106TH CONGRESS
1ST SESSION

S. 1464

To amend the Federal Food, Drug, and Cosmetic Act to establish certain requirements regarding the Food Quality Protection Act of 1996, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 29, 1999

Mr. HAGEL (for himself, Mrs. LINCOLN, Mr. ROBERTS, Ms. LANDRIEU, Mr. HUTCHINSON, Mr. COCHRAN, Mr. GRAMS, Mr. ABRAHAM, Mr. SMITH of Oregon, Mr. HOLLINGS, Mr. CRAIG, Mr. GORTON, Mr. GRASSLEY, Mr. CRAPO, Mr. BURNS, Mr. FRIST, Mr. BREAUX, Mr. ASHCROFT, Mr. COVERDELL, Mr. HELMS, and Mr. LOTT) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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A BILL

To amend the Federal Food, Drug, and Cosmetic Act to establish certain requirements regarding the Food Quality Protection Act of 1996, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Regulatory Openness and Fairness Act of 1999''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Food Quality Protection Act of 1996 (Public Law 104–170; 110 Stat. 1489), enacted on August 3, 1996, made many major modifications to section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) that require the Administrator of the Environmental Protection Agency to consider new kinds of information and use additional criteria in regulating pesticide chemical residues and in reviewing tolerances for pesticide chemical residues that had previously been found to be adequate to protect the public health.

(2)(A) Amendments made by the Food Quality Protection Act of 1996 prescribe the use of a number of new risk assessment criteria that require the development of major modifications to regulatory

policies and procedures used by the Administrator to regulate pesticide chemical residues.

(B) Since the enactment of the Food Quality Protection Act of 1996, it has become clear that several of the new concepts embodied in that Act involve a high degree of complexity.

(C) Practical implementation of the concepts demands new scientific tools in addition to the tools that were available when the Food Quality Protection Act of 1996 was enacted.

(3)(A) To reach sound, suitably protective decisions on tolerance reviews under the new criteria, the Administrator also will need a great deal of new data, not only on the newly considered nondietary routes of exposure, but also, in some cases, on dietary exposure and toxicity, so that the Administrator can determine whether pesticide chemicals residues that were found safe under the former criteria satisfy the new criteria as well.

(B) Some data collection efforts are underway to obtain new data for tolerance reviews, but will not yield results for 1 or more years.

(C) In some areas, the need for new data depends on decisions not yet made by the Administrator about what kinds of tests should be conducted

and which compounds should be tested, for tolerance reviews.

(4)(A) The Administrator has instituted public proceedings, relating to the regulations and tolerance reviews, on such topics as what new interpretations and policies are needed, what new kinds of data are needed, how the new data would be used, and how the needed regulatory transition can be achieved.

(B) These proceedings are not yet finished, and on some issues public notice and comment proceedings have been scheduled but have not yet begun.

(5)(A) The Food Quality Protection Act of 1996 amended the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) by adding several provisions that provide flexibility to the Administrator in making the transition to the new approach to regulating pesticide chemical residues.

(B) The Federal Food, Drug, and Cosmetic Act allows a continuing process of refinement and improvement in tolerance decisionmaking, as additional information is collected and as new policies and methods are developed and adopted for the practical implementation of the new requirements in that Act.

(C) The Federal Food, Drug, and Cosmetic Act provides that the data requirements for tolerances must be set out clearly in regulations and guidelines, so that the regulated community will know what types of information the Administrator requires and what testing procedures should be used to develop the information.

(D) Amendments made by the Food Quality Protection Act of 1996 relating to risk assessments affecting tolerances allow only the use of reliable information regarding nondietary exposure routes, which were not previously considered in risk assessments affecting tolerances.

(E) Congress did not anticipate that a tolerance would be revoked because of reliance by the Administrator on estimates or assumptions stemming from absence of that information, without first providing notice of what information is needed and a reasonable opportunity to collect the information.

(F) When a tolerance is under review and the Administrator determines that additional information is needed to support the continuation of the tolerance, the Federal Food, Drug, and Cosmetic Act authorizes the Administrator to postpone the effective date of any tolerance rule resulting from the re-

view, and this authority can be utilized as appropriate in cases in which additional information is pertinent to a tolerance review.

(G) The Federal Food, Drug, and Cosmetic Act permits the Administrator to conduct a tolerance review in stages, as allowed by the available, reliable information.

