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### § 346a. Tolerances and exemptions for pesticide chemical residues

#### (a) Requirement for tolerance or exemption

##### (1) General rule

Except as provided in paragraph (2) or (3), any pesticide chemical residue in or on a food shall be deemed unsafe for the purpose of section [342 \(a\)\(2\)\(B\)](#) of this title unless—

(A) a tolerance for such pesticide chemical residue in or on such food is in effect under this section and the quantity of the residue is within the limits of the tolerance; or

(B) an exemption from the requirement of a tolerance is in effect under this section for the pesticide chemical residue.

For the purposes of this section, the term “food”, when used as a noun without modification, shall mean a raw agricultural commodity or processed food.

##### (2) Processed food

Notwithstanding paragraph (1)—

(A) if a tolerance is in effect under this section for a pesticide chemical residue in or on a raw agricultural commodity, a pesticide chemical residue that is present in or on a processed food because the food is made from that raw agricultural commodity shall not be considered unsafe within the meaning of section [342 \(a\)\(2\)\(B\)](#) of this title despite the lack of a tolerance for the pesticide chemical residue in or on the processed food if the pesticide chemical has been used in or on the raw agricultural commodity in conformity with a tolerance under this section, such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice, and the concentration of the pesticide chemical residue in the processed food is not greater than the tolerance prescribed for the pesticide chemical residue in the raw agricultural commodity; or

(B) if an exemption for the requirement for a tolerance is in effect under this section for a pesticide chemical residue in or on a raw agricultural commodity, a pesticide chemical residue that is present in or on a processed food because the food is made from that raw agricultural commodity shall not be considered unsafe within the meaning of section [342 \(a\)\(2\)\(B\)](#) of this title.

##### (3) Residues of degradation products

If a pesticide chemical residue is present in or on a food because it is a metabolite or other degradation product of a precursor substance that itself is a pesticide chemical or pesticide chemical residue, such a residue shall not be considered to be unsafe within the meaning of section [342 \(a\)\(2\)\(B\)](#) of this title despite the lack of a tolerance or exemption from the need for a tolerance for such residue in or on such food if—

(A) the Administrator has not determined that the degradation product is likely to pose any potential health risk from dietary exposure that is of a different type than, or of a greater significance than, any risk posed by dietary exposure to the

precursor substance;

**(B)** either—

**(i)** a tolerance is in effect under this section for residues of the precursor substance in or on the food, and the combined level of residues of the degradation product and the precursor substance in or on the food is at or below the stoichiometrically equivalent level that would be permitted by the tolerance if the residue consisted only of the precursor substance rather than the degradation product; or

**(ii)** an exemption from the need for a tolerance is in effect under this section for residues of the precursor substance in or on the food; and

**(C)** the tolerance or exemption for residues of the precursor substance does not state that it applies only to particular named substances and does not state that it does not apply to residues of the degradation product.

**(4) Effect of tolerance or exemption**

While a tolerance or exemption from the requirement for a tolerance is in effect under this section for a pesticide chemical residue with respect to any food, the food shall not by reason of bearing or containing any amount of such a residue be considered to be adulterated within the meaning of section 342 (a)(1) of this title.

**(b) Authority and standard for tolerance**

**(1) Authority**

The Administrator may issue regulations establishing, modifying, or revoking a tolerance for a pesticide chemical residue in or on a food—

**(A)** in response to a petition filed under subsection (d) of this section; or

**(B)** on the Administrator's own initiative under subsection (e) of this section.

As used in this section, the term "modify" shall not mean expanding the tolerance to cover additional foods.

**(2) Standard**

**(A) General rule**

**(i)** Standard The Administrator may establish or leave in effect a tolerance for a pesticide chemical residue in or on a food only if the Administrator determines that the tolerance is safe. The Administrator shall modify or revoke a tolerance if the Administrator determines it is not safe.

**(ii)** Determination of safety As used in this section, the term "safe", with respect to a tolerance for a pesticide chemical residue, means that the Administrator has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.

**(iii)** Rule of construction With respect to a tolerance, a pesticide chemical residue meeting the standard under clause (i) is not an eligible pesticide chemical residue for purposes of subparagraph (B).

**(B) Tolerances for eligible pesticide chemical residues**

**(i)** Definition As used in this subparagraph, the term "eligible pesticide chemical residue" means a pesticide chemical residue as to which—

**(I)** the Administrator is not able to identify a level of exposure to the residue at which the residue will not cause or contribute to a known or anticipated harm to human health (referred to in this section as a

“nonthreshold effect”);

**(II)** the lifetime risk of experiencing the nonthreshold effect is appropriately assessed by quantitative risk assessment; and

**(III)** with regard to any known or anticipated harm to human health for which the Administrator is able to identify a level at which the residue will not cause such harm (referred to in this section as a “threshold effect”), the Administrator determines that the level of aggregate exposure is safe.

**(ii)** Determination of tolerance Notwithstanding subparagraph (A)(i), a tolerance for an eligible pesticide chemical residue may be left in effect or modified under this subparagraph if—

**(I)** at least one of the conditions described in clause (iii) is met; and

**(II)** both of the conditions described in clause (iv) are met.

**(iii)** Conditions regarding use For purposes of clause (ii), the conditions described in this clause with respect to a tolerance for an eligible pesticide chemical residue are the following:

**(I)** Use of the pesticide chemical that produces the residue protects consumers from adverse effects on health that would pose a greater risk than the dietary risk from the residue.

**(II)** Use of the pesticide chemical that produces the residue is necessary to avoid a significant disruption in domestic production of an adequate, wholesome, and economical food supply.

