

104TH CONGRESS
1ST SESSION

S. 794

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to facilitate the minor use of a pesticide, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11 (legislative day, MAY 1), 1995

Mr. LUGAR (for himself, Mr. INOUE, Mr. SANTORUM, Mr. CRAIG, Mr. COHEN, Mr. MACK, Mr. PRESSLER, Mr. BURNS, Mr. KERREY, Mr. GRAHAM, Mr. COATS, Mr. GORTON, Mr. PACKWOOD, Mr. CAMPBELL, Mr. DORGAN, Mr. MCCONNELL, Mr. THURMOND, Mr. DOLE, Mr. JEFFORDS, Mr. HELMS, Mr. BOND, Mr. GRASSLEY, Mrs. KASSEBAUM, Mr. HOLLINGS, Mr. JOHNSTON, Mr. INHOFE, Mr. ABRAHAM, Mrs. MURRAY, Ms. SNOWE, Mrs. FEINSTEIN, Mr. HATCH, Mr. NICKLES, Mr. HATFIELD, Mr. KEMPTHORNE, Mr. SPECTER, Mr. COCHRAN, Mr. PRYOR, Mr. DASCHLE, Mr. HEFLIN, Mr. COVERDELL, Mr. LOTT, and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to facilitate the minor use of a pesticide, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Minor Use Crop Protection Act of 1995”.

1 (b) REFERENCES TO FEDERAL INSECTICIDE, FUN-
2 GICIDE, AND RODENTICIDE ACT.—Whenever in this Act
3 an amendment or repeal is expressed in terms of an
4 amendment to, or repeal of, a section or other provision,
5 the reference shall be considered to be made to a section
6 or other provision of the Federal Insecticide, Fungicide,
7 and Rodenticide Act (7 U.S.C. 136 et seq.).

8 **SEC. 2. DEFINITION OF MINOR USE.**

9 Section 2 (7 U.S.C. 136) is amended by adding at
10 the end the following:

11 “(hh) MINOR USE.—The term ‘minor use’ means the
12 use of a pesticide on an animal, on a commercial agricul-
13 tural crop or site, or for the protection of public health
14 if—

15 “(1)(A) in the case of the use of the pesticide
16 on a commercial agricultural crop or site, the total
17 quantity of acreage devoted to the crop in the
18 United States is less than 300,000 acres; or

19 “(B) the Administrator, in consultation with
20 the Secretary of Agriculture, determines that, based
21 on information provided by an applicant for registra-
22 tion or a registrant—

23 “(i) the use does not provide a sufficient
24 economic incentive to support the initial reg-

1 istration or continuing registration of a pes-
2 ticide for the use; and

3 “(ii)(I) there are not a sufficient number
4 of efficacious alternative registered pesticides
5 available for the use; or

6 “(II) any 1 of the alternatives to the pes-
7 ticide pose a greater risk to the environment or
8 human health than the pesticide; or

9 “(III) the pesticide plays, or will play, a
10 significant part in managing pest resistance; or

11 “(IV) the pesticide plays, or will play, a
12 significant part in an integrated pest manage-
13 ment program; and

14 “(2) the Administrator does not determine that,
15 based on data existing on the date of the determina-
16 tion, the use may cause unreasonable adverse effects
17 on the environment.”.

18 **SEC. 3. EXCLUSIVE USE OF MINOR USE PESTICIDES.**

19 Section 3(c)(1)(F)(i) (7 U.S.C. 136a(c)(1)(F)(i)) is
20 amended—

21 (1) by striking “(i) With respect” and inserting
22 “(i)(I) With respect”;

23 (2) by striking “a period of ten years following
24 the date the Administrator first registers the pes-

1 pesticide” and inserting “the exclusive data use period
2 determined under subclause (II)”; and

3 (3) by adding at the end the following:

4 “(II) Except as provided in subclauses
5 (III) and (IV), the exclusive data use pe-
6 riod under subclause (I) shall be 10 years
7 beginning on the date the Administrator
8 first registers the pesticide.

