

A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Title 7, Subchapter II of the United States Code is hereby revised as follows:

SECTION. 1. REGISTRATION OF PESTICIDES.

Section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136a(c)(5) is hereby amended to read as follows:

“(5) Approval of registration—

“The Administrator shall register a pesticide if the Administrator determines that, when considered with any restrictions imposed under subsection (d) of this section

(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; and

(E) when used in accordance with widespread and commonly recognized practice, it is not likely to jeopardize the survival of a federally listed threatened or endangered species or directly or indirectly alter, in a manner that is likely to appreciably diminish its value, critical habitat for both the survival and recovery of the listed species.”

New paragraphs (5A) and (5B) are hereby added to subsection 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136a(c), immediately after paragraph (5), as follows:

“(5A) Principles to be applied in making the determinations required by Section 5(E).

“(A) In determining whether the criteria set forth in section 3(c)(5)(E) are met, the Administrator shall take into account the best scientific and commercial information and data

1 available, and shall consider all directions for use and restrictions on use specified by the
2 registration. The Administrator shall make this determination employing an economical and
3 effective screening process that includes higher-tiered probabilistic ecological risk assessments,
4 as appropriate. Notwithstanding any other provision of law, the Administrator shall not be
5 required to consult or otherwise communicate with the Secretaries of the Interior and Commerce
6 ("Secretaries") except to the extent specified in subsections 5A(B), (C) or (D).

7 "(B) The Administrator shall request that the Secretaries transmit their best available and
8 authoritative species information and data on federally listed threatened and endangered species'
9 location, life history, habitat needs, distribution, threats, population trends and conservation
10 needs, relevant physical and biological features of designated critical habitat not less than 30
11 days after the Administrator initiates the evaluation underlying the determination required by
12 subsection (5)(E). The Secretaries shall transmit this information and data to the Administrator
13 on a timely basis, unless the Secretaries have provided or made available their best available and
14 authoritative species information and data through a web-based platform that is updated
15 quarterly. No request for information pursuant to this subsection shall be considered or construed
16 to be a request for consultation under any other statute or subject to subsection (5A)(C) or (D) of
17 this Act. The failure of the Secretaries to provide their information or data to the Administrator
18 on a timely basis, as requested pursuant to this subsection, shall not constitute grounds for
19 extending any deadline for action established pursuant to Section 33(f) of this Act.

20 "(C) At the request of the registration applicant, the Administrator shall request
21 consultation with the Secretaries consistent with subsection (5A)(D).

22 "(D) In any consultation initiated pursuant to this subsection, the Administrator and the
23 Secretaries shall comply with the 'Joint Counterpart Endangered Species Act Section 7'
24 Consultation for regulatory actions under the Federal Insecticide, Fungicide and Rodenticide
25 Act' set forth at 50 C.F.R. part 402, Subpart D, as promulgated on September 7, 2004, or as
26 amended."

27 **"(5B) Essentiality and Efficacy.**

28 "The Administrator shall not make any lack of essentiality a criterion for denying
29 registration of any pesticide. Where two pesticides meet the requirements of section 3(c)(5) of

1 the Act, one should not be registered in preference to the other. In considering an application for
2 the registration of a pesticide, the Administrator may waive data requirements pertaining to
3 efficacy, in which event the Administrator may register the pesticide without determining that
4 the pesticide's composition is such as to warrant proposed claims of efficacy. If a pesticide is
5 found to be efficacious by any State under section 24(c) of this Act, 7 U.S.C. § 136v(c), a
6 presumption is established that the Administrator shall waive data requirements pertaining to
7 efficacy for use of the pesticide in such State."

8 **SEC. 2. APPLICABILITY OF 5(E) CRITERIA.**

9 Section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136d(b) is
10 hereby amended to read as follows:

11 "(b) CANCELLATION AND CHANGE IN CLASSIFICATION. — If it appears to the
12 Administrator that a pesticide or its labeling or other material required to be submitted does not
13 comply with the provisions of this Act or, when used in accordance with widespread and
14 commonly recognized practice, generally causes unreasonable adverse effects on the
15 environment or does not meet the criteria of section 3(c)(5)(E) of this Act, the Administrator may
16 issue a notice of the Administrator's intent either

17 "(1) to cancel its registration or to change its classification together with the
18 reasons (including the factual basis) for the Administrator's action, or