**(iv)** Conditions regarding risk For purposes of clause (ii), the conditions described in this clause with respect to a tolerance for an eligible pesticide chemical residue are the following:

**(I)** The yearly risk associated with the nonthreshold effect from aggregate exposure to the residue does not exceed 10 times the yearly risk that would be allowed under subparagraph (A) for such effect.

**(II)** The tolerance is limited so as to ensure that the risk over a lifetime associated with the nonthreshold effect from aggregate exposure to the residue is not greater than twice the lifetime risk that would be allowed under subparagraph (A) for such effect.

**(v)** Review Five years after the date on which the Administrator makes a determination to leave in effect or modify a tolerance under this subparagraph, and thereafter as the Administrator deems appropriate, the Administrator shall determine, after notice and opportunity for comment, whether it has been demonstrated to the Administrator that a condition described in clause (iii)(I) or clause (iii)(II) continues to exist with respect to the tolerance and that the yearly and lifetime risks from aggregate exposure to such residue continue to comply with the limits specified in clause (iv). If the Administrator determines by such date that such demonstration has not been made, the Administrator shall, not later than 180 days after the date of such determination, issue a regulation under subsection (e)(1) of this section to modify or revoke the tolerance.

**(vi)** Infants and children Any tolerance under this subparagraph shall meet the requirements of subparagraph (C).

### **(C) Exposure of infants and children**

In establishing, modifying, leaving in effect, or revoking a tolerance or exemption for a pesticide chemical residue, the Administrator—

**(i)** shall assess the risk of the pesticide chemical residue based on—

(I) available information about consumption patterns among infants and children that are likely to result in disproportionately high consumption of foods containing or bearing such residue among infants and children in comparison to the general population;

(II) available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults, and effects of in utero exposure to pesticide chemicals; and

(III) available information concerning the cumulative effects on infants and children of such residues and other substances that have a common mechanism of toxicity; and

(ii) shall—

(I) ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue; and

(II) publish a specific determination regarding the safety of the pesticide chemical residue for infants and children.

The Secretary of Health and Human Services and the Secretary of Agriculture, in consultation with the Administrator, shall conduct surveys to document dietary exposure to pesticides among infants and children. In the case of threshold effects, for purposes of clause (ii)(I) an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children. Notwithstanding such requirement for an additional margin of safety, the Administrator may use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children.

#### **(D) Factors**

In establishing, modifying, leaving in effect, or revoking a tolerance or exemption for a pesticide chemical residue, the Administrator shall consider, among other relevant factors—

(i) the validity, completeness, and reliability of the available data from studies of the pesticide chemical and pesticide chemical residue;

(ii) the nature of any toxic effect shown to be caused by the pesticide chemical or pesticide chemical residue in such studies;

(iii) available information concerning the relationship of the results of such studies to human risk;

(iv) available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers);

(v) available information concerning the cumulative effects of such residues and other substances that have a common mechanism of toxicity;

(vi) available information concerning the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances, including dietary exposure under the tolerance and all other tolerances in effect for the pesticide chemical residue, and exposure from other non-occupational sources;

(vii) available information concerning the variability of the sensitivities of major identifiable subgroups of consumers;

(viii) such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects; and

(ix) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data.

**(E) Data and information regarding anticipated and actual residue levels**

(i) Authority In establishing, modifying, leaving in effect, or revoking a tolerance for a pesticide chemical residue, the Administrator may consider available data and information on the anticipated residue levels of the pesticide chemical in or on food and the actual residue levels of the pesticide chemical that have been measured in food, including residue data collected by the Food and Drug Administration.

(ii) Requirement If the Administrator relies on anticipated or actual residue levels in establishing, modifying, or leaving in effect a tolerance, the Administrator shall pursuant to subsection (f)(1) of this section require that data be provided five years after the date on which the tolerance is established, modified, or left in effect, and thereafter as the Administrator deems appropriate, demonstrating that such residue levels are not above the levels so relied on. If such data are not so provided, or if the data do not demonstrate that the residue levels are not above the levels so relied on, the Administrator shall, not later than 180 days after the date on which the data were required to be provided, issue a regulation under subsection (e)(1) of this section, or an order under subsection (f)(2) of this section, as appropriate, to modify or revoke the tolerance.

**(F) Percent of food actually treated**

In establishing, modifying, leaving in effect, or revoking a tolerance for a pesticide chemical residue, the Administrator may, when assessing chronic dietary risk, consider available data and information on the percent of food actually treated with the pesticide chemical (including aggregate pesticide use data collected by the Department of Agriculture) only if the Administrator—

(i) finds that the data are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide chemical residue;

(ii) finds that the exposure estimate does not understate exposure for any significant subpopulation group;

(iii) finds that, if data are available on pesticide use and consumption of food in a particular area, the population in such area is not dietarily exposed to residues above those estimated by the Administrator; and

(iv) provides for the periodic reevaluation of the estimate of anticipated dietary exposure.

**(3) Detection methods**

**(A) General rule**

A tolerance for a pesticide chemical residue in or on a food shall not be established or modified by the Administrator unless the Administrator determines, after consultation with the Secretary, that there is a practical method for detecting and measuring the levels of the pesticide chemical residue in or on the food.

**(B) Detection limit**

A tolerance for a pesticide chemical residue in or on a food shall not be established at or modified to a level lower than the limit of detection of the

method for detecting and measuring the pesticide chemical residue specified by the Administrator under subparagraph (A).

#### **(4) International standards**

In establishing a tolerance for a pesticide chemical residue in or on a food, the Administrator shall determine whether a maximum residue level for the pesticide chemical has been established by the Codex Alimentarius Commission. If a Codex maximum residue level has been established for the pesticide chemical and the Administrator does not propose to adopt the Codex level, the Administrator shall publish for public comment a notice explaining the reasons for departing from the Codex level.

