

107TH CONGRESS
1ST SESSION

H. R. 1084

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2001

Mr. POMEROY (for himself, Mr. BALDACCI, and Mr. MCHUGH) introduced the following bill; which was referred to the Committee on Agriculture

A BILL

To amend the Federal Insecticide, Fungicide, and Rodenticide Act to permit a State to register a Canadian pesticide for distribution and use within that State.

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. REGISTRATION OF CANADIAN PESTICIDES BY**
4 **STATES.**

5 (a) IN GENERAL.—Section 24 of the Federal Insecti-
6 cide, Fungicide, and Rodenticide Act (7 U.S.C. 136v) is
7 amended by adding at the end the following:

8 “(d) REGISTRATION OF CANADIAN PESTICIDES BY
9 STATES.—

1 “(1) DEFINITIONS.—In this subsection:

2 “(A) CANADIAN PESTICIDE.—The term
3 ‘Canadian pesticide’ means a pesticide that—

4 “(i) is registered for use as a pesticide
5 in Canada;

6 “(ii) is identical or substantially simi-
7 lar in its composition to a comparable do-
8 mestic pesticide registered under section 3
9 of this Act; and

10 “(iii) is registered in Canada by the
11 registrant of the comparable domestic pes-
12 ticide or an affiliated entity of the reg-
13 istrant.

14 “(B) COMPARABLE DOMESTIC PES-
15 TICIDE.—The term ‘comparable domestic pes-
16 ticide’ means a pesticide—

17 “(i) that is registered under section 3
18 of this Act;

19 “(ii) the registration of which is not
20 under suspension;

21 “(iii) that is not subject to a notice of
22 intent to cancel or suspend, a notice for
23 voluntary cancellation under section 6(f) of
24 this Act, or an enforcement action under
25 this Act;

1 “(iv) that is used as the basis for
2 comparison for the determinations required
3 under section 24(d)(4) of this Act;

4 “(v) that is registered for use on the
5 site(s) of application for which registration
6 is sought under this subsection;

7 “(vi) for which no use is the subject
8 of a pending interim administrative review
9 under section 3(c)(8) of this Act;

10 “(vii) that is not subject to sales limi-
11 tations or production caps agreed upon be-
12 tween the Administrator and the registrant
13 or imposed by the Administrator for risk
14 mitigation purposes; and

15 “(viii) that is not classified as a re-
16 stricted use pesticide under section 3(d) of
17 this Act.

18 “(2) AUTHORITY TO REGISTER CANADIAN PES-
19 TICIDES.—

20 “(A) IN GENERAL.—A State may register
21 a Canadian pesticide for distribution and use
22 only within the State if the registration com-
23 plies with this subsection, is consistent with the
24 purposes of this Act, and has not previously
25 been denied or disapproved by the Adminis-

1 trator. A pesticide registered under this sub-
2 section shall not be used to produce a pesticide
3 to be registered under section 3 or section 24(c)
4 of this Act.

5 “(B) EFFECT OF REGISTRATION.—A reg-
6 istration of a Canadian pesticide by a State
7 under this subsection shall be deemed a reg-
8 istration under section 3 for all purposes of this
9 Act, but shall authorize distribution and use
10 only within such State.

11 “(C) REGISTRANT.—Any person or State
12 may seek registration of a Canadian pesticide
13 pursuant to this subsection. Such person or
14 State shall be deemed the registrant of the Ca-
15 nadian pesticide under this Act.

16 “(3) REQUIREMENTS FOR REGISTRATION
17 SOUGHT BY PERSON.—A person seeking registration
18 from a State of a Canadian pesticide under this sub-
19 section must—

20 “(A) demonstrate to the State that the Ca-
21 nadian pesticide is identical or substantially
22 similar in its composition to a comparable do-
23 mestic pesticide; and

24 “(B) submit to the State a copy of the
25 label approved by the Pest Management Regu-

1 latory Agency for the Canadian pesticide and
2 the label approved by the Administrator for the
3 comparable domestic pesticide.

