

Pub. L. 95-396, §22, Sept. 30, 1978, 92 Stat. 835; Pub. L. 100-532, title VIII, §801(m), Oct. 25, 1988, 102 Stat. 2682.)

#### REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(3), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

#### AMENDMENTS

1988—Pub. L. 100-532, §801(m), inserted headings for subsecs. (a) to (c) and realigned margins of pars. (1) to (4) of subsec. (c).

1978—Subsec. (a). Pub. L. 95-396 inserted “federally registered” before “pesticide or device”.

Subsec. (b). Pub. L. 95-396 substituted “labeling or packaging” and “required under” for “labeling and packaging” and “required pursuant to”, respectively.

Subsec. (c)(1). Pub. L. 95-396 incorporated existing text in provisions designated par. (1) and substituted “registration for additional uses of federally registered pesticides” for “registration for pesticides”.

Subsec. (c)(2). Pub. L. 95-396 incorporated existing text in provisions designated par. (2), conditioned disapproval of registration on communication of intention to disapprove and reasons for disapproval and provision for time to respond, and restricted authority of Administrator to prohibit or disapprove a State registration.

Subsec. (c)(3). Pub. L. 95-396 added par. (3).

Subsec. (c)(4). Pub. L. 95-396 incorporated existing text in provisions designated par. (4) and authorized suspension of registration authority of the State based on findings of inability or failure to exercise adequate controls following an indication of intention to suspend and reasons for the suspension and provision for time to respond.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-532 effective on expiration of 60 days after Oct. 25, 1988, see section 901 of Pub. L. 100-532, set out as a note under section 136 of this title.

#### EFFECTIVE DATE

For effective date of section, see section 4 of Pub. L. 92-516, set out as a note under section 136 of this title.

### § 136w. Authority of Administrator

#### (a) In general

##### (1) Regulations

The Administrator is authorized, in accordance with the procedure described in paragraph (2), to prescribe regulations to carry out the provisions of this subchapter. Such regulations shall take into account the difference in concept and usage between various classes of pesticides, including public health pesticides, and differences in environmental risk and the appropriate data for evaluating such risk between agricultural, nonagricultural, and public health pesticides.

##### (2) Procedure

###### (A) Proposed regulations

At least 60 days prior to signing any proposed regulation for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such regulation within 30 days after receiving it, the Administrator shall

publish in the Federal Register (with the proposed regulation) the comments of the Secretary and the response of the Administrator with regard to the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 30 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register any time after such 30-day period notwithstanding the foregoing 60-day time requirement.

###### (B) Final regulations

At least 30 days prior to signing any regulation in final form for publication in the Federal Register, the Administrator shall provide the Secretary of Agriculture with a copy of such regulation. If the Secretary comments in writing to the Administrator regarding any such final regulation within 15 days after receiving it, the Administrator shall publish in the Federal Register (with the final regulation) the comments of the Secretary, if requested by the Secretary, and the response of the Administrator concerning the Secretary's comments. If the Secretary does not comment in writing to the Administrator regarding the regulation within 15 days after receiving it, the Administrator may sign such regulation for publication in the Federal Register at any time after such 15-day period notwithstanding the foregoing 30-day time requirement. In taking any final action under this subsection, the Administrator shall include among those factors to be taken into account the effect of the regulation on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and the Administrator shall publish in the Federal Register an analysis of such effect.

###### (C) Time requirements

The time requirements imposed by subparagraphs (A) and (B) may be waived or modified to the extent agreed upon by the Administrator and the Secretary.

###### (D) Publication in the Federal Register

The Administrator shall, simultaneously with any notification to the Secretary of Agriculture under this paragraph prior to the issuance of any proposed or final regulation, publish such notification in the Federal Register.

###### (3) Congressional committees

At such time as the Administrator is required under paragraph (2) of this subsection to provide the Secretary of Agriculture with a copy of proposed regulations and a copy of the final form of regulations, the Administrator shall also furnish a copy of such regulations to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

###### (4) Congressional review of regulations

Simultaneously with the promulgation of any rule or regulation under this subchapter, the Administrator shall transmit a copy thereof to the Secretary of the Senate and the Clerk of the House of Representatives. The

rule or regulation shall not become effective until the passage of 60 calendar days after the rule or regulation is so transmitted.

