

Editorial Notes

AMENDMENTS

1990—Pub. L. 101-535 inserted at end “This section does not apply to the labeling requirements of sections 343(q) and 343(r) of this title.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-535 effective six months after the date of the promulgation of final regulations to implement section 343(r) of this title, or if such regulations are not promulgated, the date proposed regulations are to be considered as such final regulations (Nov. 8, 1992), with exception for persons marketing food the brand name of which contains a term defined by the Secretary under section 343(r)(2)(A)(i) of this title, see section 10(a) of Pub. L. 101-535, set out as a note under section 343 of this title.

CONSTRUCTION OF AMENDMENTS BY PUB. L. 101-535

Amendments by Pub. L. 101-535 not to be construed to alter authority of Secretary of Health and Human Services and Secretary of Agriculture under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), the Poultry Products Inspection Act (21 U.S.C. 451 et seq.), and the Egg Products Inspection Act (21 U.S.C. 1031 et seq.), see section 9 of Pub. L. 101-535, set out as a note under section 343 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration in the Department of Agriculture to Federal Security Agency, see notes set out under section 321 of this title.

§ 346. Tolerances for poisonous or deleterious substances in food; regulations

Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice shall be deemed to be unsafe for purposes of the application of clause (2)(A) of section 342(a) of this title; but when such substance is so required or cannot be so avoided, the Secretary shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2)(A) of section 342(a) of this title. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of section 342(a) of this title. In determining the quantity of such added substance to be tolerated in or on different articles of food the Secretary shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

(June 25, 1938, ch. 675, § 406, 52 Stat. 1049; Pub. L. 85-929, § 3(c), Sept. 6, 1958, 72 Stat. 1785; Pub. L.

86-618, title I, § 103(a)(1), July 12, 1960, 74 Stat. 398.)

Editorial Notes

AMENDMENTS

1960—Pub. L. 86-618 repealed subsec. (b) which required Secretary to promulgate regulations for listing of coal-tar colors.

1958—Subsec. (a). Pub. L. 85-929 substituted “clause (2)(A)” for “clause (2)” in first sentence.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-618 effective July 12, 1960, subject to the provisions of section 203 of Pub. L. 86-618, see section 202 of Pub. L. 86-618, set out as a note under section 379e of this title.

EFFECTIVE DATE OF NEMATOCIDE, PLANT REGULATOR, DEFOLIANT, AND DESICCANT AMENDMENT OF 1959

Effective date of subsec. (a) as in force prior to July 22, 1954, with respect to particular commercial use of a nematocide, plant regulator, defoliant, or desiccant in or on a raw agricultural commodity made before Jan. 1, 1958, see section 3(b) of Pub. L. 86-139, Aug. 7, 1959, 73 Stat. 288.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85-929, see section 6(b), (c) of Pub. L. 85-929, set out as a note under section 342 of this title.

TRANSFER OF FUNCTIONS

Functions vested in Secretary of Health, Education, and Welfare [now Health and Human Services] in establishing tolerances for pesticide chemicals under this section together with authority to monitor compliance with tolerances and effectiveness of surveillance and enforcement and to provide technical assistance to States and conduct research under this chapter and section 201 et seq. of Title 42, The Public Health and Welfare, transferred to Administrator of Environmental Protection Agency by Reorg. Plan No. 3 of 1970, § 2(a)(4), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, set out in the Appendix to Title 5, Government Organization and Employees.

For transfer of functions of Federal Security Administrator to Secretary of Health, Education, and Welfare [now Health and Human Services], and of Food and Drug Administration to Federal Security Agency, see notes set out under section 321 of this title.

§ 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); or

(B) on the Administrator's own initiative under subsection (e).

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 sub-

section (e)(1) 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 postnatal 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) 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), or an order under subsection (f)(2), 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 ex-

emption 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); or

(B) on the Administrator's initiative under subsection (e).

(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).

