to provide for an independent audit of the financial condition of the government of the District of Columbia, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The clerk read the statement.

(For conference report and statement, see proceedings of the House of August 3, 1976.)

Mr. DIGGS (during the reading). Mr. Speaker, in view of the fact that the conference report has been printed and is available to the Members and also was printed in the CONGRESSIONAL RECORD of August 3, 1976, and since it goes on to summarize the main provisions of the report, I ask unanimous consent that the statement be considered as read.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

The SPEAKER. The gentleman from Michigan (Mr. DIGGS) is recognized for 30 minutes.

[Mr. DIGGS adressed the House. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. WHALEN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of the conference report of H.R. 11009. This bill provides for the establishment of a Temporary Commission on Financial Oversight for the District of Columbia. It seems to me that there can be no question of the urgent need for the complete and thoroughgoing study and overhaul of the District's financial management system which this legislation would provide. Questions have been raised with respect to the District's budget and finances, and it has been pointed out that there has never been an independent audit of the books and records of the D.C. government. Considering the problems that have already come to the attention of the public since the advent of home rule, it would seem that the testimony of the U.S. Comptroller General in our hearings last December is especially pertinent, and I quote:

> The effort required to make a financial audit is obviously affected a great deal by the condition of the accounting records and the adequacy of the internal control procedures. When records and procedures are not properly designed and maintained, the extent of the testing and verification work is greatly increased. This causes the audit to become much more time consuming and therefore more expensive. The task of reconstructing the accounts may be impossible, or so major, as to preclude the rendering of an opinion at the conclusion of the audit . . .

And with what may be an understatement, he goes on to observe that:

> Unfortunately, the District's system suffers from these ills. We have found the weaknesses in internal control and the inadequacies in record keeping to be widespread and severe.

Mr. Speaker, anyone familiar with the record of this extensive proceeding will appreciate the work and expertise which has gone into this legislation. I believe that what has emerged is an excellent plan for the required analysis and study of the District's financial system. It will also provide the means for the development and implementation of the revision or complete revamping, if necessary, of the city's financial planning, reporting and control systems. It should be put into effect without a moment's unnecessary delay, starting with the passage of this legislation.

Mr. Speaker, the administration has stated that it has no opposition to this legislation. In view of the evident and urgent need and the comparatively insignificant cost to the Federal Government, I strongly urge a favorable vote on H.R. 11009 at this time.

Mr. DIGGS. Mr. Speaker, I move the previous question on the conference report.

The previous question was ordered.

The conference report was agreed to.

A motion to reconsider was laid on the table.

TOXIC SUBSTANCES CONTROL ACT

Mr. PEPPER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1458 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 1458

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 14032) to regulate commerce and protect health and the environment by requiring testing and necessary restrictions on certain chemical substances and mixtures, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Interstate and Foreign Commerce, the bill shall be read for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment under the five-minute rule and said substitute shall be read for amendment by titles instead of by sections. At the conclusion of such consideration, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions. After the passage of H.R. 14032, it shall be in order to proceed to the consideration of the bill S. 3149, section 402 of the Congressional Budget Act of 1974 (Public Law 93-344) to the contrary notwithstanding, and it shall be in order in the House to move to strike out all after the enacting clause of said Senate bill and insert in lieu thereof the provisions of H.R. 14032 as passed by the House.

The SPEAKER. The gentleman from Florida (Mr. PEPPER) is recognized for 1 hour.

Mr. PEPPER. Mr. Speaker, I yield 30 minutes to the able gentleman from California (Mr. DEL CLAWSON), pending which I yield myself such time as I shall consume.

(Mr. PEPPER asked and was given permission to revise and extend his remarks.)

Mr. PEPPER. Mr. Speaker, House Resolution 1458 provides for the consideration of H.R. 14032, Toxic Substances Control Act, granting to the Administrator of the Environmental Protection Agency regulatory authority to protect public health and the environment from potentially harmful chemical substances.

The resolution would permit the House to consider the legislation under an open rule with 1 hour of general debate. The rule makes the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill in order as an original bill for the purpose of amendment.

The rule also makes it in order to call up the bill S. 3149 for the purpose of substituting the House-passed language, and waives points of order which could be raised under section 402 of the Congressional Budget Act—Public Law 93-344.

Section 402 prohibits consideration of authorization bills for fiscal year 1977 unless they were reported by May 15, 1976. This bill, S. 3149, was reported before May 15 in the Senate and thus was not in violation of the Budget Act when considered by that body.

H.R. 14032 does not contain authorizations for fiscal year 1977. The Senate bill does and when it is called up in the House it could be subject to a point of order. However, we are calling up the Senate bill solely for the purpose of inserting the House-passed language and, therefore, the waiver does not violate the spirit of the Budget Act. This assurance was given to the Committee on Rules by the Budget Committee which has no objection to the waiver.

Mr. Speaker, there are more than 30,000 chemicals on the market and only a few thousand have been adequately tested to determine if they are safe. This number grows by about 1,000 each year, and there is no requirement that these chemicals be evaluated for health and environmental effects before they are marketed. Moreover, there is inadequate authority to regulate a chemical once it is discovered to be hazardous.

