

PESTICIDES REGULATION: CURRENT ISSUES

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AUTHOR:

James V. Aidala

Environment and Natural Resources Policy Division

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ISSUE DEFINITION

Ever since the Federal Insecticide, Fungicide, and Rodenticide Act was completely rewritten in 1972 (P.L. 92-516), controversies about its implementation have required frequent and continuing congressional attention. To ensure close oversight and a sense of accountability, Congress has been reluctant to authorize the Act for more than one or two years, and it has enacted significant "mid-course corrections" twice -- in 1975 (P.L. 94-140) and 1978 (P.L. 95-396). The 97th Congress again considered reauthorizations (which expired at the end of FY81), along with a series of further amendments correcting problems in the basic Act. The three areas of most concern were (1) the handling of data for registration of pesticides; (2) public access to health and environmental data; and (3) the extent to which States could require additional data for registrations. Since the 97th Congress failed to enact the reauthorization, the 98th Congress had to address these and other issues. However, only a single one-year reauthorization was passed during the first session, and Congress must again reconsider if major statutory amendments are warranted.

BACKGROUND AND POLICY ANALYSIS

Pesticides are chemicals used to control many kinds of pests: insects that attack crops, destroy materials, and serve as disease vectors; weeds; fungi and other disease-causing organisms; nematodes; and others. They have become major components of agricultural production and of health protection. Against their benefits, certain hazards must be weighed. Pesticides may be highly toxic, some are persistent in the environment, and many pose risks to nontarget organisms.

During World War II, synthetic organic pesticides were developed for use in the War effort. After the War, the pesticide industry expanded rapidly. In 1947, Congress enacted the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) to protect farmers from ineffective and dangerous pesticides. It accomplished this through registration of labels that were required on all pesticides. The regulatory authority to control pesticides use comes through the requirement that before a pesticide can be marketed, it must be granted a "registration", a decision based on a determination of what uses are safe and any necessary use restrictions.

Over the next two decades, concern grew about hazards to health and the environment from pesticides. In response, Congress enacted the Federal Environmental Pesticide Control Act in 1972 (P.L. 92-516). These amendments, which rewrote FIFRA, provided for direct controls on the use of pesticides, for classification of selected pesticides into a restricted use category, for registration of manufacturing plants, and for a national monitoring program for pesticide residues. It also added environmental effects to the risks to be weighed in the pesticide registration process.

From the first, the Environmental Protection Agency has had difficulty with its pesticides regulation program and with implementing the 1972 amendments. The Agency has frequently found itself being criticized both by proponents for greater regulation of pesticide use and by those urging less government interference in the pesticide field. Generally, those who benefit from the sale or use of pesticides charged the Agency with unreasonably

restricting pesticides and thereby adversely affecting the Nation's agricultural economy. Others charged the Agency with not being restrictive enough and thereby allowing human beings and the environment to be exposed to potentially hazardous chemicals. Issues of widespread concern have been Agency resources, deadlines, data validity, data confidentiality, and hazard assessment.

EPA's difficulties in carrying out the provisions of FIFRA and the controversies inherent in the task of balancing benefits and risks in regulating pesticide uses have led the FIFRA legislative committees to limit authorizations for the Act to one or two years. The committees thus are assured of continuing oversight and increased sensitivity of the Agency to congressional concerns.

Thus, virtually every year the most immediate pesticide issue is reauthorization of FIFRA. In the reauthorization process, a number of other issues recur:

Implementation Problems. Example: The 1972 amendments required EPA to reregister some 50,000 pesticide uses, a workload that proved impossible in the 4 years allowed. The deadline was first extended in 1975, and then generic registration was established in 1978. Additional flexibility may be needed.

Decision Formulation. Efforts to increase acceptability of EPA decisions led Congress in 1975 to require EPA to consult with USDA on decisions. Congress later included provisions for congressional vetoes of EPA regulations: amendments providing congressional vetoes were enacted in 1980. Another proposal has been for establishment of a scientific forum for resolution of controversial decisions.