(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);

(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), 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), 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) continues to exist with respect to a tolerance that has been left in effect or modified under subsection (b)(2)(B). 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) 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), or revoking a tolerance for a pesticide chemical or a pesticide chemical residue;
- (B) establishing, modifying, suspending under subsection (l)(3), 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), 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) 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), 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), 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), or any order issued under subsection (f)(1)(C) or (g)(2)(C), 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 ei-

ther 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) 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)¹ 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), and shall be subject to review under subsection (q).

(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), and shall be subject to review under subsection (q).

(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), and shall be subject to review under subsection (q).

(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)

¹ See References in Text note below.

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) 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).

(l) Harmonization with action under other laws

(1) Coordination with FIFRA

To the extent practicable and consistent with the review deadlines in subsection (q), 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) 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) 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) and the unavoidability of the residue. Subsection (e) 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), 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) 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);

(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); or

(D) the certification and filing in court of a transcript of the proceedings and the record under subsection (h);

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 Expe-

ditioned 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).

(3) Prohibition

During the period beginning on October 1, 2007, and ending on September 30, 2023, the Administrator shall not collect any tolerance fees under 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); or

(B)(i) pursuant to subsection (j) is remaining in effect or is deemed to have been issued under this section, or is regarded under subsection (k) 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).

(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) 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).

(4) State authority

Except as provided in paragraphs (5), (6), and (8) no State or political subdivision may estab-

lish 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) 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), the Administrator shall thereafter act on the petition pursuant to subsection (d).

(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).

(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) 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 4365¹ 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 subsections² (b)(2) or (c)(2) and shall, by the deadline for the review of the tolerance or exemption, issue a regulation under subsection (d)(4) or (e)(1) 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) 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.].

(June 25, 1938, ch. 675, §408, as added July 22, 1954, ch. 559, §3, 68 Stat. 511; amended Pub. L. 85-791, §20, Aug. 28, 1958, 72 Stat. 947; Pub. L. 91-515, title VI, §601(d)(1), Oct. 30, 1970, 84 Stat.

1311; Pub. L. 92-157, title III, §303(a), Nov. 18, 1971, 85 Stat. 464; Pub. L. 92-516, §3(3), Oct. 21, 1972, 86 Stat. 998; Pub. L. 98-620, title IV, §402(25)(A), Nov. 8, 1984, 98 Stat. 3359; Pub. L. 102-300, §6(b)(1), June 16, 1992, 106 Stat. 240; Pub. L. 102-571, title I, §107(7), Oct. 29, 1992, 106 Stat. 4499; Pub. L. 103-80, §3(k), Aug. 13, 1993, 107 Stat. 776; Pub. L. 104-170, title IV, §405, Aug. 3, 1996, 110 Stat. 1514; Pub. L. 105-324, §2(b), Oct. 30, 1998, 112 Stat. 3036; Pub. L. 110-94, §4(d)(2), Oct. 9, 2007, 121 Stat. 1002; Pub. L. 112-177, §2(a)(3), Sept. 28, 2012, 126 Stat. 1329; Pub. L. 116-8, §2(c), Mar. 8, 2019, 133 Stat. 485.)

Editorial Notes

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (g)(2)(B), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 346 of this title, referred to in subsec. (j)(1), originally consisted of subsections (a) and (b). Subsec. (a) was redesignated as the entire section 346 and subsec. (b) was repealed by Pub. L. 86-618, title I, §103(a)(1), 74 Stat. 398.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsections (l), (n)(1)(A), (r), and (s), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

Section 4365 of title 42, referred to in subsec. (p)(2), was in the original "section 8 of the Environmental Research, Development, and Demonstration Act of 1978", and was translated as meaning section 8 of the Environmental Research, Development, and Demonstration Authorization Act of 1978, to reflect the probable intent of Congress.

The Toxic Substances Control Act, referred to in subsec. (s), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (§2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

CODIFICATION

August 3, 1996, referred to in subsections (k), (n)(1)(B), (2)(A), and (p)(1), (2), (7), was in the original references to the date of enactment of this subsection and the date of enactment of this section, which was translated as meaning the date of enactment of Pub. L. 104-170, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

2019—Subsec. (m)(3). Pub. L. 116-8 substituted "2023" for "2017".

