Calendar No. 240

93D CONGRESS
1st Session
SENATE
REPORT
No. 93-254

TOXIC SUBSTANCES CONTROL ACT OF 1973

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 426

(TOGETHER WITH ADDITIONAL VIEWS)

TO REGULATE INTERSTATE COMMERCE BY REQUIRING PREMARKET TESTING OF NEW CHEMICAL SUBSTANCES AND TO PROVIDE FOR SCREENING OF THE RESULTS OF SUCH TESTING PRIOR TO COMMERCIAL PRODUCTION, TO REQUIRE TESTING OF CERTAIN EXISTING CHEMICAL SUBSTANCES, TO AUTHORIZE THE REGULATION OF THE USE AND DISTRIBUTION OF CHEMICAL SUBSTANCES, AND FOR OTHER PURPOSES

JUNE 26 (legislative day, JUNE 25), 1973.—Ordered to be printed

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JUNE 26 (legislative day, JUNE 25), 1973.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Commerce, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 426]

The Committee on Commerce, to which was referred the bill (S. 426) to regulate interstate commerce by requiring premarket testing of new chemical substances and to provide for screening of the results of such testing prior to commercial production, to require testing of certain existing chemical substances, to authorize the regulation of the use and distribution of chemical substances, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

NEED FOR THE LEGISLATION

Despite the growing body of environmental law, substances which present unreasonable threats to man and the environment continue to be developed, produced, and distributed. An April 1971 report by the Council on Environmental Quality entitled "Toxic Substances," the research for which formed the basis of the initial legislative

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proposal in this area revealed that there are approximately two million recognized chemical components in existence with additions of nearly 250,000 new compounds each year. It is probable that most of these new chemical compounds will never be produced commercially. However, several hundred will find their way into the market place and subsequently into the environment through use or disposal. It is those chemicals, as well as certain chemicals now in use, that this legislation is designed to control.

Testimony before the committee both this year and in the last Congress dwelt at length with examples of harmful chemical substances which have contaminated the environment. The hazards of asbestos, polychlorinated biphenyls, cadmium, mercury, phthalate esters, lead, and phosphates and other additives to detergents were repeatedly discussed by scientific witnesses. With respect to most of these chemicals, threats to human health and the environment have been documented and existing controls over their use and distribution have been found wanting. With respect to others, notably phthalate esters and phosphates in detergents, evidence does exist, but we need to know far more to determine the full extent of the problem.

In addition to gaining knowledge and applying a regulatory mechanism over existing chemicals, there is an even more pressing need to deal systematically with chemicals yet to be developed. While it is obviously difficult to judge what threats may lie in store for us in the future, past experiences with certain chemical substances does illustrate the need for properly assessing the risks of new chemical substances and regulating them prior to their introduction. For example, it is only in recent years that the hazards of mercury have been fully documented. If this knowledge had been known at the time many mercury containing products were introduced and had a regulatory mechanism existed, there is little doubt that regulatory officials would have curbed their use. The same could be said for polychlorinated biphenyls, which were responsible for the recent contamination of hundreds of thousands of chickens in the southeastern United States. Cadmium, asbestos, and other materials must also be regulated. Not only must legislation to control toxic substances be designed to gain knowledge about known chemicals but it must also provide a mechanism for dealing with future "mercuries" before commercial production.

The list of environmental laws now in effect is impressive. The air and water pollution control laws control effluent discharges. Other Federal laws exercise some control over the manufacture and distribution of pesticides, drugs, food additives, certain consumers products, radioactive materials, and the transportation of hazardous substances.

Yet, despite the many environmental control statutes in existence, the environmental problems precipitated by dangerous materials in consumer and industrial products continues to plague us. For example, we have all been concerned, and rightly so, about industrial discharges of mercury. Yet, testimony indicated that an even greater threat of pollution may be posed by the presence of mercury in such consumer products as paint, home thermometers, sponges, and a variety of other products. While it is rather easy to pinpoint an industrial discharge of a toxic substance and to take corrective action, it is nearly impossible

to prevent an individual householder from disposing of products containing toxic substances either down the drain or out with the garbage. While many dangerous materials can be removed from municipal sewage, many others cannot. It seems far more prudent to limit the amounts of dangerous materials in consumer products rather than letting them escape through a municipal sewage plant or asking the householder not to dispose of them. A prime purpose of S. 426 is to establish that control.

While definite advances have been made in the amount of testing that manufacturers complete prior to introducing a new chemical, there is a compelling need to broaden and standardize the test procedures and to provide for a regulatory review of test results prior to the entry of substances suspected of being dangerous into the stream of commerce and into the marketplace. Without pre-market testing and review, the regulation of such substances would, in many cases, deal with a problem only after that problem had become manifest.

Society has determined that it will not tolerate the existence of those conditions with respect to pesticides, drugs, and food additives. It is inconsistent to expect society to tolerate similar threats with respect to other toxic substances.

Summary and Purposes

The goal of S. 426 is to prevent unreasonable threats to human beings or the environment from the use of chemical substances and products containing chemical substances. In doing so, the bill authorizes the Environmental Protection Agency (EPA) to restrict the use or distribution of such substances or products. A number of additional regulatory tools are available including labeling requirements, prohibitions against misuse, recall, and seizure of substances or products in violation.

As was documented in hearings before the committee, there is great need for the regulatory mechanism to be preventive in nature with respect to new chemical substances. Consequently, the bill requires pre-market testing of new chemicals and the submission of results to EPA where there is reason to believe unreasonable threats to human beings or the environment may be posed. In order to avoid unnecessary testing of other new chemicals, the legislation requires that EPA be given notice of the impending commercial production of such new chemicals by their manufacturer ninety days in advance of that production.

More specifically, the bill provides:

(1) that new chemical substances which may pose unreasonable threats to human health or the environment be tested by their manufacturer prior to commercial production and that the test results should be reviewed by the Environmental Protection Agency prior to such production and that notification be given to EPA prior to the commercial production of all other new chemicals;

(2) that EPA will specify those existing chemical substances which there is reason to believe may present unreasonable threats to human health or the environment and that these substances will be tested as well;

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(3) a variety of tools to regulate toxic substances including the authority to restrict use or distribution, to seize chemical substances in violation of certain requirements of the Act, and to take immediate action against the chemical substances creating imminent hazards;

(4) that manufacturers and processors of chemical substances be required to maintain certain records and reports to enable the Administrator to properly determine hazards;

(5) that citizens be allowed to bring suits to enjoin certain violations of the Act and to require the performance of mandatory duties of the Administrator of EPA.

Effect of the Legislation on the Chemical Industry

Concern was expressed to the committee by the chemical industry that S. 426 as originally introduced would have a severe impact on the chemical industry. Primarily the industry was concerned that too many new chemicals would have to be tested and that EPA will be unreasonable in its demands for testing of both new and existing chemicals.

The following treats each of those concerns:

1. Unncessary Testing of New Chemical Substances

Originally, S. 426 provided that testing must be made of all new chemicals unless EPA excluded them from coverage because of no unreasonable risk to human health or the environment or because they could more efficiently be dealt with by testing of components. The chemical industry feared that EPA would be reluctant to exclude chemicals and that the same testing requirements would apply to all new chemicals regardless of risk.

As reported by the committee, the bill contains safeguards against this possibility. First, EPA would be directed to routinely require the submission of test results prior to commercial production only for those new chemical substances which there is reason to believe may pose unreasonable threats to human health or the environment. For these chemicals, EPA must make a prior determination that unreasonable risk is at least suspected. The data would be submitted in accordance with testing procedures developed by EPA.

Manufacturers of all other new chemical substances which are not so specified would only be required to give notification to EPA ninety days in advance of commercial production. At that point, EPA would examine the chemical formula and the intended use of the substance and make a determination as to whether unreasonable risks are posed. Of course, EPA could propose to restrict the use or distribution of the chemical substance during this period. The threat of EPA requiring unnecessary testing of all new chemicals regardless of anticipated risks is thereby greatly lessened.

2. EPA will be Unreasonable in its Demands for Testing

Many chemical companies have expressed concern that the cost of testing would frequently exceed $100,000 per chemical with seven different tests being required.

An exchange of correspondence between Senator Tunney and the Environmental Protection Agency provided some valuable information on the extent of testing which might be required. Senator Tunney's letter asked for EPA's estimate of what tests might be required of a chemical whose effects are unknown and how much those tests might cost. EPA responded (see page 50 of this report) that tests which would cost less than $3,000, coupled with information as to uses and chemical formula, would give EPA the basis to gauge risk for a large number of chemicals. EPA further pointed out that these types of tests would generally be performed by manufacturers as a matter of course. Of course, EPA should be authorized to be more demanding in its requirements, both for new and existing chemicals, when dealing with a substance that will be dispersed widely in the environment or there is some other good reason for gathering more data out in many cases this minimal amount of testing will suffice.

Legislative Background

S. 426 has its genesis in the 92d Congress. On February 10, 1970 the Administrator of the Environmental Protection Agency transmitted by executive message a legislative proposal which was introduced by Senators Hart and Magnuson, by request, as S. 1478, the "Toxic Substances Control Act of 1971".

Eight days of hearings were held in the 92d Congress on S. 1478 and Amendment No. 338 which suggested several major changes in the legislation. The Senate passed the legislation on May 30, 1972 following committee action. The House of Representatives acted late in the session but there was insufficient time to reconcile the differences between the Senate and House bills.

S. 426 was introduced in the 93d Congress on January 18, 1973 by Senators Magnuson, Tunney, and Hart. The Administration's bill, S. 888, was introduced on February 15, 1973. The two bills differ primarily in the manner in which new chemical substances are dealt with prior to commercial production. S. 426, as introduced, would require that all new chemicals which are not found to be of no unreasonable risk to man or the environment would be tested in accordance with EPA procedures and the results submitted to EPA 90 days in advance of its commercial production. S. 888, on the other hand, would require testing, but with no regulatory review prior to commercial production.

Three printed amendments were introduced to S. 426. Amendment No. 1, introduced on January 18 by Senators Magnuson and Hart, would require the Food and Drug Administration to develop procedures for screening food for the presence of dangerous materials. Amendment No. 8, introduced on February 15, by Senator Tunney, would require that Congressional testimony of EPA, budget requests, and legislative initiatives be submitted to the Congress simultaneously with submission to the President. Amendment No. 9 also introduced on February 15, would ensure that indemnities are not to be paid as a result of actions taken under the legislation and would repeal the indemnity provisions of Federal Insecticide, Fungicide, and Rodenticide Act.

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Amendments No. 8 and 9 are included in the reported bill. Amendment No. 1 will be treated as a separate legislative matter at a later date.

Hearings were held on both S. 426 and S. 888 and the three proposed amendments on February 23 and 26, and March 21, 1973. The Committee on Commerce met in executive session June 6 and ordered S. 426 reported favorably, with an amendment in the nature of a substitute text.

Section by Section Analysis

Section 1. Short Title and Table of Contents

The short title of the proposed legislation is the "Toxic Substances Control Act of 1973". A table of contents is included.

Section 2. Findings and Policy

This section asserts Congressional findings that human beings and the environment are being exposed to many chemical substances each year, that some of the chemical substances being developed and produced pose unreasonable threats to human health or the environment, and that the effective regulation of interstate commerce in chemical substances necessitates the regulation of transactions in chemical substances in intrastate commerce as well.

This section further states the policy of the United States to be that new chemical substances and certain existing chemical substances should be adequately tested for their effects on human health and the environment and that the testing should be the responsibility of those who produce the chemicals. It is also the policy of the United States that adequate authority should exist to restrict the use or distribution of those chemical substances which pose unreasonable threats to human health or the environment. Further, authority over chemical substances should be exercised in a manner which will not unduly impede technological innovation while at the same time assuring that chemical substances do not pose unreasonable threats. Finally, citizens should be encouraged to participate in carrying out the purposes of this Act.

Section 3. Definitions

This section defines the various terms used throughout the Act. Of particular interest are the definitions of "restrict the use or distribution" and "protect health and the environment."

"Restrict the use or distribution" is important in that it defines the ways in which the Administrator of the Environmental Protection Agency (EPA) will specify use and distribution standards for particular chemical substances. As defined, the term includes the authority to prescribe amounts sold to processors, to limit the type of processor to whom a substance may be sold, to specify the amount which may be utilized by a given type of processor, or to limit the sale or the manner in which a substance may be used, handled, labeled, or disposed of by any person.

In order to ensure that chemical substances of a consistent quality are being produced, the Administrator would be authorized to require manufacturers and processors to monitor their products and, under

the reporting requirements of section 10, to furnish the results of such monitoring to the Administrator. Contamination of chemical substances by deadly impurities must be guarded against. Testimony before the Subcommittee on the Environment revealed that some of the health problems of PCB's (polychlorinated biphenyls) may be traceable to a contaminant which might be present in other industrial chemicals as well. By including within the definition of "restrict the use or distribution" a provision for industry self-monitoring of products, the likelihood of such contamination should be greatly diminished. It is not intended that such self-monitoring requirements involve the regulation of the manufacturing process, for which provision is made under section 7, but only such requirements as are necessary to assure adequate monitoring by the manufacturer. Of course, requirements for self monitoring, as with other restrictions on use or distribution, will be subject to the mandatory hearing requirements and judicial review on the basis of "substantial evidence" on the record considered as a whole (see section 24).

Restrictions on use and distribution could be applied on a geographic basis. Thus, to use detergents as an example, the Administrator could specify different levels of phosphates to accommodate those areas where phosphate eutrophication is a problem. The Administrator could also totally ban a substance.

"Protect health and environment" is used throughout the bill as the standard EPA must attain in regulating chemical substances. As defined, the term means protection against any unreasonable threat to human health or the environment resulting from the use or distribution of a chemical substance or any product containing such substance taking into account the benefits of the substance versus the risks to human health or the environment from the use of the substance. Thus, a standard of reasonableness will be the Administrator's guide in regulating the particular uses of a chemical substance.

Section 4. Test Standards

Within one year of enactment EPA would be required to propose regulations specifying test protocols for various classes and uses of chemical substances and for the results that must be achieved therefrom as are necessary to protect health and the environment. Test protocols, as defined in section 3, are standardized methods of performing tests, the results of which will provide a basis for judging environmental and human health effects.

The test standards would be developed for those chemicals, substances, or classes or uses of chemical substances which are produced in commercial quantities and which the Administrator has reason to believe may pose an unreasonable threat to human health or to the environment. In order to include a substance or class or use of substances within the regulations, the Administrator would not have to have a provable case that unreasonable threats will be presented. Rather, the Administrator must only have some substantive basis for its inclusion.

It is expected that the Administrator will be as specific as is possible with respect to the substances or uses included within the regulations. He may wish to make variations in the testing requirements within a

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class of substances so that unnecessary testing will be avoided to the maximum extent.

As the regulations will include "results that must be achieved," standards of use for chemical substances will to the extent feasible be specified in the regulations. For example, a regulation might require that a phosphate-containing detergent could be used generally only if the test results revealed a very low level of algae stimulation characteristics. If a higher level were found, the detergent could be used everywhere except the Great Lakes Basin where over-fertilization is a problem. The committee anticipates that the use standards inherent in these regulations will be as specific as possible.

The testing requirements could include such tests as the Administrator may require to judge the human health or environmental effects (cancer, birth defects, acute toxicity, etc.) of the chemical substance.

