

CROP PROTECTION LABELING - BACKGROUND MEMORANDUM

Section 11 of 1999 Senate Bill No. 2009 requires the Legislative Council to create a Crop Harmonization Committee consisting of the chairman of the House Agriculture Committee, the chairman of the Senate Agriculture Committee, and three other individuals appointed by the Legislative Council chairman, one of whom must represent the crop protection manufacturing industry. Section 11 also provides that the committee shall:

1. Identify and prioritize crop protection product labeling needs;
2. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act;
3. Identify the data necessary to enable registration of a use to occur in a timely manner;
4. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section and communicate its findings to the Agriculture Commissioner;
5. Request the Agriculture Commissioner to pursue specific research funding options from public and private sources; and
6. Report to the Legislative Council in the same manner as do other interim Legislative Council committees.

Section 12 of Senate Bill No. 2009 appropriated \$15,000 from the minor use pesticide fund, \$15,000 from the general fund, and \$150,000 from special funds derived from grants or donation income to the Legislative Council for the purpose of addressing crop protection product registration and labeling during the 1999-2001 biennium.

Section 13 of Senate Bill No. 2009 states that it is the intent of the Legislative Assembly that the Agriculture Commissioner, Agricultural Experiment Station, and the North Dakota State University Extension Service use resources available to them to assist in the registration of crop protection pesticides in cooperation with the crop protection industry for use in the North Dakota agriculture industry during the 1999-2001 biennium.

FEDERAL LAW

The federal Insecticide, Fungicide, and Rodenticide Act (Act), 7 U.S.C. 136a, prohibits the sale or distribution of any pesticide that is not registered under the Act by the administrator of the Environmental Protection Agency. To prevent unreasonable adverse effects on the environment, the administrator is authorized to adopt regulations to limit the distribution, sale, or use in any state of any pesticide that is not registered with the administrator and that is not subject to an experimental use permit or an emergency exemption granted under the Act. Section

136a sets up a registration mechanism for pesticides and provides labeling requirements. Section 136a also allows the administrator to conditionally register a pesticide if the pesticide and its proposed use are identical or substantially similar to any currently registered pesticide and use of that pesticide.

The administrator is authorized under 7 U.S.C. 136c to issue an experimental use permit to an applicant if the administrator determines that the applicant needs the permit to accumulate information necessary to register a pesticide. In addition, the administrator is required to establish regulations through which states may authorize experimental use permits for pesticides. The administrator is also authorized to issue an experimental use permit for a pesticide to any public or private agricultural research agency or educational institution that applies for a permit for experimentation.

Under 7 U.S.C. 136o, the Secretary of the Treasury is required to notify the administrator of the arrival of pesticides that are imported into the United States. If a pesticide is determined to be misbranded or injurious to health or the environment, the pesticide may be refused admission to the country.

The administrator is authorized under 7 U.S.C. 136p to exempt a federal or state agency from the provisions of the Act if the administrator determines that emergency conditions exist which require an exemption. In determining whether an emergency exists, the administrator is required to consult with the Secretary of Agriculture and the Governor of the state concerned if they request the exemption.

Under 7 U.S.C. 136v, states are authorized to regulate the sale or use of any federally registered pesticide to the extent the regulation does not permit any sale or use prohibited by the Act. Section 136v also provides that a state may provide registration for additional uses of federally registered pesticides formulated for distribution and use within that state to meet special local needs if registration for that use has not previously been denied, disapproved, or canceled by the administrator. The administrator may under certain circumstances advise a state of a disapproval of a registration for additional uses. A state is prohibited from issuing a registration for a food or feed use if a tolerance or exemption does not exist under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., which permits the residues of the pesticide on the food or feed. If the administrator finds that a state is not capable of exercising adequate controls to assure that state registration is in accord with the purposes of the Act or has failed to exercise adequate controls, the administrator may suspend the authority of a state to register pesticides.

The administrator is authorized under 7 U.S.C. 136w-1 to delegate to a state primary enforcement responsibility for pesticide use violations if the state has adopted adequate pesticide use law and regulations, has adopted and is implementing adequate procedures for the enforcement of the state laws and regulations, and will keep compliance reports and records required by the administrator. Under 7 U.S.C. 136w-2, if the administrator determines that a state that has primary enforcement responsibility is not carrying out that responsibility, the administrator must notify the state of the aspects of administration that are determined to be inadequate. The state is then given 90 days to correct any deficiencies. If after that time the administrator determines that the state program remains inadequate, the administrator may rescind the state's primary enforcement responsibility.

NORTH DAKOTA LAW

North Dakota Century Code Chapter 4-35 provides for the regulation of pesticides in this state. Section 4-35-02 establishes a Pesticide Control Board consisting of the Agriculture Commissioner, the director of the Cooperative Extension Division of the North Dakota State University (NDSU), and the director of the Agricultural Experiment Station at NDSU. Section 4-35-06 authorizes the board to adopt regulations to carry out Chapter 4-35. The board is authorized to regulate the time, place, manner, methods, materials, and amounts and concentrations in connection with the application of a pesticide and to restrict or prohibit the use of pesticides in designated areas during specified periods of time. In addition, the board is authorized by that section to adopt restricted use classifications as determined by the Environmental Protection Agency and determine state restricted use pesticides for the state or designated areas within the state. Section 4-35-06 provides that regulations adopted by the board may not permit any pesticide use that is prohibited by the Act.