Controversial Decisions. Examples: EPA restricted the use of mirex, a pesticide used to kill the imported fire ant. There have been unsuccessful legislative efforts to reverse this decision. A similar controversy surrounds the domestic use of the herbicide 2,4,5-T, which is restricted because of possible health dangers (2,4,5-T was a component of Agent Orange, used in Vietnam, and allegations of health damages to veterans have also led to congressional concern).

The Federal Pesticide Act of 1978 (P.L. 95-396) culminated 6 years of efforts to overcome implementation obstacles and other problems arising from the 1972 amendments to the Federal Insecticide, Fungicide and Rodenticide Act.

Briefly, the 1978 Pesticide Act expedited the registration and classification processes by providing for registration on the basis of the generic chemical rather than end-product, allowing conditional registration, developing special limited data requirements for registering minor uses of pesticides, providing the developer of a pesticide with a 10-year exclusive use of data period, and allowing currently approved pesticides to be classified for either general or restricted use without waiting for finalization of the re-registration process. In addition, States were given primary enforcement responsibilities for the Act after meeting requirements for adequate pesticide use laws, regulations, and enforcement procedures. To

improve EPA's risk assessment analysis that leads to decisions by the Administrator, the new Act required the Agency to obtain operating guidelines from its scientific advisory panel, whose existence was extended until September 1981. Comments, evaluations, and recommendations of the panel are published in the Federal Register.

The 1978 Pesticide Act required the Agency, in coordination with USDA, to conduct research into integrated pest management, defined as the balanced use of such cultural, biological, and chemical measures as are most appropriate to a particular situation. EPA's monitoring activities are to include developing procedures for monitoring air, soil, water, man, plants, and animals for incidental pesticide exposure and quantifying this exposure as well as identifying its source and relationship to human and environmental effects.

In the 96th Congress, legislation on pesticides primarily concerned extending authorizations. Action on this legislation also gave the House and Senate Committees on Agriculture the opportunity to oversee EPA's pesticide programs and decisions. During the 1st session, legislation to authorize FIFRA programs for FY80 died when the House and Senate were unable to reach conference agreement on a congressional veto provision. In the second session, Congress passed H.R. 7018, which was signed as P.L. 96-539 on Dec. 17, 1980. It authorized \$77.5 million for FY81 and, retrospectively, \$72.16 million for FY80. It added some procedural requirements for scientific review of decisions to suspend uses of pesticides and for peer review of scientific studies conducted under authority of FIFRA. Also (after initial rejection of H.R. 7018 on the floor), it included a congressional veto provision.

LEGISLATIVE ACTIVITY -- 97TH CONGRESS

The 97th Congress could not agree on a bill reauthorizing FIFRA. Funding continues, however, under the FY83 appropriations bill (P.L. 97-272).

Controversial issues behind the law's implementation surfaced and were unable to be resolved legislatively. The stalemate came about when the House-passed bill (H.R. 5203), though reported by the Senate Agriculture Committee with amendments, was not brought to the Senate floor for a vote. The three major issues behind this bill were:

- (1) exclusive use of registration data (H.R. 5203 granted registrants "exclusive use" of their data for fifteen years);
- (2) public access to pesticides registration health and safety data (attempts were made to require a reading room concept for public review of data, but H.R. 5203, as passed, only required EPA to expeditiously implement a public access system according to existing provisions of the 1978 FIFRA); and
- (3) State requirements for registration data beyond that required by the Federal statute (attempts to restrict States' ability to require additional data failed).

(For a full description of these issues and the legislative trail of H.R. 5203 in the 97th Congress, see archived IB77074 -- An Overview of Issues Through the 97th Congress.)

In the closing days of the 97th Congress, the House Subcommittee on Department Operations, Research, and Foreign Agriculture released a draft staff report which continued to fuel the controversies surrounding the implementation of FIFRA.

