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ROLL NUMBER

DESCRIPTION

3042

2001 HOUSE AGRICULTURE

HCR 3042

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3042

House Agriculture Committee

Conference Committee

Hearing Date 2--16--01

Tape Number	Side A	Side B	Meter #
TWO	A		2086 TO 3876
THREE	A		1328 TO 2464
Committee Clerk Signature			

Minutes:

1A:2086 VICE CHAIRMAN JOHNSON: We will open hearing on HCR 3042.

Representative Lemieux: This a concurrent resolution urging Congress to ensure the economic viability and competitiveness of American farmers by the adopting legislation that would grant states the authority to issue state registrations to parties who wish to import Canadian crop protection products that are identical or substantially similar to products registered with the Environmental Protection agency for use in the United States. Two years ago this assembly voted on legislation enabling the Agricultural Commissioner permission to register products with and there were strings attached, as to what can happen and what can't happen. AS we all know the environmental protection agency after commissioner Johnson issued a registration for a herbicide, within a short period of time the environmental protection agency said you can not do that. There was legislation introduced after that happened in the one hundredth and sixth congress of the US and that legislation is going to be reintroduced

There is not a number on it but Congress Man Pomoroy has guaranteed us that he will introduce that legislation.

ROGER JOHNSON: Printed testimony attached. Please see. I support this resolution.

My testimony goes into some detail about some of the fine points of it. I want to just highlight three quick principles before I conclude. First of all the legislation if it is going to be effective, it must address several key issues and the first one is a party must be allowed to serve as a registrant without the primary registrant consent. If we are going to be successful in allowing Canadian Imports to come down here to be used you have to be able to do it. You have to be able to go there and buy it and not allow the pesticide registrant to veto the purchase. The purposed legislation dose do that. It also deals with compensation. With respect to access to proprietary chemical composition data. This is really a safety issue. As it exists right now, if you are a manufacture of a chemical product, you have a what is called a confidential statement of formula. It belongs to you and you give it to EPA and no one else. EPA cannot even share it with a state agency that is delegated with laws. We need to have access to that confidential information. We do not want to be importing unsafe products. Thirdly we want access to these products in the US we don't want to have to go to Canada to buy these products. The final point that I would make. There are two things that I think you should consider. Adopt this legislation. We want to change the law. We should pass HB 1445. The pesticides that we use is about 42 million dollars annually, so this is not small potatoes. The price differentials are huge.

REP LLOYD; What dose it cost for a registrant to get a registration of a product to market in Canada?

Roger Johnson: That cost varies substantially depending on the product. The cost is substantially the same between the two countries. You can't answer it directly. The US system works different then the Canadian. To register a new product the cost is about nine hundred thousand.

1A: 3870 VICE CHAIRMAN JOINSON: Other questions. Others to offer support for 3042. Opposition? WE WILL CLOSE THE HEARING ON HCR 3042

VICE CHAIRMAN JOINSON: We will reopen a hearing on HCR 3042.

REPRESENTATIVE LEMIEUX: I would urge, if I may. The group that has been working on harmonization and the Bill that came before us in the last session empowered the state to register products. This is basically Federal Legislation that is being put forward. At the request of some of the people that put forth that legislation or worked on the legislation and so on so forth. I would think that we are taking a step backwards in harmonization, the thrust of the legislation is to promote harmonization, on both sides of the boarder. Going back to the argument, if we in the US are to participate in free world market we have got to have access to the imputes of our world market price. Therefore I would like you to vote yes on a motion.

REPRESENTATIVE BERG: I don't know if I ever had any success with resolutions sent to congress but just read it, we are telling congress to let us, the states grant the authority to registration. I just don't think they would ever do it.

REPRESENTATIVE BRANDENBURG: I understand what this resolution is trying to do. The resolution keep every body talking.

REPRESENTATIVE MUELLER: Why would we not send it forward. It dose draw attention that there are problems with chemical harmonization. I guess for that reason I would like a do pass.