4 “(4) STATE REQUIREMENTS FOR REGISTRA-
5 TION.—A State may register a Canadian pesticide
6 under this subsection only if it—

7 “(A) has obtained the confidential state-
8 ment of formula for the Canadian pesticide;

9 “(B) determines that the Canadian pes-
10 ticide is identical or substantially similar in its
11 composition to a comparable domestic pesticide;

12 “(C) for each food or feed use authorized
13 by the registration—

14 “(i) determines that there exists an
15 adequate tolerance or exemption under the
16 Federal Food, Drug, and Cosmetic Act (21
17 U.S.C. 301 et seq.) that permits the resi-
18 dues of the pesticide on the food or feed;
19 and

20 “(ii) identifies the tolerances or ex-
21 emptions in the submissions made under
22 subparagraph (D);

23 “(D) has obtained a label approved by the
24 Administrator, that—

1 “(i) duplicates all statements, exclud-
2 ing the establishment number, from the
3 approved labeling of the comparable do-
4 mestic pesticide that are relevant to the
5 uses registered by the State and deletes all
6 labeling statements relating to uses not
7 registered by the State;

8 “(ii) identifies the state in which the
9 product may be used;

10 “(iii) prohibits sale and use outside
11 the state identified in clause (ii);

12 “(iv) includes a statement indicating
13 that it is unlawful to use the Canadian
14 pesticide in the State in a manner that is
15 inconsistent with the labeling approved by
16 the Administrator pursuant to this sub-
17 section; and

18 “(v) identifies the establishment num-
19 ber of the establishment in which the label-
20 ing approved by the Administrator will be
21 affixed to the containers of the Canadian
22 pesticide; and

23 “(E) notifies, within 10 working days after
24 the State’s issuance of a registration under this
25 subsection, the Administrator in writing of the

1 State's action, which notification shall include a
2 statement of the determination made under this
3 paragraph, the effective date of the registration,
4 a confidential statement of formula, and a final
5 printed copy of the labeling approved by the
6 Administrator.

7 “(5) DISAPPROVAL OF REGISTRATION BY AD-
8 MINISTRATOR.—A registration issued by a State
9 under this subsection shall not be effective for more
10 than 90 days if disapproved by the Administrator
11 within that period. The Administrator may dis-
12 approve the registration of a Canadian pesticide by
13 a State pursuant to this subsection if the Adminis-
14 trator determines that the registration of the Cana-
15 dian pesticide by the State does not comply with this
16 subsection or the Federal Food, Drug, and Cosmetic
17 Act, or is inconsistent with the purposes of this Act.

18 “(6) LABELING OF CANADIAN PESTICIDES.—

19 “(A) CONTAINERS.—Each container con-
20 taining a Canadian pesticide registered by a
21 State shall at all times bear the label that is ap-
22 proved by the Administrator. The label must be
23 securely attached to the container and must be
24 the only label visible on the container. The
25 original Canadian label on the container must

1 be preserved underneath the label approved by
2 the Administrator.

3 “(B) AFFIXING LABELS.—After a Cana-
4 dian pesticide is registered under this sub-
5 section, the registrant shall prepare labels ap-
6 proved by the Administrator for such Canadian
7 pesticide and shall conduct or supervise all la-
8 beling of the Canadian pesticides with the ap-
9 proved labeling. Labeling of the Canadian pes-
10 ticides pursuant to this subsection must be con-
11 ducted at an establishment registered by the
12 registrant pursuant to section 7 of this Act.

13 “(C) ESTABLISHMENT REPORTING RE-
14 QUIREMENTS.—Establishments registered for
15 the sole purpose of labeling required under sec-
16 tion 24(d)(6) of this Act are exempt from the
17 reporting requirements provided in section 7(c)
18 of this Act.