### **(c) Authority and standard for exemptions**

#### **(1) Authority**

The Administrator may issue a regulation establishing, modifying, or revoking an exemption from the requirement for a tolerance for a pesticide chemical residue in or on food—

- (A)** in response to a petition filed under subsection (d) of this section; or
- (B)** on the Administrator's initiative under subsection (e) of this section.

#### **(2) Standard**

##### **(A) General rule**

**(i) Standard** The Administrator may establish or leave in effect an exemption from the requirement for a tolerance for a pesticide chemical residue in or on food only if the Administrator determines that the exemption is safe. The Administrator shall modify or revoke an exemption if the Administrator determines it is not safe.

**(ii) Determination of safety** The term "safe", with respect to an exemption for a pesticide chemical residue, means that the Administrator has determined that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.

##### **(B) Factors**

In making a determination under this paragraph, the Administrator shall take into account, among other relevant considerations, the considerations set forth in subparagraphs (C) and (D) of subsection (b)(2) of this section.

#### **(3) Limitation**

An exemption from the requirement for a tolerance for a pesticide chemical residue in or on food shall not be established or modified by the Administrator unless the Administrator determines, after consultation with the Secretary—

- (A)** that there is a practical method for detecting and measuring the levels of such pesticide chemical residue in or on food; or
- (B)** that there is no need for such a method, and states the reasons for such determination in issuing the regulation establishing or modifying the exemption.

### **(d) Petition for tolerance or exemption**

#### **(1) Petitions and petitioners**

Any person may file with the Administrator a petition proposing the issuance of a regulation—

**(A)** establishing, modifying, or revoking a tolerance for a pesticide chemical residue in or on a food; or

**(B)** establishing, modifying, or revoking an exemption from the requirement of a tolerance for such a residue.

**(2) Petition contents**

**(A) Establishment**

A petition under paragraph (1) to establish a tolerance or exemption for a pesticide chemical residue shall be supported by such data and information as are specified in regulations issued by the Administrator, including—

**(i)**

**(I)** an informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition; and

**(II)** a statement that the petitioner agrees that such summary or any information it contains may be published as a part of the notice of filing of the petition to be published under this subsection and as part of a proposed or final regulation issued under this section;

**(ii)** the name, chemical identity, and composition of the pesticide chemical residue and of the pesticide chemical that produces the residue;

**(iii)** data showing the recommended amount, frequency, method, and time of application of that pesticide chemical;

**(iv)** full reports of tests and investigations made with respect to the safety of the pesticide chemical, including full information as to the methods and controls used in conducting those tests and investigations;

**(v)** full reports of tests and investigations made with respect to the nature and amount of the pesticide chemical residue that is likely to remain in or on the food, including a description of the analytical methods used;

**(vi)** a practical method for detecting and measuring the levels of the pesticide chemical residue in or on the food, or for exemptions, a statement why such a method is not needed;

**(vii)** a proposed tolerance for the pesticide chemical residue, if a tolerance is proposed;

**(viii)** if the petition relates to a tolerance for a processed food, reports of investigations conducted using the processing method(s) used to produce that food;

**(ix)** such information as the Administrator may require to make the determination under subsection (b)(2)(C) of this section;

**(x)** such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects;

**(xi)** information regarding exposure to the pesticide chemical residue due to any tolerance or exemption already granted for such residue;

**(xii)** practical methods for removing any amount of the residue that would exceed any proposed tolerance; and

**(xiii)** such other data and information as the Administrator requires by regulation to support the petition.

If information or data required by this subparagraph is available to the

Administrator, the person submitting the petition may cite the availability of the information or data in lieu of submitting it. The Administrator may require a petition to be accompanied by samples of the pesticide chemical with respect to which the petition is filed.

**(B) Modification or revocation**

The Administrator may by regulation establish the requirements for information and data to support a petition to modify or revoke a tolerance or to modify or revoke an exemption from the requirement for a tolerance.

**(3) Notice**

A notice of the filing of a petition that the Administrator determines has met the requirements of paragraph (2) shall be published by the Administrator within 30 days after such determination. The notice shall announce the availability of a description of the analytical methods available to the Administrator for the detection and measurement of the pesticide chemical residue with respect to which the petition is filed or shall set forth the petitioner's statement of why such a method is not needed. The notice shall include the summary required by paragraph (2)(A)(i)(I).

**(4) Actions by the Administrator**

**(A) In general**

The Administrator shall, after giving due consideration to a petition filed under paragraph (1) and any other information available to the Administrator—

- (i) issue a final regulation (which may vary from that sought by the petition) establishing, modifying, or revoking a tolerance for the pesticide chemical residue or an exemption of the pesticide chemical residue from the requirement of a tolerance (which final regulation shall be issued without further notice and without further period for public comment);
- (ii) issue a proposed regulation under subsection (e) of this section, and thereafter issue a final regulation under such subsection; or
- (iii) issue an order denying the petition.

**(B) Priorities**

The Administrator shall give priority to petitions for the establishment or modification of a tolerance or exemption for a pesticide chemical residue that appears to pose a significantly lower risk to human health from dietary exposure than pesticide chemical residues that have tolerances in effect for the same or similar uses.

**(C) Expedited review of certain petitions**

- (i) **Date certain for review** If a person files a complete petition with the Administrator proposing the issuance of a regulation establishing a tolerance or exemption for a pesticide chemical residue that presents a lower risk to human health than a pesticide chemical residue for which a tolerance has been left in effect or modified under subsection (b)(2)(B) of this section, the Administrator shall complete action on such petition under this paragraph within 1 year.
- (ii) **Required determinations** If the Administrator issues a final regulation establishing a tolerance or exemption for a safer pesticide chemical residue under clause (i), the Administrator shall, not later than 180 days after the date on which the regulation is issued, determine whether a condition described in subclause (I) or (II) of subsection (b)(2)(B)(iii) of this section continues to exist with respect to a tolerance that has been left in effect or modified under subsection (b)(2)(B) of this section. If such condition does not continue to exist, the Administrator shall, not later than 180 days after the date on which the determination under the preceding sentence is made,



issue a regulation under subsection (e)(1) of this section to modify or revoke the tolerance.