2012—Subsec. (m)(3). Pub. L. 112-177 substituted "September 30, 2017" for "September 30, 2012".

2007—Subsec. (m)(3). Pub. L. 110-94 added par. (3).

1998—Subsec. (j)(4). Pub. L. 105-324 added par. (4).

1996—Pub. L. 104-170 amended section generally, substituting, in subsec. (a), provisions relating to requirement for tolerance or exemption for provisions relating to conditions for safety; in subsec. (b), provisions relating to authority and standard for tolerance for provisions relating to establishment of tolerances; in subsec. (c), provisions relating to authority and standard for exemptions for provisions relating to exemptions; in subsec. (d), provisions relating to petition for tolerance or exemption for provisions relating to regulations pursuant to petition, publication of notice, time for issuance, referral to advisory committees, effective date, and hearings; in subsec. (e), provisions relating to

² So in original. Probably should be "subsection".

action on Administrator's own initiative for provisions relating to regulations pursuant to Administrator's proposals; in subsec. (f), provisions relating to special data requirements for provisions relating to data submitted as confidential; in subsec. (g), provisions relating to effective date, objections, hearings, and administrative review for provisions relating to advisory committees and their appointment, composition, compensation, and clerical assistance; in subsec. (h), provisions relating to judicial review for provisions relating to right of consultation; in subsec. (i), provisions relating to confidentiality and use of data for provisions relating to judicial review; in subsec. (j), provisions relating to status of previously issued regulations for provisions relating to temporary tolerances; in subsec. (k), provisions relating to transitions for provisions relating to regulations based on public hearings before January 1, 1953; in subsec. (l), provisions relating to harmonization with action under other laws for provisions relating to pesticides under Federal Insecticide, Fungicide, and Rodenticide Act, functions of Administrator of Environmental Protection Agency, certifications, hearings, time limitations, opinions, and regulations; in subsec. (m), provisions relating to fees for provisions relating to amendment of regulations; in subsec. (n), provisions relating to national uniformity of tolerances for provisions relating to guaranties; in subsec. (o), provisions relating to consumer right to know for provisions relating to payment of fees, services or functions conditioned on payment, and waiver or refund of fees; and adding subsecs. (p) to (s).

1993—Pub. L. 103-80, §3(k)(6), substituted "Administrator" for "Secretary" wherever appearing except when followed by "of Agriculture".

Subsec. (a)(1). Pub. L. 103-80, §3(k)(1), substituted "Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator')" for "Secretary of Health and Human Services".

Subsec. (d)(5). Pub. L. 103-80, §3(k)(2), substituted "section 556(c) of title 5" for "section 7(c) of the Administrative Procedure Act (5 U.S.C., sec. 1006(c))".

Subsec. (l). Pub. L. 103-80, §3(k)(3), substituted "In the event" for "It the event" before "a hearing is requested".

Subsec. (n). Pub. L. 103-80, §3(k)(4), made technical amendment to reference to section 333(c) of this title to reflect amendment of corresponding provision of original act.

Subsec. (o). Pub. L. 103-80, §3(k)(5), which directed the substitution of "Administrator" for "Secretary of Health and Human Services" wherever appearing in the original text, was executed by making the substitution in the first sentence before "shall by regulation require", the only place "Secretary of Health and Human Services" appeared in the original text.

1992—Subsecs. (a), (d), (h), (i), (l), (m), (o). Pub. L. 102-300 substituted "Health and Human Services" for "Health, Education, and Welfare" wherever appearing in the original statutory text.

Subsec. (g). Pub. L. 102-571 substituted "379e" for "376".

1984—Subsec. (i)(5). Pub. L. 98-620 struck out provision that required the court to advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

1972—Subsecs. (d)(1), (e), (l). Pub. L. 92-516 substituted references to pesticide for references to economic poison wherever appearing therein.

1971—Subsec. (g). Pub. L. 92-157 struck out "which the Secretary shall by rules and regulations prescribe," after "as compensation for their services a reasonable per diem" prior to amendment in 1970, by Pub. L. 91-515, which overlooked such language when amending subsec. (g) as provided in 1970 Amendment note.