REPRESENTATIVE LLOYD: I guess my concern is with lines 12 and 13. I am not saying that you don't need access to them but I'm saying COMPARABLE price fixing and I am against it. I don't think that is the issue. I think being able to purchase the product if it is cheaper that is fine. To have the prices equal, I think that is wrong. The consumer dictates the purchases. If you want to change the price in the US then you should go to Canada and buy all the products up there then the price in the US will conform. I have no problem with that if that is appropriate.

VICE CHAIRMAN JOHNSON That is the problem we can't do that.

REPRESENTATIVE ONSTAD: Access to comparably priced, maybe that was a term probably, I think there kind of saying that access to crop protection products as thought those are available to Canadians producers. I don't mean access to comparably priced. Maybe that is not stated right. Canadians have a comparable product that is cheaper in Canada, there saying let us go up there and get it.

REPRESENTATIVE LLOYD: I agree with Rep Onstad because that is the issue. I think that they should have that access especially since the products in Canada. The products have been used that we want to purchase.

REPRESENTATIVE RENNER: What if we changed line 12, take out the words comparably priced and put in the word comparable. Is that helpful.

REPRESENTATIVE LEMIEUX: Vice Chairman Johnson, if we just struck the words comparatively priced out of the language we would say that farmers need access to crop protection products.

REPRESENTATIVE FROELICH: I agree if we take the words out but I think the whole crux of the matter is between line 14 and 16.

REPRESENTATIVE MUELLER: I think that Rep. Froelich is right. I think that this resolution before us without any changes dose talk about both those issues of price and availability of products. Maybe we only want to talk about availability of products but if we do that then this resolution needs to be restructured. Significantly.

REPRESENTATIVE JOHNSON: What does the author want to do?

REPRESENTATIVE LEMIEUX: I would like to strike on lines 12 comparably priced and strike out all line 14, 15, and 16. And then we talk strictly about availability protection products. and we talk about the federal law that restricts the use of crop protection without the the product registrant.

VICE CHAIRMAN JOHNSON: Would someone like to make a motion.

REPRESENTATIVE LEMIEUX: I would like make a motion on line 12 page one strike the words comparably priced and strike the words all of the words on line 14, 15 and 16.

REPRESENTATIVE JOHNSON: Are you sure that you want to strike comparable? Do you mean farmers need access to comparable protection products just strike price.

We could leave crop in there to.

REPRESENTATIVE LEMIEUX MAKES A MOTION THAT THE AMENDMENTS BE ADDED AND IT WAS SECONDED BY REPRESENTATIVE PIETSCH.

Page 6
House Agriculture Committee
Bill/Resolution Number HCR 3042
Hearing Date 2-16-01

VICE CHAIRMAN JOHNSON: O.K. we have before us HCR 3042 as amended.

Representative moves a DO PASS AND REP. LLOYD SECONDED. WE WILL TAKE THE
ROLL. THE ROLL WAS 13 YES.....0 NO..... AND 2 ABSENT.

REPRESENTATIVE LLOYD WILL CARRY HCR 3042.

VICE CHAIRMAN JOHNSON CLOSED THE HEARING ON HCR3042

13086.0101
Title.0200

Adopted by the Agriculture Committee
February 16, 2001

VR
2/16/01

PROPOSED AMENDMENTS TO HOUSE CONCURRENT RESOLUTION NO. 3042

HOUSE AMENDMENTS TO HCR 3042
Page 1, line 12, remove "comparably priced"

HOUSE AGR. 2-16-01

Page 1, remove lines 14 through 16

Renumber accordingly

2-16-01

Date:
Roll Call Vote #:

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

HCR 3042

House AGRICULTURE

Committee

Subcommittee on _____

or

Conference Committee

House on P.R. 18

Legislative Council Amendment Number

A. Amendment

Action Taken

DR. 10/15

Motion Made By

Froelich

Seconded By

Lloyd

Representatives	Yes	No	Representatives	Yes	No
Eugene Nicholas, Chairman			Rod Froelich	✓	
Dennis E. Johnson - Vice Chairman	✓		Doug Lemieux	✓	
Rick Berg	✓		Philip Mueller	✓	
Michael Brandenburg	✓		Kenton Onstad	✓	
Joyce Kingsbury	✓		Sally M. Slandvig	✓	
Myron Koppang	✓		Dennis J. Renner	✓	
Edward H. Lloyd	✓		Dwight Wrangham		
Bill Pietsch	✓				

Total (Yes)

13
2

No

Absent

Floor Assignment

Lloyd

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 19, 2001 4:06 p.m.