Toxic substances control legislation was passed in the House and the Senate in both the 92d and 93d Congresses, but time did not permit the conferees to resolve the differences between the House and Senate passed bills. This year, I understand the legislation passed by the Senate and that reported by the House Commerce Committee are much more similar.

H.R. 14032 has the general support of the major industry trade groups, environmental groups, citizens, and labor. I

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urge adoption of House Resolution 1458 so that we may proceed to the consideration of the Toxic Substances Control Act.

Mr. DEL CLAWSON. Mr. Speaker, I yield myself such time as I may consume.

(Mr. DEL CLAWSON asked and was given permission to revise and extend his remarks.)

Mr. DEL CLAWSON. Mr. Speaker, as my colleague from Florida has explained House Resolution 1458 provides for the consideration of H.R. 14032, the Toxic Substances Control Act—a bill designed to regulate commerce and protect health and the environment by requiring testing of and restrictions on certain chemical substances and mixtures, and for other purposes. The resolution furnishes an open rule with 1 hour of general debate.

Upon the adoption of the resolution, it will be in order to consider the amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce now printed in the bill as an original bill for the purpose of amendment.

The substitute shall be read for amendment by titles instead of by sections. Subsequent to the passage of H.R. 14032, it will be in order to proceed to the consideration of the bill S. 3149, section 402 of the Congressional Budget Act of 1974 notwithstanding, and to move to strike out everything after the enacting clause of the Senate bill and insert the provisions of H.R. 14032 in its place.

H.R. 14032 will require manufacturers and processors of potentially harmful chemical substances and mixtures to test the substances or mixtures as required by rules issued by the Administrator of the Environmental Protection Agency so that their effect on health and the environment may be evaluated.

It will require manufacturers of new chemical substances and manufacturers and processors of existing chemical substances for significant new uses to notify the Administrator 90 days in advance of commercial production.

The bill will authorize delays or restrictions on the manufacture of a new chemcial substance if there is inadequate information to evaluate the health or environmental effects of the substance and if in the absence of such information, the substance may cause or significantly contribute to an unreasonable risk to health or the environment.

Further, it will authorize the Administrator to adopt rules to prohibit the manufacture, processing, or distribution of a chemical substance or mixture, to require labeling, or to regulate the manner of disposal of a chemical substance or mixture for which there is a reasonable basis to conclude that it causes or significantly contributes to an unreasonable risk to health or environment.

These provisions, and there are many more, are certainly comprehensive, but I wonder if, in our haste to deal with the onerous problems of toxic substances, if we are not paying too little attention to the ramifications of the legislation as it relates to the American chemical industry. In the more than 100 pages of this legislation, an incredibly complicated regulatory maze is mandated which is guaranteed to completely stymie any layman's attempt to wade through it. And the bill will be augmented by additional rules and regulations issued by the EPA. As each layer of thick bureaucratic tape is applied over the hands and tools of American chemical companies, it will become more and more difficult to develop and process new chemical compounds, especially for the smaller companies involved. For them it will virtually be an impossible task. The larger chemical companies who have the means to retain vast legal staffs will, of course, be presented with only a minor problem.

But what of the small chemical companies? What are we forcing on these companies who are struggling to compete on the market? Mr. Speaker, is it really responsible for us to seek to solve one major problem at the risk of creating another of similar magnitude?

The House, Mr. Speaker, has passed toxic substances legislation previously—in both the 92d and 93d Congresses. Never before has this House made provision to place such a heavy burden on our competitive market where small chemical companies are concerned.

I would ask my colleagues to thoughtfully consider the consequences of the adoption of this legislation and to decide for themselves whether or not the burden is too heavy.

Mr. Speaker, in order that we may move to answer these questions and debate the provisions of the bill, I ask that the resolution be adopted.

Mr. PEPPER. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. MURPHY of New York. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 14032) to regulate commerce and protect health and the environment by requiring testing and necessary restrictions on certain chemical substances and mixtures, and for other purposes.

The SPEAKER. The question is on the motion offered by the gentleman from New York (Mr. MURPHY).

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 14032, with Mr. MANN in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from New York (Mr. MURPHY) will be recognized for 30 minutes, and the gentleman from Nebraska (Mr. MCCOLLISTER) will be recognized for 30 minutes.

The Chair recognizes the gentleman from New York (Mr. MURPHY).

Mr. MURPHY of New York. Mr. Chairman, I yield myself such time as I may consume.

(Mr. MURPHY of New York asked and was given permission to revise and extend his remarks.)

[Mr. MURPHY of New York addressed the Committee. His remarks will appear hereafter in the Extensions of Remarks.]

Mr. MCCOLLISTER. Mr. Chairman, I yield myself 10 minutes.

(Mr. MCCOLLISTER asked and was given permission to revise and extend his remarks.)

Mr. MURPHY of New York. Mr. Chairman, will the gentleman yield?

Mr. MCCOLLISTER. I yield to the gentleman from New York.

Mr. MURPHY of New York. Mr. Chairman, I would like to place special emphasis upon the remarks of the gentleman from Nebraska (Mr. MCCOLLISTER) in which he credits the gentleman from Texas (Mr. ECKHARDT) and the gentleman from North Carolina (Mr. BROYHILL) with extraordinary work in bringing together the necessary compromises that brought this legislation to the floor, work carried on during three successive Congresses with respect to this issue so vital to the American people.