1970—Subsec. (g). Pub. L. 91-515 substituted provisions authorizing members of an advisory committee to receive compensation and travel expenses in accordance with section 376(b)(5)(D) of this title, for provisions authorizing such members to receive as com-

penation a reasonable per diem for time actually spent on committee work, and necessary traveling and subsistence expenses while serving away from their places of residence.

1958—Subsec. (i)(2). Pub. L. 85-791, §20(a), in first sentence, substituted "transmitted by the clerk of the court to the Secretary, or" for "served upon the Secretary, or upon", substituted "file in the court the record of the proceedings" for "certify and file in the court a transcript of the proceedings and the record", and inserted "as provided in section 2112 of title 28", and which, in second sentence, substituted "the filing of such petition" for "such filing".

Subsec. (i)(3). Pub. L. 85-791, §20(b), in first sentence, substituted "transmitted by the clerk of the court to the Secretary of Agriculture, or" for "served upon the Secretary of Agriculture, or upon", substituted "file in the court the record of the proceedings" for "certify and file in the court a transcript of the proceedings and the record", and inserted "as provided in section 2112 of title 28", and, in second sentence, substituted "the filing of such petition" for "such filing".

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-177 effective Oct. 1, 2012, see section 2(c) of Pub. L. 112-177, set out as a note under section 136a-1 of Title 7, Agriculture.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-94 effective Oct. 1, 2007, see section 6 of Pub. L. 110-94, set out as a note under section 136a of Title 7, Agriculture.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-516 effective at close of Oct. 21, 1972, except if regulations are necessary for implementation of any provision that becomes effective on Oct. 21, 1972, and continuation in effect of subchapter I of chapter 6 of Title 7, Agriculture, and regulations thereunder, relating to control of economic poisons, as in existence prior to Oct. 21, 1972, until superseded by provisions of Pub. L. 92-516 and regulations thereunder, see section 4 of Pub. L. 92-516, set out as an Effective Date note under section 136 of Title 7.

EXTENSION OF PROHIBITION OF TOLERANCE FEES

Pub. L. 115-141, div. M, title IV, §401(c), Mar. 23, 2018, 132 Stat. 1050, provided that: "Section 408(m)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(m)(3)) shall be applied by substituting 'September 30, 2018' for 'September 30, 2017'."

REGULATION OF SULFURYL FLUORIDE

Pub. L. 113-79, title X, §10015, Feb. 7, 2014, 128 Stat. 952, provided that: "Notwithstanding any other provision of law, the Administrator of the Environmental Protection Agency shall exclude nonpesticidal sources of fluoride from any aggregate exposure assessment required under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) when assessing tolerances associated with residues from the pesticide."

TOLERANCE FEES

Pub. L. 108-199, div. G, title V, §501(d)(2), Jan. 23, 2004, 118 Stat. 422, provided that: "Notwithstanding section 408(m)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(m)(1)), during the period beginning on October 1, 2003, and ending on September 30, 2008, the Administrator of the Environmental Protection Agency shall not collect any tolerance fees under that section."

DATA COLLECTION ACTIVITIES TO ASSURE HEALTH OF
INFANTS AND CHILDREN

Pub. L. 104-170, title III, §301, Aug. 3, 1996, 110 Stat. 1511, provided that:

“(a) IN GENERAL.—The Secretary of Agriculture, in consultation with the Administrator of the Environmental Protection Agency and the Secretary of Health and Human Services, shall coordinate the development and implementation of survey procedures to ensure that adequate data on food consumption patterns of infants and children are collected.

“(b) PROCEDURES.—To the extent practicable, the procedures referred to in subsection (a) shall include the collection of data on food consumption patterns of a statistically valid sample of infants and children.

“(c) RESIDUE DATA COLLECTION.—The Secretary of Agriculture shall ensure that the residue data collection activities conducted by the Department of Agriculture in cooperation with the Environmental Protection Agency and the Department of Health and Human Services, provide for the improved data collection of pesticide residues, including guidelines for the use of comparable analytical and standardized reporting methods, and the increased sampling of foods most likely consumed by infants and children.”