**(e) Action on Administrator's own initiative**

**(1) General rule**

The Administrator may issue a regulation—

- (A)** establishing, modifying, suspending under subsection (l)(3) of this section, or revoking a tolerance for a pesticide chemical or a pesticide chemical residue;
- (B)** establishing, modifying, suspending under subsection (l)(3) of this section, or revoking an exemption of a pesticide chemical residue from the requirement of a tolerance; or
- (C)** establishing general procedures and requirements to implement this section.

**(2) Notice**

Before issuing a final regulation under paragraph (1), the Administrator shall issue a notice of proposed rulemaking and provide a period of not less than 60 days for public comment on the proposed regulation, except that a shorter period for comment may be provided if the Administrator for good cause finds that it would be in the public interest to do so and states the reasons for the finding in the notice of proposed rulemaking.

**(f) Special data requirements**

**(1) Requiring submission of additional data**

If the Administrator determines that additional data or information are reasonably required to support the continuation of a tolerance or exemption that is in effect under this section for a pesticide chemical residue on a food, the Administrator shall—

- (A)** issue a notice requiring the person holding the pesticide registrations associated with such tolerance or exemption to submit the data or information under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a (c)(2)(B)];
- (B)** issue a rule requiring that testing be conducted on a substance or mixture under section 4 of the Toxic Substances Control Act [15 U.S.C. 2603]; or
- (C)** publish in the Federal Register, after first providing notice and an opportunity for comment of not less than 60 days' duration, an order—
  - (i)** requiring the submission to the Administrator by one or more interested persons of a notice identifying the person or persons who will submit the required data and information;
  - (ii)** describing the type of data and information required to be submitted to the Administrator and stating why the data and information could not be obtained under the authority of section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a (c)(2)(B)] or section 4 of the Toxic Substances Control Act [15 U.S.C. 2603];
  - (iii)** describing the reports of the Administrator required to be prepared during and after the collection of the data and information;
  - (iv)** requiring the submission to the Administrator of the data, information, and reports referred to in clauses (ii) and (iii); and
  - (v)** establishing dates by which the submissions described in clauses (i) and (iv) must be made.

The Administrator may under subparagraph (C) revise any such order to correct an error. The Administrator may under this paragraph require data or information

pertaining to whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

## **(2) Noncompliance**

If a submission required by a notice issued in accordance with paragraph (1)(A), a rule issued under paragraph (1)(B), or an order issued under paragraph (1)(C) is not made by the time specified in such notice, rule, or order, the Administrator may by order published in the Federal Register modify or revoke the tolerance or exemption in question. In any review of such an order under subsection (g)(2) of this section, the only material issue shall be whether a submission required under paragraph (1) was not made by the time specified.

## **(g) Effective date, objections, hearings, and administrative review**

### **(1) Effective date**

A regulation or order issued under subsection (d)(4), (e)(1), or (f)(2) of this section shall take effect upon publication unless the regulation or order specifies otherwise. The Administrator may stay the effectiveness of the regulation or order if, after issuance of such regulation or order, objections are filed with respect to such regulation or order pursuant to paragraph (2).

### **(2) Further proceedings**

#### **(A) Objections**

Within 60 days after a regulation or order is issued under subsection (d)(4), (e)(1)(A), (e)(1)(B), (f)(2), (n)(3), or (n)(5)(C) of this section, any person may file objections thereto with the Administrator, specifying with particularity the provisions of the regulation or order deemed objectionable and stating reasonable grounds therefor. If the regulation or order was issued in response to a petition under subsection (d)(1) of this section, a copy of each objection filed by a person other than the petitioner shall be served by the Administrator on the petitioner.

#### **(B) Hearing**

An objection may include a request for a public evidentiary hearing upon the objection. The Administrator shall, upon the initiative of the Administrator or upon the request of an interested person and after due notice, hold a public evidentiary hearing if and to the extent the Administrator determines that such a public hearing is necessary to receive factual evidence relevant to material issues of fact raised by the objections. The presiding officer in such a hearing may authorize a party to obtain discovery from other persons and may upon a showing of good cause made by a party issue a subpoena to compel testimony or production of documents from any person. The presiding officer shall be governed by the Federal Rules of Civil Procedure in making any order for the protection of the witness or the content of documents produced and shall order the payment of reasonable fees and expenses as a condition to requiring testimony of the witness. On contest, such a subpoena may be enforced by a Federal district court.

#### **(C) Final decision**

As soon as practicable after receiving the arguments of the parties, the Administrator shall issue an order stating the action taken upon each such objection and setting forth any revision to the regulation or prior order that the Administrator has found to be warranted. If a hearing was held under subparagraph (B), such order and any revision to the regulation or prior order shall, with respect to questions of fact at issue in the hearing, be based only on substantial evidence of record at such hearing, and shall set forth in detail the findings of facts and the conclusions of law or policy upon which the order or

regulation is based.

## **(h) Judicial review**

### **(1) Petition**

In a case of actual controversy as to the validity of any regulation issued under subsection (e)(1)(C) of this section, or any order issued under subsection (f)(1)(C) or (g)(2)(C) of this section, or any regulation that is the subject of such an order, any person who will be adversely affected by such order or regulation may obtain judicial review by filing in the United States Court of Appeals for the circuit wherein that person resides or has its principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within 60 days after publication of such order or regulation, a petition praying that the order or regulation be set aside in whole or in part.