Mr. Chairman, it is through their fine efforts that we have this bill here before us today, and I would like to pay particular tribute to these men for their productive work in this vital matter.

Mr. MCCOLLISTER. I thank the chairman for his contribution. We may well wish to give to these gentlemen the principal responsibility for this legislation.

Mr. Chairman, H.R. 14032, the Toxic Substances Control Act, is designed to give the Administrator of the Environmental Protection Agency broad, new authorities to regulate the chemical industry. That this legislation is before us today in its present form is a mark of the fine work done by the gentleman from Texas and the gentleman from North Carolina who were successful in working out many of the problems which have surrounded this bill. On two previous occasions, this body has passed similar legislation only to have the bills die in conference. I will admit that the bill leaves unaddressed some of the issues voiced by both sides to the controversy surrounding this bill, that is the environmentalists and the affected industries. Indeed, as I will discuss in a moment, I still have questions about several provisions. But, on a whole, I believe that the legislation presents a fairly well-balanced regulatory scheme which, if implemented in a reasonable fashion, will not prove to be unduly burdensome on those regulated. Therefore, I hope that we can pass this legislation and send it on to the White House in its present form.

In general, the bill would give EPA the authority to promulgate testing standards for chemical substances and mixtures, require a 90-day premarket notification period for all new chemical substances, and prescribe various regulations which the chemical industry would have to meet. I want to take a moment to discuss the premarket notification provision of the legislation, since this provision has been one of the most controver-

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sial sections of the bill. The bill would require manufacturers of all new chemical substances to notify EPA and provide certain specified information at least 90 days prior to manufacture or marketing. This approach of requiring premarket notification for all new substances represents, in my view, quite a departure from previous House-passed bills which would have limited premarket scrutiny to substances which EPA found posed a danger to health or the environment. I believe that the more limited approach found in earlier House bills would serve to better focus EPA's attention and limited resources on the potentially dangerous chemicals, and I regret that we have decided to reject this more limited approach which the House did adopt in both the 92d and 93d Congresses.

Section 5 is probably one of the most onerous provisions of the legislation with its requirement for premarket notification of all new chemical substances. However, this section does contain exemptions. For example, chemicals which are manufactured in small quantities for sale to laboratories for research purposes would not be subject to the premarket notification provisions of the bill. Further, research and analysis being performed during the developmental stages of chemicals which may ultimately be produced commercially would also be exempt from the premarket notification provisions of the bill. This exception for research and analysis related to product development would exist regardless of whether the manufacturer were evaluating the product within its own plant or had made the product available to a potential customer with or without the payment of a fee. Section 5 must not be interpreted in such a way as to stifle product development and innovation, and we expect that EPA will implement section 5 and the other provisions of the bill so that this result will not occur.

Section 6 of the bill gives EPA the authority to promulgate rules regulating the manufacture, processing, use and disposal of chemical substances and mixtures. At the outset, EPA is directed to issue the least burdensome requirement possible. For example, EPA could not ban a substance for a particular use if a labeling requirement would provide adequate protection. We have followed past practice in establishing a fairly formal rulemaking procedure, including opportunity for an oral hearing, a limited right to cross-examination, and judicial review based on the substantial evidence test. Further, EPA would be required to make certain findings before issuing a rule, including a finding as to the economic consequences of the rule taking into account the impact of the rule on small business.

The legislation does give the EPA authority to require that manufacturers maintain records and periodically submit reports. However, we also recognize that such recordkeeping can be unduly burdensome. Consequently, the legislation directs the agency to require the maintenance of reports that are nonduplicative of those required by other Federal Government agencies. Further, the legislation contains a partial exemption for small businesses from the recordkeeping requirement.

Even though, as a whole, I believe that H.R. 14032 is a well-honed piece of legislation, it does contain what I believe to be a very troublesome provision in section 21 dealing with citizens' petitions. This section would allow a private citizen to petition the EPA to promulgate a rule requiring testing or the regulation of a particular chemical substance. Should EPA deny the petition or not act on the petition, the citizen could go to Federal court and, if he could show in a de novo proceeding that the substance could possibly pose a risk, then the court would direct the agency to initiate the rulemaking proceeding as requested by the petitioner. A provision such as this was first inserted in the Consumer Product Safety Act and became effective in late October of 1975, with respect to the Consumer Product Safety Commission. This provision was inserted in the Product Safety Act as an experiment, and I believe that it is too soon to determine what effect, if any, the citizens' petition provision will have, not only on the workload of the agencies, but also on the caseload of the Federal courts. I believe that we should resist the temptation to insert this provision in other legislation until we have more closely examined the experience of the Consumer Product Safety Commission over a particular period of time.

Further, I think it is inappropriate to insert this provision piecemeal into different bills. It may be that a citizens' petition provision is indeed a desirable concept and, if so, it should be made applicable to all regulatory agencies. If not, the concept should be dropped once and for all. To insert it in various bills in such a crazy-quilt fashion makes little sense, and I regret that the provision has found its way into the bill before us today.