Section 4-35-06.2 authorizes the Agriculture Commissioner to accept, on behalf of the Pesticide Control Board, funds received for expenses paid by the board relating to the registration of pesticides or donations given to the board. The funds must be deposited in the minor use pesticide fund to pay expenses relating to the registration of pesticides or for the specific purpose for which the funds were given.

Section 4-35-07 authorizes the Pesticide Control Board to issue experimental use permits if necessary to accumulate information required to register a pesticide.

Section 4-35-12 prohibits any person from distributing or selling restricted use pesticides or acting as a pesticide dealer without first having obtained certification from the Extension Service or a designee of the Extension Service.

Section 4-35-12.1 authorizes the Agriculture Commissioner to issue a "stop-sale, use, or removal" order to any person who owns, controls, or has custody of a pesticide found by the commissioner to be in violation of Chapter 4-35 or when the registration of the pesticide has been canceled by the state or the Environmental Protection Agency. After receipt of the order, no person may sell, use, or remove the pesticide except in accordance with the order.

Pursuant to its authority to adopt regulations to carry out Chapter 4-35, the Pesticide Control Board has implemented an administrative rule providing that restricted use pesticides are the same as those declared to be restricted use pesticides by the Environmental Protection Agency and others declared at the discretion of the board. The board has also adopted rules relating to the use of the minor use pesticide fund.

LEGISLATIVE PROPOSALS CONSIDERED BY THE 1999 LEGISLATIVE ASSEMBLY

The 1999 Legislative Assembly adopted House Bill No. 1252, which authorizes the sale and use of crop protection products having Canadian labels if the Agriculture Commissioner determines that a product having an American label contains substantially similar active ingredients and if its importation and use does not violate federal law. It also authorizes the Agriculture Commissioner to use tolerance data established or obtained in North America for purposes of pursuing special local exemptions. The bill as originally introduced would have allowed the sale in this state of any agricultural chemical approved and registered for use in Canada and would have prohibited a chemical manufacturer from charging suppliers in this state an amount greater than that charged suppliers in the Canadian provinces bordering North Dakota, after taking into account the rate of exchange.

House Bill No. 1335 would have made it a Class B misdemeanor for any person to transport any agricultural product or livestock from another country into or through this state unless the product or livestock has a phytosanitary or sanitary certificate addressing its chemical levels. The Governor vetoed the bill and the Legislative Assembly sustained the veto.

House Concurrent Resolution No. 3014 directed a study of the disparity in prices and the inconsistency in the registration of agricultural chemicals. The Legislative Council did not give priority to the study.

The Legislative Assembly adopted House Concurrent Resolution No. 3035, which urges the Environmental Protection Agency and the Congress of the United States to increase resources for and efforts of the U.S.-Canada Technical Working Group to harmonize pesticide regulations between the two countries, to commit more resources and efforts toward establishing tolerances for pesticides registered for use in Canada but not in the United States, and to accept registration data currently accepted by Canadian officials in support of Canadian pesticide registrations.

The resolution was forwarded to the director of the Environmental Protection Agency, the chairmen of the House and Senate Committees on Agriculture, and to each member of the North Dakota Congressional Delegation.

RECENT FEDERAL LEGISLATION INTRODUCED

In February 1999 Senator Byron Dorgan introduced S.394, which amends the Act to permit state registration of a Canadian pesticide for distribution and use within that state. The bill was referred to the Committee on Agriculture.

In May 1999 Representative Earl Pomeroy introduced H.R.1913, which "[e]xpresses the sense of Congress that the President should direct the United States representative to the United States-Canada Technical Working Group to urge the Group to make harmonization of specified pesticide registrations the highest priority." The legislation also directs the administrator of the Environmental Protection Agency to accept a written request from a Canadian registrant for same-use United States registration unless substantial evidence exists precluding the acceptance. The bill was referred to the Committee on Agriculture's Subcommittee on Department Operations, Oversight, Nutrition and Forestry.

In June 1999 Senator Conrad R. Burns of Montana introduced S.1229, which amends the Act to allow a state, on request of an agricultural producer on the state's own initiative, to register a foreign pesticide for distribution and use in the state if registration is consistent with the Act and is approved by the administrator of the Environmental Protection Agency. The bill was referred to the Committee on Agriculture.

POSSIBLE STUDY APPROACH

Section 11 of Senate Bill No. 2009 directs the Crop Harmonization Committee, in consultation with the Pesticide Control Board, to:

1. Identify and prioritize crop protection product labeling needs.
2. Explore the extent of authority given to this state under the federal Insecticide, Fungicide, and Rodenticide Act.
3. Identify the data necessary to enable registration of a use to occur in a timely manner.
4. Determine what research, if any, is necessary to fulfill data requirements for activities listed in this section and communicate its findings to the Agriculture Commissioner.
5. Request the Agriculture Commissioner to pursue specific research funding options from public and private sources.

To accomplish those directives, the committee may consider working with the Pesticide Control Board, the NDSU Extension Service and Agricultural Experiment Station, and various agriculture groups to identify and prioritize the crop protection labeling needs. The committee may also desire to receive periodic updates regarding federal initiatives to address harmonization issues from representatives of the Environmental Protection Agency and congressional sources. If the committee determines that additional funding is necessary to conduct this study, it may request the Agriculture Commissioner to pursue additional funding options (Section 12 of Senate Bill No. 2009 appropriated up to \$150,000 in special funds for the purpose of addressing crop protection product registration and labeling).