(6)(A) Although the authorities described in subparagraphs (F) and (G) of paragraph (5) already are provided by law, it appears that further congressional guidance is needed to ensure that decisions of the Administrator relating to tolerance reviews are reasonable, well supported, and balanced, and to avoid disruptions in agriculture, other sectors of the economy, and international trade.

(B) During the transition to revised standards, procedures, and requirements for the regulation of pesticide chemical residues, the Administrator must ensure that decisions are balanced, reasonable, and understandable, and are based on and supported by sound information, in order to avoid unnecessary disruptions in agriculture, the economy, and international trade, and to maintain the public trust in the food supply.

(7) Unless the Administrator implements section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) carefully and wisely, decisions made under that section could cause great harm to—

(A) the safe and affordable food supply of the United States;

(B) the agricultural system of the United States (including food, fiber, nursery, and forestry production, food storage, and transportation);

(C) related industries; and

(D) other private and public sector activities, such as—

(i) public health protection against bacteria and other microorganisms;

(ii) control of insects and diseases; and

(iii) residential and business pest control.

TITLE I—ISSUANCE AND CONTINUATION OF TOLERANCES

SEC. 101. TRANSITION ANALYSIS AND DESCRIPTION OF BASIS FOR DECISIONS RELATING TO TOLERANCE REVIEWS.

Section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) is amended by adding at the end the following:

''(t) TRANSITION ANALYSIS AND DESCRIPTIONS OF BASIS FOR DECISIONS RELATING TO TOLERANCE REVIEWS.—

''(1) APPLICATION OF REQUIREMENTS TO CERTAIN DOCUMENTS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), this subsection applies to any proposed or final rule, order, notice, report, guidance document, or risk assessment (referred to in this subsection as a 'document') that is—

''(i) based on, or results from, any review (including a reassessment) by the Administrator of a tolerance or of the uses of a pesticide chemical for which a tolerance is in effect; and

''(ii) issued or disclosed as described in paragraph (2).

''(B) EXCEPTION.—This subsection does not apply to any document in which the Administrator determines or recommends that no revocation or denial of a tolerance, or other adverse action regarding a tolerance, is required.

''(2) PERIOD OF APPLICABILITY.—This subsection applies to a document that the Administrator issues or otherwise discloses to any member of the public during the period beginning on January 1, 1999, and ending on the date of completion of the process of reviewing tolerances under subsection (q).

''(3) TRANSITION ANALYSIS REPORT.—

''(A) TRANSITION ANALYSIS.—Before issuing any document to which this subsection applies, the Administrator shall conduct a transition analysis of the findings and regulatory steps recommended by or set forth in the document.

''(B) REPORT.—The Administrator shall prepare a report, to be issued with the document, that—

''(i) describes the results of the analysis;

''(ii) describes the extent to which the conclusions in the document are tentative, preliminary, or subject to possible modification because of policy reevaluation, correction of data deficiencies, or use of new data to replace assumptions; and

''(iii) contains the information described in subparagraphs (C) and (D).

''(C) CONTENTS OF REPORT RELATING TO BASIS FOR FINDINGS AND REGULATORY STEPS.—A transition analysis report prepared under this paragraph shall describe the extent to which any finding or regulatory step recommended by or set forth in the analyzed document is based in whole or in part on—

''(i) any assumption, if the Administrator is in possession of data that would make use of the assumption unnecessary;

''(ii) any information about possible exposure from drinking water, or another nonoccupational, nondietary exposure route, that is derived from use of—

''(I) a worst-case assumption;

''(II) a computation or modeling result that is—

"(aa) based on a high-end or upper-bound input; or

"(bb) designed to be a worst-case, high-end, or upper-bound estimate; or

"(III) information that otherwise is not reasonably representative of risks to consumers or to major identifiable subgroups of consumers, on a national or regional basis;

"(iii) any assumption about exposure from drinking water, or another non-occupational, nondietary exposure route, if data that would make use of the assumption unnecessary, and would likely demonstrate a lower level of exposure than that used in the assumption—

"(I) are being developed and will be submitted to the Administrator within a reasonable period—

"(aa) in accordance with a request by the Administrator under subsection (f) or any of the authorities referred to in that subsection; or