9 “(III) Subject to subclauses (IV), (V),
10 and (VI), the exclusive data use period
11 under subclause (II) shall be extended 1
12 year for each 3 minor uses registered after
13 the date of enactment of this subclause
14 and before the date that is 10 years after
15 the date the Administrator first registers
16 the pesticide, if the Administrator in con-
17 sultation with the Secretary of Agriculture,
18 determines that, based on information pro-
19 vided by an applicant for registration or a
20 registrant—

21 “(aa) there are not a sufficient
22 number of efficacious alternative reg-
23 istered pesticides available for the use;
24 or

1 “(bb) any 1 of the alternatives to
2 the pesticide pose a greater risk to the
3 environment or human health than
4 the pesticide; or

5 “(cc) the pesticide plays, or will
6 play, a significant part in managing
7 pest resistance; or

8 “(dd) the pesticide plays, or will
9 play, a significant part in an inte-
10 grated pest management program.

11 “(IV) Notwithstanding subclause
12 (III), the exclusive data use period estab-
13 lished under this clause may not exceed 13
14 years.

15 “(V) For purposes of subclause (III),
16 the registration of a pesticide for a minor
17 use on a crop grouping established by the
18 Administrator shall be considered 1 minor
19 use for each representative crop for which
20 data are provided in the crop grouping.

21 “(VI) An extension under subclause
22 (III) shall be reduced or terminated if the
23 applicant for registration or the registrant
24 voluntarily cancels the pesticide or deletes
25 from the registration a minor use that

1 formed the basis for the extension, or if
2 the Administrator determines that the ap-
3 plicant or registrant is not actually mar-
4 keting the pesticide for a minor use that
5 formed the basis for the extension.”.

6 **SEC. 4. TIME EXTENSIONS FOR DEVELOPMENT OF MINOR**
7 **USE DATA.**

8 (a) IN GENERAL.—Section 3 (7 U.S.C. 136a) is
9 amended by adding at the end the following:

10 “(g) TIME EXTENSION FOR DEVELOPMENT OF
11 MINOR USE DATA.—

12 “(1) SUPPORTED USE.—In the case of a minor
13 use, the Administrator shall, on the request of a reg-
14 istrant and subject to paragraph (3), extend the
15 time for the production of residue chemistry data
16 under subsection (c)(2)(B) and subsections (d)(4),
17 (e)(2), and (f)(2) of section 4 for data required sole-
18 ly to support the minor use until the final date
19 under section 4 for submitting data on any other use
20 established not later than the date of enactment of
21 this subsection.

22 “(2) NONSUPPORTED USE.—

23 “(A) If a registrant does not commit to
24 support a minor use of a pesticide, the Admin-
25 istrator shall, on the request of the registrant

1 and subject to paragraph (3), extend the time
2 for taking any action under subsection
3 (c)(2)(B) or subsection (d)(6), (e)(3)(A), or
4 (f)(3) of section 4 regarding the minor use until
5 the final date under section 4 for submitting
6 data on any other use established not later than
7 the date of enactment of this subsection.

8 “(B) On receipt of the request from the
9 registrant, the Administrator shall publish in
10 the Federal Register a notice of the receipt of
11 the request and the effective date on which the
12 uses not being supported will be deleted from
13 the registration under section 6(f)(1).

14 “(3) CONDITIONS.—Paragraphs (1) and (2)
15 shall apply only if—

16 “(A) the registrant commits to support
17 and provide data for—

18 “(i) any use of the pesticide on a food;

19 or

20 “(ii) any other use, if all uses of the
21 pesticide are for uses other than food;

22 “(B)(i) the registrant provides a schedule
23 for producing the data referred to in subpara-
24 graph (A) with the request for an extension;

1 “(ii) the schedule includes interim dates
2 for measuring progress; and

3 “(iii) the Administrator determines that
4 the registrant is able to produce the data re-
5 ferred to in subparagraph (A) before a final
6 date established by the Administrator;

7 “(C) the Administrator determines that
8 the extension would not significantly delay issu-
9 ance of a determination of eligibility for rereg-
10 istration under section 4; and

11 “(D) the Administrator determines that,
12 based on data existing on the date of the deter-
13 mination, the extension would not significantly
14 increase the risk of unreasonable adverse effects
15 on the environment.

16 “(4) MONITORING.—If the Administrator
17 grants an extension under paragraph (1) or (2), the
18 Administrator shall—

19 “(A) monitor the development of any data
20 the registrant committed to under paragraph
21 (3)(A); and

22 “(B) ensure that the registrant is meeting
23 the schedule provided under paragraph (3)(B)
24 for producing the data.

1 “(5) NONCOMPLIANCE.—If the Administrator
2 determines that a registrant is not meeting a sched-
3 ule provided by the registrant under paragraph
4 (3)(B), the Administrator may—

5 “(A) revoke any extension to which the
6 schedule applies; and

7 “(B) proceed in accordance with subsection
8 (c)(2)(B)(iv).