**(b) Exemption of pesticides**

The Administrator may exempt from the requirements of this subchapter by regulation any pesticide which the Administrator determines either (1) to be adequately regulated by another Federal agency, or (2) to be of a character which is unnecessary to be subject to this subchapter in order to carry out the purposes of this subchapter.

**(c) Other authority**

The Administrator, after notice and opportunity for hearing, is authorized—

(1) to declare a pest any form of plant or animal life (other than man and other than bacteria, virus, and other micro-organisms on or in living man or other living animals) which is injurious to health or the environment;

(2) to determine any pesticide which contains any substance or substances in quantities highly toxic to man;

(3) to establish standards (which shall be consistent with those established under the authority of the Poison Prevention Packaging Act (Public Law 91-601) [15 U.S.C. 1471 et seq.]) with respect to the package, container, or wrapping in which a pesticide or device is enclosed for use or consumption, in order to protect children and adults from serious injury or illness resulting from accidental ingestion or contact with pesticides or devices regulated by this subchapter as well as to accomplish the other purposes of this subchapter;

(4) to specify those classes of devices which shall be subject to any provision of section 136(q)(1) or section 136e of this title upon the Administrator's determination that application of such provision is necessary to effectuate the purposes of this subchapter;

(5) to prescribe regulations requiring any pesticide to be colored or discolored if the Administrator determines that such requirement is feasible and is necessary for the protection of health and the environment; and

(6) to determine and establish suitable names to be used in the ingredient statement.

**(d) Scientific advisory panel**

**(1) In general**

The Administrator shall submit to an advisory panel for comment as to the impact on health and the environment of the action proposed in notices of intent issued under section 136d(b) of this title and of the proposed and final form of regulations issued under subsection (a) of this section within the same time periods as provided for the comments of the Secretary of Agriculture under such section 136d(b) and subsection (a) of this section. The time requirements for notices of intent and proposed and final forms of regulation may not be modified or waived unless in addition to meeting the requirements of section 136d(b) of this title or subsection (a) of this section, as applicable, the advisory panel has failed to comment on the proposed action within the prescribed time period or has agreed to the modification or waiver. The Ad-

ministrator shall also solicit from the advisory panel comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of scientific analyses made by personnel of the Environmental Protection Agency that lead to decisions by the Administrator in carrying out the provisions of this subchapter. The comments, evaluations, and recommendations of the advisory panel submitted under this subsection and the response of the Administrator shall be published in the Federal Register in the same manner as provided for publication of the comments of the Secretary of Agriculture under such sections. The chairman of the advisory panel, after consultation with the Administrator, may create temporary subpanels on specific projects to assist the full advisory panel in expediting and preparing its evaluations, comments, and recommendations. The subpanels may be composed of scientists other than members of the advisory panel, as deemed necessary for the purpose of evaluating scientific studies relied upon by the Administrator with respect to proposed action. Such additional scientists shall be selected by the advisory panel. The panel referred to in this subsection shall consist of 7 members appointed by the Administrator from a list of 12 nominees, 6 nominated by the National Institutes of Health and 6 by the National Science Foundation, utilizing a system of staggered terms of appointment. Members of the panel shall be selected on the basis of their professional qualifications to assess the effects of the impact of pesticides on health and the environment. To the extent feasible to insure multidisciplinary representation, the panel membership shall include representation from the disciplines of toxicology, pathology, environmental biology, and related sciences. If a vacancy occurs on the panel due to expiration of a term, resignation, or any other reason, each replacement shall be selected by the Administrator from a group of 4 nominees, 2 submitted by each of the nominating entities named in this subsection. The Administrator may extend the term of a panel member until the new member is appointed to fill the vacancy. If a vacancy occurs due to resignation, or reason other than expiration of a term, the Administrator shall appoint a member to serve during the unexpired term utilizing the nomination process set forth in this subsection. Should the list of nominees provided under this subsection be unsatisfactory, the Administrator may request an additional set of nominees from the nominating entities. The Administrator may require such information from the nominees to the advisory panel as the Administrator deems necessary, and the Administrator shall publish in the Federal Register the name, address, and professional affiliations of each nominee. Each member of the panel shall receive per diem compensation at a rate not in excess of that fixed for GS-18 of the General Schedule as may be determined by the Administrator, except that any such member who holds another office or position under the Federal Government the compensation for which exceeds such rate may elect to

