

Public Law 92-516

AN ACT

October 21, 1972
[H. R. 10729]

To amend the Federal Insecticide, Fungicide, and Rodenticide Act, and for other purposes.

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

Federal Environmental Pesticide Control Act of 1972.

AMENDMENTS TO FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT

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

61 Stat. 163;
78 Stat. 190.

"SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

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

"(b) TABLE OF CONTENTS.—

"Section 1. Short title and table of contents.

"(a) Short title.

"(b) Table of contents.

"Sec. 2. Definitions.

"(a) Active ingredient.

"(b) Administrator.

"(c) Adulterated.

"(d) Animal.

"(e) Certified applicator, etc.

"(1) Certified applicator.

"(2) Private applicator.

"(3) Commercial applicator.

"(4) Under the direct supervision and control of a certified applicator.

"(f) Defoliant.

"(g) Desiccant.

"(h) Device.

"(i) District court.

"(j) Environment.

"(k) Fungus.

"(l) Imminent hazard.

"(m) Inert ingredient.

"(n) Ingredient statement.

"(o) Insect.

"(p) Label and labeling.

"(1) Label.

"(2) Labeling.

"(q) Misbranded.

"(r) Nematode.

"(s) Person.

"(t) Pest.

"(u) Pesticide.

"(v) Plant regulator.

"(w) Producer and produce.

"(x) Protect health and the environment.

"(y) Registrant.

"(z) Registration.

"(aa) State.

"(bb) Unreasonable adverse effects on the environment.

"(cc) Weed.

"(dd) Establishment.

"Sec. 3. Registration of pesticides.

"(a) Requirement.

"(b) Exemptions.

"(c) Procedure for registration.

"(1) Statement required.

"(2) Data in support of registration.

"(3) Time for acting with respect to application.

"(4) Notice of application.

"(5) Approval of registration.

"(6) Denial of registration.

- "(d) Classification of pesticides.
 - "(1) Classification for general use, restricted use, or both.
 - "(2) Change in classification.
- "(e) Products with same formulation and claims.
- "(f) Miscellaneous.
 - "(1) Effect of change of labeling or formulation.
 - "(2) Registration not a defense.
 - "(3) Authority to consult other Federal agencies.
- "Sec. 4. Use of restricted use pesticide; certified applicators.
 - "(a) Certification procedure.
 - "(1) Federal certification.
 - "(2) State certification.
 - "(b) State plans.
- "Sec. 5. Experimental use permits.
 - "(a) Issuance.
 - "(b) Temporary tolerance level.
 - "(c) Use under permit.
 - "(d) Studies.
 - "(e) Revocation.
- "Sec. 6. Administrative review; suspension.
 - "(a) Cancellation after five years.
 - "(1) Procedure.
 - "(2) Information.
 - "(b) Cancellation and change in classification.
 - "(c) Suspension.
 - "(1) Order.
 - "(2) Expedite hearing.
 - "(3) Emergency order.
 - "(4) Judicial review.
 - "(d) Public hearings and scientific review.
 - "(e) Judicial review.
- "Sec. 7. Registration of establishments.
 - "(a) Requirement.
 - "(b) Registration.
 - "(c) Information required.
 - "(d) Confidential records and information.
- "Sec. 8. Books and records.
 - "(a) Requirement.
 - "(b) Inspection.
- "Sec. 9. Inspection of establishments, etc.
 - "(a) In general.
 - "(b) Warrants.
 - "(c) Enforcement.
 - "(1) Certification of facts to Attorney General.
 - "(2) Notice not required.
 - "(3) Warning notices.
- "Sec. 10. Protection of trade secrets, etc.
 - "(a) In general.
 - "(b) Disclosure.
- "Sec. 11. Standards applicable to pesticide applicators.
 - "(a) In general.
 - "(b) Separate standards.
- "Sec. 12. Unlawful acts.
 - "(a) In general.
 - "(b) Exemptions.
- "Sec. 13. Stop sale, use, removal, and seizure.
 - "(a) Stop sale, etc., orders.
 - "(b) Seizure.
 - "(c) Disposition after condemnation.
 - "(d) Court costs, etc.
- "Sec. 14. Penalties.
 - "(a) Civil penalties.
 - "(1) In general.
 - "(2) Private pesticide applicator.
 - "(3) Hearing.
 - "(4) References to Attorney General.
 - "(b) Criminal penalties.
 - "(1) In general.
 - "(2) Private pesticide applicator.
 - "(3) Disclosure of information.
 - "(4) Acts of officers, agents, etc.
- "Sec. 15. Indemnities.
 - "(a) Requirement.
 - "(b) Amount of payment.
 - "(1) In general.
 - "(2) Special rule.

