

Washington Memo

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House Committee Approves \$4 Billion CFC Tax - Includes Exemption for Foam Insulation; Senate to Act Soon

The House Ways and Means Committee September 14 approved a 5-year/\$4.3 billion tax on chlorofluorocarbons (CFCs) that includes a significant exception for CFCs used to make rigid foam insulation. The CFC tax was included as a major revenue source in a budget reconciliation package, that includes the capital gains tax reduction, voted out by the panel. The base tax rates are for calendar years 1990 and 1991, \$1.10 per pound; 1992 -\$1.60 per pound and for 1993 and 1994 \$3.10 per pound.

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ICC Decision Will Save Plastics Industry \$28 Million Annually

In a highly contested decision, the Interstate Commerce Commission (ICC) decided to include 1987 data for estimating the 1989 fourth quarter rail cost adjustment figure. The new productivity factor will be worth approximately \$28 million in annual savings to the plastics industry. In its decision, the ICC ruled upon the expansion of the averaging period for the productivity calculation to six years in addition to the inclusion of 1987 data. Utilizing a productivity value for 1987 of 17.6%, this produces a six-year average of 4.4%. As a result, the railroads' cost increases of 1.3 % are offset by a productivity value of 1.1 % for a net increase of 0.2%. In her dissenting statement, Chairman Heather Gradison described the productivity adjustment as "reimposing price regulation," and added that in order to avoid "a serious regulatory relapse, the Commission ...must commit itself to allowing full experimentation with alternative methods of setting joint rates."

SPI Seeks Enhanced Rail Competition as a Cornerstone for National Transportation

SPI submitted comments August 31 to the Department of Transportation (DOT) urging that "further actions need to be taken, beyond the 1980 Staggers Rail Act, to preserve and enhance rail-to-rail competition, to protect against excessive and unreasonable pricing, and most importantly, to provide both shippers and the transportation industry a level playing field on which to compete." The comments were submitted in response to a DOT request regarding the formulation of a national transportation policy, focusing on Intercity Freight Transportation.

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**SPI Submits Formal
Complaint to ICC
Challenging Conrail
MIFTRs**

SPI submitted a Formal Complaint August 29 to the Interstate Commerce Commission challenging Conrail's administration of its Multiple Independent Factor Through Rate (MIFTR) tariffs. SPI is seeking a finding from the ICC that certain practices of Conrail and its connecting carriers violate various provisions of the Interstate Commerce Act regarding their MIFTR program. In addition, SPI seeks to require Conrail to publish its independent factors in the tariffs and to refrain from concealing them from the public. Also, SPI thinks Conrail's invitation to its connecting carriers to raise their rates to coincide with Conrail's rate increases is unlawful. SPI will submit its opening statement of facts and arguments October 5.

**Governors Urge
Rigorous Enforcement
Program for HAZ MAT
Policy**

The National Governors Association adopted a policy amendment August 1 on the transportation of hazardous materials that calls for the creation of a federal fund to finance hazardous materials transportation regulatory programs. Another amendment to the same section calls for stronger enforcement measures, including higher fines for those who repeatedly violate safety regulations. Revenues to finance the federal fund would include a user fee on carriers and shippers of hazardous materials and container manufacturers and reconditioners. The establishment of such a fund would not pre-empt states from collecting their own fees, according to Committee Chairwoman Gov. Kay Orr (D-NE). Federal revenues generated from fines for hazardous materials safety violations would be placed in a federal trust fund to help finance enforcement efforts.

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CFC Tax
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As the result of concerted lobbying efforts by SPI and affected manufacturers, the Committee approved a complete exemption from the tax for CFCs used for "rigid foam insulation" for calendar year 1990, and a net tax of \$.25 per pound for this use through 1993. It is anticipated that chemical substitutes will be available by 1994 to manufacture rigid foam insulation. SPI strongly believes that a CFC tax is poor public policy and environmentally counterproductive; however, the tax came to have a political life of its own, desired as a significant new source of revenue. CFC-dependent foam applications are the only significant CFC price-sensitive uses.

SPI is lobbying the Senate Finance Committee to adopt the Ways and Means CFC foam language. SPI also is working with an industry coalition to defeat pending Senate CFC and HCFC regulatory provisions. SPI opposes these because they would unfairly disadvantage U.S. industry, capping the production of HCFCs, the CFC substitutes, in 2010. SPI strongly supports the regulation of CFCs through the Montreal Protocol, expected to be amended next year to require the complete phaseout of CFCs by the turn of the century.