19 "(2) to hold a hearing to determine whether or not its registration should be
20 canceled or its classification changed. Such notice shall be sent to the registrant and made
21 public. In determining whether to issue any such notice, the Administrator shall include
22 among those factors to be taken into account the impact of the action proposed in such
23 notice on production and prices of agricultural commodities, retail food prices, and
24 otherwise on the agricultural economy. At least 60 days prior to sending such notice to
25 the registrant or making public such notice, whichever occurs first, the Administrator
26 shall provide the Secretary of Agriculture with a copy of such notice and an analysis of
27 such impact on the agricultural economy. If the Secretary comments in writing to the
28 Administrator regarding the notice and analysis within 30 days after receiving them, the

1 Administrator shall publish in the Federal Register (with the notice) the comments of the
2 Secretary and the response of the Administrator with regard to the Secretary's comments.
3 If the Secretary does not comment in writing to the Administrator regarding the notice
4 and analysis within 30 days after receiving them, the Administrator may notify the
5 registrant and make public the notice at any time after such 30-day period
6 notwithstanding the foregoing 60-day time requirement. The time requirements imposed
7 by the preceding 3 sentences may be waived or modified to the extent agreed upon by the
8 Administrator and the Secretary. Notwithstanding any other provision of this subsection
9 (b) and section 25(d), in the event that the Administrator determines that suspension of a
10 pesticide registration is necessary to prevent an imminent hazard to human health, then
11 upon such a finding the Administrator may waive the requirement of notice to and
12 consultation with the Secretary of Agriculture pursuant to subsection (b) and of
13 submission to the Scientific Advisory Panel pursuant to section 25(d) and proceed in
14 accordance with subsection (c). When a public health use is affected, the Secretary of
15 Health and Human Services should provide available benefits and use information, or an
16 analysis thereof, in accordance with the procedures followed and subject to the same
17 conditions as the Secretary of Agriculture in the case of agricultural pesticides. The
18 proposed action shall become final and effective at the end of 30 days from receipt by the
19 registrant, or publication, of a notice issued under paragraph (1), whichever occurs later,
20 unless within that time either (i) the registrant makes the necessary corrections, if
21 possible, or (ii) a request for a hearing is made by a person adversely affected by the
22 notice. In the event a hearing is held pursuant to such a request or to the Administrator's
23 determination under paragraph (2), a decision pertaining to registration or classification
24 issued after completion of such hearing shall be final. In taking any final action under this
25 subsection, the Administrator shall consider restricting a pesticide's use or uses as an
26 alternative to cancellation and shall fully explain the reasons for these restrictions, and
27 shall include among those factors to be taken into account the impact of such final action
28 on production and prices of agricultural commodities, retail food prices, and otherwise on
29 the agricultural economy, and the Administrator shall publish in the Federal Register an
30 analysis of such impact."

1 **SEC. 3. IMPLEMENTATION OF THE ACT.**

2 ~~(a)~~ The standards for approval of registration of a pesticide, Section 3(c)(5) of the Federal
3 Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136a(c)(5) as amended, shall be in full
4 force and effect on October 1, ~~2019~~.

5 (b) Section 3(g)(1)(A) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7
6 U.S.C. § 136a(g)(1)(A) is hereby amended by adding a new subsection (v) and renumbering
7 subsection (v) as (vi). Subsection (v) as amended shall read as follows:

8 ~~“(v)~~ ENSURING PROTECTION OF SPECIES AND HABITAT. – The Administrator
9 shall complete the determinations required by section 3(c)(5)(E) for an active ingredient
10 consistent with the periodic review of registrations in clauses (ii) and (iii) of this section and in
11 accordance with the following schedule:

12 (1) ~~not later than October 1, 2026~~, any active ingredient ~~first registered on or~~
13 before October 1, 2007;

14 (2) not later than October 1, ~~2034~~, any active ingredient first registered after
15 October 1, 2007 but before the effective date of this amendment to the Act; and

16 (3) ~~not later than 48 months after the effective date of registration~~, any active
17 ingredient first registered after October 1, 2021; and

18 (4) not later than 24 months after the effective date of this amendment to the Act,
19 the Administrator shall publish (and from time to time thereafter shall revise) a schedule
20 for completing the determinations required by section 3(c)(5)(E) and this subsection.”

21 ~~(c)~~ The Administrator shall ~~renegotiate existing settlements in court cases that relate to~~
22 the relationship between the Endangered Species Act and this Act to conform to the deadlines,
23 authorities and standards of this Act. ~~Not later than 24 months after the date of enactment of this~~
24 Act, the Administrator shall submit to the Committee on Agriculture of the House of
25 Representatives and the Committee on Agriculture, Nutrition, and Forestry a report that
26 describes actions taken by the Administrator to implement this subsection.