receive compensation at the rate provided for such other office or position in lieu of the compensation provided by this subsection. In order to assure the objectivity of the advisory panel, the Administrator shall promulgate regulations regarding conflicts of interest with respect to the members of the panel. The advisory panel established under this section shall be permanent. In performing the functions assigned by this subchapter, the panel shall consult and coordinate its activities with the Science Advisory Board established under the Environmental Research, Development, and Demonstration Authorization Act of 1978 [42 U.S.C. 4365]. Whenever the Administrator exercises authority under section 136d(c) of this title to immediately suspend the registration of any pesticide to prevent an imminent hazard, the Administrator shall promptly submit to the advisory panel for comment, as to the impact on health and the environment, the action taken to suspend the registration of such pesticide.

**(2) Science Review Board**

There is established a Science Review Board to consist of 60 scientists who shall be available to the Scientific Advisory Panel to assist in reviews conducted by the Panel. Members of the Board shall be selected in the same manner as members of temporary subpanels created under paragraph (1). Members of the Board shall be compensated in the same manner as members of the Panel.

**(e) Peer review**

The Administrator shall, by written procedures, provide for peer review with respect to the design, protocols, and conduct of major scientific studies conducted under this subchapter by the Environmental Protection Agency or by any other Federal agency, any State or political subdivision thereof, or any institution or individual under grant, contract, or cooperative agreement from or with the Environmental Protection Agency. In such procedures, the Administrator shall also provide for peer review, using the advisory panel established under subsection (d) of this section or appropriate experts appointed by the Administrator from a current list of nominees maintained by such panel, with respect to the results of any such scientific studies relied upon by the Administrator with respect to actions the Administrator may take relating to the change in classification, suspension, or cancellation of a pesticide. Whenever the Administrator determines that circumstances do not permit the peer review of the results of any such scientific study prior to the Administrator's exercising authority under section 136d(c) of this title to immediately suspend the registration of any pesticide to prevent an imminent hazard, the Administrator shall promptly thereafter provide for the conduct of peer review as provided in this sentence. The evaluations and relevant documentation constituting the peer review that relate to the proposed scientific studies and the results of the completed scientific studies shall be included in the submission for comment forwarded by the Administrator to the advisory panel as provided in subsection (d) of this section. As used in this

subsection, the term "peer review" shall mean an independent evaluation by scientific experts, either within or outside the Environmental Protection Agency, in the appropriate disciplines.

(June 25, 1947, ch. 125, §25, as added Pub. L. 92-516, §2, Oct. 21, 1972, 86 Stat. 997; amended Pub. L. 94-140, §§2(a), 6, 7, Nov. 28, 1975, 89 Stat. 751, 753; Pub. L. 95-396, §23, Sept. 30, 1978, 92 Stat. 836; Pub. L. 96-539, §§1, 2(a), 4, Dec. 17, 1980, 94 Stat. 3194, 3195; Pub. L. 98-201, §1, Dec. 2, 1983, 97 Stat. 1379; Pub. L. 98-620, title IV, §402(4)(D), Nov. 8, 1984, 98 Stat. 3357; Pub. L. 100-352, §6(i), June 27, 1988, 102 Stat. 664; Pub. L. 100-532, title VI, §§602, 605, title VIII, §801(n), Oct. 25, 1988, 102 Stat. 2678, 2679, 2683; Pub. L. 102-237, title X, §1006(b)(1), (2), Dec. 13, 1991, 105 Stat. 1895; Pub. L. 104-170, title I, §104, title II, §235, Aug. 3, 1996, 110 Stat. 1490, 1509.)