The Senate Finance Committee is expected next week to produce its own reconciliation package that will include a capital gains alternative as

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well as a CFC tax. If the Committee approves the package by October 6, the Democratic Leadership has suggested taking the budget reconciliation issue up on the Senate floor the week of October 9, rather than recessing for a Columbus holiday week.

On the House side, the House Budget Committee September 19 took the deficit-reduction recommendation of 10 House committees, wrapped them into one bill and sent the measure to the House floor. The House is expected next week to consider the package, including debate on controversial issues such as capital gains. The "reconciliation" bill contains recommended changes in existing law needed for Congress to bring the fiscal 1990 budget deficit down to levels required by the Gramm-Redmond-Hollings law.

**SPI Seeks Enhanced Rail
Competition**
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To enhance competition in the rail industry, SPI recommended that the practice of eliminating joint routes and rates and cancelling gateways should be prohibited except when based upon service inefficiencies. Assurance of rail-to-rail competition and protection against excessive and unreasonable pricing can also be accomplished through mandating publication of joint routes and rates and enforcing trackage rights and reciprocal switching agreements. In the absence of effective alternative rail transportation services, SPI thinks that the ICC must retain and exercise jurisdiction over maximum rate reasonableness. The SPI statement concluded that enactment of the above measures would encourage rail-to-rail competition and further the objectives of the 1980 Staggers Rail Act in addition to fostering a strong economy with sound transportation alternatives.

**House Subcommittee
Approves Energy-
Efficiency Measure.**

On September 21 the House Science Energy Research and Development subcommittee approved a three-year authorization (HR 1216) of research and development in renewable energy technologies and methods to improve energy efficiency. The panel approved the amendment in the nature of a substitute designed to improve the competitiveness of U.S.-developed energy efficiency technology. It requires the Secretary of Energy to enter and revise joint research and development ventures with manufacturing firms.

**Regulatory Update
EPA**

DOT and EPA Announce Workshop on Complying with Federal Requirements for Reporting Releases of Hazardous Substances and Transporting Hazardous Materials. In the August 14 *Federal Register*, DOT and EPA announced a one-day workshop to be held October 24 and 26 at the Holiday Inn, Inner Harbor in Baltimore. This workshop will provide practical information to assist regulated firms in complying with release, reporting and transportation requirements for hazardous materials. Those interested in attending should contact Deborah Boothe at RSPA (202) 366-2229 or Pamela Harris at EPA (202) 475-9815. (54 FR 33317)

EPA (continued)

EPA Announces the Receipt of Test Data on Aniline. In the August 16 *Federal Register*, EPA announced receipt of test data on aniline from the Synthetic Organic Chemical Manufacturers Association, Inc. The submission describes the chronic toxicity of aniline to daphnia magna. Aniline is used in the phenolics industry. (54 FR 33772)

EPA Issues Final Rule to Amend TSCA Good Laboratory Practice Standards. In the August 17 *Federal Register*, EPA issued a final rule to amend and expand the TSCA Good Laboratory Practice (GLP) standards to incorporate many of the changes made by the Food and Drug Administration to its GLP regulations. EPA is amending these regulations to ensure the quality and integrity of data generated from testing conducted in the field under TSCA. This rule went into effect September 18. (54 FR 34034)

EPA Announces RCRA Inspection Manual Availability. In the August 24 *Federal Register*, EPA announced the availability of this document which provides guidance concerning the procedures and checklists employed by duly authorized inspectors during RCRA inspection. This document is now available to the regulated community, and can be purchased from the National Technical Information Service, 703-487-4600, U.S. Department of Commerce, Springfield, Virginia 22161. NTIS #PB89-208-169/AS. (54 FR 35240)

EPA Announces Availability of Interim "Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities." This document, cited in the September 11 *Federal Register*, provides guidance to RCRA facility permit applicants and writers concerning the statistical evaluation of groundwater monitoring data. Comments are due December 8, 1989. This document is available for purchase through the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, VA 22161, at (703) 487-4000 (NTIS #PB89-151-047). (54 FR 37501)

The Executive Committee of the EPA Science Advisory Board will meet on October 23 and 24. In the September 12 *Federal Register*, EPA announced that an open meeting will be held to enable the Executive Committee to act on action items, which will include: SAB review of Global Climate Change Research Plan; the SAB review of Lead Carcinogenicity and Agency Science and Policy; and SAB review of Products of Incomplete Combustion (PIC) of Hazardous Wastes. The meetings are open to the public. Anyone wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes (202-382-4126) by October 18. (54 FR 37725)

EPA (continued)