The Administrator will specify in the proposed and final regulations when they shall take effect, which shall be as soon as feasible allowing sufficient time for the execution and reporting of the required tests. Any chemical substance which is commercially produced or imported prior to 180 days after the date of enactment of this Act will be considered an existing chemical substance and would be regulated pursuant to section 6.

In determining the form of the regulations, the Administrator is to consider all relevant factors which will allow him to make a determination as to what results must be achieved to authorize uses of a chemical substance. The Administrator should weigh the benefits that will derive from a certain use versus the risks that would ensue from that particular use.

Section 5. Premarket Screening of New Chemical Substances

This section specifies the means by which EPA will gain knowledge of the introduction of new chemical substances and the extent to which EPA will be given an opportunity to regulate such substances prior to their commercial production.

Subsection (a) specifies the procedures that govern all new chemical substances whereas subsection (b) applies in lieu of subsection (a) for those new chemicals which there is reason to believe may pose unreasonable threats to human health or the environment and for which test standards have been prescribed under section 4.

Subsection (a) requires that 180 days after enactment, and thereafter, any manufacturer or importer of any new chemical substance shall notify the Administrator at least 90 days in advance of the commercial production of each new chemical substance. The notification shall include the information referred to in section 10 insofar as it pertains to such substance. Thus, EPA would receive notice of the name of the substance, the chemical identity and molecular structure of the substance, the intended uses of the substance insofar as they are known to the manufacturer or importer or are reasonably ascertainable by him, an estimate of the amounts intended to be produced, and a description of the by-products of such substance.

The Administrator could shorten the 90-day period if in his judgment unreasonable environmental or public health threats would not result. It is intended that in reaching decisions as to which chemicals

may be produced prior to 90 days after submission of the notice in question, the Administrator should give priority attention to information submitted by or relating to industries—such as the fashion industry—where severe economic loss will result if commercial production is postponed. In addition, the Administrator may make determinations concerning reduction of the 90-day period in advance of notice in circumstances where in his judgment no unreasonable environmental or human health threat is posed by given classes or uses of chemical substances.

Subsection (b) requires that manufacturers or importers of new chemical substances to which regulations under section 4 are applicable shall submit to the Administrator the test data developed in accordance with that section. Section 4 requires EPA to develop test procedures for those chemical substances for which the Administrator has reason to believe may pose unreasonable risks to human health or the environment. In addition, it is intended that manufacturers would be required to submit information as to intended uses and the chemical formula of the substance in question which together with test data will enable EPA to make judgments as to risk.

Subsection (c) provides that, subject to the confidentiality requirements of section 16, the Administrator shall promptly publish in the Federal Register the identity of the chemical substance, the uses intended, and a statement of the availability of any test data submitted. Thus, all of the information received by the Administrator which would not result in significant competitive damage to the person submitting such information would be available to the public.

Subsection (e) authorizes the Administrator to extend the date after which commercial production of a new chemical substance which is subject to subsection (b) may begin by an additional period not to exceed 90 days for good cause shown. It is intended that the majority of new chemical substances for which such screening is required be handled within the 90 day period. Further delay will in cost cases be unnecessary. Those cases where delay would be necessary could be termed unusual situations. In those circumstances, such as a product or substance involving a completely new compound having properties whose toxic effects cannot be readily determined, more time to adequately review test data would be necessary.

Thus, if the Administrator has not had sufficient opportunity to review the test data submitted for any such chemical substance and to make a judgment as to whether such chemical substance should be allowed on the market or whether additional restrictions might be needed, he would have the authority to postpone the commercial production of the substance for up to an additional 90 days. However, by way of one example, the committee certainly does not intend that bureaucratic lethargy will constitute good cause for invoking the extension. Furthermore, the Administrator's decision to extend the screening period and his reasons therefore will be published in the Federal Register and will be subject to judicial review under section 24 (d). Thus, protection is built in to guard against extensions without basis. The committee intends to impose upon the Administrator a

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requirement not to extend the period for review unless such extension meets the objective test of a showing of good cause. The court, on the other hand, in reviewing that decision, would apply their traditional, albeit subjective, test of whether the Administrator, in reaching his determination, acted in an arbitary or capricious fashion.

Subsection (d) provides that during either (i) the ninety-day period or the extension for new chemicals which fall under subsection (b) or (ii) the 90 day period for new chemicals which fall under subsection (a), the Administrator would be authorized to propose regulations to restrict the use or distribution of the chemical substance in accordance with section 7. Any such restrictions proposed by the Administrator would be binding on the manufacturer of the chemical substance pending the outcome of administrative proceedings on the proposal as if such proposed regulation were final. The Administrator would if warranted by data or the absence of such data have broad discretion to propose restrictions on use or distribution during this period. The proposals could be used to more clearly specify the use standards inherent under section 4 due to, for example, unanticipated uses of a chemical substance which falls within the test requirements of section 4.

With respect to new chemical substances for which the notification requirements of subsection (a) are applicable, the Administrator could ask for test data by way of proposing a restriction on use or distribution under section 7 during the ninety-day period. As a practical matter, however, EPA would be expected to informally request such data from the manufacturer before proposing a regulation to restrict the use or distribution of the chemical substance. Of course, if the data were not received or properly evaluated by EPA prior to the expiration of the ninety-day period, the regulation should be proposed.

As the Adminisrator would be authorized to propose a regulation if warranted by data or the absence of data available to him, he could propose a regulation to restrict the use or distribution if the data were insufficient to allow him to make a judgment or if the data were of such a complicated nature so as to prevent an adequate review prior to the expiration of the ninety-day period or the extension. If because of complicated data submitted under subsection (b), the Administrator determines that the maximum total period of 180 days is not sufficient for review of the data in question, he may, in effect, grant himself an additional period of time beyond the 180 days for an adequate review of the data by proposing a restriction on use or distribution. The decision to propose a restriction on use or distribution prior to the commercial production of a new chemical substance would be subject to judicial review as its effect is immediate. The proposed restriction becomes subject to an administrative proceeding, but if the review is completed and the findings warrant it, the proposal can be withdrawn. If the data are insufficient and the manufacturer will agree to resubmit adequate data, the Administrator may choose not to propose a restriction on the use or distribution and the period of review will not commence or be in effect until the resubmission of test data. If test data are resubmitted, the Administrator will again have 90 days from the date of resubmission to review the data before commercial production could begin and could invoke the 90-day extension referred to above.

Subsection (f) provides that if the Administrator fails to propose a restriction on the use or distribution within 90 days of submission of information or data as required under this section or to extend the time pursuant to the above, commercial production of such chemical substance may begin.

If the Administrator did not take action to propose a restriction on the use or distribution during the ninety-day period or extension, he would not be prohibited from taking subsequent action after commercial production has begun as an existing chemical substance or to take action against any substance found to be an imminent hazard pursuant to section 8.

Finally, subsection (g) provides a mechanism whereby the manufacturer first submitting test data for a new chemical substance may be reimbursed by subsequent manufacturers who are exempted from submitting duplicative data. Unless the parties can agree on the amount to be reimbursed and the method of reimbursement, the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement to the person who previously submitted test data and to any other person who has been required to contribute with respect to such data. The reimbursement period begins at the earliest date the chemical may be manufactured and distributed in commerce and ends two years later. After the expiration of such period, subsequent manufacturers of the chemical substance will not be entitled to reimbursement. The Administrator may choose to make the determinations as to reasonable reimbursement at the expiration of the two year period. At that time, the Administrator will have knowledge of all producers of such chemicals and can more easily allocate the cost.

Section 6. Existing Chemical Substances

This section will enable the Administrator to require testing of existing chemical substances when he has reason to believe that the manufacture, processing, distribution, use, or disposal of that substance may pose an unreasonable threat to human health or the environment. Testing would be performed in accordance with section 4 procedures. This would allow the Administrator to gather data for those existing chemical substances about which we know very little or not enough. Heavy metals such as mercury, cadmium, and lead could very well fall within this category as well as PCB's and other industrial chemicals, and chemicals within consumer products. Again duplicative testing would not be required if another manufacture of the existing chemical substance had previously submitted test data. Cost sharing provisions similar to those of section 5 are provided. Provision is made for manufacturers of the same existing chemical to designate one of their numbers to perform the testing. EPA would designate a manufacturer or a qualified third party to do the testing if they cannot agree.

Existing chemical substances specified for testing under this section would remain on the market while the tests were being performed unless the Administrator chose to use his authority to restrict use of distribution under section 7 or initiated the imminent hazard authority of section 8. At the time test data is required, however, the use controls specified in the regulations under section 4 would be effective.

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Test data would have to be submitted for new uses of a chemical substance specified under this section if a regulation under section 4 is applicable. If the manufacturer proposes to commercially produce the substance for a new use between the time when regulations specifying the substance are final and when the data is required to be submitted, then the procedures of this section would govern. After the data is submitted, the substance could only be commercially produced for the uses specified in the section 4 regulations. If the new use is proposed after the date by which the data is required to be submitted, then the procedures of section 5 would govern. A manufacturer of a chemical substance would be responsible for following these procedures for new uses made of his chemical. Of course, that responsibility extends only to the limits of acts prohibited under section 17. In other words, a manufacturer will be responsible for the uses, including new uses, made of his chemical to the extent that he has actual knowledge or should have had knowledge of the new use as specified in section 17.

Section 7. Restrictions on Use or Distribution.

Subsection (a) prescribes the form and manner in which restrictions on use or distribution will be imposed by the Administrator for chemical substances or products containing such substances subject to this Act. The goal of the regulatory framework is to eliminate unreasonable threats to human health or the environment arising from chemical substances and products containing such substances. Restrictions on use or distribution is the vehicle by which EPA will achieve this goal. Within the limits of the definition of "restrict the use or distribution", the Administrator would have broad authority to fashion the type of restrictions necessary to adequately protect health and the environment. In addition, he could require that persons engaged in distributing such chemical substance or product give notification to purchasers or other recipients of such restrictions in a manner prescribed by EPA. In the case of industrial chemicals this could include notification to subsequent processors or, in the case of consumer products, labeling provisions containing appropriate warnings and directions for use and disposal. Also, EPA would have the authority to take such other action as may be necessary to carry out such restrictions, including recalling and remedying, replacing, or refunding the purchase price of the product or substance.

Subsection (b) specifies some of the relevant factors that EPA should consider in issuing regulations to restrict use or distribution of a chemical substance or product containing such chemical substance. The list, which is not meant to be all inclusive, includes several areas of concern which are designed to guide the Administrator in arriving at a proper weighing of benefit versus risk.

Subsection (c) provides that if a restriction on use or distribution contains a requirement for a chemical or product of reasonably consistent composition and the Administrator has good cause to believe that such requirement is not met, he could take additional action to assure a reasonably consistent chemical or product. Those requirements would only be made after an opportunity for an adjudicative hearing in accordance with section 554, United States Code.

Finally subsection (d), this section prohibits indemnity payments from being made to any person as a result of action taken under this Act or section 15 of the Federal Insecticide Fungicide Rodenticide Act which section is repealed.

Complementing the prohibition on indemnity payments, subsection (e) requires EPA would be required to commission a study for the purpose of determining whether and under what conditions, if any, indemnification should be accorded to any person as a result of action taken by the Administrator under any law administered by him. The study is to be conducted outside of EPA under the direction of a university or recognized research center does not have any conflict of interest with respect to the findings and conclusions of the study. The study is to be completed within two years of the date of enactment of this Act and be submitted with submittal simultaneously to the Congress and the Administrator following the completion of the study.

Section 8. Imminent Hazards

This section authorizes the district courts of the United States, upon the petition of the Administrator or the Attorney General, to restrict the uses or distribution of any chemical substances or product containing such substance which is found to be an imminent hazard.

An imminent hazard shall be considered to exist, when the evidence is sufficient to show that any chemical substance or product containing such substance will result in an unreasonable threat to human health or the environment prior to the completion of an administrative hearing or other formal proceeding held pursuant to this Act. The Administrator would also be required simultaneously with petitioning the court, to propose appropriate regulations under section 7 to restrict the use or the distribution of the chemical substance or product. It is not intended that knowledge with respect to the hazard be complete for the court order to ensue. The sufficiency of the evidence with respect to the hazard necessary for a court order will depend upon the seriousness of the damage that would result if the threat were allowed to go unchecked pending the completion of administrative proceedings. Thus, if the threat of damage was thought to be serious and widespread the requisite amount of evidence demonstrating the hazard should be less than that required for a hazard with a lesser degree of seriousness. The district courts, as courts of equity, should take into account all factors. Their major function, however, should be to protect the public health against the threat of unreasonable damage until the full extent of the hazard is determined and the permanent form of relief fashioned pursuant to the administrative procedures arising from the proposal to restrict the use or distribution of the chemical substance.

Section 9. Seizure

Subsection (a) authorizes the seizure of those chemicals substances, or products containing such chemical substances, which the Administrator finds are manufactured, processed, distributed, used, or disposed of in violation of section 5, 6, or 7 of this Act and where there is reason to believe such substance or product poses an unreasonable threat to human health or the environment. Similarly, those chemicals

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or products containing those chemicals which constitute an imminent hazard under section 8 would also be liable to seizure.

It is intended that actions to determine imminent hazards under section 8 and actions to seize substances or products containing such substances under this section could be decided in the same proceeding before a district court. In other words, the district courts would not be required to first decide the issue of an imminent hazard and then decide the issue of seizure. Both actions could occur simultaneously. Of course, such a procedure is not mandatory as there may be instances where simultaneous proceedings would be inappropriate.

Subsection (b) provides that any substance condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may direct. The proceeds of any sale will be paid into the Treasury of the United States, less legal costs and charges. Any such sale will not be contrary to the provisions of this Act or the laws of the jurisdiction in which such sale takes place. The court also may, upon payment of costs of the preceeding and execution of a bond, order the chemical substance returned to the owner to be destroyed or brought into compliance with this Act under the supervision of the EPA.

Subsection (c) provides that when a decree of condemnation is entered, court costs, storage and other property expenses shall be awarded against the claimant of the substance or product proceeded against.

Section 10. Reports

Subsection (a) provides that the Administrator would be authorized to require reports of manufacturers or processors to enable him to be aware of the chemical substances in use or, in the case of the requirements of section 5, of chemicals purposed to be commercially produced so that he can adequately discharge his functions under this Act. Various reports could be required including the names and identity of chemical substances produced, the categories of use, the amounts of each substance produced and a description of each chemical substance.

Subsection (b) authorizes the Administrator to exempt manufacturers or processors from all or any part of the reporting requirements if the reports are not necessary for the Administrator to carry out his functions under this Act. In making such exemptions, the Administrator would be expected to consider the ability of the chemical manufacturer to make the required reports under this section. For example, small manufacturers like printing ink or dye manufacturers may have lesser requirements than would large chemical manufacturers. It is intended that the Administrator would not make any such exemption with respect to the information furnished under section 5(a).

Subsection (c) provides that the Administrator would be authorized to publish a notice in the Federal Register inviting written comment on the human health and environmental effects of a chemical substance, whenever he determines that such action would be necessary.