Finally, I want to say a few words about the impact which this bill could have on small businesses. Certainly all Federal legislation falls more harshly on small businesses than on large companies who, as a rule, are better able to hire the legion of attorneys and accountants needed to cope with the myriad rules and regulations that some agencies hand down. However, we have, in this bill, made a genuine effort to deal with some of the unique problems that small businesses face. Further, we expect that EPA in implementing this bill, will pay special attention to the particular needs of small businesses. For example, in section 27 of the bill, we give EPA the authority to collect filing fees of up to $2,500 to defray the cost of administering the act. However, these fees are to be based on ability to pay and we expect that EPA would impost lower fees, if any at all, on small companies.

Finally, we expect that EPA will establish close contact with the Small Business Administration so that EPA can more adequately inform itself as to the particular problems faced by the small business community. Frankly, I have found that the small business community has little confidence in EPA's ability to issue sensible rules and regulations. This lack of confidence is based on EPA's past track record. If EPA will counsel with the Small Business Administration, to determine what effect its regulations will have on small companies, then this act need not have the harsh consequences that some are presently predicting. I, for one, will be closely watching EPA's performance in this regard.

Mr. Chairman, I think it probably should be said also that on both sides in the committee there was an effort made to hold to the language of the bill. I know that the conversations between the gentleman from North Carolina (Mr. BROYHILL) and the gentleman from Texas (Mr. ECKHARDT) will indeed be tested here and there, and some of the amendments offered may well seem to be very attractive. But I think we are obligated—we who have worked out the compromise—to hold to the language of the bill. I should have much preferred that the bill which I introduced originally would be the vehicle before us today. I regret that it is not. In any case, H.R. 14032 is the product of that labor before the Committee of the Whole today, and I hope that it passes in its present form.

The CHAIRMAN. The time of the gentleman has expired.

Mr. McCOLLISTER. Mr. Chairman, I yield myself 3 additional minutes.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. McCOLLISTER. I yield to the gentleman from Texas.

Mr. ECKHARDT. I thank the gentleman for yielding.

I think that the distinguished gentleman in the well has underestimated his influence with respect to this bill in his very generous statement concerning myself and the gentleman from North Carolina (Mr. BROYHILL). Actually he has, I think, devised many of the provisions that afford protection to small business. Perhaps we have not adopted enough to totally suit him. I suspect that that is true. Because he has been such a stalwart defender of the interests of independent small businesses on our committee, it might be difficult for us ever totally to suit him on that matter. But I think great credit must be given to the gentleman in this regard.

There is one thing that I would like to bring out in this colloquy. The gentleman from Nebraska had referred to the premarket notification section of the bill and indeed that is perhaps the most controversial portion. He did mention certain exemptions and perhaps one other thing needs pointing out. This is on page 163 with respect to the administrative authority in identifying a chemical substance. It states:

(2) To the extent consistent with the purposes of this Act, the Administrator may, in lieu of listing, pursuant to paragraph (1), a chemical substance individually, list a category of chemical substances in which such substance is included.

I may say to the gentleman, I think this is an extremely important leeway to the Administrator. Say for instance a chemical substance is manufactured and

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produced inhouse in an oil and chemical refinery. That chemical substance may be a catalyst that undergoes successive changes. Under these provisions we felt that instead of requiring a 90-day notice every time a change was made that had the result of changing the chemical constituency of the substance, the single category could be mentioned and changes could be made within that category.

I think that the gentleman will agree with me this is one of the provisions in which we carefully examined difficulties which could result from too rigid an act and met those possible objections.

Mr. McCOLLISTER. I do agree and I am grateful for the gentleman's comment.

Mr. MURPHY of New York. Mr. Chairman, I yield such time as he may consume to the gentleman from New Jersey (Mr. MAGUIRE).

(Mr. MAGUIRE asked and was given permission to revise and extend his remarks.)

Mr. MAGUIRE. Mr. Chairman, I thank the chairman of the subcommittee, and I compliment the committee on introducing this landmark piece of legislation.

Mr. Chairman, I rise in support of this landmark legislation. Everyone will agree that in considering legislation to protect the environment Congress must achieve a sensible balance between the needs of the economy and the need to protect the public health and welfare. No one will advocate shutting down the economy in order to protect the environment. And no one will advocate destroying the environment in order to protect the economy. Too often, however, the demust be met. The fact is that society can only satisfy one need or the other need, but not both. I strongly disagree. I believe that both needs can, should, and must be met. The fact is that society cannot live long without either. This is not to imply that satisfying both needs is an easy task. It requires difficult decisions. It also requires a strong desire to work for and to achieve moderate resolutions of competing interests.

Faced with this task of resolving the conflicting needs of the economy and the environment I undertook to bring a measure of balance to the Toxic Substances Control Act. The concerns expressed by the chemical companies in New Jersey as well as those of the citizens and workers of my State, who daily face living in environment which continues to deteriorate, had to be weighed and reconciled.

My efforts in the full Commerce Committee markup of this bill were aimed at developing new approaches which sought to alleviate the costs of compliance to chemical manufacturers and processors, especially those small and medium size companies to whom the additional costs of regulation might prove prohibitive without some kind of relief.