EPA Announces the Establishment and Open Meeting of an Advisory Committee to Negotiate a Rule to Control Fugitive Emissions of Toxic Volatile Organic Compounds (VOCs) from Chemical Equipment Leaks. In the September 12 *Federal Register*, EPA announced a meeting September 27 and 28 to complete outstanding procedural matters, and determine how best to address the substantive issues and begin addressing them. For further information on the substantive matters of the rule call EPA's Robert Ajax at (919) 541-5579. (54 FR 37725)

EPA Proposed Rule Focuses on Confidentiality of Business Information Collected under Section 313. This proposed rule is intended to clarify that such data collected under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 relating to discharges to the air and water will be considered emission or effluent data under the Clean Air Act or the Clean Water Act. Such data will not be accorded confidential treatment. Comments are due October 16, 1989. (54 FR 38156)

EPA Signs Testing Consent Order for 1,1,1-Trichloroethane. In the August 23 *Federal Register*, EPA announced that an enforceable testing consent order has been signed with five manufacturers of 1,1,1-trichloroethane (TCEA). The final rule requires the manufacturers to perform mutagenicity and meyrtoxicity tests on TCEA. The manufacturers are Dow Chemical, ICI Americas, Inc., Vulcan Chemicals, Occidental Chemical Corp., and PPG Industries, Inc.. TCEA is a chlorinated solvent used in adhesives. (54 FR 34991)

EPA Issues Final Rule on Standards of Performance for New Facilities that Perform Polymeric Coating of Supporting Substrates. In the September 11 *Federal Register*, EPA published final air pollution standards to control volatile organic compound (VOC) emissions for new, modified, and reconstructed facilities that perform polymeric coating of supporting substrates. These standards, effective September 11, apply to affected facilities for which construction or modification began after April 30, 1987. "Polymeric coating of supporting substrates" is defined as a web-coating that applies an elastomer or other polymeric material onto a supporting substrate, for example, fiberglass, non-woven textiles and yarn. Examples of polymeric coatings are: urethane, polyvinyl chloride, epoxy, phenolic, and acrylic. (54 FR 37534)

EPA Proposes Rule to Establish Procedures for Resolving Claims for Cost Incurred for Responding to Hazardous Substances Release Asserted Against the Hazardous Substance Superfund. The proposed regulation also would establish procedures for notifying concerned parties regarding limitations on the payment of response claims. Comment deadline November 13. (54 FR 37892)

EPA (continued)

EPA Requests Comment on Field Test Report Related to Revisions to the Hazard Ranking System for Superfund Sites. In the September 14 *Federal Register*, EPA requested comment on the field test report related to proposed revisions to the Hazard Ranking System used to determine site placement on the Superfund National Priorities List. EPA conducted a nationwide field test to examine model results to actual field data, to test the feasibility of implementing the proposed factors, etc. Comment deadline October 16. (54 FR 37949)

EPA Announces Stratospheric Ozone Protection Advisory Committee. In the September 14 *Federal Register*, EPA announced the establishment of the new Stratospheric Ozone Protection Advisory Committee to provide advice on policy and technical issues that relate to domestic and international aspects of the Montreal Protocol on Substances that Deplete the Ozone Layer. (54 FR 37990)

EPA Issues Final Proposed Regulations on Benzene. In the September 14 *Federal Register*, EPA issued final rules (54 FR 38044) for benzene emissions from coke by-product recovery plants and benzene storage vessels. The same day EPA proposed national emission standards (54 FR 38083) for benzene from sources never before regulated including industrial solvent use and benzene waste operations. Comment deadline November 13. The rules were the first developed by EPA under a two-step standard-setting process ordered by the U.S. Court of Appeals for the District of Columbia Circuit in a 1987 decision involving its vinyl chloride standard. According to EPA, the risk of developing leukemia from benzene exposure would be limited to one in one million for 99% of the population and one in 10,000 for the remaining 1%. EPA set the benchmark of 1 in 10,000 to meet the court's requirement that it develop the regulations by first setting an acceptable risk level; the second step, a one in one million risk level, represents an ample margin of safety. SPI submitted comments earlier this year on the benzene proposal because of its policy implications.

