Tom Udall

116TH CONGRESS
1ST SESSION

S. 921

To prohibit the use of chlorpyrifos on food, to prohibit the registration of pesticides containing chlorpyrifos, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. UDALL (for himself, Mr. BLUMENTHAL, Mr. BOOKER, Mr. CARDIN, Mrs. FEINSTEIN, Mrs. GILLIBRAND, Ms. HARRIS, Mr. LEAHY, Mr. MARKEY, Mr. MERKLEY, Mr. SANDERS, Mr. VAN HOLLEN, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To prohibit the use of chlorpyrifos on food, to prohibit the registration of pesticides containing chlorpyrifos, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Protect Children, Farmers, and Farmworkers from Nerve Agent Pesticides Act of 2019".

SEC. 2. FINDINGS.

Congress finds as follows:

(1) In 1996, Congress unanimously passed the Food Quality Protection Act of 1996 (Public Law 104–170; 110 Stat. 1489) (referred to in this section as "FQPA"), a comprehensive overhaul of Federal pesticide and food safety policy. That Act amended the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) (referred to in this section as "FIFRA") and the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), the laws that govern how the Environmental Protection Agency (referred to in this section as the "EPA") registers pesticides and pesticide labels for use in the United States and establishes tolerances or acceptable levels for pesticide residues on food.

(2) The FQPA directs the EPA to ensure with "reasonable certainty" that "no harm" will result from food, drinking water, and other exposures to a pesticide. If the EPA cannot make this safety finding, it must prohibit residues and use of the pesticide on food. The FQPA mandates that the EPA must consider children's special sensitivity and exposure to pesticide chemicals and must make an explicit determination that the pesticide can be used with a "reasonable certainty of no harm" to children. In determining acceptable levels of pesticide

residue, the EPA must account for the potential health harm from pre-and postnatal exposures. The economic benefits of pesticides cannot be used to override this health-based standard for children from food and other exposures.

(3) Chlorpyrifos is a widely used pesticide first registered by the EPA in 1965. Chlorpyrifos is an organophosphate pesticide, a class of pesticides developed as nerve agents in World War II and adapted for use as insecticides after the war. Chlorpyrifos and other organophosphate pesticides affect the nervous system through inhibition of cholinesterase, an enzyme required for proper nerve functioning. Acute poisonings occur when nerve impulses pulsate through the body, causing symptoms like nausea, vomiting, convulsions, respiratory paralysis, and, in extreme cases, death. Based on dozens of peer-reviewed scientific articles, the EPA determined that exposure during pregnancy to even low levels of chlorpyrifos that caused only minimal cholinesterase inhibition (10 percent or less) in the mothers could lead to measurable long-lasting and possibly permanent neurobehavioral and functional deficits in prenatally exposed children.

(4) People, including pregnant women, are exposed to chlorpyrifos through residues on food, contaminated drinking water, and toxic spray drift from nearby pesticide applications. Chlorpyrifos is used on an extensive variety of crops, including fruit and nut trees, vegetables, wheat, alfalfa, and corn. Between 2006 and 2012, chlorpyrifos was applied to more than 50 percent of the Nation's apple and broccoli crops, 45 percent of onion crops, 46 percent of walnut crops, and 41 percent of cauliflower crops.

(5) Chlorpyrifos is acutely toxic and associated with neurodevelopmental harms in children. Prenatal exposure to chlorpyrifos is associated with elevated risks of reduced IQ, loss of working memory, delays in motor development, attention-deficit disorders, and structural changes in the brain.

(6) There is no nationwide chlorpyrifos use reporting. The United States Geological Survey estimates annual pesticide use on agricultural land in the United States, and estimates that chlorpyrifos use on crops in 2014 ranged from 5,000,000 to 7,000,000 pounds of chlorpyrifos.

(7) In its 2016 report, the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel recognized "the growing body of literature

with laboratory animals (rats and mice) indicating that gestational and/or early postnatal exposure to chlorpyrifos may cause persistent effects into adulthood along with epidemiology studies which have evaluated prenatal chlorpyrifos exposure in mother-infant pairs and reported associations with neurodevelopment outcomes in infants and children.''.

(8) Chlorpyrifos has long been of concern to the EPA. Residential uses of chlorpyrifos ended in 2000 after the EPA found unsafe exposures to children. The EPA also discontinued use of chlorpyrifos on tomatoes and restricted its use on apples and grapes in 2000, and obtained no-spray buffers around schools, homes, playfields, day cares, hospitals, and other public places, ranging from 10 to 100 feet. In 2015, the EPA proposed to ban all chlorpyrifos food tolerances, based on unsafe drinking water contamination, which would end use of chlorpyrifos on food in the United States. After updating the risk assessment for chlorpyrifos in November 2016 to protect against prenatal exposures associated with brain impacts, the EPA found that expected residues from use on food crops exceeded the safety standard, and additionally the majority of estimated drinking water exposures from currently allowed uses of chlorpyrifos

also exceeded acceptable levels, reinforcing the need to revoke all food tolerances for the pesticide.

(9) Chlorpyrifos threatens the healthy development of children. Children experience greater exposure to chlorpyrifos and other pesticides because, relative to adults, they eat and drink more proportional to their body weight. A growing body of evidence shows that prenatal exposure to very low levels of chlorpyrifos can lead to lasting and possibly permanent neurological impairments. In November 2016, the EPA released a revised human health risk assessment for chlorpyrifos that confirmed that there are no acceptable uses for the pesticide, all food uses exceed acceptable levels, with children ages 1 to 2 exposed to levels of chlorpyrifos that are 140 times what the EPA considers acceptable.

