement of procedural matters. We do not mean to imply that the products involved in those two instances were being sold under protest.

In general, we support this legislation.

We have submitted three amendments, two of which I see, after hearing Mr. Brinkley testify, are identical to his. The third amendment is merely one covering timeliness on the part of the Secretary in submitting reports—just purely a procedural amendment and it does not change the intent of this bill.

(The prepared statement of Richard T. O'Connell follows:)

#### STATEMENT OF NATIONAL COUNCIL OF FARMER COOPERATIVES

I am Richard T. O'Connell, secretary, National Council of Farmer Cooperatives. The National Council is a federation of farmer cooperatives with several members manufacturing agricultural chemicals and a substantial number of member organizations distributing chemicals to nearly 3 million farmers.

We appreciate this opportunity to express our views on H.R. 6828 and other bills pending.

The National Council supports the objectives of H.R. 6828 for two principal reasons: (1) the statutory inclusion of an advisory committee to assist the Secretary in evaluating data, and the selection of its members from the National Academy of Sciences, will give the broad and objective analysis of economic poisons which we believe essential for their continued effectiveness in agriculture; and (2) the eliminating of the sale of economic poisons "under protest" will substantially remove the potentially adverse public relations position the farmer is placed when difficulties arise.

However, there are several amendments we wish to recommend to strengthen the measure.

We will briefly discuss each position.



## ADVISORY COMMITTEES STIMULATE A BROAD-SCALE ANALYSIS

It is our belief when adverse situations arise from the use of economic poisons in the production and marketing phases of agriculture, the farmer generally bears the brunt of the unfavorable publicity and frequently the financial damage as well. We are certain the committee recalls the situations in the cranberry and poultry industries several years ago. The incidents caused a temporary decline in the per capita consumption of these two products and posed a severe financial reversal for farmers until assistance was received from the Government.

We believe the twin tragedies that occurred in cranberries and poultry could have been eliminated or the impact sharply reduced if an advisory committee such as suggested in this measure had been in effect prior to the registration of the chemicals involved and could have been available during the crisis.

The fundamental advantage of employing an advisory committee of competent members of the scientific community is the opportunity to thoroughly analyze, from all aspects and viewpoints, research and other data before a decision is reached. The advisory committee can weigh and judge the conflicts that seem to exist when two or more scientists study the same problem. The committee can also act as a clearinghouse for research work as well as an important adjunct to the Secretary in his decisionmaking processes. We support this procedure.

## SALES "UNDER PROTEST" SHOULD BE ELIMINATED

Much of the publicity furor in recent months has, as this committee is well aware, been concentrated on the sale of economic poisons "under protest." We believe the publicity has far overshadowed the beneficial and effective uses of agricultural chemicals. It can be easily considered as a thorn in the side of agriculture, and a strong weapon in the hands of those who wish to see the reduction or elimination of the use of chemicals in agricultural production and marketing.

Therefore, it is imperative that agriculture remove the stigma of sales "under protest" so that the public can judge the effectiveness of those products approved by the USDA as safe.

We believe the removal of sales "under protest" will cause little if any economic hardship on agriculture or the manufacturers of these products. It is our understanding that approximately one-half dozen products are currently being sold "under protest" out of about 50,000 products approved for use by the USDA.

## AMENDMENTS TO STRENGTHEN THE MEASURE

The amendments we recommend are largely to clarify and improve the procedures contained in H.R. 6828 and do not alter the objectives of the proposed legislation.

On page 3, line 7, we recommend the deletion of the period after the word "Secretary" and insert in lieu thereof a comma and the following words, "or in the alternative the applicant or the registrant may file objections to such notice and request a public hearing thereon. If a petition is not filed within thirty days requesting reference to an advisory committee or if a request for a public hearing is not filed with the time allowed for such filing, this notice shall become the final action of the Secretary with respect to the application or the registration."

The recommended amendment is an attempt to offer alternatives to the procedures the Secretary or the applicant may follow. We believe it is important that fair and equitable procedures be permitted for both the Secretary and the applicant in stating their cases, either privately or publicly. We also favor the inclusion of time limits, such as a specified number of days to complete actions. Time required to make a decision becomes a matter of judgment, but in most occasions a time limit stimulates and spurs the parties in concrete action. The use of the term "final action" by inaction is also good. This will give notice to both parties that after a stated amount of time has elapsed, the prior decision is the one that stands. This eliminates the possible confusion from two or more statements being rendered on the same subject.