REFERENCES IN TEXT

The Poison Prevention Packaging Act, referred to in subsec. (c)(3), is Pub. L. 91-601, Dec. 30, 1970, 84 Stat. 1670, as amended, which is classified principally to chapter 39A (§1471 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 1471 of Title 15, and Tables.

References in subsec. (c)(4) to "section 136(q)(1)" was, in the original, a reference to "paragraph 2(q)(1)" and has been editorially translated as "section 136(q)(1)" as the probable intent of Congress.

The Environmental Research, Development, and Demonstration Authorization Act of 1978, referred to in subsec. (d), is Pub. L. 95-155, Nov. 8, 1977, 91 Stat. 1257, as amended. Provisions of the Act establishing the Science Advisory Board are classified to section 4365 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1996—Subsec. (a)(1). Pub. L. 104-170, §235, inserted "including public health pesticides," after "various classes of pesticides" and substituted "nonagricultural, and public health pesticides" for "and nonagricultural pesticides".

Subsec. (d). Pub. L. 104-170, §104, designated existing text as par. (1), inserted heading, and added par. (2).

1991—Subsec. (a)(3). Pub. L. 102-237, §1006(b)(1), substituted "the Administrator" for "he" before "shall".

Subsec. (b). Pub. L. 102-237, §1006(b)(1), substituted "the Administrator" for "he" before "determines".

Subsec. (c)(4). Pub. L. 102-237, §1006(b)(2), substituted "the Administrator's" for "his".

Subsec. (c)(5). Pub. L. 102-237, §1006(b)(1), substituted "the Administrator" for "he" before "determines".

Subsec. (d). Pub. L. 102-237, §1006(b)(1), substituted "the Administrator" for "he" before "deems necessary" and before "shall publish".

1988—Subsec. (a). Pub. L. 100-532, §801(n)(1), amended heading and directed that pars. (1) to (3) be aligned at left margin with subsec. (c)(1), and that subpars. (A) to (D) of par. (2) be indented, and in par. (3) substituted "Committee on Agriculture, Nutrition, and Forestry" for "Committee on Agriculture and Forestry".

Subsec. (a)(4). Pub. L. 100-532, §605, amended par. (4) generally, substituting single unlettered par. (4) for former subpars. (A) to (E).

Pub. L. 100-352, in subpar. (E), struck out "(i)" before "Any interested" and struck out cl. (ii) which provided that notwithstanding any other provision of law, any decision on a matter certified under cl. (i) of this subparagraph be reviewable by appeal directly to the Supreme Court of the United States, with such appeal to be brought not later than 20 days after the decision of the court of appeals.

Subsec. (d). Pub. L. 100-532, §602, substituted "section shall be permanent" for "subsection shall terminate September 30, 1987".

Subsec. (e). Pub. L. 100-532, §801(n)(2), substituted "pesticide. Whenever" for "pesticide: *Provided*, That whenever".

1984—Subsec. (a)(4)(E)(iii). Pub. L. 98-620 struck out cl. (iii) requiring the court of appeals and the Supreme Court to advance on the docket and expedite the disposition of any matter certified under cl. (i) of this subparagraph.

1983—Subsec. (d). Pub. L. 98-201 in fourth sentence, inserted "under this subsection" after "submitted"; in eighth sentence, provided for utilization of a system of staggered terms of appointment and substituted "7" and "6" for "seven" and "six", respectively, and inserted ninth through fourteenth sentences respecting basis for selection of members, multidisciplinary representation, appointments to fill vacancies, extension of term pending filling of vacancies, appointment for unexpired term, and request for additional set of nominees from nominating entities; and in present eighth sentence, formerly twelfth sentence, extended termination date to Sept. 30, 1987, from Sept. 30, 1981.

1980—Subsec. (a)(4). Pub. L. 96-539, §4, added par. (4). Subsec. (d). Pub. L. 96-539, §1, inserted provisions relating to composition of subpanels and submissions to advisory panels respecting registration suspensions.