27 ~~(d)~~ Notwithstanding any other law, failure of the Administrator to consult with the
28 Secretaries of the Interior and Commerce, except as provided by this Act, is not actionable in any

1 court after the effective date of this Act. ~~In any existing settlement of a court case, pending court~~
2 ~~case or future litigation, the sole and exclusive remedy for the Administrator's failure to consult~~
3 ~~with the Secretaries of the Interior and Commerce, except as provided by this Act, shall be~~
4 ~~scheduling the determinations required by section 3(c)(5)(E) for an active ingredient consistent~~
5 ~~with the periodic review of registrations established by this section of the Act.~~

6 (e) Within 180 days after the effective date of this amendment to the Act, the
7 Administrator shall publish ~~(and from time to time thereafter shall revise) a work plan and~~
8 ~~processes for implementing and enforcing standards of registration consistent with section~~
9 ~~3(c)(5)(E) consistent with registration reviews and other periodic reviews."~~

1 **SEC. 4. UNLAWFUL ACTS.**

2 Section 12 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136j, is
3 amended by adding a new subsection (c) as follows:

4 “(c) If the Administrator determines that a pesticide meets the criteria set forth in Section
5 3(c)(5)(E) and the Administrator has registered the pesticide pursuant to this Act, then any
6 incidental take of a federally listed threatened or endangered species resulting from the lawful
7 use of such pesticide pursuant to this Act shall not be unlawful pursuant to Section 9(a)(1)(B) or
8 4(d) of the Endangered Species Act of 1973 as amended, 16 U.S.C § 1533(d) and
9 1538(a)(1)(B).”

10 **SEC. 5. CONFORMING AMENDMENTS.**

11 Section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136a(c)(7)
12 is hereby amended to read as follows:

13 “(7) REGISTRATION UNDER SPECIAL CIRCUMSTANCES. —Notwithstanding the
14 provisions of paragraph (5)—

15 “(A) The Administrator may conditionally register or amend the registration of a pesticide if the
16 Administrator determines that (i) the pesticide and proposed use are identical or substantially
17 similar to any currently registered pesticide and use thereof, or differ only in ways that would not
18 significantly increase the risk of unreasonable adverse effects on the environment and when used
19 in accordance with widespread and commonly recognized practice, it is not likely to jeopardize
20 the survival of a federally listed threatened or endangered species or directly or indirectly alter in
21 a manner that is likely to appreciably diminish the value of critical habitat for both the survival
22 and recovery of the listed species, and (ii) approving the registration or amendment in the
23 manner proposed by the applicant would not significantly increase the risk of any unreasonable
24 adverse effect on the environment and it is not likely to jeopardize the survival of a federally
25 listed threatened or endangered species or directly or indirectly alter in a manner that is likely to
26 appreciably diminish the value of critical habitat for both the survival and recovery of the listed
27 species. An applicant seeking conditional registration or amended registration under this
28 subparagraph shall submit such data as would be required to obtain registration of a similar

1 pesticide under paragraph (5). If the applicant is unable to submit an item of data because it has
2 not yet been generated, the Administrator may register or amend the registration of the pesticide”
3 “under such conditions as will require the submission of such data not later than the time such
4 data are required to be submitted with respect to similar pesticides already registered under this
5 Act.
6 “(B) The Administrator may conditionally amend the registration of a pesticide to permit
7 additional uses of such pesticide notwithstanding that data concerning the pesticide may be
8 insufficient to support an unconditional amendment, if the Administrator determines that (i) the
9 applicant has submitted satisfactory data pertaining to the proposed additional use, and (ii)
10 amending the registration in the manner proposed by the applicant would not significantly
11 increase the risk of any unreasonable adverse effect on the environment and it is not likely to
12 jeopardize the survival of a federally listed threatened or endangered species or directly or
13 indirectly alter in a manner that is likely to appreciably diminish the value of critical habitat for
14 both the survival and recovery of the listed species. Notwithstanding the foregoing provisions of
15 this subparagraph, no registration of a pesticide may be amended to permit an additional use of
16 such pesticide if the Administrator has issued a notice stating that such pesticide, or any
17 ingredient thereof, meets or exceeds risk criteria associated in whole or in part with human
18 dietary exposure enumerated in regulations issued under this Act, and during the pendency of
19 any risk-benefit evaluation initiated by such notice, if (I) the additional use of such pesticide
20 involves a major food or feed crop, or (II) the additional use of such pesticide involves a minor
21 food or feed crop and the Administrator determines, with the concurrence of the Secretary of
22 Agriculture, there is available an effective alternative pesticide that does not meet or exceed such
23 risk criteria. An applicant seeking amended registration under this subparagraph shall submit
24 such data as would be required to obtain registration of a similar pesticide under paragraph (5). If
25 the applicant is unable to submit an item of data (other than data pertaining to the proposed
26 additional use) because it has not yet been generated, the Administrator may amend the
27 registration under such conditions as will require the submission of such data not later than the
28 time such data are required to be submitted with respect to similar pesticides already registered
29 under this Act.”
30

Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136c is hereby amended to read as follows:

“SEC. 5. EXPERIMENTAL USE PERMITS.”