Module No: HR-30-3916
Carrier: Lloyd
Insert LC: 13086.0101 Title: .0200

REPORT OF STANDING COMMITTEE
HCR 3042: Agriculture Committee (Rep. Nicholas, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HCR 3042 was placed on the
Sixth order on the calendar.

Page 1, line 12, remove "comparably priced"

Page 1, remove lines 14 through 16

Renumber accordingly

2001 SENATE AGRICULTURE

HCR 3042

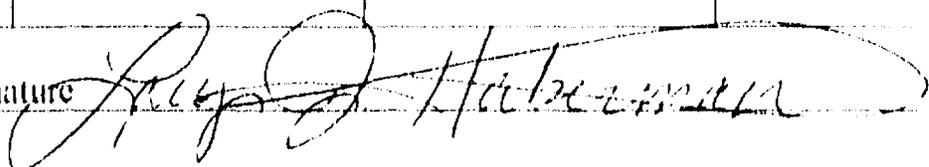
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3042

Senate Agriculture Committee

Conference Committee

Hearing Date March 22, 2001

Tape Number	Side A	Side B	Meter #
March 22 1	X		6.8 - 26.1
March 29 1	X		13.6 - 17.8
Committee Clerk Signature 			

Minutes:

March 22, 2001

REP. LEMIEUX; Sponsor, introduced the resolution to the committee. This is a request that the North Dakota Legislature support the action of allowing the state of North Dakota or other states to register chemicals.

ROGER JOHNSON; Agriculture Commissioner, testified in support of this resolution. See attached testimony.

SENATOR WANZEK; With the registration was there any discussion of liability?

ROGER JOHNSON; There has been a lot of debate on that issue.

JIM GRAY; ND Dept. of Agriculture, testified in support of this resolution. For the enforcement side the policy that ND Dept. of Ag. has used and what EPA has used is that liability on the enforcement side will lie with that party that had knowledge or control of that stage of production.

Page 2
Senate Agriculture Committee
Bill/Resolution Number HCR 3042
Hearing Date March 22, 2001

GARY KNUTSON; North Dakota Agriculture Assoc., testified in the neutral position on this resolution. We are concern about the economic liability of the dealers in the state.

The hearing was closed.

March 29, 2001

Discussion was held.

SENATOR NICHOLS moved for a DO PASS and be placed on the Consent Calendar.

SENATOR URLACHER seconded the motion.

Roll call vote: 6 Yeas, 0 No, 0 Absent and Not voting.

SENATOR WANZEK will carry the bill.

REPORT OF STANDING COMMITTEE (410)
March 29, 2001 11:13 a.m.

Module No: SR-55-7113
Carrier: Wanzek
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3042: Agriculture Committee (Sen. Wanzek, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3042 was placed on the Tenth order on the calendar.

2001 TESTIMONY

HCR 3042

COMMISSIONER OF AGRICULTURE
ROGER JOHNSON



HCR
3042

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**NORTH DAKOTA DEPARTMENT OF AGRICULTURE
LEGISLATIVE TESTIMONY**

Testimony of Roger Johnson
Agriculture Commissioner
House Concurrent Resolution 3042
February 16, 2001
9:00 a.m.
House Agriculture Committee
Peace Garden Room

Chairman Nicholas and members of the House Agriculture Committee, I am Agriculture Commissioner Roger Johnson, and I am here to testify in support of House Concurrent Resolution 3042. This resolution supports federal legislation, such as H.R. 5187 presented by Rep. Pomeroy in the 106th Congress, that would grant states the authority to issue state registrations for certain Canadian pesticides.