Section 11. Exemptions and Relationship to Other Laws

The provisions of this Act shall not apply, pursuant to subsection (a), to pesticides, foods, drugs, devices, or cosmetics subject to the Federal Food, Drug and Cosmetic Act, the Federal Meat Inspection Act, the Egg Product Inspection Act or the Poultry Product Inspection Act; to any nuclear material defined in the Atomic Energy Act; to the transportation of hazardous materials insofar as they are regulated by the Department of Transportation; to intermediate chemical substances unles the Administrator finds that the Clean Air Act or the Federal Water Pollution Control Act can not sufficiently regulate these substances; or any other chemical substance that can be more effectively regulated by the Clean Air Act of the Federal Water Pollution Control Act. Laboratory reagents, which are small amounts of chemicals used for research purposes, would not be covered unless a reagent poses an unreasonable threat to human health or the environment.

Tobacco and tobacco products would likewise be exempted as would the extraction of any mineral deposit governed by the mining or mineral leasing laws of the United States, unless that extraction poses an unreasonable threat to human health and the environment which could not be effectively regulated under other provisions of law.

The knowledge of the effects of certain chemical substances in industrial discharges is deficient with respect to public health and environmental concerns. As the air and water pollution control laws do not as a rule require testing of a chemical substance, it is intended that this authority could be used to gain knowledge of those chemical substances even though the pollution control mechanism could be applied under the Clean Air Act or the Federal Water Pollution Control Act.

To define the role of the Environmental Protection Agency under this Act as opposed to other agencies responsible for consumer hazards and occupational hazards subsection (b) directs the Administrator of EPA not to regulate the use or the distribution of new or existing chemical substances on the basis of any possible harm to employees in their place of employment or the hazards directly to consumers resulting from the personal use, enjoyment, or consumption of marketed products which contain or might contain the substance. The Administrator would be required however, to take such hazards into account in determining tests procedures under sections 4 and results to be achieved therefrom, and restrictions on use or distribution. Thus, EPA would be given the authority to regulate chemical substances on the basis of their total exposure to man and the environment. No single agency now is charged with considering and regulating all of the risks associated with the chemical as opposed to all of the benefits of a chemical whether occupational, consumer, or environmental. This provision provides for that supervision.

Accordingly, subsection (c) directs the Administrator to transmit any relevant data to certain other Federal agencies responsible for the regulation of chemical substances not regulated by this Act. Moreover, subsection (e) further directs the Administrator to consult the Secretary of Health, Education, and Welfare and heads of other appropriate Federal agencies in administering this Act. The Administrator would be required to report annually to the Congress on his coordination with other Federal agencies.

Subsection (f) provides that this Act shall not be construed as superseding or impairing the provisions of any other law or treaty of the United States.

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Section 12. Chemical Substances Board

Subsection (a) establishes a Chemical Substances Board to give scientific advice to the Environmental Protection Agency in carrying out its functions under this Act.

The Board, consisting of 12 members, serving staggered terms of four years (except for those initially appointed) is to be drawn from a list of individuals recommended to the Administrator by the National Academy of Sciences (NAS). The Secretary of Health, Education, and Welfare shall appoint one member of the board from whatever source he desires. The Board will consist of qualified scientists not more than one-third of which could have a significant economic interest in the chemical industry.

Subsection (b) authorizes the Administrator to enter into agreements with NAS to deal with specific problems under this Act. The advice given by the Board would be limited to matters of science rather than matters of policy.

Compensation of Board members is provided at a daily rate not to exceed that of grade GS–18 of the classified Civil Service.

Of course, the Board will be fully subject to the Federal Advisory Committee Act (86 Stat. 770).

Section 13. Research

This section authorizes the Administrator of the Environmental Protection Agency to conduct such research and monitoring as is necessary to carry out his functions under this Act. This research and monitoring also may be accomplished by the Administrator through contracts and grants. It is intended that the research and monitoring conducted by the EPA under this section will not duplicate the research of other Federal agencies or that required of manufacturers. As one of the prime purposes of this Act is to place the burden of performing research and monitoring on the manufacturers of chemical substances, it is intended that the research of the EPA be limited to the extent possible and that research and monitoring be the responsibility of those who manufacture chemical substances.

The Administrator would be authorized to plan, design, and construct research laboratories, but only after the resources of other Federal agencies have been utilized and then only when expressly authorized by the Congress and subject to funds being appropriated for that purpose.

Section 14. Administrative Inspections and Warrants

For the purpose of conducting administrative inspections, subsection (a) authorizes the Administrator to enter any factory, warehouse, or other premises concerned with the manufacture, processing, or distribution of chemical substances. The inspections would be for the purpose of verifying the correctness of records, reports, or other documents required by this title and to otherwise facilitate the administration of this Act.

The entries and inspections will be carried out by employees designated by the Administrator of EPA. Presentation of appropriate credentials and an administrative warrant or written notice of inspection authority to the person in charge of the premises would be required in

order to establish right of entry and to conduct such inspections at reasonable times. Administrative inspections authorized by this section shall not extend, except when consented to in writing by the owner, operator, or agent in charge, to 1) financial data, 2) sales data other than shipment data, 3) pricing data, 4) personnel data, 5) research data (other than data required by this Act), or 6) process technology other than that related to chemical composition or the industrial use of a chemical substance.

Subsection (b) spells out the procedure by which administrative warrants will be issued and how they must be executed.

Section 15. Exports and Imports

Subsection (a) provides that, notwithstanding any other provisions of this Act, chemical substances or products containing such substances intended solely for export shall not be subject to this Act, except that (1) test data would have to be submitted to the Administrator as if the exported substance were marketed domestically; (2) all such chemical substances would be subject to the reporting provisions of section 10; and (3) no chemical substance could be exported if the Administrator finds by regulation that the chemical substance will pose unreasonable threats to the human health or environment of the United States. The submittal of test data required by this section should present no undue burden on the chemical industry as virtually no chemical substances are produced solely for export and the testing requirements would have to be met for domestic use.

Subsection (b) provides that if submittal of test data is required for a chemical substance under section 5 or 6 or restrictions on use or distribution have been proposed or requested under section 7 or 8, the Administrator shall, subject to section 16 concerning confidentiality, furnish to the governments of the foreign nations to which the substance or product may be exported (1) a notice of the availability of the data submitted to him under section 5 or 6 and (2) any restrictions on use or distribution that have been imposed, proposed, or requested with respect to such product or substance.

Subsection (c) requires the Secretary of the Treasury to refuse entry for failure to conform with the regulations promulgated under the Act. Procedures are spelled out for such entry refusal and subsection (d) authorizes the Secretary, in consultation with the Administrator of EPA, to issue such enforcement regulations.

Imports would be subject to all the requirements of this Act as if they were produced domestically.

Section 16. Confidentiality

Section 16 of the bill establishes as a general principle that "copies of any communications, documents, reports, or other information received or sent by the Administrator shall be made available to the public, upon identifiable request, and at reasonable costs unless such information may not be publicly released under the terms of subsection (b) of this section." Subsection (c) of section 16 mandates that any communication from a person to the Administrator or any other employee of the EPA concerning a matter presently under consideration in a rulemaking or adjudicatory proceeding in the Agency should be made part of the public file of that proceeding unless it is

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communication entitled to protection as outlined below. It is intended that these requirements shall also apply to communications of the Chemical Substances Board as well.

Whereas subsection (a) of section 16 establishes as a general principle access of the public to information there is no *legal requirement* to make information available if it is not required to be made available under the Freedom of Information Act (5 U.S.C. 552 (b)). Subsection (a) must be read in conjunction with paragraph (2) of subsection (b) which states: "Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public." Although nothing in the section "shall be deemed to require" release of any information, section 16 *authorizes* the Administrator or any officer or employee of the Agency to make public any communications, documents, reports, or other information, except that referred to in section 1905 of title 18 United States Code, which if disclosed, would result in significant competitive damage.

Thus, information referred to in 18 U.S.C. 1905, which has commercial value and would result in significant competitive damage to its owners if disclosed may not be disclosed by the Administrator or employees of the Agency or any member of the Chemical Substances Board established under section 12, except under certain specified situations. The purpose for this qualification is to protect the business community from significant competitive harm. To give added protection to possessors of this information, disclosure of such information to the public when the disclosure is necessary to protect their health (subsection (b)(1)(E)) could not be made without notice to the manufacturer and an opportunity for comment in writing or for personal discussion in closed session during a period of 15 days following the notice. Of course, the 15-day period could be waived if the resultant delay would be detrimental to the public health and safety.

There is a final qualification to the general principle of complete public access to information. Section 16 prevents disclosure of the names or other means of identification of injured persons without their expressed written consent.

Section 17. Prohibited Acts

This section sets forth the several prohibited acts. Particular note should be taken of the prohibition against the manufacture, processing, sale, distribution, or importation of a chemical substance when those acts are known to be or should have been known to be for a use of violation of regulations promulgated under sections 4 (test standards) or 7 (restrictions on use or distribution) of this Act. Such acts should be regarded as known to a person if he has actual knowledge. Such acts will be regarded as should have been known if a reasonable man acting in similar or like circumstances would have known.

In addition, the use of the chemical substance in violation of regulations under section 4 or 7 will be prohibited if that use is known or should have been known to be in violation of those regulations. Thus, if a chemical substance in a consumer product is labeled

as prohibiting certain uses it can be assumed, in nearly all cases, that a person exercising due care would read and understand the label and thus if the product was misused that user would be subject to the penalties of this Act. With respect to industrial users of chemical substances, the presumption of knowledge should be even greater. If a chemical substance has been restricted as to industrial uses or distribution, the industrial user of that chemical substance should have known those restrictions if a reasonable man acting in similar or like circumstances would have known them.

Section 18. Penalties and Remedies

Subsection (a) provides criminal penalties of up to $25,000 per day of violation or imprisonment of not more than one year, or both, for willful violations of the Act.

Persons violating the Act other than willfully, pursuant to subsection (b), are to be liable for a civil penalty of up to $25,000 for each day of violation. The civil penalty shall be assessed by the Administrator after an adjudicative hearing and after he has considered the nature, circumstances, and extent of the violation, the practicability of compliance with the provisions violated, and any good-faith efforts made to comply. Failures to pay the civil penalties may be enforced in the appropriate district court by the Administrator, or by the Attorney General on the request of the Administrator.

Section 19. Citizen Civil Action

This section is patterned after similar provisions of the Clean Air Amendments of 1970 and the Federal Water Pollution Control Act Amendments of 1972. Subsection (a) provides that any person would have standing to bring a civil action for injunctive relief whenever that action constitutes a constitutionally justiciable case or controversy. Actions could be brought against (1) any person (including the United States or other governmental instrumentality or agency) who is alleged to be in violation of any regulation or order promulgated under section 4 or 7 of this Act. Thus, if a person violates a standard of performance required under section 4 or 7 that person would be subject to a citizen civil action under this section. Included would be violations of restrictions on use or distribution or other provisions of regulations under section 7, the requirements to perform tests specified under section 4 and use standards specified in the regulations under section 4. Suits could also be brought against the Administrator where there is an alleged failure by the Administrator to perform mandatory duties under this Act.

Subsection (b) provides that citizen civil actions under this section could not be commenced prior to sixty days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator, or if the Administrator or Attorney General has commenced a civil action to require compliance with the regulation or order. Suits could not be brought against the Administrator prior to sixty days after the Administrator has been given notice by the plaintiff. In the case of an imminent hazard, however, such action could be brought ten days after such notification.

Subsection (c) authorizes the Administrator of the Attorney General to intervene in any action under this section as a matter of right.

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Subsection (d) authorizes the court to award the costs of litigation to the parties whenever appropriate.

Subsection (e) provides that nothing in this section shall restrict any common law or other statutory right of any person.

Subsection (f) gives the courts the discretionary authority upon the application by the defendant, to consolidate cases involving the same issues of violations to a single district court. Any such consolidation order to be issued by the court should give due consideration to the convenience of all the parties and witnesses to the action.

Section 20. Environmental Prediction and Assessment

This section directs the EPA, in cooperation with other Federal agencies, to develop the personnel and information resources necessary to assess the environmental consequences of the introduction of new chemical substances.

Section 21. Cooperation of Federal Agencies

This section authorizes each Federal agency to assist the Administrator in the performance of his duties under this Act.

Section 22. Health and Environmental Data

This section directs the Council on Environmental Quality in consultation with other Federal, State, and local agencies, the scientific community, and the chemical industry to coordinate a study of the feasibility of establishing a standard classification system for chemical substances and a means of storing and retrieving that information.

Section 23. State Regulations

This section preempts State and local governments from establishing standards for purposes similar to this Act, unless the Environmental Protection Agency has not established such standards for a particular chemical substance. State and local governments would not be preempted from invoking total bans on substances for which the Environmental Protection Agency has established standards or regulations.

The Administrator could, upon his own initiative or upon petition, exempt State and local governments from the preemption requirements of this section or any other Federal law administered by EPA. It is intended that the waiver should be granted only if the standard will be at least as strict and will not result in unreasonable burdens on commerce.

Section 24. Regulations, Procedure, and Judicial Review

Subsection (a) authorizes the Administrator to issue regulations to carry out his functions under this Act and to amend or rescind them at his own initiative or on the petition of any interested party.

Subsection (b) provides that the Administrator shall publish any proposed regulations in the Federal Register at least 60 days prior to their final date. He also must publish in the Federal Register a notice of all petitions received and if denied, his reasons therefor.

If any adversely affected person files objections and requests a public hearing, the Administrator will be required to grant the requested hearing. Except as expressly provided otherwise, the Administrator will be free to structure the hearing in a manner he deems advisable.

Thus, depending on the nature of the regulation, the hearing could consist of the presentation of oral and written statements only or the hearing could be structured so as to include the rights of cross-examination of witnesses. It is intended that most of the hearings involving regulations and restrictions under sections 4 and 7 would be of an informal nature, bearing in mind, of course, the rights of the parties to be afforded due process. However, if the regulation proposed involves determinations which are adjudicative in nature, such as regulations ordering recalls or replacement of chemical substances in violation of this Act, formal hearings should be held.

Subsection (c) requires that proposed and final regulations issued under the Act shall specify findings of fact on which the regulations are based and these relationship to the regulations issued.

Subsection (d) provides that final regulations promulgated under this Act will be subject to judicial review in accordance with the Administrative Procedures Act, except that with respect to regulations promulgated under section 4, 6, or 7, the findings of the Administrator will be sustained if based upon substantial evidence on the record considered as a whole. The reviewing court may not stay an EPA action unless the court determines that the party seeking this stay is likely to prevail on the merits and will suffer irreparable harm pending the review proceeding. Subsection (e) provides that chapter 5 of title 5 of the United States Code shall apply unless otherwise specified in this section.

Pursuant to subsection (f) a party seeking judicial review of regulations may also apply to the court for leave to adduce additional evidence before the Administrator. The court could order that such evidence be taken if (1) the evidence responsible for the request is material and was not available at the time of the original proceeding, or (2) the failure of the Administrator to include the evidence in the original hearing was an arbitrary or capricious act, thereby allowing judicial review of the form of the original administrative hearing conducted by the Administrator.

Section 25. National Security Waiver

The Administrator would be authorized to waive compliance with the provisions of this Act upon receiving information from the Secretary of Defense that the waiver is in the interest of national security.

Section 26. Authorization for Appropriation

Subsection (a) provides a specific authorization for the next three fiscal years in the amount of $9,940,000, $11,550,000, and $10,300,000, respectively, and specifies that research laboratories may not be established unless expressly authorized by the Congress. Subsection (b) authorizes the collection of reasonable fees from manufacturers of chemical substances for which testing is required to help defray the cost of implementing the provisions of this act.