9 “(6) MODIFICATION OR REVOCATION.—The Ad-
10 ministrator may modify or revoke an extension
11 under this subsection if the Administrator deter-
12 mines that the extension could cause unreasonable
13 adverse effects on the environment. If the Adminis-
14 trator modifies or revokes an extension under this
15 paragraph, the Administrator shall provide written
16 notice to the registrant of the modification or rev-
17 ocation.”.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Section 3(c)(2)(B) (7 U.S.C. 136a(c)(2)(B))
20 is amended by adding at the end the following:

21 “(vi) Subsection (g) shall apply to this sub-
22 paragraph.”.

23 (2) Subsections (d)(4), (e)(2), and (f)(2) of sec-
24 tion 4 (7 U.S.C. 136a–1) are each amended by add-
25 ing at the end the following:

1 “(C) Section 3(g) shall apply to this para-
2 graph.”.

3 (3) Subsections (d)(6) and (f)(3) of section 4 (7
4 U.S.C. 136a-1) are each amended by striking “The
5 Administrator shall” and inserting “Subject to sec-
6 tion 3(g), the Administrator shall”.

7 (4) Section 4(e)(3)(A) (7 U.S.C. 136a-
8 1(e)(3)(A)) is amended by striking “If the reg-
9 istrant” and inserting “Subject to section 3(g), if
10 the registrant”.

11 **SEC. 5. MINOR USE WAIVER.**

12 Section 3(c)(2) (7 U.S.C. 136a(c)(2)) is amended by
13 adding at the end the following:

14 “(E) In the case of the registration of a
15 pesticide for a minor use, the Administrator
16 may waive otherwise applicable data require-
17 ments if the Administrator determines that the
18 absence of the data will not prevent the Admin-
19 istrator from determining—

20 “(i) the incremental risk presented by
21 the minor use of the pesticide; and

22 “(ii) whether the minor use of the
23 pesticide would have unreasonable adverse
24 effects on the environment.”.

1 **SEC. 6. EXPEDITING MINOR USE REGISTRATIONS.**

2 Section 3(c)(3) (7 U.S.C. 136a(c)(3)) is amended by
3 adding at the end the following:

4 “(C)(i) As expeditiously as practicable
5 after receipt, the Administrator shall review and
6 act on a complete application that—

7 “(I) proposes the initial registration
8 of a new pesticide active ingredient, if the
9 active ingredient is proposed to be reg-
10 istered solely for a minor use, or proposes
11 a registration amendment to an existing
12 registration solely for a minor use; or

13 “(II) for a registration or a registra-
14 tion amendment, proposes a significant
15 minor use.

16 “(ii) As used in clause (i):

17 “(I) The term ‘as expeditiously as
18 practicable’ means the Administrator shall,
19 to the greatest extent practicable, complete
20 a review and evaluation of all data submit-
21 ted with the application not later than 1
22 year after submission of the application.

23 “(II) The term ‘significant minor use’
24 means—

1 “(aa) 3 or more proposed minor
2 uses for each proposed use that is not
3 minor;

4 “(bb) a minor use that the Ad-
5 ministrators determines could replace a
6 use that was canceled not earlier than
7 5 years preceding the receipt of the
8 application; or

9 “(cc) a minor use that the Ad-
10 ministrators determines would avoid
11 the reissuance of an emergency ex-
12 emption under section 18 for the
13 minor use.

14 “(iii) Review and action on an application
15 under clause (i) shall not be subject to judicial
16 review.

17 “(D) On receipt by the registrant of a de-
18 nial of a request to waive a data requirement
19 under paragraph (2)(E), the registrant shall
20 have the full time period originally established
21 by the Administrator for submission of the
22 data, beginning on the date of receipt by the
23 registrant of the denial.”.

1 **SEC. 7. UTILIZATION OF DATA FOR VOLUNTARILY CAN-**
2 **CANCELED CHEMICALS.**

3 Section 6(f) (7 U.S.C. 136d) is amended by adding
4 the following:

5 “(4) UTILIZATION OF DATA FOR VOLUNTARILY
6 CANCELED CHEMICALS.—The Administrator shall
7 process, review, and evaluate the application for a
8 voluntarily canceled pesticide as if the registrant had
9 not canceled the registration, if—

10 “(A) another application is pending on the
11 effective date of the voluntary cancellation for
12 the registration of a pesticide that is—

13 “(i) for a minor use;

14 “(ii) identical or substantially similar
15 to the canceled pesticide; and

16 “(iii) for an identical or substantially
17 similar use as the canceled pesticide;

18 “(B) the Administrator determines that
19 the minor use will not cause unreasonable ad-
20 verse effects on the environment; and

21 “(C) the applicant certifies that the appli-
22 cant will satisfy any outstanding data require-
23 ment necessary to support the reregistration of
24 the pesticide, in accordance with any data sub-
25 mission schedule established by the Adminis-
26 trator.”.