"Sec. 16. Administrative procedure; judicial review.

- "(a) District court review.
- "(b) Review by Court of Appeals.
- "(c) Jurisdiction of district courts.
- "(d) Notice of judgments.

"Sec. 17. Imports and exports.

- "(a) Pesticides and devices intended for export.
- "(b) Cancellation notices furnished to foreign governments.
- "(c) Importation of pesticides and devices.
- "(d) Cooperation in international efforts.
- "(e) Regulations.

"Sec. 18. Exemption of Federal agencies.

"Sec. 19. Disposal and transportation.

- "(a) Procedures.
- "(b) Advice to Secretary of Transportation.

"Sec. 20. Research and monitoring.

- "(a) Research.
- "(b) National monitoring plan.
- "(c) Monitoring.

"Sec. 21. Solicitation of public comments; notice of public hearings.

"Sec. 22. Delegation and cooperation.

"Sec. 23. State cooperation, aid, and training.

- "(a) Cooperative agreements.
- "(b) Contracts for training.

"Sec. 24. Authority of States.

"Sec. 25. Authority of Administrator.

- "(a) Regulations.
- "(b) Exemption of pesticides.
- "(c) Other authority.

"Sec. 26. Severability.

"Sec. 27. Authorization for appropriations.

"SEC. 2. DEFINITIONS.

"For purposes of this Act—

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

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

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

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

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

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

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

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

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

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

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

"(e) **CERTIFIED APPLICATOR, ETC.**—

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

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

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

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

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

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

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

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

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

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

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

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

“(m) **INERT INGREDIENT.**—The term ‘inert ingredient’ means an ingredient which is not active.

“(n) **INGREDIENT STATEMENT.**—The term ‘ingredient statement’ means a statement which contains—

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

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

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

“(p) LABEL AND LABELING.—

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

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

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

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

“(q) MISBRANDED.—

“(1) A pesticide is misbranded if—

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

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

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

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

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

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

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

“(2) A pesticide is misbranded if—

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

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

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

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

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

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

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

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

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

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

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

“(i) the skull and crossbones;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"SEC. 3. REGISTRATION OF PESTICIDES.

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

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

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

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

"(c) PROCEDURE FOR REGISTRATION.—

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

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

"(B) the name of the pesticide;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Publication in
Federal Register.

“(d) CLASSIFICATION OF PESTICIDES.—

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

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

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

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

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

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

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

Publication in
Federal Register.

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

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

“(f) MISCELLANEOUS.—

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

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

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

"SEC. 4. USE OF RESTRICTED USE PESTICIDES; CERTIFIED APPLICATORS.**"(a) CERTIFICATION PROCEDURE.—**

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

Standards.

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

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

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

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

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

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

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

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

Hearing.

"SEC. 5. EXPERIMENTAL USE PERMITS.

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

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

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

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

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

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

"SEC. 6. ADMINISTRATIVE REVIEW; SUSPENSION.

"(a) CANCELLATION AFTER FIVE YEARS—

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

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

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

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

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

Hearing.

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

“(c) **SUSPENSION.**—

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

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

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

80 Stat. 381;
81 Stat. 54.
5 USC 551.

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

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

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

Subpena.