### **(2) Record and jurisdiction**

A copy of the petition under paragraph (1) shall be forthwith transmitted by the clerk of the court to the Administrator, or any officer designated by the Administrator for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which the Administrator based the order or regulation, as provided in section 2112 of title 28. Upon the filing of such a petition, the court shall have exclusive jurisdiction to affirm or set aside the order or regulation complained of in whole or in part. As to orders issued following a public evidentiary hearing, the findings of the Administrator with respect to questions of fact shall be sustained only if supported by substantial evidence when considered on the record as a whole.

### **(3) Additional evidence**

If a party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the proceeding before the Administrator, the court may order that the additional evidence (and evidence in rebuttal thereof) shall be taken before the Administrator in the manner and upon the terms and conditions the court deems proper. The Administrator may modify prior findings as to the facts by reason of the additional evidence so taken and may modify the order or regulation accordingly. The Administrator shall file with the court any such modified finding, order, or regulation.

### **(4) Final judgment; Supreme Court review**

The judgment of the court affirming or setting aside, in whole or in part, any regulation or any order and any regulation which is the subject of such an order shall be final, subject to review by the Supreme Court of the United States as provided in section 1254 of title 28. The commencement of proceedings under this subsection shall not, unless specifically ordered by the court to the contrary, operate as a stay of a regulation or order.

### **(5) Application**

Any issue as to which review is or was obtainable under this subsection shall not be the subject of judicial review under any other provision of law.

## **(i) Confidentiality and use of data**

### **(1) General rule**

Data and information that are or have been submitted to the Administrator under this section or section 348 of this title in support of a tolerance or an exemption from a tolerance shall be entitled to confidential treatment for reasons of business confidentiality and to exclusive use and data compensation to the same extent provided by sections 3 and 10 of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a, 136h].

**(2) Exceptions****(A) In general**

Data and information that are entitled to confidential treatment under paragraph (1) may be disclosed, under such security requirements as the Administrator may provide by regulation, to—

- (i) employees of the United States authorized by the Administrator to examine such data and information in the carrying out of their official duties under this chapter or other Federal statutes intended to protect the public health; or
- (ii) contractors with the United States authorized by the Administrator to examine such data and information in the carrying out of contracts under this chapter or such statutes.

**(B) Congress**

This subsection does not authorize the withholding of data or information from either House of Congress or from, to the extent of matter within its jurisdiction, any committee or subcommittee of such committee or any joint committee of Congress or any subcommittee of such joint committee.

**(3) Summaries**

Notwithstanding any provision of this subsection or other law, the Administrator may publish the informative summary required by subsection (d)(2)(A)(i) of this section and may, in issuing a proposed or final regulation or order under this section, publish an informative summary of the data relating to the regulation or order.

**(j) Status of previously issued regulations****(1) Regulations under section 346**

Regulations affecting pesticide chemical residues in or on raw agricultural commodities promulgated, in accordance with section 371 (e) of this title, under the authority of section 346 (a) <sup>[1]</sup> of this title upon the basis of public hearings instituted before January 1, 1953, shall be deemed to be regulations issued under this section and shall be subject to modification or revocation under subsections (d) and (e) of this section, and shall be subject to review under subsection (q) of this section.

**(2) Regulations under section 348**

Regulations that established tolerances for substances that are pesticide chemical residues in or on processed food, or that otherwise stated the conditions under which such pesticide chemicals could be safely used, and that were issued under section 348 of this title on or before August 3, 1996, shall be deemed to be regulations issued under this section and shall be subject to modification or revocation under subsection (d) or (e) of this section, and shall be subject to review under subsection (q) of this section.

**(3) Regulations under section 346a**

Regulations that established tolerances or exemptions under this section that were issued on or before August 3, 1996, shall remain in effect unless modified or revoked under subsection (d) or (e) of this section, and shall be subject to review under subsection (q) of this section.

**(4) Certain substances**

With respect to a substance that is not included in the definition of the term "pesticide chemical" under section 321 (q)(1) of this title but was so included on the day before October 30, 1998, the following applies as of October 30, 1998:

(A) Notwithstanding paragraph (2), any regulation applying to the use of the substance that was in effect on the day before October 30, 1998, and was on such day deemed in such paragraph to have been issued under this section, shall be considered to have been issued under section 348 of this title.

(B) Notwithstanding paragraph (3), any regulation applying to the use of the substance that was in effect on such day and was issued under this section (including any such regulation issued before August 3, 1996) is deemed to have been issued under section 348 of this title.

**(k) Transitional provision**

If, on the day before August 3, 1996, a substance that is a pesticide chemical was, with respect to a particular pesticidal use of the substance and any resulting pesticide chemical residue in or on a particular food—

(1) regarded by the Administrator or the Secretary as generally recognized as safe for use within the meaning of the provisions of subsection (a) of this section or section 321 (s) of this title as then in effect; or

(2) regarded by the Secretary as a substance described by section 321 (s)(4) of this title;

such a pesticide chemical residue shall be regarded as exempt from the requirement for a tolerance, as of August 3, 1996. The Administrator shall by regulation indicate which substances are described by this subsection. Any exemption under this subsection may be modified or revoked as if it had been issued under subsection (c) of this section.