Subsection (c) requires the Administrator of EPA to prepare and submit concurrently to the President and to the Congress his budget estimates by August 1 of each year for the following fiscal year. Whenever any budget request, supplemental budget estimate, legislative recommendation, prepared testimony for Congressional hearings, or com-

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mendation, prepared testimony for Congressional hearings, or comments on legislation is sent to the President or to the Office of Management and Budget, the Administrator shall concurrently transmit a copy to the Congress. This subsection further prohibits any officer or agency of the United States from requiring the Administrator to submit this information to him prior to submission to Congress.

Cost Estimate

Pursuant to the requirements of section 252 of the Legislative Reorganization Act of 1970, the committee estimates the cost of the proposed legislation for each of the first five fiscal years will be as follows:

Gross costs

Fiscal year:	
1974	$9,940,000
1975	11,550,000
1976	10,300,000
1977	10,200,000
1978	10,200,000

The committee knows of no cost estimates made by any Federal agency which differs from those tabulated above.

Changes in Existing Law

Section 7(f) repeals section 15 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135). No other changes in existing law are made by the proposed legislation.

Text of S. 426 as Reported

A BILL To regulate interstate commerce by requiring premarket testing of new chemical substances and to provide for screening of the results of such testing prior to commercial production, to require testing of certain existing chemical substances, to authorize the regulation of the use and distribution of chemical substances, and for other purposes

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

SHORT TITLE AND TABLE OF CONTENTS

Section 1. (a) This Act may be cited as the "Toxic Substances Control Act of 1973".

(b) Table of contents.

FINDINGS AND POLICY

Sec. 2. (a) The Congress finds that—

(1) Human beings and the environment are being exposed to a large number of chemical substances each year.

(2) Among the many chemical substances constantly being developed and produced there are some which may pose an unreasonable threat to human health or the environment.

(3) The effective regulation of interstate commerce in such chemical substances necessitates the regulation of transactions in such chemical substances in intrastate commerce as well.

(b) It is the policy of the United States that—

(1) New chemical substances and hazardous or potentially hazardous existing chemical substances should be adequately tested with respect to their safety to human beings and the environment. It should be the responsibility of those who produce such chemicals, to conduct such tests.

(2) Adequate authority should exist to restrict the distribution and use of chemical substances found to pose an unreasonable threat to human health or the environment.

(3) Authority over chemical substances should be exercised in such a manner as not to unduly impede technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical substances does not pose an unreasonable threat to human health or the environment.

(4) As set forth herein, citizens should be encouraged to participate and to assist in carrying out the purposes of this Act.

DEFINITIONS

Sec. 3. As used in this Act—

(1) "Administrator" means the Administrator of the Environmental Protection Agency.

(2) "Byproduct" means a chemical substance produced as a result of the production, manufacture, processing, use, or disposal of some other chemical substance.

(3) "Chemical substance" means any organic or inorganic substance of a particular molecular identity, or any uncombined chemical radical or element.

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(4) "District of the United States", which court shall have jurisdiction over actions arising under this Act, includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii.

(5) "Environment" includes water, air, land, all living things therein, and the interrelationships which exist among these.

(6) "Existing chemical substance" means any chemical substance which has been produced or imported into the United States in commercial quantities prior to one hundred eighty days after the date of enactment of this Act.

(7) "Indemnity" means any payment made to a person as reimbursement for loss or damage other than a payment made in accordance with a judgment of any court in an action brought at common law or under section 1346 of title 28, United States Code.

(8) "Intermediate chemical substance" means any chemical substance to the extent that such substance is converted chemically or used as a catalyst in the manufacture of other chemical substances subject to this Act.

(9) "Laboratory reagent" means any chemical substance produced, distributed, or used for scientific experimentation or chemical research or analysis.

(10) "Manufacturer" means any person engaged in the production or manufacture of chemical substances for purposes of sale or distribution in commercial quantities, or an importer of such substances.

(11) "New chemical substance" means any chemical substance which has not been produced or imported into the United States in commercial quantities prior to one hundred eighty days after the date of enactment of this Act: *Provided*, That after such substance is first produced or imported in commercial quantities it shall be regarded thereafter for purposes of this Act as an "existing chemical substance."

(12) "Person" includes an individual or a corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or trustee of any of the foregoing, State, municipality, or political subdivision of a State.

(13) "Processor" means any person engaged in the preparation of a chemical substance or a product containing such substance for distribution or use either in the form in which it is received or as part of another product, as defined by regulations of the Administrator.

(14) "Protect health and the environment" means protect against any unreasonable threat to human health or the environment resulting from the use or distribution of a chemical substance or any product containing such substance, taking into account the benefits of such use or distribution as compared to the risks of such use or distribution to human health or the environment.

(15) "Restrict the use or distribution" means to prescribe the amount of a chemical substance or a product containing such substance which may be sold to given types of processors, or to limit the type of processor to whom such substance or product may be sold, or to prescribe the amount of such substance or product which may be utilized by a given type of processor, or to limit the sale of such substance or product or the manner in which such substance or product may be used, handled, labeled, or disposed of by any person, including self-monitoring requirements for manufacturers and processors to insure that the substance or product being manufactured or processed is of reasonably consistent composition. Such restriction on use or distribution may be applied on a geographic basis and may include a total ban.

(16) "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

(17) "Test protocol" means a standardized procedure for performing tests as required by this Act pursuant to regulations promulgated by the Administrator, the results of which will provide a basis for judging the effects of a chemical substance on human health or the environment.

TEST STANDARDS

SEC. 4. (a) Within one year after the date of enactment of this Act and from time to time thereafter, the Administrator shall issue proposed regulations to establish such standards for test protocols for various chemical substances or classes of chemical substances or uses thereof and for the results to be achieved therefrom as are necessary to protect health and environment. Such regulations shall apply to those chemical substances or classes or uses of chemical substances which are produced in commercial quantities and which the Administrator has reason to believe may pose an unreasonable threat to human health or the environment. To the extent feasible, such regulations shall indicate the use or distribution of a chemical substance which will be permitted upon and only upon the attainment of specified test results.

(b) In issuing the proposed regulations required under subsection (a) and in issuing any subsequent final regulations, the Administrator shall consider all relevant factors including—

(1) the effects of the chemical substance on health and the magnitude of human exposure;

(2) the effects of the chemical substance on the environment and the magnitude of environmental exposure;

(3) any benefit of the chemical substance and the availability of less hazardous substitutes for any use or distribution of such substance;

(4) the extent to which the test protocol is reasonably predictive of the potential adverse effects of the chemical substance on health or the environment; and

(5) any data concerning the safety of the chemical substance which may affect the requirements of the test protocol.

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(c) Test protocols established under this section may include tests for carcinogenesis, teratogenesis, mutagenesis, persistence, the cumulative properties of the substance, the synergistic properties of the substance and other types of hazards, and epidemiological studies of the effects of the chemical substance.

(d) The Administrator shall specify in any proposed or final regulations developed under this section the date on which such regulations shall take effect, except that such regulations shall take effect as soon as feasible allowing sufficient time for the execution and reporting of required tests as may be required by sections 5 and 6 of this Act.

PREMARKET SCREENING OF NEW CHEMICAL SUBSTANCES

SEC. 5. (a) One hundred and eighty days after the date of enactment of this Act, and thereafter, any manufacturer of a new chemical substance shall notify the Administrator, at least ninety days in advance of the commercial production of such substance, and when tendering such notice such manufacturer shall submit to the Administrator the information referred to in section 10(a) of this Act insofar as it pertains to such substance. If in the judgment of the Administrator a substance is of no unreasonable environmental or public health threat, he may reduce the number of days after submission of such information during which commercial production may not occur. The Administrator shall give priority attention to information covering a substance where serious economic or other hardship will result from unnecessary postponement of commercial production.

(b) After the effective date of regulations promulgated pursuant to section 4 of this Act, any manufacturer of a new chemical substance (i) to which such regulations are applicable and (ii) who first produces or imports such substance into the United States in commercial quantities after the effective date of such regulations, shall submit to the Administrator in lieu of the information required in subsection (a) of this section, at least ninety days in advance of the commercial production or importation of such substance, the test data developed in accordance with such regulation for the intended use or distribution of such substance.

(c) Subject to section 16 of this Act, the Administrator shall promptly publish in the Federal Register the identity of such chemical substance, the use or distribution intended, and a statement of the availability of any test data submitted.

(d) If warranted by data or the absence of data available to him, the Administrator may propose by regulation to restrict the use or distribution of any new chemical substance in accordance with section 7 of this Act. If such regulation is proposed prior to the expiration of the ninety-day period referred to in subsection (a) or (b) of this section such proposed restrictions on use or distribution shall apply, pending the outcome of administrative proceedings on such proposal, to any subsequent commercial production of such new chemical substance as if such proposed regulation were final. After such regulation is proposed, the Administrator may refer it to the Board referred to in section 12(c) of this Act. The Administrator shall refer such proposal to such Board if requested by any interested party.

(e) The Administrator may extend the date after which a new chemical substance may be commercially produced under this Act for any particular use or distribution beyond ninety days from the submission of information required under this section for an additional period, not to exceed ninety days, for good cause shown. Subject to section 16 of this Act, notice of such extension and the reasons therefor shall be published in the Federal Register and shall constitute a final action subject to judicial review in accordance with section 24(d) of this Act.

(f) If the Administrator fails to propose a restriction on use or distribution with respect to a chemical substance within ninety days of submission of information or data under subsection (a) or (b) of this section, (or in the case of information submitted under subsection (a) such shorter period of time as the Administrator may consider appropriate) or to extend the time, pursuant to subsection (e), for consideration of information submitted, commercial production of such chemical substance may begin. Nothing in this section shall be construed to prohibit the Administrator from restricting the use or distribution of any chemical substance pursuant to section 7 of this Act after commercial production of such substance has begun or from taking action against any substance which is found to be an imminent hazard pursuant to section 8 of this Act.

(g)(1) The Administrator may exempt any person from the obligation to submit test data under this section if he determines that the submission of test data by such person would be duplicative of data previously submitted in accordance with this section, except that such person shall not commercially produce such new chemical substance prior to the commercial production of the new chemical substance for which test data were submitted under this section. Any chemical substance or member of a class of chemical substances or any manufacturer or processor thereof referred to under the preceding sentence shall be subject to all the other provisions of this Act.

(2) If the Administrator, under paragraph (1), exempts any person from submitting data under this section because of the existence of previously submitted test data and if such exemption takes effect during the reimbursement period for such data (defined in paragraph (3)), then unless the parties can agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount and subject to conditions determined under rules of the Administrator)—

(A) to any person who previously submitted test data on which the exemption was based, for a portion of the costs incurred by him in complying with the requirement under this section to submit such data, and

(B) to any other person who has been required under this paragraph to contribute with respect to such data.

An order under this paragraph shall be considered final agency action, for purposes of judicial review.

(3) For purposes of paragraph (2), the reimbursement period for any previously submitted test data is a period—

(A) beginning on the earliest data (after submission of such data) on which a person who previously submitted test data on

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which the exemption was based was no longer prohibited from proceeding with the manufacture and distribution in commerce of a chemical substance to which such data applied, and

(B) ending two years after such date (or, if later, at the expiration of a period after such date equal in length to the period which the Administrator determines was necessary to develop the previously submitted test data).

EXISTING CHEMICAL SUBSTANCES

SEC. 6. (a) The Administrator shall issue, within one year after the date of enactment of this Act and from time to time thereafter, proposed regulations specifying those existing chemical substances or classes or uses of chemical substances which are produced or imported into the United States in commercial quantities and which the Administrator has reason to believe may pose an unreasonable threat to human health or the environment. Concurrently with each proposal to specify such existing chemical substance, the Administrator shall propose regulations under section 4 of this Act, if he has not previously done so, which are applicable to each existing chemical substance so specified. On or before the effective date of any applicable regulation under section 4 of this Act, any manufacturer of an existing chemical substance shall furnish the test data developed in accordance with such regulations of the Administrator. Subject to section 16 of the Act, the Administrator shall, upon receipt of such test data from a manufacturer, promptly publish in the Federal Register the identity of such existing chemical substance, the uses to which the substance is put, and a statement of the availability of test data.

(b) The Administrator may, in appropriate cases, permit manufacturers of an existing chemical substance for which testing is required under subsection (a) of this section to designate one or more of their number or to designate a qualified independent third party to perform the tests required under subsection (a) of this section and permit the sharing of the costs of such tests. If such manufacturers are not able to agree upon a designee within a reasonable time, or if the agreed-upon designee is not acceptable to the Administrator, the Administrator may order one or more of such manufacturers or may designate a qualified independent third party, to perform the required tests, and may order such manufacturers to contribute to the costs of such tests.

(c) Manufacturers of existing chemical substances for which testing is required under subsection (a) of this section shall not be required to submit test data which would duplicate applicable test data submitted previously by other manufacturers. Such chemical substances and the manufacturers and processors thereof shall be subject to all other provisions of this Act. In the event a manufacturer is exempted from submitting data under this subsection, the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement in accordance with procedures set out in section 5(g) of this Act.

(d) Whenever a manufacturer of an existing chemical substance proposes to commercially produce such substance for a use or distribution for which a regulation under section 4 of this Act is applicable

and with respect to which the Administrator has not received test data for such use or distribution pursuant to subsection (a), the manufacturer shall be required to follow the procedures of this section notwithstanding the fact that no objection has been raised to other uses. Whenever a manufacturer of an existing chemical substance proposes to commercially produce such substance for a new use one hundred and eighty days following the date of enactment of this Act, and thereafter, the manufacturer shall be required to follow the procedures of section 5 of this Act before such substance may be commercially produced for such use or distribution.

RESTRICTIONS OF USE OR DISTRIBUTION

SEC. 7. (a) If warranted by data available to him, or in the absence of acceptable test data required under sections 5 or 6 of this Act, the Administrator may issue proposed regulations (1) to restrict the use or distribution of any chemical substance or products containing such substance to the extent necessary to protect health and the environment; (2) to require that any or all persons engaged in the distribution of the chemical substance or product so regulated give notification to purchasers or other recipients of the substance or product of such restrictions in such form and manner as the Administrator determines is necessary to protect health and the environment including labeling requirements on such chemical substances or products containing such substances with appropriate warning provisions and directions for use and disposal; and (3) to require such other action as may be necessary to carry out such restrictions including recalling and remedying, replacing, or refunding the purchase price of such products or substances.

(b) In issuing proposed regulations under subsection (a) and in issuing any subsequent final regulations, the Administrator shall consider all revelant factors including—

(1) the effects of the substance on human health;
(2) the effects of the substance on the environment;
(3) the benefits of the substance for various uses;
(4) the normal circumstances of use;
(5) the degree to which the substance is released to the environment;
(6) the magnitude of exposure of human beings and the environment to the substance; and
(7) the availability of less hazardous substitutes.

The Administrator shall specifiy in the regulation the date on which it shall take effect, which shall be as soon as feasible. All data relevant to the Administrator's findings shall be available to the public subject to section 16 of this Act.