Our second recommended amendment is as follows:

On page 4, line 13, after the word "shall" insert a comma and the words "within ninety days after receipt of the report and recommendations of the advisory committee."

Our third amendment is on page 5, line 8. Delete the words "as soon as practicable" and insert in lieu thereof the words, "within ninety days."



Our reasons for the importance of time in expediting the decisions in these last two amendments are the same as we have stated earlier.

Our fourth and final amendment is on page 7, line 10. Delete the words "by substantial evidence when considered on" and insert in lieu thereof the following "by fair evaluation of."

This amendment, in our judgment, establishes continuity where an advisory committee is employed in assisting the Secretary in evaluating the data supplied. It further reduces hasty judgment and narrow interpretation of research data which we believe has been a possibility in the past.

#### SUMMARY

The National Council of Farmer Cooperatives favors the passage of H.R. 6828 and preferably with our recommended amendments. We urge this committee to favorably report H.R. 6828 and actively support its passage in the House.

We appreciate this opportunity to express our views.

Mr. JONES. As to Mr. Brinkley's amendments, yours refers to what portion of the bill?

Mr. O'CONNELL. Our third amendment is, as to page 5, line 8, delete the words "as shown as practical" and insert in lieu thereof the words "within ninety days".

We believe the time element is important in these decisions, not to have them drag out.

Mr. JONES. We all want to see that they expedite these matters as quickly as possible.

Are there any other questions? If not, we want to thank you, Mr. O'Connell. As stated, your complete statement will be made a part of the official record.

Mr. O'CONNELL. Thank you.

Mr. JONES. Our next witness is Mr. John C. Datt, assistant to the director of the Washington office of the American Farm Bureau Federation. We shall be glad to hear from you now.

#### STATEMENT OF JOHN C. DATT, ASSISTANT TO THE DIRECTOR, WASHINGTON OFFICE, AMERICAN FARM BUREAU FEDERATION

Mr. DATT. Mr. Chairman and members, my name is John C. Datt, assistant to the director of the Washington office of the American Farm Bureau Federation.

I believe that you have a copy of my prepared statement before you. I would like to submit it for the record.

Mr. JONES. It will be made a part of the record at this point.

(The prepared statement of John C. Datt follows:)

#### STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

We appreciate this opportunity to present the views of the American Farm Bureau Federation concerning H.R. 6828, H.R. 6913, and H.R. 7336.

This legislation, as we understand it, would amend the Federal Insecticide, Fungicide and Rodenticide Act to do two things:

(1) Require that when the Secretary of Agriculture registers one of the economic poisons he would provide for the label to contain the registration number assigned to that particular product.

(2) Eliminate the provisions whereby economic poisons can be registered by their manufacturers under protest.

Farm Bureau is a free, independent voluntary organization of farm and ranch families. Currently we have over 1,600,000 members in some 2,700 counties and 49 States, and Puerto Rico. Farm Bureau members use substantial quantities of agricultural chemicals and drugs. Therefore, we are quite interested in any legislation that affects their use.

Agricultural chemicals and drugs have become very essential to the economic



production of food. Farmers are vitally interested in protecting the public health and welfare of our consumers at all times. We have a responsibility to see that agricultural chemicals and drugs are properly used. We have conducted educational programs among our members in order to insure proper use.

Farm Bureau in the past has supported legislation to provide for the proper labeling and use of agricultural chemicals and drugs for the protection of public health and welfare.

The proposed legislation is, in our opinion, designed to further provide for proper use of agricultural chemicals and drugs as well as to provide for increased protection to consumers.

The first section of the proposed legislation dealing with the labeling of economic poisons with registration numbers would be of assistance to farmers and ranchers. If these economic poisons contained registration numbers, a producer would then know that the product had been registered and cleared by the U.S. Department of Agriculture for proper use. He would then know that, if he used the product according to directions provided him by the manufacturer, the final food product would be safe for consumers.

The second provision of the bill deals with the elimination of registration under protest. Currently, a manufacturer of an economic poison can present his product to the Secretary of Agriculture for registration. If the product meets the requirements set forth by the law, and carried out by the Secretary, he will register it for proper use. However, in the event that the product fails to meet the procedures established by the Secretary, he can refuse to register the product. Under these circumstances, the manufacturer does have the privilege to proceed and market the product under the so-called registration under protest provision.

While it is our understanding that very few of the products that have been registered under protest would be directly used by agricultural producers, we are concerned about this provision and support legislation to eliminate it.