The major issues examined in the draft report, "Regulatory Procedures and Public Health Issues in the EPA's Office of Pesticide Programs" (OPP), were:

- (1) Are FIFRA registration requirements being circumvented through abuse of Emergency Exemptions and Special Local Need provisions?
- (2) Have EPA/OPP's risk assessment policies -- including both the interpretation of chronic health test data and allowable levels of estimated risk -- changed significantly since 1980, while avoiding procedures for peer review and public comment?
- (3) Are OPP's current decisions regarding allowable pesticide residues -- especially in light of possible changes in risk assessment policies -- adequately protecting human health and the environment?
- (4) Is the amount, quality, and management of the data base upon which pesticide decisions are made adequate for OPP to make informed decisions? and
- (5) Has the pesticide program received adequate financial resources to properly implement the requirements of FIFRA?

LEGISLATIVE ACTIVITY -- 98TH CONGRESS

As one of its first orders of business in the 98th Congress, on Feb. 22 and 23, 1983, the Subcommittee on Department Operation, Research, and Foreign Agriculture held a hearing on the draft report. Some critics claimed the staff report shows the need for major revisions in FIFRA to address both current and more longstanding questions about implementing FIFRA. Nonetheless, on Apr. 27, 1983, Representative Brown, chairman of the Subcommittee, introduced H.R. 2785, proposing only minor amendments, reinstating the Scientific Advisory Panel, and reauthorizing FIFRA for one year. It was explained that at this time the issues raised by the staff report would be best dealt with through continuing oversight hearings of the program instead of additional legislative changes. The Subcommittee considered the bill on Apr. 27, and it approved H.R. 2785 after amending it to reauthorize FIFRA for 2 years. On May 3 the full Agriculture Committee amended the bill to be only a one-year reauthorization, and it was reported to the House on May 10 (H.Rept. 98-104). On May 17, 1983, the bill was called up by the House under Suspension of Rules and passed by voice vote.

In the Senate, on May 11, Senator Helms, chairman of the Agriculture Committee, introduced the Administration bill, S. 1263, which is a simple reauthorization of FIFRA for 2 years (including reactivating the Scientific

Advisory Panel). The Committee held hearings on the bill on May 24, 1983.

The debate over a two-year as opposed to a one-year extension reflects concern over the magnitude of the FIFRA implementation problems at EPA. Supporters of the one-year extension want the opportunity to review EPA's progress in overcoming these difficulties as soon as possible. Supporters of the two year extension, while not necessarily downplaying the significance of the problems, argue that during 1984, a Presidential election year, Congress will not be able to give FIFRA the kind of thoughtful review it deserves.

Late in the first session the Senate nonetheless decided to accept the House bill with the one-year reauthorization. On Nov. 4 the bill was discharged from the Committee by unanimous consent. Finally, on the last day of the first session, Nov. 18, H.R. 2785 passed the Senate without amendment by voice vote. It was signed into law Dec. 2, 1983 (P.L. 98-201).

A further complication in considering FIFRA arises from an Apr. 19, 1983, decision of the U.S. District Court for the Eastern District of Missouri that held certain provisions of FIFRA unconstitutional (Monsanto Co. v. Acting Administrator, U.S. Environmental Protection Agency). The decision referred to the provisions regarding registrant data sharing and compensation for use of the data as well as public disclosure of that data. The Agency is currently considering implications of the ruling for the product registration process, and has appealed the decision.

Most recently, an extensive package of FIFRA amendments was introduced in both the House and Senate. H.R. 3818 (Harkin et al.) and S. 1774 (Proxmire et al.) is titled the FIFRA Reform Act, "to better protect the environment and man from the hazards of pesticides." It is supported by a coalition of environmental and farm labor groups. Hearings on the bill have been held by the DORFA subcommittee in late 1983. In the Senate, no action on the bill has been scheduled.