**(l) Harmonization with action under other laws**

**(1) Coordination with FIFRA**

To the extent practicable and consistent with the review deadlines in subsection (q) of this section, in issuing a final rule under this subsection that suspends or revokes a tolerance or exemption for a pesticide chemical residue in or on food, the Administrator shall coordinate such action with any related necessary action under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

**(2) Revocation of tolerance or exemption following cancellation of associated registrations**

If the Administrator, acting under the Federal Insecticide, Fungicide, and Rodenticide Act, cancels the registration of each pesticide that contains a particular pesticide chemical and that is labeled for use on a particular food, or requires that the registration of each such pesticide be modified to prohibit its use in connection with the production, storage, or transportation of such food, due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on that food, the Administrator shall revoke any tolerance or exemption that allows the presence of the pesticide chemical, or any pesticide chemical residue that results from its use, in or on that food. Subsection (e) of this section shall apply to actions taken under this paragraph. A revocation under this paragraph shall become effective not later than 180 days after—

(A) the date by which each such cancellation of a registration has become effective; or

(B) the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

**(3) Suspension of tolerance or exemption following suspension of associated registrations**

**(A) Suspension**

If the Administrator, acting under the Federal Insecticide, Fungicide, and Rodenticide Act, suspends the use of each registered pesticide that contains a

particular pesticide chemical and that is labeled for use on a particular food, due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on that food, the Administrator shall suspend any tolerance or exemption that allows the presence of the pesticide chemical, or any pesticide chemical residue that results from its use, in or on that food. Subsection (e) of this section shall apply to actions taken under this paragraph. A suspension under this paragraph shall become effective not later than 60 days after the date by which each such suspension of use has become effective.

**(B) Effect of suspension**

The suspension of a tolerance or exemption under subparagraph (A) shall be effective as long as the use of each associated registration of a pesticide is suspended under the Federal Insecticide, Fungicide, and Rodenticide Act. While a suspension of a tolerance or exemption is effective the tolerance or exemption shall not be considered to be in effect. If the suspension of use of the pesticide under that Act is terminated, leaving the registration of the pesticide for such use in effect under that Act, the Administrator shall rescind any associated suspension of tolerance or exemption.

**(4) Tolerances for unavoidable residues**

In connection with action taken under paragraph (2) or (3), or with respect to pesticides whose registrations were suspended or canceled prior to August 3, 1996, under the Federal Insecticide, Fungicide, and Rodenticide Act, if the Administrator determines that a residue of the canceled or suspended pesticide chemical will unavoidably persist in the environment and thereby be present in or on a food, the Administrator may establish a tolerance for the pesticide chemical residue. In establishing such a tolerance, the Administrator shall take into account both the factors set forth in subsection (b)(2) of this section and the unavoidability of the residue. Subsection (e) of this section shall apply to the establishment of such tolerance. The Administrator shall review any such tolerance periodically and modify it as necessary so that it allows no greater level of the pesticide chemical residue than is unavoidable.

**(5) Pesticide residues resulting from lawful application of pesticide**

Notwithstanding any other provision of this chapter, if a tolerance or exemption for a pesticide chemical residue in or on a food has been revoked, suspended, or modified under this section, an article of that food shall not be deemed unsafe solely because of the presence of such pesticide chemical residue in or on such food if it is shown to the satisfaction of the Secretary that—

**(A)** the residue is present as the result of an application or use of a pesticide at a time and in a manner that was lawful under the Federal Insecticide, Fungicide, and Rodenticide Act; and

**(B)** the residue does not exceed a level that was authorized at the time of that application or use to be present on the food under a tolerance, exemption, food additive regulation, or other sanction then in effect under this chapter;

unless, in the case of any tolerance or exemption revoked, suspended, or modified under this subsection or subsection (d) or (e) of this section, the Administrator has issued a determination that consumption of the legally treated food during the period of its likely availability in commerce will pose an unreasonable dietary risk.

**(6) Tolerance for use of pesticides under an emergency exemption**

If the Administrator grants an exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136p) for a pesticide chemical, the Administrator shall establish a tolerance or exemption from the requirement for a tolerance for the pesticide chemical residue. Such a tolerance or exemption from a tolerance shall have an expiration date. The Administrator may establish such a tolerance or exemption without providing notice or a period for comment on the tolerance or exemption. The Administrator shall promulgate regulations within 365

days after August 3, 1996, governing the establishment of tolerances and exemptions under this paragraph. Such regulations shall be consistent with the safety standard under subsections (b)(2) and (c)(2) of this section and with section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act.

**(m) Fees**

**(1) Amount**

The Administrator shall by regulation require the payment of such fees as will in the aggregate, in the judgment of the Administrator, be sufficient over a reasonable term to provide, equip, and maintain an adequate service for the performance of the Administrator's functions under this section. Under the regulations, the performance of the Administrator's services or other functions under this section, including—

- (A)** the acceptance for filing of a petition submitted under subsection (d) of this section;
- (B)** establishing, modifying, leaving in effect, or revoking a tolerance or establishing, modifying, leaving in effect, or revoking an exemption from the requirement for a tolerance under this section;
- (C)** the acceptance for filing of objections under subsection (g) of this section; or
- (D)** the certification and filing in court of a transcript of the proceedings and the record under subsection (h) of this section;

may be conditioned upon the payment of such fees. The regulations may further provide for waiver or refund of fees in whole or in part when in the judgment of the Administrator such a waiver or refund is equitable and not contrary to the purposes of this subsection.

**(2) Deposit**

All fees collected under paragraph (1) shall be deposited in the Reregistration and Expedited Processing Fund created by section 4(k) of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a-1 (k)]. Such fees shall be available to the Administrator, without fiscal year limitation, for the performance of the Administrator's services or functions as specified in paragraph (1).