19 “(7) REVOCATION.—At any time after the reg-
20 istration of a Canadian pesticide, if the Adminis-
21 trator finds that the Canadian pesticide is not iden-
22 tical or substantially similar in composition to a
23 comparable domestic pesticide, the Administrator
24 may issue an emergency order revoking the registra-
25 tion of the Canadian pesticide. Such order shall be

1 immediately effective and may prohibit sale, dis-
2 tribution and use of the Canadian pesticide. Such
3 order may also prescribe terms of a requirement for
4 the registrant of any such Canadian pesticide to
5 purchase and dispose of any unopened product sub-
6 ject to a revocation order. The registrant of a prod-
7 uct subject to a revocation order may request a
8 hearing on such order within 10 days of the issuance
9 of such order. If no hearing is requested within the
10 prescribed period, the order shall become final and
11 shall not be subject to judicial review. If a hearing
12 is requested, judicial review may be sought only at
13 the conclusion of the hearing and following the
14 issuance by the Agency of a final revocation order.
15 A final revocation order issued following a hearing
16 shall be reviewable in accordance with section 16 of
17 this Act.

18 “(8) SUSPENSION OF STATE AUTHORITY TO
19 REGISTER CANADIAN PESTICIDES.—

20 “(A) IN GENERAL.—If the Administrator
21 finds that a State that has registered 1 or more
22 Canadian pesticides under this subsection is not
23 capable of exercising adequate controls to en-
24 sure that registration under this subsection is
25 consistent with this subsection, other provisions

1 of this Act, or the Federal Food, Drug, and
2 Cosmetic Act, or has failed to exercise adequate
3 controls of one or more Canadian pesticides
4 registered under this subsection, the Adminis-
5 trator may suspend the authority of the State
6 to register Canadian pesticides under this sub-
7 section until such time as the Administrator de-
8 termines that the State can and will exercise
9 adequate control of the Canadian pesticides.

10 “(B) NOTICE AND OPPORTUNITY TO RE-
11 SPOND.—Before suspending the authority of a
12 State to register a Canadian pesticide, the Ad-
13 ministrator shall—

14 “(i) advise the State that the Admin-
15 istrator proposes to suspend the authority
16 and the reasons for the proposed suspen-
17 sion; and

18 “(ii) before taking final action to sus-
19 pend under this subsection, the Adminis-
20 trator shall provide the State an oppor-
21 tunity to respond to the proposal to sus-
22 pend within 30 calendar days of the
23 State’s receipt of the Administrator’s pro-
24 posal to suspend.

25 “(9) TORT LIABILITY.—

1 “(A) STATE AS REGISTERING AGENCY.—

2 No action for monetary damages may be main-
3 tained in any Federal court against a State act-
4 ing as a registering agency under the authority
5 of and consistent with this section for injury or
6 damage resulting from the use of a product reg-
7 istered by the State pursuant to this subsection.

8 “(B) REGISTRANT.—Actions in tort may
9 not be maintained in any Federal court against
10 a registrant for damages resulting from adulter-
11 ation or compositional alterations of the reg-
12 istrants product registered under this sub-
13 section if the registrant did not and could not
14 reasonably have knowledge of the adulteration
15 or compositional alterations.

16 “(10) DISCLOSURE OF INFORMATION BY AD-
17 MINISTRATOR TO THE STATE.—The Administrator
18 may disclose to a State that is seeking to register a
19 Canadian pesticide in the State information that is
20 necessary for the State to make the determinations
21 required by paragraph (4) if the State certifies to
22 the Administrator that the State can and will main-
23 tain the confidentiality of any trade secrets or com-
24 mercial or financial information provided by the Ad-
25 ministrator to the State under this subsection to the

1 same extent as is required under section 10 of this
2 Act.