An issue of increasing congressional concern has been the pesticide Ethylene Dibromide, which has caused cancer in laboratory animals tests. EPA suspended most EDB use in September 1983. No EDB residue levels in food had been established as safe by EPA, and in December State officials in Florida issued stop sale orders for foods which contained any detectable levels of EDB. Other States began to conduct their own analyses and pressed EPA to determine allowable levels. Finally in February and March of 1984, EPA announced recommended levels as a guide to State actions. However, controversies surrounding the regulatory history of EDB and its possible health risks have emerged as a major pesticide issue for the second session of the 98th Congress. (For further information, see CRS Info Pak Ethylene Dibromide, IP0280E.)

In light of the EDB situation, H.R. 5495 (Waxman) has been introduced to achieve two broad goals. First, the bill would grant EPA and FDA authority to more quickly revoke or impose residue tolerances in certain emergency situations. Second, it would greatly accelerate the development of chronic and other health data for pesticides which do not have a complete or reliable data base which fulfills all current regulatory requirements. The bill only covers pesticides for which there is a food tolerance granted under the Federal Food, Drug, and Cosmetic Act. Hearings on the bill are scheduled for May 1984.

Related Issues

The issue of data compensation and trade secrets would be affected by patent legislation being considered in the Senate: S. 1306, supported by the National Agricultural Chemicals Association, would add up to 7 years to pesticide patents.

The problem of Agent Orange and possible health effects suffered by Vietnam veterans was the subject of several bills, including: H.R. 462, H.R. 1961, H.R. 209, S. 786, and S. 991. (For further information see IB83043 -- Agent Orange: Veterans' Complaints and Studies of Health Effects.)

On the domestic use side of the 2, 4, 5,-T/dioxin issue, H.R. 2799 would promote forestry employment, control vegetation expenditures, and foster safe use of herbicides on public forest lands.

Another herbicide-related issue concerns restrictions on the use of foreign aid funds to finance herbicide spraying of marijuana. The restriction arose from concern that marijuana sprayed with the herbicide paraquat might contain residues that could harm users. H.Res. 143, however, would direct that the U.S. should attempt to persuade Columbia to begin such an eradication program.

Finally, the issue of exports of hazardous substances has been reopened by Congress since President Reagan rescinded President Carter's Executive Order setting out a Federal regulatory policy for dealing with exports of hazardous substances, including the export of pesticides that are banned or restricted domestically. H.R. 2467 would reestablish a Federal policy on the export of hazardous substances.

LEGISLATION

P.L. 98-201, H.R. 2785

Amends the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act relating to the scientific advisory panel and extends the authorization for appropriations for such Act. Introduced Apr. 27, 1983; referred to Committee on Agriculture. Reported May 11, 1983 (H.Rept. 98-104); passed House May 17, 1983, amended. Passed Senate Nov. 18, 1983. Signed into law Dec. 2, 1983.

H.R. 2799 (Weaver)

Defines the conditions for use of phenoxy herbicides on Federal lands managed by the Bureau of Land Management or by the United States Forest Service. Introduced Apr. 27, 1983; referred to more than one committee.

H.R. 2961 (McCollum)

Amends the Federal Insecticide, Fungicide, and Rodenticide Act to require the denial of registration of a pesticide unless there is submitted certain third-party data demonstrating that such pesticide will not cause unreasonable adverse effects on the environment. Introduced May 10, 1983; referred to House Committee on Agriculture.

H.R. 3254 (Heftel)

Protects the American public from consuming potentially unsafe pesticide

residues on imported foodstuffs; to foster prudent and equitable regulatory requirements and standards for U.S. producers of agricultural commodities competing with producers in other countries in international and domestic markets; and to improve the international exchange of scientific information on the properties, safety, benefits, and risks of pesticide use. Introduced June 8, 1983; referred to Committee on Agriculture.