**(n) National uniformity of tolerances**

**(1) "Qualifying pesticide chemical residue" defined**

For purposes of this subsection, the term "qualifying pesticide chemical residue" means a pesticide chemical residue resulting from the use, in production, processing, or storage of a food, of a pesticide chemical that is an active ingredient and that—

- (A)** was first approved for such use in a registration of a pesticide issued under section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136a (c)(5)] on or after April 25, 1985, on the basis of data determined by the Administrator to meet all applicable requirements for data prescribed by regulations in effect under that Act [7 U.S.C. 136 et seq.] on April 25, 1985; or
- (B)** was approved for such use in a reregistration eligibility determination issued under section 4(g) of that Act [7 U.S.C. 136a-1 (g)] on or after August 3, 1996.

**(2) "Qualifying Federal determination" defined**

For purposes of this subsection, the term "qualifying Federal determination" means a tolerance or exemption from the requirement for a tolerance for a qualifying pesticide chemical residue that—

- (A)** is issued under this section after August 3, 1996, and determined by the Administrator to meet the standard under subsection (b)(2)(A) (in the case of a tolerance) or (c)(2) (in the case of an exemption) of this section; or

**(B)**

(i) pursuant to subsection (j) of this section is remaining in effect or is deemed to have been issued under this section, or is regarded under subsection (k) of this section as exempt from the requirement for a tolerance; and

(ii) is determined by the Administrator to meet the standard under subsection (b)(2)(A) (in the case of a tolerance) or (c)(2) (in the case of an exemption) of this section.

**(3) Limitation**

The Administrator may make the determination described in paragraph (2)(B)(ii) only by issuing a rule in accordance with the procedure set forth in subsection (d) or (e) of this section and only if the Administrator issues a proposed rule and allows a period of not less than 30 days for comment on the proposed rule. Any such rule shall be reviewable in accordance with subsections (g) and (h) of this section.

**(4) State authority**

Except as provided in paragraphs (5), (6), and (8) no State or political subdivision may establish or enforce any regulatory limit on a qualifying pesticide chemical residue in or on any food if a qualifying Federal determination applies to the presence of such pesticide chemical residue in or on such food, unless such State regulatory limit is identical to such qualifying Federal determination. A State or political subdivision shall be deemed to establish or enforce a regulatory limit on a pesticide chemical residue in or on a food if it purports to prohibit or penalize the production, processing, shipping, or other handling of a food because it contains a pesticide residue (in excess of a prescribed limit).

**(5) Petition procedure****(A) In general**

Any State may petition the Administrator for authorization to establish in such State a regulatory limit on a qualifying pesticide chemical residue in or on any food that is not identical to the qualifying Federal determination applicable to such qualifying pesticide chemical residue.

**(B) Petition requirements**

Any petition under subparagraph (A) shall—

(i) satisfy any requirements prescribed, by rule, by the Administrator; and

(ii) be supported by scientific data about the pesticide chemical residue that is the subject of the petition or about chemically related pesticide chemical residues, data on the consumption within such State of food bearing the pesticide chemical residue, and data on exposure of humans within such State to the pesticide chemical residue.

**(C) Authorization**

The Administrator may, by order, grant the authorization described in subparagraph (A) if the Administrator determines that the proposed State regulatory limit—

(i) is justified by compelling local conditions; and

(ii) would not cause any food to be a violation of Federal law.

**(D) Treatment**

In lieu of any action authorized under subparagraph (C), the Administrator may treat a petition under this paragraph as a petition under subsection (d) of this section to modify or revoke a tolerance or an exemption. If the Administrator



determines to treat a petition under this paragraph as a petition under subsection (d) of this section, the Administrator shall thereafter act on the petition pursuant to subsection (d) of this section.

**(E) Review**

Any order of the Administrator granting or denying the authorization described in subparagraph (A) shall be subject to review in the manner described in subsections (g) and (h) of this section.

**(6) Urgent petition procedure**

Any State petition to the Administrator pursuant to paragraph (5) that demonstrates that consumption of a food containing such pesticide residue level during the period of the food's likely availability in the State will pose a significant public health threat from acute exposure shall be considered an urgent petition. If an order by the Administrator to grant or deny the requested authorization in an urgent petition is not made within 30 days of receipt of the petition, the petitioning State may establish and enforce a temporary regulatory limit on a qualifying pesticide chemical residue in or on the food. The temporary regulatory limit shall be validated or terminated by the Administrator's final order on the petition.

**(7) Residues from lawful application**

No State or political subdivision may enforce any regulatory limit on the level of a pesticide chemical residue that may appear in or on any food if, at the time of the application of the pesticide that resulted in such residue, the sale of such food with such residue level was lawful under this section and under the law of such State, unless the State demonstrates that consumption of the food containing such pesticide residue level during the period of the food's likely availability in the State will pose an unreasonable dietary risk to the health of persons within such State.

**(8) Savings**

Nothing in this chapter preempts the authority of any State or political subdivision to require that a food containing a pesticide chemical residue bear or be the subject of a warning or other statement relating to the presence of the pesticide chemical residue in or on such food.

**(o) Consumer right to know**

Not later than 2 years after August 3, 1996, and annually thereafter, the Administrator shall, in consultation with the Secretary of Agriculture and the Secretary of Health and Human Services, publish in a format understandable to a lay person, and distribute to large retail grocers for public display (in a manner determined by the grocer), the following information, at a minimum:

- (1)** A discussion of the risks and benefits of pesticide chemical residues in or on food purchased by consumers.
- (2)** A listing of actions taken under subparagraph (B) of subsection (b)(2) of this section that may result in pesticide chemical residues in or on food that present a yearly or lifetime risk above the risk allowed under subparagraph (A) of such subsection, and the food on which the pesticide chemicals producing the residues are used.
- (3)** Recommendations to consumers for reducing dietary exposure to pesticide chemical residues in a manner consistent with maintaining a healthy diet, including a list of food that may reasonably substitute for food listed under paragraph (2).