§ 346b. Authorization of appropriations

There are authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary for the purpose and administration of sections 321(q), (r), 342(a)(2), and 346a of this title.

(July 22, 1954, ch. 559, § 4, 68 Stat. 517.)

Editorial Notes

CODIFICATION

Section was not enacted as part of the Federal Food, Drug, and Cosmetic Act which comprises this chapter.

§ 347. Intrastate sales of colored oleomargarine

(a) Law governing

Colored oleomargarine or colored margarine which is sold in the same State or Territory in which it is produced shall be subject in the same manner and to the same extent to the provisions of this chapter as if it had been introduced in interstate commerce.

(b) Labeling and packaging requirements

No person shall sell, or offer for sale, colored oleomargarine or colored margarine unless—

(1) such oleomargarine or margarine is packaged,

(2) the net weight of the contents of any package sold in a retail establishment is one pound or less,

(3) there appears on the label of the package (A) the word “oleomargarine” or “margarine” in type or lettering at least as large as any other type or lettering on such label, and (B) a full and accurate statement of all the ingredients contained in such oleomargarine or margarine, and

(4) each part of the contents of the package is contained in a wrapper which bears the word “oleomargarine” or “margarine” in type or lettering not smaller than 20-point type.

The requirements of this subsection shall be in addition to and not in lieu of any of the other requirements of this chapter.

(c) Sales in public eating places

No person shall possess in a form ready for serving colored oleomargarine or colored mar-

garine at a public eating place unless a notice that oleomargarine or margarine is served is displayed prominently and conspicuously in such place and in such manner as to render it likely to be read and understood by the ordinary individual being served in such eating place or is printed or is otherwise set forth on the menu in type or lettering not smaller than that normally used to designate the serving of other food items. No person shall serve colored oleomargarine or colored margarine at a public eating place, whether or not any charge is made therefor, unless (1) each separate serving bears or is accompanied by labeling identifying it as oleomargarine or margarine, or (2) each separate serving thereof is triangular in shape.

(d) Exemption from labeling requirements

Colored oleomargarine or colored margarine when served with meals at a public eating place shall at the time of such service be exempt from the labeling requirements of section 343 of this title (except paragraphs (a) and (f)) if it complies with the requirements of subsection (b) of this section.

(e) Color content of oleomargarine

For the purpose of this section colored oleomargarine or colored margarine is oleomargarine or margarine having a tint or shade containing more than one and six-tenths degrees of yellow, or of yellow and red collectively, but with an excess of yellow over red, measured in terms of Lovibond tintometer scale or its equivalent.

(June 25, 1938, ch. 675, § 407, as added Mar. 16, 1950, ch. 61, § 3(c), 64 Stat. 20.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Act Mar. 16, 1950, ch. 61, § 7, 64 Stat. 22, provided that: “This Act [enacting this section and sections 347a and 347b of this title and amending sections 331 and 342 of this title and sections 45 and 55 of Title 15, Commerce and Trade] shall become effective on July 1, 1950.”

TRANSFER OF APPROPRIATIONS

Act Mar. 16, 1950, ch. 61, § 5, 64 Stat. 22, provided that: “So much of the unexpended balances of appropriations, allocations, or other funds (including funds available for the fiscal year ending June 30, 1950) for the use of the Bureau of Internal Revenue of the Treasury Department in the exercise of functions under the Oleomargarine Tax Act (26 U.S.C., § 2300, subchapter A) [now section 4591 et seq. of Title 26, Internal Revenue Code], as the Director of the Bureau of the Budget [now Director of the Office of Management and Budget] may determine, shall be transferred to the Federal Security Agency (Food and Drug Administration) [now the Department of Health and Human Services] for use in the enforcement of this Act [see Effective Date note above].”

§ 347a. Congressional declaration of policy regarding oleomargarine sales

The Congress hereby finds and declares that the sale, or the serving in public eating places, of colored oleomargarine or colored margarine without clear identification as such or which is otherwise adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] depresses the