1 **SEC. 8. MINOR USE PROGRAMS.**

2 The Act is amended—

3 (1) by redesignating sections 30 and 31 (7
4 U.S.C. 136x and 136y) as sections 33 and 34, re-
5 spectively; and

6 (2) by inserting after section 29 (7 U.S.C.
7 136w-4) the following:

8 **“SEC. 30. ENVIRONMENTAL PROTECTION AGENCY MINOR**
9 **USE PROGRAM.**

10 “(a) ESTABLISHMENT.—The Administrator shall es-
11 tablish a minor use program in the Office of Pesticide Pro-
12 grams.

13 “(b) RESPONSIBILITIES.—In carrying out the pro-
14 gram established under subsection (a), the Administrator
15 shall—

16 “(1) coordinate the development of minor use
17 programs and policies; and

18 “(2) consult with growers regarding a minor
19 use issue, registration, or amendment that is submit-
20 ted to the Environmental Protection Agency.

21 **“SEC. 31. DEPARTMENT OF AGRICULTURE MINOR USE PRO-**
22 **GRAM.**

23 “(a) ESTABLISHMENT.—The Secretary of Agri-
24 culture shall establish a minor use program.

25 “(b) RESPONSIBILITIES.—In carrying out the pro-
26 gram established under subsection (a), the Secretary shall

1 coordinate the responsibilities of the Department of Agri-
2 culture related to the minor use of a pesticide, including—

3 “(1) carrying out the Inter-Regional Research
4 Project Number 4 established under section 2(e) of
5 Public Law 89–106 (7 U.S.C. 450i(e));

6 “(2) carrying out the national pesticide resist-
7 ance monitoring program established under section
8 1651(d) of the Food, Agriculture, Conservation, and
9 Trade Act of 1990 (7 U.S.C. 5882(d));

10 “(3) supporting integrated pest management
11 research;

12 “(4) consulting with growers to develop data for
13 minor uses; and

14 “(5) providing assistance for minor use reg-
15 istrations, tolerances, and reregistrations with the
16 Environmental Protection Agency.

17 **“SEC. 32. MINOR USE MATCHING FUND PROGRAM.**

18 “(a) ESTABLISHMENT.—The Secretary of Agri-
19 culture, in consultation with the Administrator, shall es-
20 tablish and administer a minor use matching fund pro-
21 gram.

22 “(b) RESPONSIBILITIES.—In carrying out the pro-
23 gram, the Secretary shall—

24 “(1) ensure the continued availability of minor
25 use pesticides; and

1 “(2) develop data to support minor use pes-
2 ticide registrations and reregistrations.

3 “(c) ELIGIBILITY.—Any person that desires to de-
4 velop data to support a minor use registration shall be
5 eligible to participate in the program.

6 “(d) PRIORITY.—In carrying out the program, the
7 Secretary shall provide a priority for funding to a person
8 that does not directly receive funds from the sale of a
9 product registered for a minor use.

10 “(e) MATCHING FUNDS.—To be eligible for funds
11 under the program, a person shall match the amount of
12 funds provided under the program with an equal amount
13 of non-Federal funds.

14 “(f) OWNERSHIP OF DATA.—Any data developed
15 through the program shall be jointly owned by the Depart-
16 ment of Agriculture and the person that receives funds
17 under this section.

18 “(g) STATEMENT.—Any data developed under this
19 subsection shall be submitted in a statement that complies
20 with section 3(c)(1)(F).

21 “(h) COMPENSATION.—Any compensation received
22 by the Department of Agriculture for the use of data de-
23 veloped under this section shall be placed in a revolving
24 fund. The fund shall be used, subject to appropriations,
25 to carry out the program.

- “(c) Eligibility.
- “(d) Priority.
- “(e) Matching funds.
- “(f) Ownership of data.
- “(g) Statement.
- “(h) Compensation.
- “(i) Authorization for appropriations.
- “Sec. 33. Severability.
- “Sec. 34. Authorization for appropriations.”.



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