Pesticide harmonization is an issue of paramount concern to a border state like North Dakota that has a high economic reliance on agriculture. Because of NAFTA, Canadian grain can move freely across the U.S./Canadian border to compete with domestic grain on the open market. However, much of the Canadian output is produced each year with pesticides that are not registered for use in this country, or with pesticides that are

substantially more expensive in the U.S. than in Canada. In order for American farmers to be economically competitive with their Canadian counterparts, they need access to the same chemical pest management tools at a similar price.

Pesticide pricing studies have repeatedly shown that American producers pay significantly higher pesticide prices than Canadian producers do. In cereal production, for example, North Dakota producers pay approximately 40 percent more for herbicides than their Canadian counterparts. This puts our producers at an immediate economic disadvantage when our grain has to compete with Canadian grain on the open market. However, barriers currently exist which prevent growers from legally importing Canadian pesticides without the consent of the product registrant, even if the products are identical in composition to pesticides registered with EPA for the desired use. As a result, product registrants have been able to use the U.S.-Canadian border to segment markets and charge significantly different prices for identical products.

In late May 2000, the North Dakota Department of Agriculture used the Canadian pesticide Achieve 80DG to challenge the ability of registrants to use the U.S./Canadian border to segment markets and restrict access to Canadian products by American producers. Imports of Achieve 80DG were discontinued on June 9, 2000, following a complaint from Zeneca to EPA. In a July 5, 2000, letter to my office, EPA declared that FIFRA does not permit relabeling and importation of Achieve 80DG by persons without the consent of the product registrant. EPA's conclusion was based on two points of evidence. First, FIFRA's regulatory definition of "produce" includes labeling and

relabeling. Labels were being affixed at random sites and not at registered EPA establishments; further, they were not being updated with the EPA Establishment Number of the last site of "production". As a result, the Achieve 80DG containers imported for use were considered by EPA to be misbranded; therefore, EPA would not allow them to be distributed or sold in the United States. Second, EPA considers a pesticide registration to be a product license, and a party cannot produce any pesticide product without the authorization of the registrant.

The events surrounding the Department's efforts with Achieve 80DG demonstrated how product registrants effectively use federal statutes to prevent access to Canadian pesticides by American farmers and dealers. To overcome these barriers, federal legislation is needed to amend FIFRA and grant states the authority to issue state registrations to parties who wish to import Canadian pesticides that are identical or substantially similar to products registered with EPA for use in the United States.

To be effective, such federal legislation must include language addressing several key issues. First, a party must be allowed to serve as a product registrant without the primary registrant's consent. A state registrant for the Canadian product is critical since it ensures that some party will assume responsibility for distributing and relabeling the Canadian product to meet EPA requirements. To protect state registrants under this legislation, data compensation requirements must be waived. In addition, it must be clearly stated that state registrants would assume liability for only those parts of the product "production" (relabeling and distribution) for which they had control and

knowledge.

The second major issue that must be addressed in the legislation deals with access to proprietary chemical composition data. To prevent unreasonable adverse effects to man or the environment and to ensure a safe and high-quality food supply, state registrations must be limited to Canadian products that are identical or substantially similar to products currently registered with EPA for the desired use. However, a mechanism must be described that allows regulatory agencies to ensure that the Canadian and U.S. products are identical or substantially similar, and that the Canadian products do not contain unregistered active or inert ingredients.

Last, we must ensure the economic viability of pesticide retailers and distributors. In many towns, the chemical dealer is a major part of the local economy. Therefore, legislation should be aimed at allowing distributors to access Canadian pesticides at Canadian wholesale prices. These economic savings can then be passed on to the retailer and subsequently to the farmer.

One week ago, I testified before this committee on HB 1338. I said then that price disparities on pesticides between North Dakota and Canada was a huge issue, costing our producers more than \$42 million per year. I recommended then that this legislative assembly ought to do two things. First, you should adopt this resolution to send a strong signal to Congress that we need to pass legislation similar to what is contemplated in HCR 3042. Second, I recommended that you consider passing

HB 1445 which describes a process which would assess a pesticide registration fee equal to the extra pesticide costs incurred by North Dakota farmers. Those extra fees would then be rebated to the farmer based on their use of the product. If we are going to do anything to deal with this pricing disparity issue we need to pass these two pieces of legislation.