I sponsored three amendments to the bill in committee which were designed to approach this needed balance. All were approved. My first amednment, which redefines "mixtures" to include a broader range of formulations than did H.R. 10318, was incorporated in the drafting of the compromise bill, H.R. 14032, which we are now considering. By refining the mixture definition, to include certain kinds of reactive mixtures, it now more accurately differentiates between those mixtures to which the premarket notification requirements of section 5 would apply and those mixtures for which premarket notification would not be necessary. This has the effect of eliminating what would have been unnecessary regulation for a special class of mixture products which are generally produced by smaller chemical companies.

Two other amendments which I developed were unanimously approved in committee action.

The first requires the Environmental Protection Agency—EPA—to establish an identifiable office to provide technical, referral and other nonfinancial assistance to chemical manufacturers and processors. In the accompanying report language it is clearly stated that this office shall concentrate its efforts on reaching out to the small and medium size chemical companies who will benefit in a great way from such an office. Details as to the status of standing regulations, outstanding public comment periods, legal assistance made available for certain provisions of the bill, shared-cost testing arrangements, and so forth, will all be available to companies through this office. Another important function of the office would be to refer companies to the proper authorities in the regular Office of Toxic Substances who can handle specific problems. This concept of an identifiable office to assist small businesses may lead the way toward changes in other regulatory agencies where small businesses seem to be given less than adequate attention when regulations are proposed and implemented.

My final amendment addressed the question of which tests, from among available test methods, might be ordered by the Administrator under section 4 authority. Recent developments in the field of toxicological testing have centered on the emergence of low-cost, short-term bacteriological and mammaliancell tests for mutagenicity. These tests show great potential for cutting down on the cost to all companies of testing their products to show what degree of hazard, if any, may be posed by their products. These test methods are in need of further refinements and the National Cancer Institute is conducting a research program into this area. My amendment authorizes the Secretary of Health, Education, and Welfare, in consultation with the EPA Administrator and acting through the Assistant Secretary for Health, to conduct and make grants and contracts for continued research into the field of low-cost and efficient test methodologies.

Since the committee considered this bill the HEW appropriation for fiscal year 1977 has been announced and it directs that $3 million be included in the budget for the National Institute for Environmental Health Sciences to expand its programs for short-term testing research and the carcinogenesis bioassay program being conducted in collaboration with the National Cancer Institute. It appears from correspondence which I have conducted with the Assistant Secretary for Health that added funds will not be needed at this time. Even so, the Assistant Secretary, in his response to my inquiry on current testing programs, assured me that my amendment, in the context of this new regulatory bill, stands as an important statement of national policy that such test methods shall be considered, wherever feasible, for use in place of whole animal tests. The presence of grant and contract authority may yet prove significant for the purposes of this legislation. I am presenting the text of this letter for inclusion in the RECORD:

DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE,
Washington, D.C., August 19, 1976.

Hon. ANDREW MAGUIRE,
House of Representatives,
Washington, D.C.

DEAR MR. MAGUIRE: Thank you for your letter of July 27 concerning the current status of research in the development and validation of short-term toxicity tests in the Department of Health, Education, and Welfare laboratories. We share your view that establishing the reliability of rapid bioassay tests is very likely to have far-reaching impact on future regulatory decisions.

In addition to a wide variety of ongoing research activities in this area, the Department is presently developing a document on methods for determining mutagenic properties of chemicals which addresses the current utility of short-term tests for the identification of mutagens in the environment. This activity is under the direction of the Department's Committee to Coordinate Toxicology and Related Programs, chaired by the Director of the National Institute of Environmental Health Sciences (NIEHS).

As indicated by your letter, within the Department the NIEHS and the National Cancer Institute (NCI) are conducting and supporting most of the research and development in this area. These Institutes, beginning in the mid-to-late 1960's, pioneered in the development of short-term tests as a means of rapidly identifying chemicals having potential to cause either cancer or genetic defects. Since 1974 there has been considerable expansion of both Institutes' programs in this area utilizing grants, contracts, and, of course, intramural research to develop and evaluate inexpensive and efficient methods for assessing the health and environmental effects of chemicals.

As you may know, the Committee on Appropriations for the Department of Labor and the Department of Health, Education, and Welfare in its Report on the FY 1977 Appropriation directed that an additional $3 million be included in the budget for NIEHS to expand short-term testing and for collaborative activities with NCI concerning the carcinogenesis bioassay program. As pointed out in that report, a very close working relationship exists between these two Institutes for developing short term tests and establishing their acceptability as prescreens and possible alternatives to studies requiring years to conduct.

There are ongoing, continuous program activities at both NCI and NIEHS which seek to establish a matrix of procedures which can serve as an effective perscreen, and to establish priorities for further in-depth testing.

In our view the Public Health Service Act currently contains ample authority for our current and projected activities in this area. We would have no objection to additional language being included in the Toxic Substances Act as a statement of National policy.

In any event we agree with you that this

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is a vitally important area to the future health of the American people and we will continue to stress our efforts in this area.

Sincerely yours,

THEODORE COOPER, M.D.,
Assistant Secretary for Health.