From the producer's standpoint, it is important that he know that an agricultural chemical or drug has been properly cleared by the Secretary of Agriculture. Even though a manufacturer of a product may be responsible, it is the farmer who takes much of the blame when an economic poison causes injury or harm. A farmer might use one of the products that had been registered under protest and not fully realize this, and therefore subject himself to serious problems.

Because of the discussion that has taken place in recent weeks concerning the use of agricultural chemicals and drugs, we believe it is important that all steps be taken to make it possible for farmers to use them safely. The use of agricultural chemicals and drugs has been largely responsible for providing consumers with low-cost, high-quality food. The use of these products is essential if we are to continue to maintain this high standard in our food production.

Farm Bureau for a number of years has, through all phases of the organization, conducted an aggressive educational program to be certain that individual farmers adhere strictly to the recommendations for the proper use of agricultural chemicals and drugs. We shall continue this educational program, because we recognize that we have a responsibility as farmers and ranchers to see that these products are properly used.

The Farm Bureau supports the passage of H.R. 6828, H.R. 6913, and H.R. 7336, and hopes that the committee will give them favorable early consideration.

We appreciate the opportunity to present our views on this legislation.

Mr. DATT. Our farm members use substantial quantities of agricultural drugs and commodities, and, therefore, we have quite an interest in any legislation that affects their use. Particularly in recent years, agricultural chemicals and drugs have become very essential in the economic production of food. And we, as farmers, have a vital concern in providing and protecting public health and welfare of the consumers. And so we have an interest in this legislation.

The Farm Bureau supports this legislation because we believe that it will assist in improving protection to the consumers and at the same time will be of assistance to the farmers. It will enable them to know when the products have been registered, to know that if an agricultural chemical is made available, that it, in fact, has been registered and approved by the Department of Agriculture.



All throughout the organization, we conduct educational programs, because we are confident that if the directions that are provided on the various agricultural drugs and chemicals are followed, that we can cut down the number of deaths and other problems that come up in this particular area.

Mr. JONES. I think, of course, that all of the farm organizations can be helpful in an educational program. I know that you have been in the past in calling attention to hazards involved. We appreciate the necessity for this.

Are there any questions by members of the committee?

Mr. BEERMANN. There is one question that I would like to ask. If chemicals are used in such large quantities as to be entirely bulk operation, would the responsibility be on the part of the handler or the applicator to follow the instructions?

Mr. DATT. Well, I think that if I understand your question correctly, you are speaking in terms of where you have, say, a spray application by air or something like that, where a substantial quantity is used at one time.

Mr. BEERMANN. Yes. In containers such as tank cars, large containers, larger than just the normal size containers, would they have labels on them? Just how would you handle that?

Mr. DATT. I will ask Mr. Noone to answer that.

**STATEMENT OF JOSEPH A. NOONE, TECHNICAL DIRECTOR, NATIONAL AGRICULTURAL CHEMICALS ASSOCIATION, WASHINGTON, D.C.**

Mr. NOONE. My name is Joseph A. Noone, and I am with the National Agricultural Chemicals Association.

The Federal Insecticide, Fungicide, and Rodenticide Act specifically requires that all containers bear such directions for use as may be necessary for the protection of the public and proper use of the material.

There is a proviso that containers such as tank cars need not have instructions upon them, inasmuch as it is assumed that the purchaser of such large quantities is fully familiar with the product and its use.

If, however, it is a new chemical with which he would not have had prior experience, then he must be given adequate instructions.

Mr. JONES. Just as a matter of procedure, it would be presumed that any manufacturer, distributor of such products, would be assured that the purchaser would be aware of the properties of that substance and the facts that would be necessary for its safe use.

Mr. NOONE. Apart from the legal requirement of the act, yes.

Mr. JONES. Are there any further questions? If not, we want to thank you very much for your appearance here, as well as all of the witnesses. The committee will have an executive session at an early date, and it is possible that we will call upon some of you and from the Department, particularly, before we take any official action on this legislation.

The subcommittee will stand adjourned subject to the call of the Chair.

(Whereupon, the hearing adjourned at 11:55 a.m., subject to the call of the Chair.)



of the National Agricultural Chemical Association, and I am with the National Agricultural Chemical Association.

The National Agricultural Chemical Association is a body of manufacturers of agricultural chemicals, and I am with the National Agricultural Chemical Association.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.

# STATEMENT OF JOSEPH A. NOONE, DIRECTOR, NATIONAL AGRICULTURAL CHEMICAL ASSOCIATION, WASHINGTON, D. C.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.

Mr. Jones: I think I have a question to ask. I am not sure, but I think I have a question to ask. I am not sure, but I think I have a question to ask.







