

# HOUSE BILL REPORT

## HJM 4003

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### As Reported By House Committee On:

Agriculture & Ecology

**Brief Description:** Petitioning Congress to amend the food, drug, and cosmetic act to establish a negligible risk standard for pesticide residue in processed foods.

**Sponsors:** Representatives Chandler, Lisk, Kremen, Mulliken, Mastin, Honeyford, Chappell, Clements, Schoesler, Robertson, Delvin, Boldt, Foreman and Johnson.

### Brief History:

#### Committee Activity:

Agriculture & Ecology: 1/10/95, 1/25/95 [DP].

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## HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** Do pass. Signed by 15 members: Representatives Chandler, Chair; Koster, Vice Chair; McMorris, Vice Chair; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; R. Fisher; Honeyford; Johnson; Kremen; Poulsen; Regala and Robertson.

**Staff:** Kenneth Hirst (786-7105).

**Background:** The Federal Food, Drug and Cosmetic Act prohibits the sale of a raw agricultural commodity which bears or contains a pesticide chemical that is unsafe within the meaning of Section 408 of the act or food which contains a food additive that is unsafe within the meaning of Section 409 of the act.

Under Section 408 of the act, the U.S. Environmental Protection Agency (EPA) is permitted to set tolerances for the presence of pesticide residues in or on raw agricultural commodities. These tolerances must protect the public health. The administrator of the EPA is expressly authorized to establish the tolerance level in or on a commodity at a zero level if the scientific data before the administrator does not justify the establishment of a greater tolerance.

Section 409 of the act contains the Delaney Clause, which states, in part, that no additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal. The Delaney Clause provides a zero tolerance for carcinogens, regardless of their concentration. However, in a 1992 decision, the U.S. Court of Appeals (9th Circuit) noted that if a tolerance for a pesticide residue has been

established for a pesticide residue in or on a raw agricultural commodity, Section 402 of the act allows the 'flow-through' of the residue to processed foods, even when the pesticide may be a carcinogen. It stated that this flow-through is allowed, however, only to the extent that the concentration of the pesticide in the processed food does not exceed the concentration allowed in the raw food.

In the 1992 case, the EPA had argued that an exception to the Delaney clause was necessary, and could be achieved through an application of the overall regulatory scheme for pesticides and additives. The agency's rules, which were the object of the case, would have permitted concentrations of cancer-causing pesticides residues greater than that tolerated for raw foods so long as the particular substances posed only a 'de minimis' risk of actually causing cancer. The court found the EPA's refusal to revoke these rules to be contrary to the provisions of the Delaney Clause. It observed that revising the existing statutory scheme is neither the court's function nor the function of the EPA; if there is to be a change, it is for Congress to direct.

**Summary of Bill:** Congress is requested to amend Section 409 of the Federal Food, Drug, and Cosmetic Act to establish a negligible risk standard for pesticide residues in processed foods.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Testimony For:** None.

**Testimony Against:** None.

**Testified:** None.