"(bb) at the initiative of an interested person; or

"(II) could be obtained by the Administrator by an action taken in accordance with subsection (f);

"(iv) any assumption regarding the method for determining the aggregate exposure to a pesticide chemical or the cumulative effect of exposure to 2 or more pesticide chemicals having a common mechanism of toxicity, if the use of the assumption is based in whole or in part on the absence of data that could be obtained by the Administrator by an action taken in accordance with subsection (f), unless the data that would eliminate the need for use of the assumption have been identified and made known by the Administrator to interested persons and sufficient time has been provided to allow the data to be developed, submitted, and subsequently evaluated by the Administrator;

"(v) any calculation developed by use of the margin of safety described in subsection (b)(2)(C), if the use of the margin

of safety is based in whole or in part on the absence of data that could be obtained by the Administrator by an action taken in accordance with subsection (f), unless the data that would eliminate the need for use of the margin of safety have been identified and made known by the Administrator to interested persons and sufficient time has been provided to allow the data to be developed, submitted, and subsequently evaluated by the Administrator; or

''(vi) any information about an alleged adverse effect relating to a pesticide chemical, if the information is anecdotal, unverified, or scientifically implausible, or comes from any study whose design and conduct has not been found by the Administrator to be scientifically sound with regard to design, conduct, reporting, and data availability.

''(D) ADDITIONAL CONTENTS OF REPORT.—A transition analysis report prepared under this paragraph shall contain information—

"(i) summarizing and responding briefly to comments received by the Administrator from any other person regarding the applicability of any provision of subparagraph (C) to the document analyzed under this subsection;

"(ii) describing briefly the availability and suitability of pesticidal and nonpesticidal alternatives to the pesticide chemical uses being reviewed, including a description of—

"(I) the extent to which (as determined by the Administrator, in consultation with the Secretary of Agriculture) an alternative to the use for which the tolerance under review has been approved that is effective and economical; and

"(II) whether revocation or modification of the tolerance will result in—

"(aa) a significant regional shift of production of food within the United States;

"(bb) an increase in imports of corresponding commodities;

"(cc) an increase in pest control costs;

"(dd) an increase in pest crop damage and yield loss, including quality degradation, due to the lack of an effective alternative; or

"(ee) a disruption of domestic production of an adequate, wholesome, and economical food supply;

"(iii) identifying the data that, if available, would make unnecessary any reliance on any information, assumption, or calculation that is described in clause (ii), (iii), (iv), or (v) of subparagraph (C) and identified in the report;

"(iv) describing the extent to which any finding or regulatory step recommended by or set forth in the document is based in whole or in part on any assumption about toxicity, dietary exposure, or risk from dietary exposure, if data that

would make use of the assumption unnecessary—

"(I) are being developed and will be submitted to the Administrator within a reasonable period—

"(aa) in accordance with a request by the Administrator under subsection (f) or any of the authorities referred to in that subsection; or

"(bb) at the initiative of an interested person; or

"(II) could be obtained by the Administrator by an action taken in accordance with subsection (f); and

"(v) describing the extent to which any finding or regulatory step recommended by or set forth in the document is based in whole or in part on—

"(I) any use of data on the presence or absence of nonadverse effects, rather than data on the presence or absence of adverse effects, as the basis for calculation of allowable exposure levels; or

''(II) any policy that the Administrator may revise after completion of any reevaluation of that policy that is being conducted or is scheduled to be conducted.

''(4) DEFINITION.—In this subsection and subsection (u), the term 'tolerance' has the meaning given the term in section 201 of the Regulatory Openness and Fairness Act of 1999.''.

SEC. 102. INTERIM PROCEDURES FOR REVIEWS OF TOLERANCES.

Section 408 of the Federal Food, Drug, and Cosmetic Act, as amended by section 101, is further amended by adding at the end the following:

''(u) INTERIM PROCEDURES FOR REVIEWS OF TOLERANCES.—

''(1) APPLICATION OF REQUIREMENTS TO CERTAIN ACTIONS.—This subsection applies to—

''(A) any review (including a reassessment) by the Administrator of a tolerance, whether initiated by the Administrator or by petition by another person; and

''(B) any review (including a reassessment) by the Administrator of any registration of a pesticide chemical under the Federal Insecti-

cide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) that is associated with or results from such a tolerance review;

that the Administrator issues during the period described in paragraph (2).