28 USC app.

Report.

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

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

“SEC. 7. REGISTRATION OF ESTABLISHMENTS.

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

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

“(c) INFORMATION REQUIRED.—

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

“(A) which he is currently producing;

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

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

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

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

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

“SEC. 8. BOOKS AND RECORDS.

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

Regulations.

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

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

"SEC. 9. INSPECTION OF ESTABLISHMENTS, ETC.

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

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

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

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

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

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

"(c) ENFORCEMENT.—

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

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

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

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

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

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

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

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

“SEC. 11. STANDARDS APPLICABLE TO PESTICIDE APPLICATORS.

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

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

“SEC. 12. UNLAWFUL ACTS.

“(a) IN GENERAL.—

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

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

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

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

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

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

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

“(F) any device which is misbranded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(1) in the case of a pesticide—

"(A) it is adulterated or misbranded;

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

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

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

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

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

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

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

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

"SEC. 14. PENALTIES.

"(a) CIVIL PENALTIES.—

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

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

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

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

"(b) CRIMINAL PENALTIES.—

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

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

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

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

"SEC. 15. INDEMNITIES.

"(a) REQUIREMENT.—If—

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

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

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

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

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

"(b) AMOUNT OF PAYMENT.—

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

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

"SEC. 16. ADMINISTRATIVE PROCEDURE; JUDICIAL REVIEW.

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

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

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

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

72 Stat. 941;
80 Stat. 1323.

62 Stat. 928.

"SEC. 17. IMPORTS AND EXPORTS.

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

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

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

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

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

"SEC. 18. EXEMPTION OF FEDERAL AGENCIES.

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

"SEC. 19. DISPOSAL AND TRANSPORTATION.

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

Regulations.

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

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

“**SEC. 20. RESEARCH AND MONITORING.**

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

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

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

“**SEC. 21. SOLICITATION OF COMMENTS; NOTICE OF PUBLIC HEARINGS.**

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

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

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

“**SEC. 22. DELEGATION AND COOPERATION.**

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

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

“**SEC. 23. STATE COOPERATION, AID, AND TRAINING.**

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

80 Stat. 944.

74 Stat. 808;

79 Stat. 285.

72 Stat. 775;

85 Stat. 481.

Contract
authority.

Publication in
Federal Register.

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

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

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

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

“SEC. 24. AUTHORITY OF STATES.

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

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

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

“SEC. 25. AUTHORITY OF ADMINISTRATOR.

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

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

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

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

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

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

84 Stat. 1670.
15 USC 1471
note.

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

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

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

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

“SEC. 26. SEVERABILITY.

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

“SEC. 27. AUTHORIZATION FOR APPROPRIATIONS.

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

AMENDMENTS TO OTHER ACTS

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

- 74 Stat. 372. (1) The Federal Hazardous Substances Act, as amended (15 U.S.C. 1261 et seq.);
- 84 Stat. 1670. (2) The Poison Prevention Packaging Act, as amended (15 U.S.C. 1471 et seq.); and
- 52 Stat. 1040. (3) The Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301 et seq.).

EFFECTIVE DATES OF PROVISIONS OF ACT

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

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

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

Savings provision.
61 Stat. 163.
7 USC 135
note.

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

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

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

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

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

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

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

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

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

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

Approved October 21, 1972.

61 Stat. 163.
7 USC 135
note.

Public Law 92-517

AN ACT

October 21, 1972
[S. 4062]

To provide for acquisition by the Washington Metropolitan Area Transit Authority of the mass transit bus systems engaged in scheduled regular route operations in the National Capital area, and for other purposes.

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

National Capital
Area Transit Act
of 1972.

SHORT TITLE

SECTION 1. This Act may be cited as "National Capital Area Transit Act of 1972".

STATEMENT OF FINDINGS AND PURPOSES

SEC. 2. The Congress finds that (1) an adequate and economically sound transportation system or systems, including bus and rail rapid