H.R. 3818 (Harkin)

Amends the Federal Insecticide, Fungicide, and Rodenticide Act to better protect the environment and man from the hazards of pesticides, and for other purposes. Introduced Aug. 4, 1983; referred to Committee on Agriculture.

H.R. 5495 (Waxman)

Amends section 408 of the Federal Food, Drug, and Cosmetic Act to authorize emergency action with respect to pesticide chemicals which present an imminent hazard to the public health, to revise the procedures under such section for changes in tolerances and exemptions for pesticide chemicals, and for other purposes. Introduced Apr. 12, 1984; referred to Committee on Energy and Commerce.

S. 780 (Sarbanes)

Amends the Federal Insecticide, Fungicide, and Rodenticide Act to direct the Administrator of the Environmental Protection Agency to maintain a biological pesticide testing facility. Introduced Mar. 11, 1983; referred to Committee on Agriculture, Nutrition, and Forestry.

S. 1263 (Helms by request)

Amends and extends the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, for 2 years. Introduced May 11, 1983; referred to Committee on Agriculture.

S. 1774 (Proxmire)

Amends the Federal Insecticide, Fungicide and Rodenticide Act to better protect the environment and man from the hazards of pesticides, and for other purposes. Introduced Aug. 4, 1983; referred to Committee on Agriculture, Nutrition, and Forestry.

HEARINGS

U.S. Congress. House. Committee on Agriculture. Subcommittee on Department Operations, Research, and Foreign Agriculture. "EPA Pesticide Regulatory Program Study." Hearings, 97th Congress, 2d session. Dec. 17, 1982.

REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. House. Committee on Agriculture. Federal Insecticide, Fungicide, and Rodenticide Act Amendments of 1982. Report to accompany H.R. 5203. May 17, 1982. Washington, U.S. Govt. Print. Off., 1982.
At head of title: 97th Congress, 2d session. House.

Report no. 97-566.

U.S. Congress. House. Committee on Agriculture. Federal Insecticide, Fungicide, and Rodenticide Act Extension. Report to accompany H.R. 2785. May 11, 1983. Washington, U.S. Govt. Print. Off., 1983.

U.S. Congress. Senate. Committee on Agriculture, Nutrition and Forestry. Federal Insecticide, Fungicide, and Rodenticide Act. Sept. 20, 1982. Washington, U.S. Govt. Print. Off., 1982.

At head of title: 97th Congress, 2d session. Senate. Report no. 97-551.

CHRONOLOGY OF EVENTS

- 05/24/83 -- Senate Agriculture Committee held hearings on S. 1263.
- 05/17/83 -- House passed H.R. 2785, with amendments.
- 05/11/83 -- FIFRA reauthorization, with amendments, introduced in Senate (S. 1263).
- 05/10/83 -- House Committee on Agriculture reported H.R. 2785 (H.Rept. 98-104).
- 05/03/83 -- House Committee on Agriculture considered and marked up H.R. 2875.
- 04/27/83 -- FIFRA reauthorization, with amendments, introduced in House (H.R. 2785).
- 12/17/80 -- H.R. 7018 signed into law as P.L. 96-539.
- 09/30/78 -- Passage of the Federal Pesticide Control Act of 1978, P.L. 95-395.
- 11/28/75 -- Passage of FIFRA reauthorizations, P.L. 94-140; deadlines extended to October 1977.
- 10/21/72 -- Passage of the Federal Environmental Pesticide Control Act of 1972, P.L. 92-516.

ADDITIONAL REFERENCE SOURCES

Environmental and Energy Study Conference. Update. Pesticide bill opponents put on the brakes, by Laurie Baker. U.S. Congress. 515 House Annex 2. Washington.

National Academy of Sciences. Regulating pesticides. Prepared by the Committee on Prototype Explicit Analyses for Pesticides, National Research Council. Washington, D.C. 1980.

Special pesticide registration by the Environmental Protection Agency should be improved. Report to the Congress by the Comptroller General of the United States. Washington,

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