''(2) PERIOD OF APPLICABILITY.—The period referred to in paragraph (1) is the period beginning on January 1, 1999, and ending on the date of completion of the process of reviewing tolerances under subsection (q).

''(3) LIMITATION.—Notwithstanding any other provision of law—

''(A) in any tolerance review (including a reassessment) to which this subsection applies, the Administrator may not base the revocation or denial of, or other adverse action regarding, a tolerance on any information, calculation, or assumption described in subsection (t)(3)(C); and

''(B) in any review (including a reassessment) to which this subsection applies of the registration of a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), the Administrator may not base any adverse action regarding a

registration on any such information, calculation, or assumption.''.

SEC. 103. IMPLEMENTATION RULES AND GUIDANCE.

Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) is amended by adding at the end the following:

''(3) IMPLEMENTATION RULES AND GUIDANCE.—

''(A) IN GENERAL.—In establishing general procedures and requirements to implement this section in accordance with paragraph (1)(C), the Administrator shall issue rules and guidance, including guidance regarding the provisions of this Act regarding aggregate exposure to pesticide chemicals and cumulative effects of exposure to 2 or more pesticide chemicals having a common mechanism of toxicity. The Administrator shall include in such rules and guidance general procedures and requirements to implement the provisions of this Act that were added by amendments made by the Regulatory Openness and Fairness Act of 1999.

''(B) ISSUANCE.—The Administrator shall issue—

''(i) proposed rules and guidance described in subparagraph (A) not later than 180 days after the date of enactment of the Regulatory Openness and Fairness Act of 1999;

''(ii) final rules and guidance described in subparagraph (A) not later than 1 year after the date of enactment of the Regulatory Openness and Fairness Act of 1999; and

''(iii) such revisions to the rules and guidance as the Administrator determines to be necessary and appropriate.''.

SEC. 104. DATA IN SUPPORT OF TOLERANCES AND REGISTRATIONS.

(a) FEDERAL FOOD, DRUG, AND COSMETIC ACT.—Section 408(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(f)) is amended by adding at the end the following:

''(3) ISSUANCE OF GUIDELINES.—

''(A) IN GENERAL.—The Administrator shall issue guidelines specifying the kinds of information that will be required to support the issuance or continuation of a tolerance for a pesticide chemical residue or the exemption

from the requirement of such a tolerance, established under this section. The Administrator shall revise the guidelines from time to time. The guidelines shall specify the conditions under which data requirements will apply to particular types of pesticide chemical residues.

''(B) PROCEDURES.—In issuing the guidelines described in subparagraph (A), the Administrator shall provide notice and an opportunity for comment, except for those guidelines that already have been issued after notice and an opportunity for comment under section 3(c)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)(2)(A)).''.

(b) FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT.—The first sentence of section 3(c)(2)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)(2)(A)) is amended by striking the period and inserting '', after providing notice and an opportunity for comment on the guidelines or revisions by interested parties.''.

SEC. 105. EXPEDITED ACTION.

(a) EXPEDITED ACTION TO PROVIDE EFFECTIVE, ECONOMIC ALTERNATIVES.—Section 3(c)(3) of the Fed-

eral Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)(3)) is amended by adding at the end the following:

"(E) EXPEDITED ACTION TO PROVIDE EFFECTIVE, ECONOMIC ALTERNATIVES.—The Administrator shall expedite the review of any complete application for registration or amended registration of a pesticide under this section, for an experimental use permit under section 5, or for an emergency exemption under section 18, if the application seeks approval for the registration or use of a pesticide—

"(i) that, in the opinion of the Administrator, is likely to provide an effective and economic alternative to the use of a pesticide that has been or is likely to be removed from the market as a result of a review conducted under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a); and

"(ii) for which—

"(I) there is no registered effective and economical alternative (as of the date of submission of the application); or

''(II) the number of the alternatives is insufficient to avoid problems such as pest resistance.''.

(b) COORDINATION.—Section 408(d)(4)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(d)(4)(B)) is amended—

(1) by striking ''tolerance or exemption for'' and inserting ''tolerance or exemption—

''(i) for'';

(2) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(ii) that is needed in connection with an application under section 3(c)(3)(E) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(c)(3)(E)) for approval of an effective and economic alternative.''.