(c) Whenever the Administrator has good cause to believe that a particular manufacturer or processor is producing or processing a chemical substance or product not in compliance with a particular restriction on use or distribution requiring reasonably consistent composition of such chemical substance or product—

(1) he may require such manufacturer or processor to submit a description of the relevant quality control procedures followed

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in the manufacturing or processing of such chemical substance or product; and

(2) if he thereafter determines that such noncompliance is attributable to the inadequacy of the manufacturer's or processor's control procedures, he may, after notice and opportunity for hearing pursuant to section 554 of title 5, United States Code, order the manufacturer or processor to revise such quality control procedures to the extent necessary to remedy such inadequacy.

(d) Notwithstanding the provisions of section 11(a)(1) of this Act, no indemnity payment shall be made to any manufacturer, wholesale distributor, retailer, or other vendor of a chemical substance or to any other person as a result of any action taken under this section, under any other provision of this Act, or under section 15 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135).

(e) Notwithstanding any provision of section 11 of this Act, the Administrator shall by contract or other arrangement commission a study of all Federal laws administered by the Environmental Protection Agency for the purpose of determining whether and under what conditions, if any, indemnification should be accorded any person as a result of any action taken by the Administrator under any law administered by such agency. This study shall—

(1) be conducted outside of the Environmental Protection Agency under the direction of a university or recognized research center by an interdisciplinary group, none of the members of which may have a financial interest or conflict of interest (other than any fee paid by the Administrator for serving as a member of such group) with respect to the findings and conclusions of such study;

(2) include an estimate of the probable cost of any indemnification programs which may be recommended;

(3) include an examination of all viable means of financing the cost of any recommended indemnification;

(4) be completed no less than two years from the date of enactment of this Act; and

(5) be submitted, upon completion, simultaneously to the Administrator and to the Congress without prior clearance or review by the executive branch.

(f) Notwithstanding the requirements of section 11 of this Act, section 15 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135) is hereby repealed.

IMMINENT HAZARD

SEC. 8. (a) An imminent hazard shall be considered to exist when the evidence is sufficient to show that the manufacture, processing, distribution, use, or disposal of a chemical substance or product containing such substance will result in any unreasonable threat to human health or the environment prior to the completion of an administrative hearing or other formal proceeding held pursuant to this Act.

(b) If the Administrator has reason to believe that an imminent hazard exists he may petition an appropriate district court of the United States, or he may request the Attorney General to do so, to

restrict the use or distribution of the chemical substance or product responsible for the hazard, or to take such other action as is authorized under section 7 of this Act. The Administrator shall simultaneously, if he has not done so, propose any regulation which may be warranted under section 7 of this Act.

SEIZURE

SEC. 9. (a) Any chemical substance or product containing such substance which the Administrator finds (1) is manufactured, processed, distributed, used, or disposed of in violation of section 5, 6, or 7 of this Act, where there is reason to believe such substance or product poses an unreasonable threat to human health or the environment, or (2) constitute an imminent hazard under section 8 of this Act shall be liable to be proceeded against by the Administrator or the Attorney General on libel of information and condemned in any district court of the United States within the jurisdiction of which such substance or product is found. Such substance or product shall be liable to seizure by process pursuant to the libel. In cases under this section, the procedure shall conform, as nearly as may be, to a proceeding in rem in admiralty.

(b) Any substance or product condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may, in accordance with the provisions of this section, direct, and the proceedss thereof, if sold, less the legal costs and charges, shall be paid into the Treasury of the United States; but such substance or product shall not be sold under such decree contrary to the provisions of this title or the laws of the jurisdiction in which sold: Provided, That after entry of the decree and upon the payment of the costs of such proceedings and the execution of a good and sufficient bond conditioned that such substance or product shall not be sold or disposed of contrary to the provisions of this Act or the laws of any State in which sold, the court may be order direct that such substance or product be delivered to the owner thereof to be destroyed or brought into compliance with the provisions of this Act under the supervision of an officer or employee duly designated by the Administrator. The expenses of such supervision shall be paid by the persons obtaining release of the substance or product under bond.

(c) When a decree of condemnation is entered against the substance or product court costs and fees, and storage and other property expenses, shall be awarded against the person, if any, intervening as claimant of the substance or product.

REPORTS

SEC. 10. (a) The Administrator shall require all manufacturers of chemical substances or, where appropriate, processors to submit reports to him annually and at such more frequent times as he may reasonably require containing any or all of the following—

(1) the names of any or all chemical substances produced, imported, or processed in commercial quantities by the manufacturer or processor thereof;

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(2) the chemical identity and molecular structure of such substances insofar as is known to him or is reasonably ascertainable by him;

(3) the categories of use of each such substance, insofar as they are known to him or are reasonably ascertainable by him;

(4) reasonable estimates of the amounts of each substance produced or processed for each such category of use; and

(5) a description of the byproducts, if any, resulting from the production of each such substance, and, insofar as they are known to him or are reasonably ascertainable by him, from the processing, use, or disposal thereof.

(b) The Administrator may, by regulation, exempt manufacturers from all or part of the requirements of subsection (a) of this section if he finds that such reports are not necessary to carry out the purposes of this Act.

(c) Whenever the Administrator determines that such action would be necessary to assist him to carry out his responsibilities and authorities under this Act, he may publish a notice in the Federal Register to invite and afford all interested persons an opportunity to provide to him in writing information with respect to the human health or environmental effects of a chemical substance or products containing such substance.

EXEMPTIONS AND RELATIONSHIP TO OTHER LAWS

SEC. 11. (a) This Act shall not apply to—

(1) pesticides and chemical substances used in such pesticides, except that if a chemical substance which constitutes such a pesticide or such an ingredient is or may be used for any non-pesticidal purpose which is not regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, this Act shall apply to such other uses;

(2) foods, drugs, devices, and cosmetics subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321), as amended, foods subject to the Federal Meat Inspection Act (56 Stat. 351), the Egg Products Inspection Act (21 U.S.C. 1031), and the Poultry Products Inspection Act (21 U.S.C. 451), and chemical substances used therein, except that if such an item or substance is or may be used for any purpose which is not regulated by such Acts this Act shall apply to such other uses;

(3) any source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011), as amended, and regulations issued pursuant thereto by the Atomic Energy Commission;

(4) the transportation of hazardous materials insofar as it is regulated by the Secretary of Transportation;

(5) except for section 10 of this Act, intermediate chemical substances, unless the Administrator finds that such chemical substances cannot be sufficiently regulated by the Clean Air Act (42 U.S.C. 1857), as amended, or the Federal Water Pollution Control Act (33 U.S.C. 466), as amended, to the extent necessary to protect health and the environment;

(6) except for section 10 of this Act, any other chemical substance that the Administrator finds can be regulated more effectively by the Clean Air Act, as amended, or the Federal Water Pollution Control Act, as amended, to the extent necessary to protect health and the environment;

(7) laboratory reagents, except those where there is reason to believe the manufacture, processing, distribution, use, or disposal of the reagent may produce an unreasonable threat to human health or the environment;

(8) tobacco and tobacco products; and

(9) any extraction of any mineral deposit covered by the mining or mineral leasing laws of the United States, unless the Administrator finds, by regulation, that such extraction of such mineral deposit poses an unreasonable threat to human health or the environment which cannot be effectively regulated under any other provision of law.

(b) To the extent that such chemical substances are subject to regulation by other Federal laws, including the Occupational Safety and Health Act of 1970 (29 U.S.C. 651) and the Consumer Product Safety Act (86 Stat. 1207), the Administrator shall not regulate the use or distribution of a new or existing chemical substance on the basis of any possible hazard to employees in their place of employment, or the hazard directly to consumers resulting from the personal use, enjoyment, or consumption of marketed products which contain or might contain the substance: *Provided*, That the Administrator shall take such hazards into account in determining what standards for test protocols, results to be achieved therefrom, and restrictions on use or distribution are appropriate.

(c) If it appears to the Administrator that any such substance may pose a hazard when transported, or when used on or in food or as a drug or cosmetic, he shall transmit any data received from manufacturers or processors or data otherwise in his possession which is relevant to such hazards to the Federal department or agency with authority to take legal action if a hazard is found to exist.

(d) The Administrator shall coordinate actions taken to implement the Federal Water Pollution Control Act and the Clean Air Act, and shall, where appropriate, use the authorities contained in such Acts to regulate chemical substances.

(e) The Administrator shall consult and coordinate with the Secretary of Health, Education, and Welfare and the heads of other appropriate Federal agencies in administering the provisions of this Act. The Administrator shall report annually to the Congress on actions taken to coordinate with other Federal agencies and actions taken to coordinate the authority under this Act with the authority granted under other Acts referred to in this section.

(f) This Act shall not be construed as superseding or impairing the provisions of any other law or treaty of the United States.

CHEMICAL SUBSTANCES BOARD

SEC. 12. (a) There shall be established in the Environmental Protection Agency a Chemical Substances Board (hereinafter referred to as the "Board") consisting of twelve scientifically qualified members. The Administrator shall appoint eleven members to the Board from

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a list of individuals recommended to him by the National Academy of Sciences, and the Secretary of Health, Education, and Welfare shall appoint one member to the Board from whatever source he desires. No more than one-third of the members of such Board shall represent the chemical industry. None of the members of such Board, other than chemical industry representatives, may have any significant economic interest in the chemical industry. Members of the Board shall serve one term of four years, except that one-half of the members initially appointed shall serve one term of two years. Thereafter, one-half of the members of the Board shall be appointed every two years. Members of the Board shall not be reappointed for consecutive terms. One of the members shall be designated by the Administrator to serve as Chairman of the Board.

(b) The Administrator is authorized—

(1) at the request of the Board to enter into appropriate arrangements with the National Academy of Sciences to provide assistance to the Board in the conduct of independent scientific reviews required by this section; and

(2) at his own discretion, to request such additional scientific advisory services from the National Academy of Sciences as may be required in carrying out other provisions of this Act.

In making such arrangements with the National Academy of Sciences, the Administrator shall assure that conflicts of interest do not exist in the membership of any study committees subsequently convened which will prevent an objective scientific review of the questions referred to the National Academy of Sciences by the Board.

(c)(1) Except as provided in section 5(b) of this Act, before proposing any regulations under section 4, 6, or 7 of this Act, the Administrator shall refer his proposed action and the available evidence to the Board and shall, concurrently with such referral, publish in the Federal Register a notice of the referral identifying the proposed action. The Board shall conduct an independent scientific review of the proposed action and shall report its views and reasons therefor in writing to the Administrator, within a reasonable time, not to exceed forty-five days, as specified by the Administrator. Such time may be extended an additional forty-five days if the Administrator determines that the extension is necessary and that the Board has made a good-faith effort to report within the initial forty-five-day period. All such views shall be given due consideration by the Administrator. If the Board fails to report within the specified time, the Administrator may proceed to take action under this Act. The report of the Board and any dissenting views shall be considered as part of the record in any proceeding taken with respect to the Administrator's action.

(2) The Administrator may, at his discretion, also request the Board to consider other actions proposed to be taken under this Act. In such case all provisions of this section shall apply.

(d) The Administrator is authorized to reimburse the National Academy of Sciences for expenses incurred in carrying out this section.

(e) Members of the Board who are not regular full-time employees of the United States shall, while serving on business of the Board, be entitled to compensation at rates fixed by the Administrator, but

not exceeding the daily rate applicable at the time of such service to grade GS–18 of the classified civil service, including traveltime. While serving away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

RESEARCH

SEC. 13. The Administrator is authorized to conduct such research and monitoring as is necessary to carry out his functions under this Act. Such research and monitoring may be undertaken to (i) determine proper standards for test protocols and results to be obtained therefrom under section 4 of this Act, (ii) determine what existing chemical substances might present unreasonable hazards under section 6 of this Act, (iii) monitor chemical substances in man and in the environment as is necessary to carry out the purposes of this Act, and (iv) confirm the results of tests required by this Act. To the extent possible, such research and monitoring shall not duplicate the efforts of other Federal agencies or the research required of manufacturers under this Act. In order to carry out the provisions of this section, the Administrator is authorized to make contracts and grants for such research and monitoring. The Administrator may construct research laboratories for the purposes of this Act (i) after fully utilizing the personnel, facilities, and other technical support available in other Federal agencies, (ii) when authorized by the Congress to plan, design, and construct such laboratories, and (iii) subject to the appropriation of funds for this purpose by the Congress.

ADMINISTRATIVE INSPECTIONS AND WARRANTS

SEC. 14. (a)(1) For the purpose of inspecting, copying, and verifying the correctness of records, reports, or other documents required to be kept or made under this Act and to otherwise facilitate the carrying out of his functions under this Act, the Administrator is authorized, in accordance with this section, to enter any factory, warehouse, or other premises in which chemical substances or products containing suh substances are manufactured, processed, stored, held, or maintained, including retail establishments, and to conduct adminstrative inspections thereof.

(2) Such entries and inspections shall be carried out through officers or employees (hereinafter referred to as "inspectors") designated by the Administrator. Any usch inspector, upon stating his purpose and presenting to the owner, operator, or agent in charge of such premises (A) appropriate credentials and (B) his administrative inspection warrant or a written notice of his other inspection authority, shall have the right to enter such premises and to conduct such inspection at reasonable times.

(3) Except when the owner, operator, or agent in charge of such premises so consents in writing, no inspection authorized by this section shall extend to—

(A) financial data;

(B) sales data other than shipment data;

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(C) pricing data;
(D) personnel data;
(E) research data (other than data required by this Act); or
(F) process technology other than that related to chemical composition or the industrial use of a chemical substance or a product containing such substance.

(b) A warrant under this section shall not be reqiured for entries and administrative inspections (including seizures of chemical substances or products containing chemical substances manufactured in violation of regulations issued under this Act)—

(1) conducted with the consent of the owner, operator, or agent in charge of such premises; or

(2) in any other situation where a warrant is not constitutionally required.

(c) Administrative inspection warrants shall be issued and executed as follows—

(1) Any judge or magistrate of the United States or a judge of a State court of record may, within his territorial jurisdiction, and upon proper oath or affirmation showing probable cause, issue warrants for the purpose of conducting administrative inspections authorized by this Act, and seizures of property appropriate to such inspections. For purposes of this subsection, "probable cause" means a valid public interest in the effective enforcement of this Act or regulations issued thereunder sufficient to justify administrative inspections of an area, premises, building, or the contents thereof, under the circumstances specified in the application for the warrant.

(2) A warrant shall be issued only upon the affidavit of an officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the facts alleged and the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, or building to be inspected, the purpose of such inspection, and where appropriate, the type of property to be inspected, if any. The warrant shall—

(A) identify the items or types of property to be seized, if any;

(B) be directed to a person authorized under subsection (a)(2) of this section to execute it;

(C) state the grounds for its issuance and the name of the person or persons whose affidavit has been taken in support thereof;

(D) command the person to whom it is directed to inspect the area, premises, or building identified for the purpose specified, and, where appropriate, to seize the identified property;

(E) direct that it be served during normal business hours; and

(F) designate the judge or magistrate to whom it shall be returned.

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date of issuance unless, upon a showing by the United States of a need therefor, the judge or magistrate allows additional time. If property is seized pursuant to such

warrant, the person executing the warrant shall give a copy of the warrant and a receipt for the property taken to the person from whom or from whose premises the property was taken, or shall leave such copy and receipt at the place from which the property was taken. The return of the warrant shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person making such inventory. Such inventory shall be verified by the person executing the warrant. The judge or magistrate, upon request, shall cause a copy of such inventory to be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(4) The judge or magistrate who has issued a warrant under this section shall attach to the warrant a copy of the return and all papers filed in connection therewith and shall file them with the clerk of the district court of the United States for the judicial district in which the inspection was made.