I hope that you will see the benefit of the federal legislation described in HCR3042. If adopted, this legislation would largely eliminate the disparate pesticide pricing practices that place North Dakota at a significant disadvantage. It would allow North Dakota farmers to compete on a level playing field with their Canadian counterparts and create a freer market for agricultural inputs. I would urge a do pass on HCR 3042. I would be happy to answer any questions.

COMMISSIONER OF AGRICULTURE
ROGER JOHNSON



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**NORTH DAKOTA DEPARTMENT OF AGRICULTURE
LEGISLATIVE TESTIMONY**

Testimony of Roger Johnson
Agriculture Commissioner
House Concurrent Resolution 3042
March 22, 2001
9:15 a.m.
Senate Agriculture Committee
Roosevelt Park Room

Chairman Wanzek and members of the Senate Agriculture Committee, I am Agriculture Commissioner Roger Johnson, and I am here to testify in support of House Concurrent Resolution 3042. This resolution supports federal legislation such as H.R.1084 and S.532 presented by Rep. Pomeroy and Sen. Dorgan, respectively, in the 107th Congress. If enacted, this legislation would grant states the authority to issue state registrations for certain Canadian pesticides.

Pesticide harmonization is an issue of paramount concern to a border state like North Dakota that has a high economic reliance on agriculture. Because of NAFTA, Canadian grain can move freely across the U.S./Canadian border to compete with domestic grain on the open market. However, much of the Canadian output is produced each year with pesticides that are not registered for use in this country, or with pesticides that are substantially more expensive in the

U.S. than in Canada. In order for American farmers to be economically competitive with their Canadian counterparts, they need access to the same chemical pest management tools at a similar price.

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In late May 2000, the North Dakota Department of Agriculture used the Canadian pesticide Achieve 80DG to challenge the ability of registrants to use the U.S./Canadian border to segment markets and restrict access to Canadian products by American producers. Imports of Achieve 80DG were discontinued on June 9, 2000, following a complaint from Zeneca to EPA. In a July 5, 2000, letter to my office, EPA declared that FIFRA does not permit relabeling and importation of Achieve 80DG by persons without the consent of the product registrant. EPA's conclusion was based on two points of evidence. First, FIFRA's regulatory definition of "produce" includes labeling and relabeling. Labels were being affixed at random sites and not at registered EPA establishments; further, they were not being updated with the EPA Establishment Number of the last site of "production". As a result, the Achieve 80DG containers imported for use were

considered by EPA to be misbranded; therefore, EPA would not allow them to be distributed or sold in the United States. Second, EPA considers a pesticide registration to be a product license, and a party cannot produce any pesticide product without the authorization of the registrant.

The events surrounding the Department's efforts with Achieve 80DG demonstrated how product registrants effectively use federal statutes to prevent access to Canadian pesticides by American farmers and dealers. To overcome these barriers, federal legislation is needed to amend FIFRA and grant states the authority to issue state registrations to parties who wish to import Canadian pesticides that are identical or substantially similar to products registered with EPA for use in the United States.

To be effective, such federal legislation must include language addressing several key issues. First, a party must be allowed to serve as a product registrant without the primary registrant's consent. A state registrant for the Canadian product is critical since it ensures that some party will assume responsibility for distributing and relabeling the Canadian product to meet EPA requirements. To protect state registrants under this legislation, data compensation requirements must be waived. In addition, it must be clearly stated that state registrants would assume liability for only those parts of the product "production" (relabeling and distribution) for which they had control and knowledge.

The second major issue that must be addressed in the legislation deals with access to proprietary chemical composition data. To prevent unreasonable adverse effects to man or the environment and to ensure a safe and high-quality food supply, state registrations must be limited to Canadian products that are identical or substantially similar to products currently

registered with EPA for the desired use. However, a mechanism must be described that allows regulatory agencies to ensure that the Canadian and U.S. products are identical or substantially similar, and that the Canadian products do not contain unregistered active or inert ingredients.