(10) Chlorpyrifos threatens agricultural workers. Farm workers are exposed to chlorpyrifos from mixing, handling, and applying the pesticide, as well as from entering fields where chlorpyrifos was recently sprayed. Chlorpyrifos is one of the pesticides most often linked to acute pesticide poisonings, and in many States, it is regularly identified among the 5 pesticides linked to the highest number of pesticide poisoning incidents. This is significant given

widespread under-reporting of pesticide poisonings due to such factors as inadequate reporting systems, fear of retaliation from employers, and reluctance to seek medical treatment. According to the EPA, all workers who mix and apply chlorpyrifos are exposed to unsafe levels of the pesticide even with maximum personal protective equipment and engineering controls. Field workers are currently allowed to re-enter fields within 1 to 5 days after chlorpyrifos is sprayed based on current restricted entry intervals on the registered chlorpyrifos labels but unsafe exposures continue on average 18 days after applications.

(11) Chlorpyrifos threatens families in agricultural communities. Rural families are exposed to unsafe levels of chlorpyrifos on their food and in their drinking water. They are also exposed to toxic levels of chlorpyrifos when it drifts from the fields to homes, schools, and other places people gather. The EPA's 2016 revised human health risk assessment found that chlorpyrifos drift reaches unsafe levels at 300 feet away from the edge of the treated field, and the chemical chlorpyrifos is found at unsafe levels in the air at schools, homes, and communities in agricultural areas. The small buffers put in place in

2012 leave children unprotected from this toxic pesticide drift.

(12) Chlorpyrifos threatens drinking water. The EPA's 2014 and 2016 risk assessments have found that chlorpyrifos levels in drinking water are unsafe. People living and working in agricultural communities are likely to be exposed to higher levels of chlorpyrifos and other organophosphate pesticides in their drinking water.

(13) In 2015, leading scientific and medical experts, along with children's health advocates, came together, under "Project TENDR: Targeting Environmental Neuro-Developmental Risks" (referred to in this section as "TENDR"), to issue a call to action to reduce widespread exposures to chemicals that interfere with fetal and children's brain development. Based on the available and peer-reviewed scientific evidence, the TENDR authors identified prime examples of neurodevelopmentally toxic chemicals "that can contribute to learning, behavioral, or intellectual impairment, as well as specific neurodevelopmental disorders such as ADHD or autism spectrum disorder," and listed organophosphate pesticides, among them. In 2018, leading scientists involved with TENDR published an article in PLOS

Medicine that found that prenatal exposure to organophosphate pesticides such as chlorpyrifos, even at low levels that were previously considered safe, are putting children at risk for cognitive and behavioral deficits and neurodevelopmental disorders. The scientists recommended phasing out chlorpyrifos.

(14) In August 2018, based on overwhelming findings that chlorpyrifos is unsafe for public health, and particularly harmful to children and farmworkers, the United States Court of Appeals for the Ninth Circuit ordered the EPA to move forward with a ban of chlorpyrifos, stating that "the time has come to put a stop to this patent evasion" of the law. However, instead of complying with the court order, the EPA has appealed the ruling.

SEC. 3. PROHIBITION ON USE OF CHLORPYRIFOS ON FOOD.

Section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) is amended by adding at the end the following:

"(j) Notwithstanding any other provision of law, if it bears or contains chlorpyrifos, including any residue of chlorpyrifos, or any other added substance that is present on or in the food primarily as a result of the metabolism or other degradation of chlorpyrifos.".

SEC. 4. PROHIBITION ON REGISTRATION OF PESTICIDES CONTAINING CHLORPYRIFOS.

Section 3(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(f)) is amended by adding at the end the following:

"(5) PROHIBITION ON REGISTRATION OF PESTICIDES CONTAINING CHLORPYRIFOS.—

"(A) IN GENERAL.—The Administrator shall not register under this Act any pesticide containing chlorpyrifos as an active ingredient.

"(B) CANCELLATION OF REGISTRATIONS.—The Administrator shall cancel the registration under this Act of any pesticide containing chlorpyrifos as an active ingredient.

"(C) ADMINISTRATION.—The Administrator shall carry out subparagraph (B) without regard to sections 6(a)(1), 6(b), and 15.".

SEC. 5. PESTICIDES AND DEVICES INTENDED FOR EXPORT.

(a) IN GENERAL.—Section 17(a) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136o(a)) is amended—

(1) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting appropriately;

(2) in the matter preceding subparagraph (A) (as so redesignated), by striking "Notwithstanding" and inserting the following:

"(1) IN GENERAL.—Except as provided in paragraph (3), notwithstanding";

(3) in the undesignated matter following paragraph (1)(B) (as so designated), by striking "A copy of that statement" and inserting the following:

"(2) TRANSMISSION TO APPROPRIATE OFFICIAL.—A copy of the statement described in paragraph (1)(B)"; and

(4) by adding at the end the following:

"(3) EXCEPTION FOR PESTICIDES CONTAINING CHLORPYRIFOS.—Paragraph (1) shall not apply to any pesticide containing chlorpyrifos as an active ingredient.".

(b) CONFORMING AMENDMENT.—Section 3(f)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(f)(4)) is amended in the undesignated matter following subparagraph (B) by striking "17(a)(2)" and inserting "17(a)(1)(B)".

SEC. 6. EXEMPTION OF FEDERAL AND STATE AGENCIES.

Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136p) is amended in the first sentence by inserting "(except with respect to any pes-

ticide containing chlorpyrifos as an active ingredient)" after "provision of this Act".