3 “(11) PROVISION OF INFORMATION BY REG-
4 ISTRANTS OF COMPARABLE DOMESTIC PES-
5 TICIDES.—Upon request, the registrant of a com-
6 parable domestic pesticide shall provide to a State
7 that is seeking to register a Canadian pesticide in
8 the State pursuant to this subsection information
9 that is necessary for the State to make the deter-
10 minations required by section 24(d)(4) of this Act if
11 the State certifies to the registrant that the State
12 can and will maintain the confidentiality of any
13 trade secrets or commercial or financial information
14 provided by the registrant to the State under this
15 subsection to the same extent as is required under
16 section 10 of this Act. If the registrant of a com-
17 parable domestic pesticide fails to provide to the
18 State, within 15 days of its receipt of a written re-
19 quest by the State, information possessed by or rea-
20 sonably accessible to the registrant that is necessary
21 to make the determinations required by paragraph
22 (4), the Administrator may assess a penalty against
23 the registrant of the comparable pesticide based on
24 the Administrator’s estimate of the difference be-
25 tween the per-acre cost of the application of the

1 comparable domestic pesticide and the application of
2 the Canadian pesticide multiplied by the acreage in
3 the State of the commodity for which the State reg-
4 istration is sought. No penalty under this subsection
5 shall be assessed unless the registrant assessed shall
6 have been given notice and opportunity for a hearing
7 as provided by section 14(a)(3) of this Act. The only
8 matters for resolution at that hearing will be wheth-
9 er the registrant of the comparable domestic pes-
10 ticide failed to timely provide to the State the infor-
11 mation possessed by or reasonably accessible to the
12 registrant that was necessary to make the deter-
13 minations required by paragraph (4) and the
14 amount of the penalty.

15 “(12) PENALTY FOR DISCLOSURE BY STATE
16 EMPLOYEE.—The State shall not make public infor-
17 mation obtained under paragraphs (10) and (11) of
18 this subsection that is privileged and confidential
19 and contains or relates to trade secrets or commer-
20 cial or financial information. Any State employee
21 who has willfully disclosed information described in
22 this paragraph shall be subject to penalties pre-
23 scribed in section 10(f) of this Act.

24 “(13) DATA COMPENSATION.—A State or per-
25 son registering a Canadian pesticide under this sub-

1 section shall not be liable for compensation for data
2 supporting such registration if the registration of
3 the Canadian pesticide in Canada and the registra-
4 tion of the comparable domestic pesticide are held by
5 the same registrant or by affiliated entities.

6 “(14) FORMULATION CHANGE.—The registrant
7 of a comparable domestic pesticide must notify the
8 Administrator of any change in the formulation of a
9 comparable domestic pesticide or a Canadian pes-
10 ticide registered by such registrant or its affiliate at
11 least 30 days prior to any sale or distribution of the
12 pesticide containing the new formulation. The reg-
13 istrant of the comparable domestic pesticide must
14 submit, with its notice to the Administrator pursu-
15 ant to this paragraph, the confidential statement of
16 formula for the new formulation if the registrant has
17 possession of or reasonable access to such informa-
18 tion. If the registrant fails to provide notice or sub-
19 mit a confidential statement of formula as required
20 by this paragraph, the Administrator may issue a
21 notice of intent to suspend the registration of the
22 comparable domestic pesticide for a period of no less
23 than one year. Suspension shall become final within
24 30 days of the Administrator’s issuance of the notice
25 of intent to suspend, unless during that time the

1 registrant requests a hearing. If a hearing is re-
2 quested, a hearing shall be conducted under section
3 6(d) of this Act. The only matter for resolution at
4 that hearing will be whether the registrant has failed
5 to provide notice or submit a confidential statement
6 of formula as required by this paragraph.”.

7 (b) CONFORMING AMENDMENT.—Section 24(c)(4) is
8 amended in the first sentence by striking “If the Adminis-
9 trator” and inserting the following: “Except as otherwise
10 provided in section 24(d)(8), if the Administrator”.

○