With the Toxic Substances Control Act now being considered by the full House I will be proposing a further amendment to give the Administrator of EPA the authority to make grants to selected States, with severe problems related to toxic chemicals, like New Jersey, to cover up to 75 percent of the costs of establishing and operating programs to prevent or eliminate unreasonable risks in the States to health or the environment associated with chemical substances or mixtures. The grant money is earmarked for use in ways which will complement the activities already underway or being planned by EPA for the implementation of this act and for activities which the Administrator is unable to undertake because of inadequate resources or other higher priorities. It is not intended to, and will not replace, EPA's authority to require reporting, testing or any other of the authorities given in this act.

The need for strong provisions to begin reversing the deterioration of public health caused by toxic substances which is so evident in my own State of New Jersey is clear. The same is true of other States—New York, Pennsylvania, Ohio, and Texas, for example.

There can be no doubt that the chemical industry has brought great benefits to the people of this country through continuing advances in the manufacturing, agricultural, and service sectors of the economy. But we have paid a high price for that progress. For far too long the chemical industry has proceeded to conduct business without giving adequate attention to the health and environmental dangers of the substances which they produce. At last we have before us legislation which will take significant steps toward insuring that the industry assumes full responsibility in protecting the public from those chemical products which are hazardous.

As a representative from the State of New Jersey I am all too familiar with the serious health problems in my State and the relationship of these problems to the heavy concentration of industrial activity there. New Jersey is host to nearly one-fourth of the chemical companies in this country. Evidence mounts that some of this chemical manufacturing and processing activity may pose a genuine threat to the public health. The major study on cancer mortality by counties, conducted by the National Cancer Institute, found a high correlation between cancer deaths and densely concentrated industry. New Jersey's 21 counties were found to be in the top 10 percent of all counties in the Nation for the rate of cancer deaths. In Salem County, N.J., where 25 percent of the male population works in the chemical industry, the Nation's highest rate of bladder cancer deaths was recorded. This alarming rate of bladder cancer mortality, an occupational disease associated with exposure to various chemical substances, emphasizes the suspected relationship of chemicals in the workplace and the environment and the excessive cancer incidence and mortality in our State.

On May 28 of this year I chaired an official hearing in Newark, N.J., of the Commerce Committee's Oversight and Investigations Subcommittee. The subject of the hearing was "Cancer in the Environment" and the testimony of experts pointed to the fact that indeed the chemical pollution in New Jersey is extensive and that EPA does not yet know what chemical, toxic pollutents are present in our State. As a result of that hearing EPA granted a request from the commissioner of the New Jersey Department of Environmental Protection to conduct air monitoring, especially for nitrosamines known to be carcinogenic to humans. Not only were nitrosamines found in the atmosphere in our State but they were also present in significant concentrations in our soil and water along with significant amounts of other organic chemicals. Monitoring to establish the quantities of chemical substances must be continued and expanded; especially multimedia monitoring which would give a comprehensive evaluation of the passage of chemical substances from one medium to another. It is to problems such as exist in New Jersey, and for State programs such as this, which would augment EPA efforts, that the funds from another amendment I will be offering would apply. I will discuss the particulars of that amendment when I offer it later today.

In conclusion, let me stress that New Jersey is actively working to evaluate the extent of these serious threats to the public health. Gov. Brendan Byrne has established a cabinet committee on cancer in an effort to coordinate New Jersey's programs at the highest level of government. The department of environmental protection in our State, an agency whose programs have earned the respect of EPA, is presently drawing up plans to expand its programs for measuring the extent of exposure to and the presence of carcinogens, and other environmental contaminants, in the environment.

Specifically the department would like to undertake an inventory of toxic chemicals in use in the State which would record their amounts, forms, and sources of emission, and their ultimate pathways through the environment. Having identified types of substances and pinpointed the serious risks, monitoring programs would be refined to go beyond measuring the overall pollution of various media and take in more detailed information on organic and inorganic materials, concentrations of which may not be evident from general sampling techniques. Additionally much remains to be learned about the safe handling and disposal of toxic wastes and the department of environmental protection is presently drawing up plans to study and develop safer methods of disposal.

I enclose for the RECORD, a recent article "The War on Cancer", by Glenn Paulson and Peter W. Preuss of the New Jersey State Department of Environmental Protection.

[From the New York Times, Aug. 15, 1976]

WAR ON CANCER: THE DEADLY FIGHT

(By Glenn Paulson and Peter W. Preuss)

The Cancer Atlas, published in 1975 by the National Cancer Institute, showed that for a large number of different cancers the State of New Jersey as a whole and many counties within the state ranked significantly above the national average over the 20-year period from 1950 to 1970.

Cancer rates vary significantly between regions in the United States. In general, states with high rates are the industrial states, such as New Jersey.

We cannot precisely estimate, for New Jersey or for the nation, the extent to which observed cancer rates and changes in those rates are caused by chemicals. Some cancer undoubtedly arises from natural sources, such as cosmic or solar radiation; our best judgment is that this is a small fraction.

However, there are many examples of cancer directly traceable to industrial or other human activities that involve chemical or other cancer-producing agents.

Liver cancer caused by vinyl chloride, mesothelioma caused by asbestos fibers, lung cancer caused by arsenic compounds, uranium dust, and other agents, a particularly debilitating lung cancer caused by beryllium, and bladder cancer caused by dye and chemical intermediates such as beta-naphthylamine are a few of the well-understood examples. Unfortunately, even the primitive knowledge available at this time leads us to conclude that more such examples will be found in future years.