“(a) ISSUANCE.—Any person may apply to the Administrator for an experimental use permit for a pesticide. The Administrator shall review the application. After completion of the review, but not later than one hundred and twenty days after receipt of the application and all required supporting data, the Administrator shall either issue the permit or notify the applicant of the” “Administrator’s determination not to issue the permit and the reasons therefor. The applicant may correct the application or request a waiver of the conditions for such permit within thirty days of receipt by the applicant of such notification. The Administrator may issue an experimental use permit only if the Administrator determines that the applicant needs such permit in order to accumulate information necessary to register a pesticide under section 3 of this Act. An application for an experimental use permit may be filed at any time.

“(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, the Administrator 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 and whether? it is not likely to jeopardize the survival of a federally listed threatened or endangered species or directly or indirectly alter in a manner that is likely to appreciably diminish the value of critical habitat for both the survival and recovery of the listed species. All results of such studies shall be reported to the Administrator before such pesticide may be registered under section 3.

1 “(e) REVOCATION.—The Administrator may revoke any experimental use permit, at any time,
2 if the Administrator finds that its terms or conditions are being violated, or that its terms and
3 conditions are inadequate to avoid unreasonable adverse effects on the environment and ensure
4 that? it is not likely to jeopardize the survival of a federally listed threatened or endangered
5 species or directly or indirectly alter in a manner that is likely to appreciably diminish the value
6 of critical habitat for both the survival and recovery of the listed species.”

7 “(f) STATE ISSUANCE OF PERMITS.—Notwithstanding the foregoing provisions of this
8 section, the Administrator shall, under such terms and conditions as the Administrator may by
9 regulations prescribe, authorize any State to issue an experimental use permit for a pesticide. All
10 provisions of section 11 relating to State plans shall apply with equal force to a State plan for the
11 issuance of experimental use permits under this section.”

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

20
21 Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136p is hereby
22 amended to read as follows:

23 **“SEC. 18. EXEMPTION OF FEDERAL AND STATE AGENCIES.**

24 “The Administrator may, at the Administrator’s discretion, exempt any Federal or State agency
25 from any provision of this Act if the Administrator determines that emergency conditions exist
26 which require such exemption and it is not likely to jeopardize the survival of a federally listed
27 threatened or endangered species or directly or indirectly alter in a manner that is likely to
28 appreciably diminish the value of critical habitat for both the survival and recovery of the listed
29 species. The Administrator, in determining whether or not such emergency conditions exist, shall

1 consult with the Secretary of Agriculture and the Governor of any State concerned if they request
2 such determination.”

3
4 Section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136v(c) is
5 hereby amended to read as follows:

6 **“SEC. 24. AUTHORITY OF STATES.**

7 **“(c) ADDITIONAL USES. —**

8 **“(1)** A State may provide registration for additional uses of federally registered pesticides
9 formulated for distribution and use within that State to meet special local needs in accord with”
10 “the purposes of this Act and if registration for such use has not previously been denied,
11 disapproved, or canceled by the Administrator. Such registration shall be deemed registration
12 under section 3 for all purposes of this Act, but shall authorize distribution and use only within
13 such State.

14 **“(2)** A registration issued by a State under this subsection shall not be effective for more than
15 ninety days if disapproved by the Administrator within that period. Prior to disapproval,
16 the Administrator shall, except as provided in paragraph (3) of this subsection, advise the State
17 of the Administrator’s intention to disapprove and the reasons therefor, and provide the
18 State time to respond. The Administrator shall not prohibit or disapprove a registration issued by
19 a State under this subsection (A) on the basis of lack of essentiality of a pesticide or (B) except
20 as provided in paragraph (3) of this subsection, if its composition and use patterns are similar to
21 those of a federally registered pesticide and it is not likely to jeopardize the survival of a
22 federally listed threatened or endangered species or directly or indirectly alter in a manner that is
23 likely to appreciably diminish the value of critical habitat for both the survival and recovery of
24 the listed species..

25 **“(3)** In no instance may a State issue a registration for a food or feed use unless there exists a
26 tolerance or exemption under the Federal Food, Drug, and Cosmetic Act that permits the residues
27 of the pesticide on the food or feed. If the Administrator determines that a registration issued by
28 a State is inconsistent with the Federal Food, Drug, and Cosmetic Act, or the use of, a pesticide
29 under a registration issued by a State constitutes an imminent hazard, the Administrator may
30 immediately disapprove the registration.”