Last, we must ensure the economic viability of pesticide retailers and distributors. In many towns, the chemical dealer is a major part of the local economy. Therefore, legislation should be aimed at allowing distributors to access Canadian pesticides at Canadian wholesale prices. These economic savings can then be passed on to the retailer and subsequently to the farmer.

I hope that you will see the benefit of the federal legislation described in HCR3042. If adopted, this legislation would largely eliminate the disparate pesticide pricing practices that place North Dakota at a significant disadvantage. It would allow North Dakota farmers to compete on a level playing field with their Canadian counterparts and create a freer market for agricultural inputs. I would urge a do pass on HCR 3042. I would be happy to answer any questions.

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Bill 2 of 8

GPO's PDF version of this bill	References to this bill in the Congressional Record	Link to the Bill Summary & Status file.	Full Display - 17,313 bytes. [Help]
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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. (Introduced in the House)

HR 1084 IH

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.

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

SECTION 1. REGISTRATION OF CANADIAN PESTICIDES BY STATES.

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

(d) REGISTRATION OF CANADIAN PESTICIDES BY STATES-

'(1) DEFINITIONS- In this subsection:

'(A) CANADIAN PESTICIDE - The term 'Canadian pesticide' means a pesticide that--

'(i) is registered for use as a pesticide in Canada;

'(ii) is identical or substantially similar in its composition to a comparable domestic pesticide registered under section 3 of this Act; and

'(iii) is registered in Canada by the registrant of the comparable domestic pesticide or an affiliated entity of the registrant.

'(B) COMPARABLE DOMESTIC PESTICIDE - The term 'comparable domestic pesticide' means a pesticide --

'(i) that is registered under section 3 of this Act;

'(ii) the registration of which is not under suspension;

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

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

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

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

'(vii) that is not subject to sales limitations or production caps agreed upon between the Administrator and the registrant or imposed by the Administrator for risk mitigation purposes; and

'(viii) that is not classified as a restricted use pesticide under section 3(d) of this Act.

'(2) AUTHORITY TO REGISTER CANADIAN PESTICIDES-

'(A) IN GENERAL- A State may register a Canadian pesticide for distribution and use only within the State if the registration complies with this subsection, is consistent with the purposes of this Act, and has not previously been denied or disapproved by the Administrator. A pesticide registered under this subsection shall not be used to produce a pesticide to be registered under section 3 or section 24(c) of this Act.

'(B) EFFECT OF REGISTRATION- A registration of a Canadian pesticide by a State under this subsection shall be deemed a registration under section 3 for all purposes of this Act, but shall authorize distribution and use only within such State.

'(C) REGISTRANT- Any person or State may seek registration of a Canadian pesticide pursuant to this subsection. Such person or State shall be deemed the registrant of the Canadian pesticide under this Act.

'(3) REQUIREMENTS FOR REGISTRATION SOUGHT BY PERSON- A person seeking registration from a State of a Canadian pesticide under this subsection must--

'(A) demonstrate to the State that the Canadian pesticide is identical or substantially similar in its composition to a comparable domestic pesticide ; and

'(B) submit to the State a copy of the label approved by the Pest Management Regulatory Agency for the Canadian pesticide and the label approved by the Administrator for the comparable domestic pesticide .

'(4) STATE REQUIREMENTS FOR REGISTRATION- A State may register a Canadian pesticide under this subsection only if it--

'(A) has obtained the confidential statement of formula for the Canadian pesticide ;

'(B) determines that the Canadian pesticide is identical or substantially similar in its composition to a comparable domestic pesticide ;

'(C) for each food or feed use authorized by the registration--

'(i) determines that there exists an adequate tolerance or exemption under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that permits the residues of the pesticide on the food or feed; and

'(ii) identifies the tolerances or exemptions in the submissions made under subparagraph (D);

'(D) has obtained a label approved by the Administrator, that--

'(i) duplicates all statements, excluding the establishment number, from the approved labeling of the comparable domestic pesticide that are relevant to the uses registered by the State and deletes all labeling statements relating to uses not registered by the State;

'(ii) identifies the state in which the product may be used;

'(iii) prohibits sale and use outside the state identified in clause (ii);