Nothing in this subsection shall prevent retail grocers from providing additional information.

**(p) Estrogenic substances screening program**

**(1) Development**

Not later than 2 years after August 3, 1996, the Administrator shall in consultation with the Secretary of Health and Human Services develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.

**(2) Implementation**

Not later than 3 years after August 3, 1996, after obtaining public comment and review of the screening program described in paragraph (1) by the scientific advisory panel established under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136w (d)] or the science advisory board established by section 4365 [2] of title 42, the Administrator shall implement the program.

**(3) Substances**

In carrying out the screening program described in paragraph (1), the Administrator—

- (A) shall provide for the testing of all pesticide chemicals; and
- (B) may provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such substance.

**(4) Exemption**

Notwithstanding paragraph (3), the Administrator may, by order, exempt from the requirements of this section a biologic substance or other substance if the Administrator determines that the substance is anticipated not to produce any effect in humans similar to an effect produced by a naturally occurring estrogen.

**(5) Collection of information****(A) In general**

The Administrator shall issue an order to a registrant of a substance for which testing is required under this subsection, or to a person who manufactures or imports a substance for which testing is required under this subsection, to conduct testing in accordance with the screening program described in paragraph (1), and submit information obtained from the testing to the Administrator, within a reasonable time period that the Administrator determines is sufficient for the generation of the information.

**(B) Procedures**

To the extent practicable the Administrator shall minimize duplicative testing of the same substance for the same endocrine effect, develop, as appropriate, procedures for fair and equitable sharing of test costs, and develop, as necessary, procedures for handling of confidential business information.

**(C) Failure of registrants to submit information**

- (i) **Suspension** If a registrant of a substance referred to in paragraph (3) (A) fails to comply with an order under subparagraph (A) of this paragraph, the Administrator shall issue a notice of intent to suspend the sale or distribution of the substance by the registrant. Any suspension proposed under this paragraph shall become final at the end of the 30-day period beginning on the date that the registrant receives the notice of intent to suspend, unless during that period a person adversely affected by the notice requests a hearing or the Administrator determines that the registrant has complied fully with this paragraph.

(ii) **Hearing** If a person requests a hearing under clause (i), the hearing shall be conducted in accordance with section 554 of title 5. The only matter for resolution at the hearing shall be whether the registrant has failed to comply with an order under subparagraph (A) of this paragraph. A decision by the Administrator after completion of a hearing shall be considered to be a final agency action.

(iii) **Termination of suspensions** The Administrator shall terminate a suspension under this subparagraph issued with respect to a registrant if the Administrator determines that the registrant has complied fully with this paragraph.

#### **(D) Noncompliance by other persons**

Any person (other than a registrant) who fails to comply with an order under subparagraph (A) shall be liable for the same penalties and sanctions as are provided under section 16 of the Toxic Substances Control Act [15 U.S.C. 2615] in the case of a violation referred to in that section. Such penalties and sanctions shall be assessed and imposed in the same manner as provided in such section 16.

#### **(6) Agency action**

In the case of any substance that is found, as a result of testing and evaluation under this section, to have an endocrine effect on humans, the Administrator shall, as appropriate, take action under such statutory authority as is available to the Administrator, including consideration under other sections of this chapter, as is necessary to ensure the protection of public health.

#### **(7) Report to Congress**

Not later than 4 years after August 3, 1996, the Administrator shall prepare and submit to Congress a report containing—

- (A) the findings of the Administrator resulting from the screening program described in paragraph (1);
- (B) recommendations for further testing needed to evaluate the impact on human health of the substances tested under the screening program; and
- (C) recommendations for any further actions (including any action described in paragraph (6)) that the Administrator determines are appropriate based on the findings.

#### **(q) Schedule for review**

##### **(1) In general**

The Administrator shall review tolerances and exemptions for pesticide chemical residues in effect on the day before August 3, 1996, as expeditiously as practicable, assuring that—

- (A) 33 percent of such tolerances and exemptions are reviewed within 3 years of August 3, 1996;
- (B) 66 percent of such tolerances and exemptions are reviewed within 6 years of August 3, 1996; and
- (C) 100 percent of such tolerances and exemptions are reviewed within 10 years of August 3, 1996.

In conducting a review of a tolerance or exemption, the Administrator shall determine whether the tolerance or exemption meets the requirements of subsections <sup>[3]</sup> (b)(2) or (c)(2) of this section and shall, by the deadline for the review of the tolerance or exemption, issue a regulation under subsection (d)(4) or (e)(1) of this section to modify

or revoke the tolerance or exemption if the tolerance or exemption does not meet such requirements.

## **(2) Priorities**

In determining priorities for reviewing tolerances and exemptions under paragraph (1), the Administrator shall give priority to the review of the tolerances or exemptions that appear to pose the greatest risk to public health.

## **(3) Publication of schedule**

Not later than 12 months after August 3, 1996, the Administrator shall publish a schedule for review of tolerances and exemptions established prior to August 3, 1996. The determination of priorities for the review of tolerances and exemptions pursuant to this subsection is not a rulemaking and shall not be subject to judicial review, except that failure to take final action pursuant to the schedule established by this paragraph shall be subject to judicial review.

## **(r) Temporary tolerance or exemption**

The Administrator may, upon the request of any person who has obtained an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.] or upon the Administrator's own initiative, establish a temporary tolerance or exemption for the pesticide chemical residue for the uses covered by the permit. Subsections (b)(2), (c)(2), (d), and (e) of this section shall apply to actions taken under this subsection.

## **(s) Savings clause**

Nothing in this section shall be construed to amend or modify the provisions of the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] or the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

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[1] See References in Text note below.

[2] See References in Text note below.

[3] So in original. Probably should be "subsection".

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