(c) TOLERANCES FOR EMERGENCY USES.—Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(l)(6)) is amended—

(1) by inserting before the first sentence the following:

''(A) IN GENERAL.—'';

(2) by inserting before the third sentence the following:

''(B) PROCEDURE.—'';

(3) by inserting before the fifth sentence the following:

''(C) SAFETY STANDARD.—'';

(4) in the fifth sentence, by striking the period and inserting '', except as described in subparagraph (D).''; and

(5) by adding at the end the following:

''(D) EMERGENCY EXEMPTIONS.—The Administrator may establish a tolerance for a pesticide chemical residue associated with an emergency exemption without regard to other tolerances for a pesticide chemical residue and before reviewing those other tolerances, if the Administrator determines that any incremental exposure that may result from the tolerance associated with the emergency exemption will not pose any significant risk to food consumers.''.

TITLE II—STUDIES AND REPORTS

SEC. 201. DEFINITIONS.

In this title:

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

(2) PESTICIDE CHEMICAL; PESTICIDE CHEMICAL RESIDUE.—The terms ''pesticide chemical'' and ''pesticide chemical residue'' have the meanings given the terms in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Agriculture.

(4) TOLERANCE.—The term ''tolerance'' means a tolerance for a pesticide chemical residue or an exemption from the requirement of such a tolerance, established under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a).

SEC. 202. PRIORITIES AND RESOURCES.

(a) ENVIRONMENTAL PROTECTION AGENCY PROPOSAL.—The Administrator shall prepare a proposal for revising the priorities of and resources available to the Administrator that will allow the Administrator—

(1) to process promptly all—

(A) applications for registration of pesticide chemicals under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

(B) petitions for tolerances (including exemptions) under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a);

(C) requests for experimental use permits, for approval of new inert ingredients, and for emergency exemptions, relating to pesticide chemicals under an Act described in subparagraph (A) or (B); and

(D) requests for decisions on the merits of the applications, petitions, and requests described in subparagraphs (A) through (C); and

(2) to perform tolerance reviews (including reassessments) and other duties relating to pesticide chemicals, as required by the Federal Food, Drug, and Cosmetic Act or the Federal Insecticide, Fungicide, and Rodenticide Act.

(b) DEPARTMENT OF AGRICULTURE PROPOSAL.—The Secretary shall prepare a proposal for revising the priorities of and resources available to the Secretary that will allow the Secretary—

(1) to obtain and provide to the Administrator adequate and timely information on food consumption, pesticide chemical residues in or on food and drinking water, and pesticide chemical use;

(2) to review actions proposed by the Administrator under section 408 of the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act; and

(3) to perform other duties related to the regulation of pesticide chemicals (including pesticide chemical residues).

(c) REPORT.—The Administrator and the Secretary shall prepare and submit to Congress a report containing the proposals described in subsections (a) and (b) not later than 180 days after the date of enactment of this Act.

SEC. 203. INTERNATIONAL TRADE EFFECTS.

(a) ASSESSMENT.—

(1) ASSESSMENT PROGRAM.—The Secretary shall establish and administer a program to continuously assess the strength of major United States agricultural commodities and products in the international marketplace. The commodities and products assessed shall include fruits and vegetables, corn, wheat, cotton, rice, soybeans, and nursery and forest products.

(2) FACTORS.—In carrying out paragraph (1), the Secretary shall examine factors pertinent to assessing the sustainability and competitive strength of each commodity and product in the international

marketplace and the relationship of the factors to regulatory actions taken under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act. The factors examined for each commodity and product shall include commodity changes, regional changes, prices, quality, input costs and availability, and the ratio of imports to exports.

(b) REPORT.—The Secretary shall prepare periodic reports describing the results obtained from the assessment program conducted under subsection (a). The Secretary shall submit the reports to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. The Secretary shall submit the reports not later than October 1, 2000, and October 1 of every second year thereafter through 2010.

SEC. 204. ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established an advisory committee to be known as the Pesticide Advisory Committee (referred to in this section as the ''Advisory Committee'').