EXPORTS AND IMPORTS

SEC. 15. (a) Notwithstanding any other provision of this Act, no chemical substance or product containing such substance shall be deemed in violation of this Act when intended solely for export to any foreign nation except that—

(1) test data which would be required to be submitted under section 5 or 6 of this Act if such substance were produced for domestic use, shall be submitted to the Administrator in accordance with such sections;

(2) such chemical substance shall be subject to the reporting requirements of section 10 of this Act, and

(3) no such substance or product containing such substance may be exported if the Administrator by regulation finds that such substance or product as exported and used will, directly or indirectly, pose an unreasonable threat to the human health of persons within the United States or to the environment of the United States.

(b) If submittal of test data is required for a chemical substance under section 5 or 6 of this Act, or restrictions on use or distribution have been proposed or requested for a chemical substance or product containing such substance under section 7 or 8 of this Act, the Administrator, subject to section 16 of this Act, shall furnish to the governments of the foreign nations to which such substance or product containing such substance may be exported (1) a notice of the availability of the data submitted to him under section 5 or 6 of this Act concerning any such substance or product, (2) any restrictions on use or distribution of such substance or product that have been imposed or proposed or requested by him or the Attorney General with respect to such substance or product.

(c) The Secretary of the Treasury shall refuse entry into the United States of any chemical substance or product containing such substance offered for entry if it fails to conform with regulations promulgated under this Act. If a chemical substance or product is refused entry, the

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Secretary of the Treasury shall refuse delivery to the consignee and shall cause the disposal or storage of any substance or product refused delivery which has not been exported by the consignee within three months from the date of receipt of notice of such refusal under such regulations as the Secretary of the Treasury may prescribe, except that the Secretary of the Treasury may deliver to the consignee such substance or product pending examination and decision in the matter on execution of bond for the amount of the full invoice value of such substance or product, together with the duty thereon, and on refusal to return such substance or product for any cause to the custody of the Secretary of the Treasury, when demanded, for the purpose of excluding them from the country, or for any other purpose, said consignee shall forfeit the full amount of said bond. All charges for storage, cartage, and labor on substances or articles which are refused admission or delivery under this section shall be paid by the owner or consignee, and in default of such payment shall constitute a lien against any future importation made by such owner or consignee.

(d) The Secretary of the Treasury, in consultation with the Administrator, shall issue regulations for the enforcement of subsection (c) of this section.

CONFIDENTIALITY

SEC. 16. (a) Copies of any communications, documents, reports, or other information received or sent by the Administrator or the Chemical Substances Board under this Act shall be made available to the public upon identifiable request, and at reasonable cost unless such information may not be publicly released under the terms of subsection (b) of this section.

(b)(1) The Administrator or any officer or employee of the Environmental Protection Agency or the Chemical Substances Board shall not disclose any information referred to in section 1905 of title 18, United States Code, which has commercial value and which, if disclosed, would result in significant competitive damage to its owner, except that such information may be disclosed by the Administrator—

(A) to other Federal Government departments, agencies, and officials for official use, upon request, and with reasonable need for such information;

(B) to committees of Congress having jurisdiction over the subject matter to which the information relates;

(C) in any judicial proceeding under a court order formulated to preserve the confidentiality of such information without impairing the proceeding;

(D) if relevant in any proceeding under this Act, except that such disclosure shall preserve the confidentiality to the extent possible without impairing the proceeding; and

(E) to the public in order to protect their health, after notice and opportunity for comment in writing or for discussion in closed session within fifteen days by the manufacturer of any product to which the information appertains (if the delay resulting from such notice and opportunity for comment would not be detrimental to the public health).

In no event shall the names or other means of identification of injured persons be made public without their express written consent.

(2) Nothing contained in this section shall be deemed to require the release of any information described by subsection (b) of section 552, title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(c) Any communication from a person to the Administrator or any other employee of the Environmental Protection Agency concerning a matter then under consideration in a rulemaking or adjudicative proceeding in the Environmental Protection Agency shall be made a part of the public file of that proceeding unless it is a communication entitled to protection under subsection (b) of this section.

PROHIBITED ACTS

SEC. 17. The following acts and the causing thereof are prohibited—

(1) the failure to comply with any final regulation or order issued by the Administrator or the Secretary of the Treasury pursuant to this Act;

(2) the failure to provide information as required by section 5, 6, or 10 of this Act;

(3) the failure to permit entry and administrative inspection pursuant to section 14 of this Act;

(4) the manufacture, processing, sale, distribution, or importation into the United States of a chemical substance or product containing such substance whenever such manufacture, processing, sale, distribution, or importation is known to be or should have been known to be for use in violation of regulations promulgated under section 4 or 7 of this Act, and the use, including disposal, of any such substance or product when such use or disposal is known or should have been known to be in violation of such regulations; and

(5) the failure of any person who purchases or receives a chemical substance or product containing such substance and who is required to be given notice of restrictions on use or distribution of such substance or product pursuant to section 7(a)(2) of this Act, to comply with such restrictions on use or distribution.

PENALITIES AND REMEDIES

SEC. 18. (a) Any person who willfully violates section 17 of this Act shall on conviction be fined not more than $25,000 for each day of violation or imprisoned for not more than one year, or both.

(b)(1) Any person who violates section 17 of this Act other than willfully shall be liable to the United States for a civil penalty of a sum which is not more than $25,000 for each day of violation. The amount of such civil penalty shall be assessed by the Administrator after notice and an opportunity for an adjudicative hearing conducted in accordance with section 554 of title 5, United States Code, and after he has considered the nature, circumstances, and extent of such violation, the practicability of compliance with the provisions violated, and any good-faith efforts to comply with such provisions.

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(2) Upon the failure of the offending party to pay such civil penalty, the Administrator may commence an action in the appropriate district court of the United States for such relief as may be appropriate or he may request the Attorney General to commence such an action.

(c) The Attorney General or the Administrator may bring an action in the appropriate district court of the United States for equitable relief to redress a violation by any person of any provision of section 17 of this Act. The district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

CITIZEN CIVIL ACTIONS

SEC. 19. (a) Except as provided in subsection (b) of this section, any person may commence a civil action for injunctive relief on his own behalf, whenever such action constitutes a case or controversy—

(1) against any person (including the United States or any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) alleged to be in violation of any regulation or order promulgated under section 4 or 7 of this Act, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator. Any action brought against the Administrator under this paragraph shall be brought in the District Court of the District of Columbia.

The district courts shall have jurisdiction over suits brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) No civil action may be commenced—

(1) under subsection (a) (1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the violation to the Administrator and to any alleged violator of the regulation or order, or

(B) if the Administrator or Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the regulation or order: *Provided*, That any person may intervene as a matter of right in any such actions;

(2) under subsection (a) (2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any other statute or at common law to seek enforcement of any regulation or order or to seek any other relief.

(f) When any actions brought under this subsection involving the same defendant and the same issues of violations are pending in two or more jurisdictions, such pending proceedings, upon application of the defendant reasonably made to the court of one such jurisdiction, may, if the court in its discretion so decides, be consolidated for trial by order of such court, and tried in (1) any district selected by the defendant where one of such proceedings is pending; or (2) a district agreed upon by stipulation between the parties. If no order for consolidation is so made within a reasonable time, the defendant may apply to the court of one such jurisdiction, and such court (after giving all parties reasonable notice and opportunity to be heard) may by order, unless good cause to the contrary is shown, specify a district of reasonable proximity to the applicant's principal place of business, in which all such pending proceedings shall be consolidated for trial and tried. Such order of consolidation shall not apply so as to require the removal of any case the date for trial of which has been fixed. The court granting such order shall give prompt notification thereof to the other courts having jurisdiction of the cases covered thereby.

ENVIRONMENTAL PREDICTION AND ASSESSMENT

SEC. 20. The Environmetal Protection Agency shall, in cooperation with the Council on Environmental Quality and other Federal agencies, develop the necessary personnel and information resources to assess the environmental consequences of the introduction of new chemical substances into the environment.

COOPERATION OF FEDERAL AGENCIES

SEC. 21. Upon request by the Administrator, each Federal agency is authorized—

(a) to make its services, personnel, and facilities available with or without reimbursement to the greatest practicable extent within its capability to the Administrator to assist him in the performance of his functions; and

(b) to furnish to the Administrator such information, data, estimates, and statistics, and to allow the Administrator access to all information in its possession, as the Administrator may reasonably determine to be necessary for the performance of his functions as provided by this Act.

HEALTH AND ENVIRONMENTAL DATA

SEC. 22. The Council on Environmental Quality, in consultation with the Administrator, the Secretary of Health, Education, and Welfare, the Secretary of Commerce, and the heads of other appropriate Federal, State, and local departments or agencies, the scientific community, and the chemical industry, shall coordinate a study of the feasibility of establishing (1) a standard classification system for chemical compounds and related substances, and (2) a standard means for storing and for obtaining rapid access information respecting such materials.

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STATE REGULATIONS

SEC. 23. (a) Nothing in this Act shall affect the authority of any State or local government to impose more stringent restrictions on the use or distribution of chemical substances or products containing such substance, or to establish and enforce more stringent standards for test protocols for various classes and uses of such substances and products and for the results that must be achieved therefrom, to protect health and the environment, except that—

(1) if the Administrator issues a final regulation under section 7 of this Act restricting the use or distribution of a chemical substance a State or local government may not enforce any such restriction of its own for purposes similar to this Act after the effective date of such regulation, other than a total ban on use or distribution; and

(2) if the Administrator issues a final regulation under section 4 of this Act a State or local government may not enforce any standards for test protocols and the result to be achieved therefrom after the effective date of such regulation.

(b) The Administrator may by regulation, upon the petition of any State or local government or of his own initiative, exempt State and local governments from the prohibitions of subsection (a) of this section, or from the prohibitions contained in any other Federal law administered by the Environmental Protection Agency against the regulation by State or local governments of the manufacture, use, or distribution of chemical substances or products containing such substances with respect to a substance or product if such exemption will not, through difficulties in marketing, distribution, or other factors, result in placing an unreasonable burden upon commerce.

REGULATIONS, PROCEDURES, AND JUDICIAL REVIEW

SEC. 24. (a) At his own initiative, or upon the petition of any person, the Administrator is authorized to issue regulations to carry out the purposes of this Act and to amend or rescind such regulations at any time.

(b) The Administrator shall publish any regulations proposed under this Act in the Federal Register at least sixty days prior to the time when such regulations shall become final. The Administrator shall also publish in the Federal Register a notice of all petitions received under subsection (a) and, if such petition is denied, his reasons therefor. Such notice shall identify the purpose of the petition and include a statement of the availability of any data submitted in support of such petition. If any person adversely affected by a proposed regulation files objections and requests a public hearing within forty-five days of the date of publication of the proposed regulation, the Administrator shall grant such request. If such public hearing is held, final regulations shall not be promulgated by the Administrator until after the conclusion of such hearing. All public hearings authorized by this subsection shall consist of the oral and written presentation of data or arguments in accordance with such conditions or limitations as the Administrator may make applicable thereto.

(c) Proposed and final regulations issued under this Act shall set forth findings of fact on which the regulations are based and shall state the relationship of such findings to the regulations issued.

(d) Any judicial review of final regulations promulgated under this Act and final actions under section 5(e) of this Act shall be in accordance with sections 701–706 of title 5. United States Code, except that—

(1) with respect to regulations promulgated under section 4, 6, or 7 of this Act, the findings of the Administrator as to the facts shall be sustained if based upon substantial evidence on the record considered as a whole; and

(2) with respect to relief pending review, no stay of an agency action may be granted unless the reviewing court determines that the party seeking such stay (i) is likely to prevail on the merits in the review proceeding and (ii) will suffer irreparable harm pending such proceeding.

(e) Except as expressly modified by this section, the provisions of chapter 5 of title 5 of the United States Code shall apply to proceedings conducted by the Administrator under this Act.

(f) If the party seeking judicial review applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court either (1) that the information is material and was not available at the time of the proceeding before the Administrator or (2) that failure to include such evidence in the proceeding was an arbitrary or capricious act of the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order.

NATIONAL SECURITY WAIVER

SEC. 25. The Administrator may waive compliance with the provisions of this Act, in whole or in part, upon receiving information from the Secretary of Defense that such waiver is in the interest of national security. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for good cause shown by the Secretary of Defense in the interest of national security, unless the Administrator has been requested by the Secretary of Defense to omit such publication because such publication would be contrary to the interests of national security.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 26. (a) There is hereby authorized to be appropriated such sums as may be necessary, but not to exceed $9,940,000, $11,550,000, and $10,300,000 for the fiscal years ending on June 30, 1974, June 30, 1975, and June 30, 1976, respectively, for the purposes and administration of this Act. No part of the funds so authorized to be appro-

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priated shall be used to plan, design, or construct any research laboratories unless specifically authorized by the Congress by law.

(b) To help defray the expenses of implementing the provisions of this Act, the Administrator may by regulation require the payment of a reasonable fee from the manufacturer of each chemical substance for which test data is required to be submitted under this Act.

(c) On or before August 1 of each year, the Administrator shall prepare and submit concurrently to the President and to the Congress budget estimates to carry out the provisions of this Act and all other authority of the Administrator for the following year. Whenever the Administrator submits any budget requests, supplemental budget estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to the President or to the Office of Management and Budget, he shall concurrently transmit a copy thereof to the Congress. No officer or agency of the United States shall have any authority to request or require the Administrator to submit his budget requests or estimates, legislative recommendations, prepared testimony for congressional hearings, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress.

AGENCY COMMENTS

U.S. ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., February 15, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: I am pleased to forward to you a proposed bill, "The Toxic Substances Control Act of 1973," designed to provide for the effective control of chemical substances for the purposes of assuring that such substances do not endanger human health or the environment.

The proposal is being transmitted in accordance with the Environment and Natural Resources State of the Union Message of the President.

The proposed bill would provide to the American public the protection greatly needed from the dangers posed by toxic substances, both new and existing. With the exposure of our citizens to an increasing number of chemical substances each year and with hazards to health and the environment potentially present in certain existing chemicals, it is essential that chemical substances be tested so that the Administrator may determine if regulation to control such substances is necessary.

The legislative proposal would authorize the Administrator of the Environmental Protection Agency to restrict or prohibit the use or distribution of a chemical substance if necessary to protect health and the environment. The Administrator is also authorized to prescribe standards for tests and test results which must be met before a manufacturer can market a new product. Such testing requirements can likewise be applied to existing chemical substances if the Administrator determines that an unreasonable threat to health or the environment may be posed. The Administrator is required to consult with an independent board of scientists before proposing action to restrict a substance or before proposing standards for tests.

The legislation has been developed in cooperation with the Council on Environmental Quality and other interested agencies. We recommend that the bill be referred to the appropriate committee and that it be enacted.

The Office of Management and Budget advises that enactment of this proposed legislation would be in accord with the program of the President.

Sincerely yours,

WILLIAM D. RUCKELSHAUS,
Administrator.

Enclosure.

ENVIRONMENTAL PROTECTION AGENCY,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., June 18, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Environmental Protection Agency on Staff Working Draft No. 1 of the Toxic Substances Control Act of 1973. We appreciate the effort which has been put into the development of this legislation by you and your Committee.