Subsec. (e). Pub. L. 96-539, §2(a), added subsec. (e). 1978—Subsec. (a)(1). Pub. L. 95-396, §23(1), required regulations to take into account differences in environmental risk and appropriate data for evaluating such risk between agricultural and nonagricultural pesticides.

Subsec. (a)(2)(B). Pub. L. 95-396, §23(2), required the Administrator, before taking any final action, to consider certain factors bearing on the agricultural economy and to publish an analysis of the effect in the Federal Register.

Subsec. (d). Pub. L. 95-396, §23(3), (4), required the Administrator to solicit operating guidelines from the scientific advisory panel to improve scientific analyses made by personnel of the Environmental Protection Agency that lead to decisions by the Administrator in carrying out this subchapter; extended requirement of publication in the Federal Register to evaluations and recommendations of the advisory panel; authorized creation of temporary subpanels on specific projects to assist in accelerating the work of the advisory panel; set forth Sept. 30, 1981, as the termination date of the advisory panel; and required the panel to consult and coordinate its activities with the Science Advisory Board established under section 4365 of title 42.

1975—Subsec. (a)(1). Pub. L. 94-140, §2(a)(1), (2), redesignated existing provision as subsec. (a)(1) and inserted ", in accordance with the procedure described in paragraph (2)," after "is authorized".

Subsec. (a)(2). Pub. L. 94-140, §2(a)(3), added par. (2). Subsec. (a)(3). Pub. L. 94-140, §6, added par. (3). Subsec. (d). Pub. L. 94-140, §7, added subsec. (d).

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-532 effective on expiration of 60 days after Oct. 25, 1988, see section 901 of Pub. L. 100-532, set out as a note under section 136 of this title.

Amendment by Pub. L. 100-352 effective ninety days after June 27, 1988, except that such amendment not to apply to cases pending in Supreme Court on such effective date or affect right to review or manner of reviewing judgment or decree of court which was entered before such effective date, see section 7 of Pub. L. 100-352, set out as a note under section 1254 of Title 28, Judiciary and Judicial Procedure.

#### 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 1980 AMENDMENT

Pub. L. 96-539, §2(b), Dec. 17, 1980, 94 Stat. 3195, provided that: "The provisions of this section [amending

this section] shall become effective upon publication in the Federal Register of final procedures for peer review as provided in this section, but in no event shall such provisions become effective later than one year after the date of enactment of this Act [Dec. 17, 1980]."

#### EFFECTIVE DATE

For effective date of section, see section 4 of Pub. L. 92-516, set out as a note under section 136 of this title.

#### REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

#### USER FEES

Pub. L. 101-508, title I, §1204(e), Nov. 5, 1990, 104 Stat. 1388-11, provided that: "Notwithstanding any provision of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101-508, see Tables for classification], nothing in this title or the other provisions of this Act shall be construed to require or authorize the Administrator of the Environmental Protection Agency to assess or collect any fees or charges for services and activities authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.)."

### § 136w-1. State primary enforcement responsibility

#### (a) In general

For the purposes of this subchapter, a State shall have primary enforcement responsibility for pesticide use violations during any period for which the Administrator determines that such State—

(1) has adopted adequate pesticide use laws and regulations, except that the Administrator may not require a State to have pesticide use laws that are more stringent than this subchapter;

(2) has adopted and is implementing adequate procedures for the enforcement of such State laws and regulations; and

(3) will keep such records and make such reports showing compliance with paragraphs (1) and (2) of this subsection as the Administrator may require by regulation.

#### (b) Special rules

Notwithstanding the provisions of subsection (a) of this section, any State that enters into a cooperative agreement with the Administrator under section 136u of this title for the enforcement of pesticide use restrictions shall have the primary enforcement responsibility for pesticide use violations. Any State that has a plan approved by the Administrator in accordance with the requirements of section 136i of this title that the Administrator determines meets the criteria set out in subsection (a) of this section shall have the primary enforcement responsibility for pesticide use violations. The Administrator shall make such determinations with respect to State plans under section 136i of this title in effect on September 30, 1978, not later than six months after that date.

#### (c) Administrator

The Administrator shall have primary enforcement responsibility for those States that