FDA

FDA Issues ANPR on Packaging Materials for Use Under High Temperature Conditions in Microwave Ovens. In the September 8 *Federal Register*, the Food and Drug Administration issued an advance notice of proposed rule-making requesting public comment on the maximum temperatures of the use for food packaging materials and related safety information. The Agency is considering publishing a proposal to amend the indirect food additive regulations by establishing maximum temperatures of use for certain food packaging materials including susceptors. A subgroup of the SPI Food, Drug and Cosmetic Packaging Materials Committee is addressing these issues. Comment deadline November 7. (54 FR 37340)

FDA (continued)

FDA Increases Allowable Radiation Dose. In the August 30 *Federal Register*, FDA amended the food additive regulations, effective immediately, in response to a petition filed by Cryovac Division of W.R. Grace. The limitation has been raised on the maximum absorbed dose of radiation that may be used to produce molecular crosslinking of ethylene-vinyl acetate copolymers. The change results in an increase from 8 to 5 mega-rads as the maximum absorbed dose of ionizing radiation. (54 FR 35874)

Colorant Approved for Food Contact. The FDA has approved the use of 5-[(2,3-dihydro-6-methyl-2-oxo-1H-benzimidazol-5-yl)azo]-2,4,6-(1H,3H,5H)pyrimidinetrione as a colorant in all polymers. The amended food additive regulations will allow use of not more than 1% by weight of the polymer. The action responds to a petition filed by Ciba-Geigy and became effective August 30. (54 FR 35874)

ITA

ITA Solicits Comments on EC Commissions' Newly Proposed Procedures on EC-Wide Product Testing and Certification. In the September 14 *Federal Register*, the U.S. Working Group on EC Standards, Testing and Certification solicited views relating to the development of a new product testing and certification system in the European Community, its impact on U.S. business, and how the U.S. should respond. Comment deadline October 15 (54 FR 37967)

FHWA

Federal Highway Administration Proposes Rule to Clarify the Dromedary Box Provisions. In the August 24 *Federal Register*, the FHWA proposed a rule that would preempt inconsistent state laws and regulations to permit truck tractors equipped with dromedary decks or plates having the capacity to carry cargo that were in legal use on December 1, 1982, to continue to operate throughout their useful lives. Proof of such legal use would continue to rest with the operator of the equipment. Comments are due October 23, 1989. (54 FR 35199)

OSHA

OSHA Announces Issuance of Final Lockout/Tagout Rule. The Occupational Safety and Health Administration published a final rule September 1 (54 FR 36644) governing procedures for disabling equipment to prevent it from inadvertently starting during maintenance or repair. The "lockout/tagout" procedures in the final rule cover servicing and maintenance of machines and equipment in which an unexpected energization or start up or release of stored energy could cause injury to employees. The standard, which applies only to the general industry sector, becomes effective October 31.

The costs to the approximately 631,000 affected employers of complying with the standard are estimated at \$214 million in the first year, and \$135 million in subsequent years. OSHA has estimated first year costs of the standard for SIC 30 (Rubber and miscellaneous plastics products) at \$6 million. OSHA estimates that the rule will prevent approximately 120

OSHA (continued)

fatalities, 28,400 lost workday injuries and 31,900 non-lost workday injuries a year. Workers at greatest risk from release of hazardous energy are craft workers, machine operators and laborers, with a high proportion of accidents caused by lockout/tagout failures in wrapping equipment, printing presses and conveyors. The rule requires employers to establish uniform lockout/tagout procedures and to provide initial and refresher training for affected employees. The general industry standards were originally published in 1971. Call SPI Federal Government Affairs for a copy of the rule.

DOT

DOT Revises "List of Hazardous Substances and Reportable Quantities." In the August 21 *Federal Register*, the Research and Special Programs Administration of DOT revised the List of Hazardous Substances and Reportable Quantities. Effective October 13, 1989, the action makes the list consistent with EPA's list of CERCLA (Comprehensive Environmental Response, Compensation and Liability Act) hazardous substances. It enables carriers to specifically identify CERCLA hazardous substances and to make the required notification if a discharge of a reportable quantity occurs. Of concern to the plastics industry are the following:

Reportable quantities increased from 1 to 10 pounds:

Cadmium - Pigments, stabilizers;

Ethylene Oxide - Used in production of ethylene glycol and acrylonitrile;

2,3-epoxy-1-Propanal - Stabilizer for vinyl polymers; and

Toluenediamine - an Intermediate in production of polyurethanes.

Reportable quantities increased from 1 to 1000 pounds:

Ethylene glycol monoethyl ether - Solvent for cellulose nitrate, phenolic, alkyd and epoxy resins. (54 FR 34666)

Polyurethanes '89

October 1-4 in San Francisco

A highlight of this 32 Annual Technical/Marketing Conference will be a panel discussion October 2 by environmentalists and policymakers on the fate of CFCs and substitutes, as well as taxes, further regulation and phaseout dates. Featured speakers are Steve Shimberg, U.S. Senate Environment Committee, Eileen Claussen, U.S. EPA, John Millhone, Energy Department and David Doniger, Natural Resources Defence Council. SPI's Margaret Rogers will be