(b) MEMBERSHIP.—

(1) COMPOSITION.—The Advisory Committee shall be composed of 20 members, appointed by the

Administrator and the Secretary. The members of the Advisory Committee shall represent a wide variety of interests and viewpoints and shall be appointed from among individuals who are representatives of organizations who are interested in the regulation of pesticide chemicals, including representatives of—

(A) organizations that represent—

(i) food consumers;

(ii) persons with a special interest in environmental protection;

(iii) farmworkers;

(iv) agricultural producers (including persons engaged in crop production, livestock and poultry production, or nursery and forestry production);

(v) nonagricultural pesticide chemical users;

(vi) food manufacturers and processors;

(vii) food distributors and marketers; and

(viii) manufacturers of agricultural and nonagricultural pesticide chemicals; and

(B) Federal and State agencies.

(2) PUBLICATION.—The Administrator shall publish in the Federal Register the name, address, and professional affiliation of each member of the Advisory Committee.

(3) TERMS OF APPOINTMENT.—Each member of the Advisory Committee shall serve for a term of years determined by the Administrator and the Secretary, except that—

(A) the terms of service of the members initially appointed shall be (as specified by the Administrator and the Secretary) for such fewer number of years as will provide for the expiration of terms on a staggered basis;

(B) a member appointed to fill a vacancy occurring prior to the expiration of the term for which a predecessor was appointed, shall be appointed for the remainder of the term; and

(C) the Secretary and the Administrator may extend the term of a member of the Advisory Committee until a new member is appointed to fill the vacancy.

(4) VACANCIES.—Any vacancy occurring in the membership of the Advisory Committee shall be filled in the same manner as the original appoint-

ment. The vacancy shall not affect the power of the remaining members to execute the duties of the Advisory Committee.

(c) DUTIES.—The Advisory Committee shall—

(1) provide advice to the Administrator and the Secretary on matters related to implementation of section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) and the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), including proposed and final rules, policies, procedures, and testing guidelines used to regulate tolerances and pesticide chemical registrations;

(2) foster communication between the Administrator, the Secretary, and the various organizations who represent persons having particular interest in the regulation of pesticide chemicals under the Federal Food, Drug, and Cosmetic Act and the Federal Insecticide, Fungicide, and Rodenticide Act; and

(3) carry out the functions performed by the Tolerance Reassessment Advisory Committee.

(d) MEETINGS.—

(1) FREQUENCY.—The Advisory Committee shall meet at least 2 times per year, at times determined jointly by the Administrator and the Secretary. Not later than 14 days before the date of

each meeting, the Administrator shall publish a notice regarding the meeting in the Federal Register.

(2) OPEN MEETINGS.—The Advisory Committee shall conduct its principal business—

(A) in meetings that are—

(i) open to the public; and

(ii) in facilities that can accommodate the reasonably foreseeable number of persons attending; or

(B) by teleconference, with open access.

(3) FACILITIES.—The Secretary shall be responsible for providing or making arrangements for the meeting facilities or teleconferences.

(e) COMMUNICATIONS.—The Administrator or the Secretary shall ensure that written communications between the Administrator or Secretary, respectively, and the Advisory Committee, are recorded and made available to any person upon request.

(f) CHAIRPERSON.—The Advisory Committee shall select a Chairperson from among its members.

(g) POWERS OF THE ADVISORY COMMITTEE.—

(1) HEARINGS.—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evi-

dence as the Advisory Committee considers advisable to carry out this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—Except as otherwise provided in Federal law, the Advisory Committee may secure directly from any Federal department or agency such information as the Advisory Committee considers necessary to carry out this section. Upon request of the Chairperson of the Advisory Committee, the head of the department or agency shall furnish the information to the Advisory Committee.

(3) POSTAL SERVICES.—The Advisory Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(4) GIFTS.—The Advisory Committee may accept, use, and dispose of gifts or donations of services or property.

(h) ADVISORY COMMITTEE PERSONNEL MATTERS.—

(1) TRAVEL EXPENSES.—

(A) IN GENERAL.—The members of the Advisory Committee shall not receive compensation for the performance of services for the Advisory Committee, but shall be allowed travel expenses, including per diem in lieu of subsist-

ence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Advisory Committee.

(B) FUNDS.—Funds used to provide travel expenses under subparagraph (A) shall be paid by the Administrator from appropriations available for those purposes.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any employee of the Department of Agriculture (and no other Federal employee) may be detailed to the Advisory Committee without reimbursement, and the detail shall be without interruption or loss of civil service status or privilege.

(i) PERMANENT COMMITTEE.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Advisory Committee.

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