Exposure to carcinogenic materials is not confined to the industrial work place. In a preliminary assessment of drinking water carried out by the United States Environmental Protection Agency, known and suspected carcinogens (cancer-causing agents) were found in the two New Jersey sources of drinking water that were tested, the Passaic Valley Water Commission and Toms River Water Company. The significance of the levels that were found is not clear, however. This was a preliminary assessment; E.P.A. made no attempt to measure other families of known or suspected carcinogenic agents.

The Department of Environmental Protection should devote more effort to determining and defining the dangers New Jersey residents face as a result of exposure to carcinogens and other environmental contaminants. One important step would be to begin to inventory the presence and patterns of use of toxic chemicals in the environment. Another need is to expand efforts in measuring the concentrations of carcinogenic and other exotic pollutants that may be present in the air, drinking water supplies, fish and other wildlife, surface and ground waters, and sediments.

At present, the department has permit systems that collect data on the emissions of certain relatively common pollutants into the air and water. These existing systems should be expanded to provide information on the emissions of all potentially carcinogenic and other toxic substances. The Solid Waste Administration is developing an equivalent system that would allow it to collect information at a level of detail similar to that obtainable through the air and water permit systems; this system will allow collection of data regarding emissions, treatment and disposal of solid and liquid toxic wastes.

A department-wide inventory would provide information about the toxic chemicals currently in use in New Jersey, their amounts, and their emissions, as well as their ultimate pathways into the environment. This information will allow priorities to be established for monitoring and regulation. It will also help establish the criteria upon which regulations may be based, including,

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for example, toxicity, persistence in the environment, and amounts used in the state.

To avoid creating more problems in the future, a program should be established for the environmentally safe treatment and disposal of solid wastes. Such a program would logically be a part of the overall solid waste management program being developed by the Solid Waste Administration. One of the first steps is to determine what kind of wastes are produced, how they are transported, and where they are treated and disposed.

There are a number of toxic substances for which sufficient information is available now, so that a determination may be made as to the unsuitability of their disposal on land. In order for these wastes to be disposed of properly, however, alternative treatment or disposal methods must be made available. This will require the development of criteria to define environmentally sound disposal procedures.

The first priority in this area is the development of performance criteria for incinerators that are or may be used to dispose of toxic and hazardous organic materials. These criteria must insure that the materials are burned completely, and that no toxic substances enter the air through the stack or into the water via water used for cleaning ("scrubbing") the exhaust gases.

The presence of one or more such facilities in New Jersey would provide a necessary alternative to help insure that environmentally dangerous chemicals may be safely treated.

Another problem is the disposal of sludge produced in sewage-treatment facilities. Sludge often contains toxic substances from the effluents of industrial facilities that feed into the sewage plant; sludge is presently disposed of in the ocean. The Federal policy for disposal of such sludges calls for the phasing out of ocean dumping by 1981; as a result, alternative methods will have to be found.

It will be necessary to monitor carefully the development of alternative programs, as well as the facilities themselves to insure that toxic substances present in sludge are not inadvertently released into the environment.

The Department of Environmental Protection, by building on its existing legal authorities and regulatory programs, can take sound steps toward minimizing the threat that cancer-causing agents and other toxic and hazardous pollutants pose to human health in New Jersey.

Mr. MURPHY of New York. Mr. Chairman, I yield 3 minutes to the gentleman from New York (Mr. OTTINGER).

(Mr. OTTINGER asked and was given permission to revise and extend his remarks.)

Mr. OTTINGER. Mr. Chairman, I would like to congratulate the subcommittee chairman and the gentleman from Nebraska for bringing this vitally important legislation before us, this legislation which is vitally important to the health of the Nation, and particularly to complement, as they did, the gentleman from Texas (Mr. ECKHARDT) and the gentleman from North Carolina (Mr. BROYHILL) for the adept manner in which they were able to work out with the chemical industry the very complicated, complex, economically significant, and controversial items in this bill. I think they did a superlative job and got a meaningful bill through the committee which obtained the support of the chemical industry. I think that is an attribute to both their efforts and the chemical industry.

The February 13, 1976 issue of Science Magazine had an article titled "Control of Toxic Substances: an idea whose time has nearly come." I dearly hope the time is now, for this legislation has been stalled for too long as the cancer rates of the country continue to soar. When medical authorities seem to agree that between 60 and 90 percent of all cancers have an environmental cause, surely the place to test new chemicals for their potential hazard is not after they have reached the environment, but in the laboratory.

The Toxic Substances bill, H.R. 14032, is not a perfect panacea for the frightening statistics mentioned above but it is a most important beginning and I commend my colleagues on the Interstate and Foreign Commerce Committee who have worked so hard to bring this legislation forward.

The issues dealt with in the legislation are of overwhelming importance; we are sadly more and more aware of the significance as we read of horrendous instances of either chemical pollution or of "mysterious fatal diseases"—all of which might have been prevented if legislation such as this had been in operation sooner. I want also to congratulate both the environmental and consumer groups who have worked together in support of the bill before us.

While I very strongly support the bill, I believe it needs to be improved with respect to the use of nonanimal tests where they are adequate and accurate.