The objectives and approach of Staff Working Draft No. 1 and of the Administration bill, S. 888, are basically the same. Both provide authority to require testing of certain chemical substances to the extent necessary to protect health or the environment. There are, however, several differences between the two bills to which we would address the Committee's attention.

First, the testing section of Staff Working Draft No. 1 requires the Administrator to prescribe, by rule, standards for test protocols and for results to be achieved therefrom. Such standards are apparently applicable to all chemical substances except those which, in his judgment are of no unreasonable environmental or public health threat, or which are more efficiently controlled through the regulation of their components. The required reach of this provision is considerably more broad than that of the Administration bill, S. 888, which authorizes the Administrator to prescribe such standards for test protocols and the results to be achieved therefrom as are necessary to protect health and the environment. We do not feel that it is necessary to automatically require some testing of all chemicals except for those chemicals or classes which the Administrator can positively identify as being of no environmental or public health threat. Past Federal regulation and experience in the toxic substances area, particularly with respect to testing, has been limited. The rather sweeping testing requirements of the Staff Working Draft would tax the resources of the Agency and of

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the chemical industry before the Agency has had the opportunity to assess the need for and the benefits of a broad-based testing program. We prefer the more selective provisions of S. 888 which would allow the Administrator to focus all of his resources and attention on those substances or classes which we suspect may pose health or environmental hazards. It should be noted that the language of the Administration bill does not foreclose the possibility of widely applicable testing requirements should it later be found that these are necessary to protect health or the environment.

Additionally, the one year dead-line for the development of standards for test protocols applicable to all chemical substances will require Agency resources to be spread lightly over all aspects of the toxic substances problem rather than allowing us to focus selectively on those problem areas which have already been identified.

Both S. 888 and S. 1478 as it passed the Senate in May of 1972 expressly provide that the Administrator may promulgate standards for test protocols for substances *and uses* of substances. S. 426 and the Staff Draft thereof make no such direct provision for standards for test protocols for uses of chemical substances, but do provide more obliquely that "to the extent feasible such regulations shall indicate the use . . . which will be permitted upon . . . the attainment of specified test results." We are not entirely clear as to the total effect of the quoted language, particularly whether it authorizes the promulgation of test protocols for specified uses of chemical substances. In many cases the degree of hazard associated with a chemical substance will depend upon the use to which a substance is to be put, and the types of tests relevant to evaluating that hazard should therefore be geared to such use. Accordingly, we would urge the Committee expressly to include this important factor in the testing section by inserting "or uses" between "classes" and "of" on line 3, page 51, of the Staff Draft.

We oppose the requirement that the benefits of a chemical substance be taken into account in issuing test standards, as provided in section 4(b)(3) of the Staff Draft. Benefits of the use of a chemical substance are, of course, important in evaluating possible restrictive action, but should not enter into determination of testing requirements. What is important in prescribing tests is that they be appropriate to evaluate risk.

The inclusion of the language authorizing the Administrator to prescribe "standards for test protocols" rather than actual test protocols is a commendable change from past versions of S. 426. This will relieve the Administrator of the possible burden under the old language of specifying the exact details of test procedures, especially in those cases where test methods are very new or changing rapidly. This language will guarantee the Administrator's flexibility in prescribing the important parameters or principles of testing, without requiring him to specify exact procedures for any given test. We would recommend that this language be carried throughout section 4, especially in subsection 4(c), which to be consistent should read (line 7, page 52), "(c) Test protocols for *which standards have been* established under this section . . ."

Section 6(a) of S. 888 provides that in cases where there is more than one manufacturer of a substance for which testing is required, such manufacturers may share the cost of testing. There is no need for several manufacturers to independently conduct the same tests on the same substance, from the standpoint of health or environmental protection. We would urge the inclusion of such a provision in any bill reported by the Committee.

The second major difference between the two versions of toxic substances legislation considered by your Committee concerns EPA review of data on new chemicals and new uses of chemicals in advance of commercial production or distribution. We do not favor either the Staff Working Draft or the House Toxic Substances Control bill (H.R. 5356) approach to premarket screening, partly because of the burden they would impose in connection with the production and distribution of chemicals, and partly because of the unwarranted administrative burden they would impose on this Agency. We do recognize, however, that some notification at any early date of test results and certain other information would contribute to an orderly regulatory process. Accordingly, we would be able to support a provision which would permit the government to obtain some important information at an early stage while avoiding the adverse impacts noted above.

We believe that such provision would afford us an opportunity to make preliminary judgments as to any dangers which might be presented by the proposed introduction of chemical substances into the environment, prior to such introduction.

In the event that a substance is recognized as posing an "imminent hazard", provision is made for seeking injunctive relief during this notification period. In addition, of course, we will retain the other remedies already afforded by S. 888.

An appropriate pre-market notification procedure could be provided in S. 888 by adding a new section and by amending subsections 5(a) and 15(b) as follows:

PROPOSED NEW SECTION

PREMARKET NOTIFICATION

(a) At least 120 days in advance of (i) the importation or production, in commercial quantities, of any new chemical substance, or (ii) the sale, distribution or importation for a new use of an existing chemical substance after the Administrator has determined by regulation that such substance or use may pose an unreasonable threat to health or the environment, the manufacturer or importer of such chemical substance shall submit to the Administrator a premarket notification which shall include a notice of his intent to so sell, distribute or import such substance, the results of any tests required to be performed under section 6, any information which could be required to be submitted under subsections 7(a)(2), (3), (4) and (5), and any other test data which the manufacturer wishes to submit to show that the new substance or use does not require action by the Administrator under section 4 or 5 to protect public health or the environment. Provided, however, that no notification shall be required pursuant to this

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section with respect to a chemical substance intended solely for export to any foreign country.

(b) The premarket notification referred to in subsection (a) shall be deemed effective upon receipt by the Administrator of the notice of intent, test results and other information required to be submitted under subsection (a). No subsequent submission or request for the submission of additional or supplementary test results or information shall be regarded as changing the effective date of such notification. Nothing in this section shall be construed to authorize, permit or require any change of such effective date, or to limit or expand the authority of the Administrator under any other section of this Act. Whenever the Administrator determines that such action is necessary to accomplish the purposes of this Act, he may direct any person required to submit a notification under subsection (a) to provide, within a specified period of time not to be less than thirty days, the results of any tests on the health or environmental effects of the substance as to which premarket notification was required or its byproducts which have been performed by or at the instance of such person.

AMENDMENT TO SECTION 5(a)

SEC. 5. (a) An imminent hazard shall be considered to exist when the evidence is sufficient to how that a use or distribution of a chemical substance or a proposed *importation*, *production*, *sale*, or distribution of a chemical substance *as to* which premarket notification is required pursuant to section ——— of this Act creates *or would create* a hazard to human health or the environment (1) that should be corrected immediately to prevent injury to health and (2) that should not be permitted to continue *or occur* while an administrative hearing or other formal proceeding is being held.

AMENDMENT TO SECTION 15(b)

(b) the failure or refusal to provide information or results of tests as required by section 7 of this Act, *or to comply with the premarket notification requirement of this Act;*

We would like to raise several other points with respect to the Staff Working Draft. Section 3(2) of the Staff Draft defines chemical substance as "any organic or inorganic substance of a particular molecular identity, or any uncombined radical or element." This definition is quite narrow and would not cover some of the substances which we have currently identified as posing potential hazard. We continue to prefer the definition contained in S. 888 which would provide coverage for certain mixtures of substances such as asbestos and PCBs where testing or restriction of component parts is either extremely difficult and expensive, or is meaningless because of the nature of the substance.

We support the new provision found in section 7(d) prohibiting the payment of indemnities under this Act or any other Act administered by EPA. As we testified before the Subcommittee on the Environment, we do not feel that the study required in subsection (e) of the Staff Draft is either necessary or a wise use of Agency resources.

We prefer the approach of S. 888, in dealing with reporting requirements, which would give the Administrator discretion in determining who should report. We have not yet established the need for reporting by all manufacturers, as Staff Working Draft No. 1 would require, and until we have some experience to guide us in determining what information will be useful, we would recommend that the Administrator be authorized, but not required, to impose the specified reporting of data. Additionally, we would urge the Committee to include in its bill the provision found in subsection 7(b) of S. 888, allowing the Administrator to require submission of test data other than those specified under the Act and other information when such are available to the manufacturer. Manufacturers will frequently have other test data of considerable value to the overall evaluation of the risk posed by a chemical substance. Authority to require the submission of test results which have already been conducted may help to reduce the amount of testing which might otherwise be required.

Section 11(a)(5) and (7) of the Staff Draft provides limited exemptions for chemical substances as they are used as intermediates or reagents. We find no basis in fact nor any rationale for such exemptions. One of the main purposes of toxic substances legislation is to provide authority to regulate those substances which presently are not controllable or economically or effectively controlled, under existing Federal law. It would seem unproductive to create gaps in this legislation which is designed to fill gaps in existing law. Thus, despite the limitations on the exemption provided in (5) and (7), we nevertheless recommend deletion.

Section 11(b) contains a new provision concerning the factors which the Administrator may take into account in the exercise of his testing or regulatory authority under the Act. We favor a comprehensive examination of risk in exercising the authorities of the toxic substances control legislation, and the provision of relevant information to other agencies. But we recommend against requiring the Administrator to make formal recommendations to other Federal agencies to take specific actions. This may force them into action, in their areas of responsibility, which they may not feel warranted. Subsections 11(d) and (e) direct the Administrator to coordinate his actions under this Act with other EPA authorities and with the various Federal agencies, and to report annually to Congress concerning such coordination. These provisions are sufficient to insure that information relating to hazards under the legal jurisdiction of other agencies is transmitted.

We prefer the language of S. 888 concerning the Chemical Substances Board. We see no reason for allowing the Secretary of the Department of Health, Education, and Welfare to name two members to the Board. Section 13 of the Staff Draft also unnecessarily singles out a subdivision of another agency to be cooperated with in conducting research and monitoring programs. We oppose this specific and unnecessary requirement. The coordinative efforts between agencies, already required by section 11(e), will facilitate the institution of compatible research programs both with the National Institute of Environmental Health Sciences and other components of the Department of Health, Education, and Welfare, as well as with the numerous other

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Federal agencies conducting research and monitoring related to toxic substances.

We are opposed to the provision contained in section 26(c) of the Staff Working Draft requiring concurrent submission to the President and to Congress of budget estimates and appropriation requests, legislative recommendations, and prepared testimony.

In regard to the provision relating to requests for funds, I would like to note the statement made by Roy L. Ash, Director of the Office of Management and Budget, before the Senate Committee on Government Operations on April 27, 1973, on S. 1214, a bill requiring *all* agencies to follow such a procedure. Mr. Ash stated:

"The position of the Office of Management and Budget on the substance of this bill has not changed from that taken over twenty years ago by the Bureau of the Budget on a similar measure: '. . . (I)t is essential that the respective responsibilities of the Executive Branch for preparing and presenting the budget and of the Legislative Branch for reviewing and enacting the budget should be kept separate . . . budget requests . . . are only preliminary working papers. To make them a matter of formal legislative-executive record and to limit the free exchange of information and views in the course of budget preparations . . . would make it much more difficult for the President to carry out his responsibilities for an executive budget. Furthermore, the plan suggested would probably attract external pressures upon the Appropriations Committees to a much greater extent than at present, and hence might cause an ever larger spending program than otherwise.'"

"Upon request (however) after the President's Budget has been transmitted, agencies do furnish information to the Appropriations Committees on the amounts of their initial budget requests to the President." Essentially the same considerations apply to the concurrent transmission of legislative recommendations and testimony. For the foregoing reasons, the Administration is strongly opposed to such provisions.

Once again, I would like to thank you and your Committee for your actions toward the development of this legislation. While there are differences, as outlined above, between our two bills, we feel that it is important that this legislation move ahead.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

ROBERT W. FRI,
Acting Administrator.

Hon. JOHN V. TUNNEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TUNNEY: I am writing in response to your letter of April 18, 1973 to Administrator William D. Ruckelshaus. Your letter referred to a "catch-all" procedure which might be used with respect to testing new chemical substances whose hazards cannot be predicted, and asked for our estimates of the types of information that might be required to be submitted under such a procedure and the costs of developing this information.

I should preface my response by indicating that we have not yet determined with any firmness the situations under which a sort of "catch-all" or residual set of information requirements would be imposed. There will be chemicals, perhaps many, that will not warrant any statutory testing at all. We intend to administer the Toxic Substances Control Act selectively, with attention to the types of tests and information suitable to require of the manufacturer and for us to review for different chemicals and chemical groups. Principal focus will be on those that appear to have the greatest potential for harm. Thus, we cannot say at this time whether a "catch-all" procedure would be a suitable adjunct to other testing requirements, and when and under what circumstances it should be used.

I can, however, provide you with an example of the sorts of basic information and testing that might be comprised in a "catch-all" requirement, and the costs of acquiring the information:

(a) Physical-chemical properties and chemical stability. This category would include melting point; boiling point; vapor pressure; solubility and partition coefficients in water and non-polar solvent; specific *gravity*; pH in solution; COD; BOD; and acid, base and thermal stability. Estimated cost: $500 or less.

(b) Thirty-day toxicity test in two species. This would be a short term, sub-chronic toxicity test to provide an indication of the capability of the chemical to produce cumulative toxic effects. Estimated cost: $2,400.

I would like to add a comment. We would anticipate that most if not all of the information in item (a) would currently be required and obtained by a manufacturer of a new chemical in any case. It would also be likely that a manufacturer of a new chemical would conduct the sub-chronic toxicity test identified in item (b), though this is less common practice. In effect, we would expect that a large part of this work, if not all of it, would be done in the absence of any legal requirement under the Toxic Substances Control Act. The less-than-$3,000 total figure for testing would thus not represent additional costs.

I trust the foregoing information is useful and responsive to your request. Please let us know if we can be of further assistance.

Sincerely yours,

GARY H. BAISE,
Director, Office of Legislation.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 4, 1973.

B-109650.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This refers to your letter dated March 6, 1973, requesting our views on S. 888, 93d Congress, a bill which if enacted would be known as the Toxic Substances Control Act of 1973.

Section 11 of the bill would authorize the Administrator of the Environmental Protection Agency to make contracts and grants for "such

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research and monitoring as is necesary to carry out his functions and responsibilities under this Act." In order that this Office may have access to records connected with such contracts and grants, and to facilitate our audit of them, we recommend that the following new section be incorporated in S. 888:

SEC. (a) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by this Act, shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Administrator or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

A list of suggested technical and editorial corrections is enclosed.

Sincerely yours,

PAUL G. DEMBLING,
Acting Comptroller General.

Enclosure.

Technical and editorial changes to S. 888

On page 1, in the line immediately above line 1, "1972" should be "1973."

On page 11, line 3, "applicable" should be inserted following "regulations."

On page 18, line 9, "less" should evidently be "more."

On page 30, line 17, "interevene" should be "intervene."

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 4, 1973.

B-109650.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This refers to your letter dated March 1, 1973, requesting our views on S. 426, 93d Congress, a bill which if enacted would be known as the Toxic Substances Control Act of 1973.