'(iv) includes a statement indicating that it is unlawful to use the Canadian pesticide in the State in a manner that is inconsistent with the labeling approved by the Administrator pursuant to this subsection; and

'(v) identifies the establishment number of the establishment in which the labeling approved by the Administrator will be affixed to the containers of the Canadian pesticide ;

and

'(E) notifies, within 10 working days after the State's issuance of a registration under this subsection, the Administrator in writing of the State's action, which notification shall include a statement of the determination made under this paragraph, the effective date of the registration, a confidential statement of formula, and a final printed copy of the labeling approved by the Administrator.

'(5) DISAPPROVAL OF REGISTRATION BY ADMINISTRATOR- A registration issued by a State under this subsection shall not be effective for more than 90 days if disapproved by the Administrator within that period. The Administrator may disapprove the registration of a Canadian pesticide by a State pursuant to this subsection if the Administrator determines that the registration of the Canadian pesticide by the State does not comply with this subsection or the Federal Food, Drug, and Cosmetic Act, or is inconsistent with the purposes of this Act.

'(6) LABELING OF CANADIAN PESTICIDES-

'(A) CONTAINERS- Each container containing a Canadian pesticide registered by a State shall at all times bear the label that is approved by the Administrator. The label must be securely attached to the container and must be the only label visible on the container. The original Canadian label on the container must be preserved underneath the label approved by the Administrator.

'(B) AFFIXING LABELS- After a Canadian pesticide is registered under this subsection, the registrant shall prepare labels approved by the Administrator for such Canadian pesticide and shall conduct or supervise all labeling of the Canadian pesticides with the approved labeling. Labeling of the Canadian pesticides pursuant to this subsection must be conducted at an establishment registered by the registrant pursuant to section 7 of this Act.

'(C) ESTABLISHMENT REPORTING REQUIREMENTS- Establishments registered for the sole purpose of labeling required under section 24(d)(6) of this Act are exempt from the reporting requirements provided in section 7(c) of this Act.

'(7) REVOCATION- At any time after the registration of a Canadian pesticide, if the Administrator finds that the Canadian pesticide is not identical or substantially similar in composition to a comparable domestic pesticide, the Administrator may issue an emergency order revoking the registration of the Canadian pesticide. Such order shall be immediately effective and may prohibit sale, distribution and use of the Canadian pesticide. Such order may also prescribe terms of a requirement for the registrant of any such Canadian pesticide to purchase and dispose of any unopened product subject to a revocation order. The registrant of a product subject to a revocation order may request a hearing on such order within 10 days of the issuance of such order. If no hearing is requested within the prescribed period, the order shall become final and shall not be subject to judicial review. If a hearing is requested, judicial review may be sought only at the conclusion of the hearing and following the issuance by the Agency of a final revocation order. A final revocation order issued following a hearing

shall be reviewable in accordance with section 16 of this Act.

'(8) SUSPENSION OF STATE AUTHORITY TO REGISTER CANADIAN PESTICIDES-

'(A) IN GENERAL- If the Administrator finds that a State that has registered 1 or more Canadian pesticides under this subsection is not capable of exercising adequate controls to ensure that registration under this subsection is consistent with this subsection, other provisions of this Act, or the Federal Food, Drug, and Cosmetic Act, or has failed to exercise adequate controls of one or more Canadian pesticides registered under this subsection, the Administrator may suspend the authority of the State to register Canadian pesticides under this subsection until such time as the Administrator determines that the State can and will exercise adequate control of the Canadian pesticides.

'(B) NOTICE AND OPPORTUNITY TO RESPOND- Before suspending the authority of a State to register a Canadian pesticide, the Administrator shall--

'(i) advise the State that the Administrator proposes to suspend the authority and the reasons for the proposed suspension; and

'(ii) before taking final action to suspend under this subsection, the Administrator shall provide the State an opportunity to respond to the proposal to suspend within 30 calendar days of the State's receipt of the Administrator's proposal to suspend.

'(9) TORT LIABILITY-

'(A) STATE AS REGISTERING AGENCY- No action for monetary damages may be maintained in any Federal court against a State acting as a registering agency under the authority of and consistent with this section for injury or damage resulting from the use of a product registered by the State pursuant to this subsection.

'(B) REGISTRANT- Actions in tort may not be maintained in any Federal court against a registrant for damages resulting from adulteration or compositional alterations of the registrant's product registered under this subsection if the registrant did not and could not reasonably have knowledge of the adulteration or compositional alterations.

'(10) DISCLOSURE OF INFORMATION BY ADMINISTRATOR TO THE STATE- The Administrator may disclose to a State that is seeking to register a Canadian pesticide in the State information that is necessary for the State to make the determinations required by paragraph (4) if the State certifies to the Administrator that the State can and will maintain the confidentiality of any trade secrets or commercial or financial information provided by the Administrator to the State under this subsection to the same extent as is required under section 10 of this Act.

'(11) PROVISION OF INFORMATION BY REGISTRANTS OF COMPARABLE DOMESTIC PESTICIDES- Upon request, the registrant of a comparable domestic pesticide shall provide to a State that is seeking to register a Canadian pesticide in the State pursuant to this subsection information that is necessary for the State to make the determinations required by section 24(d)(4) of this Act if the State certifies to the registrant that the State can and will maintain the confidentiality of any trade secrets or commercial or financial information provided by the registrant to the State under this subsection to the same extent as is required under

section 10 of this Act. If the registrant of a comparable domestic pesticide fails to provide to the State, within 15 days of its receipt of a written request by the State, information possessed by or reasonably accessible to the

registrant that is necessary to make the determinations required by paragraph (4), the Administrator may assess a penalty against the registrant of the comparable pesticide based on the Administrator's estimate of the difference between the per-acre cost of the application of the comparable domestic pesticide and the application of the Canadian pesticide multiplied by the acreage in the State of the commodity for which the State registration is sought. No penalty under this subsection shall be assessed unless the registrant assessed shall have been given notice and opportunity for a hearing as provided by section 14(a)(3) of this Act. The only matters for resolution at that hearing will be whether the registrant of the comparable domestic pesticide failed to timely provide to the State the information possessed by or reasonably accessible to the registrant that was necessary to make the determinations required by paragraph (4) and the amount of the penalty.

(12) PENALTY FOR DISCLOSURE BY STATE EMPLOYEE- The State shall not make public information obtained under paragraphs (10) and (11) of this subsection that is privileged and confidential and contains or relates to trade secrets or commercial or financial information. Any State employee who has willfully disclosed information described in this paragraph shall be subject to penalties prescribed in section 10(f) of this Act.

(13) DATA COMPENSATION- A State or person registering a Canadian pesticide under this subsection shall not be liable for compensation for data supporting such registration if the registration of the Canadian pesticide in Canada and the registration of the comparable domestic pesticide are held by the same registrant or by affiliated entities.

(14) FORMULATION CHANGE- The registrant of a comparable domestic pesticide must notify the Administrator of any change in the formulation of a comparable domestic pesticide or a Canadian pesticide registered by such registrant or its affiliate at least 30 days prior to any sale or distribution of the pesticide containing the new formulation. The registrant of the comparable domestic pesticide must submit, with its notice to the Administrator pursuant to this paragraph, the confidential statement of formula for the new formulation if the registrant has possession of or reasonable access to such information. If the registrant fails to provide notice or submit a confidential statement of formula as required by this paragraph, the Administrator may issue a notice of intent to suspend the registration of the comparable domestic pesticide for a period of no less than one year. Suspension shall become final within 30 days of the Administrator's issuance of the notice of intent to suspend, unless during that time the registrant requests a hearing. If a hearing is requested, a hearing shall be conducted under section 6 (d) of this Act. The only matter for resolution at that hearing will be whether the registrant has failed to provide notice or submit a confidential statement of formula as required by this paragraph.'

(b) CONFORMING AMENDMENT- Section 24(c)(4) is amended in the first sentence by striking 'If the Administrator' and inserting the following: 'Except as otherwise provided in section 24(d)(8), if the Administrator'.

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