Section 13 of the bill would authorize the Administrator of the Environmental Protection Agency to make contracts and grants for

"such research and monitoring as is necessary to carry out his functions and responsibilities under this Act." In order that this Office may have access to records connected with such contracts and grants, and to facilitate our audit of them, we recommend that the following new section be incorporated in S. 426:

SEC. (a) Each recipient of Federal assistance under this Act, pursuant to grants, subgrants, contracts, subcontracts, loans or other arrangements, entered into other than by formal advertising, and which are otherwise authorized by his Act, shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the expiration of three years after completion of the project or undertaking referred to in subsection (a) of this section, have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients which in the opinion of the Administrator or the Comptroller General may be related or pertinent to the grants, subgrants, contracts, subcontracts, loans or other arrangements referred to in subsection (a).

A list of suggested technical and editorial corrections is enclosed.

Sincerely yours,

PAUL G. DEMBLING,
Acting Comptroller General.

Enclosure.

Technical and editorial changes to S. 426

On page 10, line 7, "to take" should evidently be "from taking."

On page 18, line 13, "as amended," should be inserted after the comma.

On page 19, line 1, there is a reference to "Title II of this Act." The bill is not, however, divided into titles. Other apparently inappropriate references in S. 426 to "title" appear at page 40, line 15; page 41, lines 12 and 15; and page 42, line 13.

On page 21, line 17, "11" should be "12."

On page 27, line 11 "within." should be inserted preceding "his."

On page 27, line 13, "probably" should be "probable."

On page 27, line 22, "be" should be inserted preceding "issued."

Starting on page 27, line 25 and continuing through page 28, line 1, the portion of section 12(c)(2) beginning with "of the facts" and ending with "and establishing" should be deleted.

On page 28, line 3, "probably" should be "probable."

On page 28, line 4, the first "the" should be "they."

On page 28, line 8, "of" should be "or."

On page 33, line 11, "public" should be inserted preceding "without."

On page 33, line 20, "presently" should apparently be "then."

On page 43, line 14, "to" should be deleted.

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COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 4, 1973.

B-109650.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This refers to your letter of March 30, 1973, requesting our views on proposed Amendment No. 8 to S. 426, 93d Congress, which would require that copies of budget requests, legislative recommendations, and other materials submitted to the President or the Office of Management and Budget (OMB) in connection with carrying out the provisions of S. 426 be submitted concurrently to the Congress.

It is not at all clear that the agency budget submissions, as such, would be helpful to the Congress. Agency budget submissions to OMB are subject to an intensive hearing process, field investigations, and, frequently, resubmissions. In some cases where agency programs involve similar or related programs of other agencies, there is need for elimination of duplicative requests and for adjustment of the level of programs to assure effective interagency collaboration.

The Committee may wish to consider, as an alternative, making arrangements for the advance delivery of approved agency budget requests prior to the formal submission of the President's Budget. Arrangements along these lines have been made in the past with the appropriations committees in order to enable these committees to undertake hearings at an earlier date. In some cases, it has been possible to release agency budget justifications as early as the first week of December.

Sincerely yours,

PAUL G. DEMBLING,
Acting Comptroller General.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 4, 1973.

B-109650.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: This refers to your request dated March 1, 1973, for our views on proposed Amendment No. 1 to S. 426, 93d Congress. The amendment would add a new section to the Federal Food, Drug, and Cosmetic Act to provide for an intensive screening system to detect dangerous materials in foods, and for other purposes. We suggest that our report to your Committee, entitled "Total Diet Study and Other Pesticide and Residue Surveillance Programs, dated February 23, 1972 (copy enclosed), containing information on the pesticide and residue surveillance programs of the Food and Drug Administration, may be helpful in the Committee's deliberations on this Amendment. Distribution of this report remains restricted to your Committee.

We note that the Amendment contains no authorization for appropriations for carrying out the purpose of the new section which the Amendment would add to the Federal Food, Drug, and Cosmetic Act.

Finally, at line 7 of page 3 of the Amendment, "gage" should be "gauge."

Sincerely yours,

PAUL G. DEMBLING,
Acting Comptroller General.

Enclosure.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., June 1, 1973.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for comments on S. 426, Amendment No. 9, a bill "to regulate interstate commerce by requiring premarket testing of new chemical substances and to provide for screening of the results of such testing prior to commercial production, to require testing of certain existing chemical substances, to authorize the regulation of the use and distribution of chemical substances and for other purposes."

Because these provisions of Amendment No. 9 are responsibilities of the Environmental Protection Agency, we defer to EPA for comment on the amendment.

Amendment No. 9 defines "indemnity" and adds paragraphs (d) and (e) to Section 7 of S. 426. Paragraph (d) provides that, "Notwithstanding the provisions of section 11(a)(1) of this Act, no indemnity payment shall be made to any manufacturer, wholesale distributor, retailer, or other vendor of a chemical substance or to any other person as a result of any action taken under this section, under any other provision of this Act, or under section 15 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 et seq.)." Paragraph (e) provides that, "Notwithstanding any provision of section 11 of this Act, the Administrator shall by contract or other arrangement commission a study of all Federal laws administered by the Environmental Protection Agency for the purpose of determining whether and under what conditions, if any, indemnification should be accorded any person as a result of any action taken by the Administrator under any law administered by such agency."

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL, *Under Secretary.*

Source: https://www.industrydocuments.ucsf.edu/docs/hgfv0228

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., May 29, 1973.

B-109650.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: With respect to your letter of March 6, 1973, requesting our views on proposed Amendment No. 9 to S. 426, 93d Congress, this is to advise that we have no comments to offer.

Sincerely yours,

PAUL G. DEMBLING,
(For the Comptroller General.)

ADDITIONAL VIEWS OF MR. COTTON

During the consideration of S. 426—the "Toxic Substances Control Act of 1973"—by the Committee on Commerce, several business firms expressed to me their genuine concern that the legislation, if enacted, would result in undue hardship upon them, not warranted by the objective sought to be attained.

For example, Mr. Roy M. Malool, President of Roymal Coatings & Chemical Co., Inc., expressed the fear that if S. 426 ". . . were passed we would have to lock up our doors."

Accordingly, by letter dated April 16, 1973, I brought these expressions of concern to the attention of the senior Senator from Michigan (Mr. Hart), Chairman of our Subcommittee on the Environment, which considered this legislation, requesting his views on the issues raised by these firms (See Appendix A).

By letter dated May 18, 1973, Senator Hart replied to the concerns expressed by such firms as Roymal Coatings & Chemical Co., Inc. (See Appendix B).

The issues raised in this exchange of correspondence are important. If it had been possible for me to participate in the final consideration of S. 426 by the Committee, I certainly would have raised them. Unfortunately, this was not possible owing to family illness. In the alternative, therefore, I have set forth the exchange of correspondence as appendices for the purpose of establishing legislative history on S. 426 and the manner of its implementation with respect to those issues raised.

NORRIS COTTON.

Source: https://www.industrydocuments.ucsf.edu/docs/hgfv0228

APRIL 16, 1973.

Hon. PHILIP A. HART,
U.S. Senate,
Washington, D.C.

DEAR SENATOR HART: You will recall that during February and March our Environment Subcommittee conducted three days of hearings on the bills, S. 426 (and related amendments thereto) and S. 888, both of which have the short title of the "Toxic Substances Control Act of 1973".

I am enclosing one copy each of three letters which I have received expressing concern over this pending legislation. The first is from the President of Roymal Coatings & Chemical Co., Inc., of Newport, New Hampshire, which states in part that if S. 426 ". . . were passed we would have to lock up our doors." The second is from the Board Chairman and President of Petrolite Corporation urging me to oppose these two bills. S. 426 and S. 888. The third is from the GAF Corporation expressing concern for the need for selectivity of testing and regulation under the pending legislation.

It is my understanding that the full Committee will be considering a working draft of S. 426, at the first scheduled executive session following the Easter recess. In view of this I would appreciate receiving your comments on the objections raised by these three firms to the pending legislation, especially that of the President of Roymal Coatings & Chemical Co., Inc. in my State which fears that enactment of such legislation will necessitate the closing of his business.

Your response to this request will be appreciated.

With best wishes

Sincerely,

NORRIS COTTON,
U.S. Senator.

Enclosures.

ROYMAL COATINGS & CHEMICAL CO., INC.,
Newport, N.H., March 28, 1973.

Hon. NORRIS COTTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COTTON: It has come to my attention that a new bill, namely The Toxic Substances Control Act of 1973 (S. 426), would have an increase effect on our small business here in Newport, N.H.

Source: https://www.industrydocuments.ucsf.edu/docs/hgfv0228

We are manufacturers of Industrial Chemical Coatings supplying industries throughout New England, New York State, Pa. and in smaller quantities throughout the U.S.A. and some overseas business.

Our products are used on all types of manufactured goods for appearance, corrosion protection, etc.

These products include Lacquers, Enamels, Epoxies, Polyurethanes, Stains, Solvents, etc.

If the Toxic Substances Control Act of 1973 (S. 426) were passed we would have to lock up our doors.

The way I read this bill, it would mean that every product we sell would have to be tested. Under sec. 4,c. the bill authorizes the administrator to require seven tests which from what information I have been able to find out would apply to each product we sell. These tests could cost over $100,000 for each product. We have over 5,000 formulations. Multiply 5,000 by the cost of the tests and frankly I would have to give the front door key to the administrator.

Our company is a small cog in a billion dollar industry and I feel I am correct in stating that there are over 2,000 paint manufacturers in the U.S.A., with the majority of them small like ourselves. If this bill (S. 426) were passed the effect on the Chemical Coatings Industry would be dramatic and this in turn would have a bearing on the bulk of the manufacturers in the U.S.A. who use Industrial Chemical Coating products.

I would personally appreciate receiving your thoughts and comments on this bill (S. 426) and what you can do for us covering this bill.

Thanks for your full cooperation, we remain.

Very truly yours,

ROY M. MALOOL,
President.

GAF CORPORATION,
New York, N.Y., March 26, 1973.

Hon. NORRIS COTTON,
U.S. Senate,
Washington, D.C.

DEAR SIR: As Group Vice President of GAF Corporation's chemical operations, I am particularly concerned about the hearings on a new version of the Toxic Substances Control Act being conducted by the Environment Subcommittee of the Senate Commerce Committee.

Specifically, I am concerned about the need for the selectivity of testing and regulation under the proposed Act (S. 426 and S. 888).

As one of the nation's leading producers of chemicals my company is convinced that any legislative chemical regulations should focus on those chemicals and their applications that have demonstrated *an unreasonable risk to health or the environment.*

We feel that testing under this legislation should be restricted to cases in which (1) EPA has determined that testing of that chemical for its intended use is necessary because of a threat to health or the environment, taking into consideration the magnitude of human and environmental exposure, and (2) EPA has specified the particular tests which must be conducted on that chemical to evaluate precisely that threat and the need for limitations on use.

The public interest must be protected and this protection will be guaranteed with the adoption of *selectivity* as the basic principle of the legislation. Rather than wasting these valuable resources on innocuous products, it will focus scientific and regulatory resources on dangerous chemicals.

Concurrently, this selectivity will eliminate indiscriminate and unnecessary testing requirements. This is of paramount importance as the legislation under consideration has a much broader reach than is generally realized.

Very truly yours,

H. L. MINCKLER.

Source: https://www.industrydocuments.ucsf.edu/docs/hgfv0228

APPENDIX B

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., May 18, 1973.

Hon. NORRIS COTTON,
U.S. Senate,
Washington, D.C.

DEAR SENATOR COTTON: Thanks very much for passing on the comments of Mr. Malool and other manufacturers of chemical products. Mr. Malool seems to be concerned in two ways. First, he fears that every product he manufacturers would have to be tested for safety. Second, he is fearful of the excessive costs of performing the tests.

With respect to the first point, EPA could only require testing of existing chemicals if there is reason to believe unreasonable hazards may exist. EPA would first have to establish by regulation a list of those chemicals about which there is reason to be concerned. Thus, a very large number of the existing chemicals and possibly most, would escape testing all together.

With respect to new chemicals, it would seem important that the Environmental Protection Agency have a mechanism of gathering information of new chemical substances the introduction of which could not have been predicted. It would obviously be desirable to create a mechanism whereby all new chemicals are not treated with the same broad brush so that chemicals which may prove to be innocuous are not subjected to extensive, costly testing. I would hope that language could be developed which is sensitive to both concerns.

Mr. Malool is also concerned about the cost of testing. While the exact nature of the tests should be left to the administrator of EPA, the requirement should be kept in check and EPA should require no more information than is needed to assess hazards. Senator Tunney recently wrote to EPA asking for their estimate of what tests might be required of a new unpredictable chemical and how much those tests might cost. A copy of the EPA response is attached. As you can see, for less than $3,000 in tests EPA should have the basis, coupled with information as to uses and chemical formula, to gauge risk for a large number of chemicals. It should be pointed out that these tests are normally performed by manufacturers as a matter of course. I think the letter from EPA illustrates that a great deal can be learned about a chemical with data that is easily gathered by a manufacturer. It does seem reasonable, however, to authorize EPA to be more demanding in its requirements, both for new and existing chemicals, where dealing with a substance that will be dispensed widely in the environment or there is some other good reason for gathering more data.

Your concern for developing workable legislation is indeed appreciated. Please feel free to call on me if I can be of further help.

With best personal regards.

Sincerely yours,

PHILIP A. HART,
Chairman, Subcommittee on the Environment.

Source: https://www.industrydocuments.ucsf.edu/docs/hgfv0228

Hon. JOHN V. TUNNEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TUNNEY: I am writing in response to your letter of April 18, 1973 to Administrator William D. Ruckelshaus. Your letter referred to a "catch-all" procedure which might be used with respect to testing new chemical substances whose hazards cannot be predicted, and asked for our estimates of the types of information that might be required to be submitted under such a procedure and the costs of developing this information.

I should preface my response by indicating that we have not yet determined with any firmness the situations under which a sort of "catch-all" or residual set of information requirements would be imposed. There will be chemicals, perhaps many, that will not warrant any statutory testing at all. We intend to administer the Toxic Substances Control Act selectively, with attention to the types of tests and information suitable to require of the manufacturer and for us to review for different chemicals and chemical groups. Principal focus will be on those that appear to have the greatest potential for harm. Thus, we cannot say at this time whether a "catch-all" procedure would be a suitable adjunct to other testing requirements, and when and under what circumstances it should be used.

I can, however, provide you wtih an example of the sorts of basic information and testing that might be comprised in a "catch-all" requirement, and the costs of acquiring the information:

(a) Physical-chemical properties and chemical stability. This category would include melting point; boiling point; vapor pressure; solubility and partition coefficients in water and non-polar solvent; specific *gravity;* pH in solution; COD; BOD; and acid, base and thermal stability. Estimated cost: $500 or less.

(b) Thirty-day toxicity test in two species. This would be a short term, sub-chronic toxicity test to provide an indication of the capability of the chemical to produce cumulative toxic effects. Estimated cost: $2,400.

I would like to add a comment. We would anticipate that most if not all of the information in item (a) would currently be required and obtained by a manufacturer of a new chemical in any case. It would also be likely that a manufacturer of a new chemical would conduct the sub-chronic toxicity test identified in item (b), though this is less common practice. In effect, we would expect that a large part of this work, if not all of it, would be done in the absence of any legal requirement under the Toxic Substances Control Act. The less-than-$3,000 total figure for testing would thus not represent additional costs.

I trust the foregoing information is useful and responsive to your request. Please let us know if we can be of further assistance.

Sincerely yours,

GARY H. BAISE,
Director, Office of Legislation.

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Source: https://www.industrydocuments.ucsf.edu/docs/hgfv0228