TOXIC SUBSTANCES BILL

At the appropriate time, I will offer an amendment to H.R. 14032, the Toxic Substances Control Act, to prevent the unnecessary use of animals in laboratory experiments.

My amendment to section 4(2)(A) states that "* * * in prescribing tests the Administrator in his discretion shall give preference to available tests which do not involve the use of animals if such tests provide an adequate and accurate means for ascertaining the effect of a chemical substance or mixture on humans and the environment."

This amendment does not ban the use of animal tests, nor does it make it more difficult for the Administrator to prescribe animal tests if he feels they are necessary. Quite simply, it is meant to require the Administrator to consider alternative testing methods and direct him to use them when, in his discretion, he finds they are adequate and accurate.

Two nonanimal tests presently exist, and have been used to test the toxic effects of known and unknown carcinogens. One such test uses bacteria; the other laboratory-grown mammal cells. Both are cheaper, easier, faster, and as effective as their whole animal counterparts. I think we should promote their use where feasible and thus minimize the pain and suffering administered to laboratory animals.

I strongly support adoption of the bill and hope this improving amendment will be adopted.

Mr. McCOLLISTER. Mr. Chairman, I yield 10 minutes to the gentleman from Texas (Mr. COLLINS).

(Mr. COLLINS of Texas asked and was given permission to revise and extend his remarks.)

Mr. COLLINS of Texas. Mr. Chairman, we have heard much discussion about the compromises that were reached between the two sides. I could not help but think as I kept sitting there and listening, I wish we would compromise all the facts so we did not have any bill at all. The people that advocated these compromises represented big companies, because big industries can send a lawyer down here. They can send technicians down here to express the views of big industry; but what we are faced with is the fact that the little businessman, who runs a small business with 40 or 50 people in it, does not have 10 people in his legal section. He does not have specialized chemists that can fight this thing. So what happens when we pass a bill of this type is that there is no way a small businessman can live under it. The bureaucracy, the paperwork, the complications, make it overbearing on the manager of small business. The least, I think, that anyone could process for approval would be about $50,000. That will be the least cost and he cannot put up that much or maybe $100,000. He cannot afford that sort of thing. So it is going to be the end of the line for all but the giants.

Mr. Chairman, I would like to further discuss some of the other features of this bill. One group that is probably going to be hurt the most of all is agriculture. We have in this country the greatest agricultural system that has ever been developed. I come from a city. I do not have over 20 farmers in my district, but the thing that always impressed me was that the American farmers make up only about 4 percent of our population; yet we produce more food than anybody. We really do produce. Over in China, I think it is 80 percent of the people work on farms. In order to produce, they need chemicals and they need these materials to help them.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. COLLINS of Texas. I am happy to yield.

Mr. ECKHARDT. Mr. Chairman, is the gentleman under the impression that this bill would do anything at all with respect to pesticides?

Mr. COLLINS of Texas. I just think in general that anything could be involved through lawsuits. I understand pesticides are out; but we could say anything is a chemical. How do we define "a chemical"? I thought any combination of elements became a chemical.

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield further, that is right; but there are exceptions in the bill. The principle thing this bill purports to do is require that those chemicals put on the market be reported and tested; but we have absolutely nothing in the bill that prevents them from flowing to the marketplace after a maximum of 180 days, unless court action has been taken and that court action has to be based on a determination that they pose a danger.

Now, how is the farmer affected by this bill? I cannot see it.

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Mr. COLLINS of Texas. Well, it has been my experience with the courts that as they reach out on their interpretation of any and every subject, that they can go a long way to determine what is terminology. When they determine something to be a pesticide or not is whatever the court determines it to be.

I can give an example, not on this bill, but on busing. There is nothing on the books that says Congress has permitted busing, but courts over the country are defining busing to meet their views. When we raise the question that there is nothing here that says pesticides, I would remind my friend, the gentleman from Texas, that the lawyers, the judges on the benches, will read into this anything they want to.

When we set up the mechanism for EPA to develop it, then we have set up the toxic subject for full bureaucratic intervention.

We have so many bureaucratic rules now that EPA can get into anything they choose. What disturbed me especially in this bill was the fact that we have two sections in here that are going to make it possible for any employee who sees that he is about to be fired to take some action that should give him permanent employment. I am referring to sections 23 and 24. It not only protects him, but it seems that it would almost encourage lawyers to represent him.

Section 23 says:

No employer may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act;

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

What that will do, for instance, is to have this complaint go to the Secretary of Labor. Anybody who is a deadhead on the job, lazy, comes in drunk, tears up the whole place, can now file some kind of complaint on the grounds that something is wrong with the company's products, and from then on he has got built-in job protection. To carry that a step further, when they get through the company has to reinstate the complainant to his former condition as far as compensation goes, and also may include compensatory damages and exemplary damages.

I want to go to section 24, because we seem to be encouraging labor unrest in this bill. In section 24, they say:

The Administrator shall evaluate on a continuing basis the potential effects on employment (including reductions in employment or loss of employment from threatened plant closures) of—

(1) the issuance of a rule or order under section 4, 5, or 6, or

(2) a reqirement of section 5.

(b) (1) INVESTIGATIONS.—Any employee (or any representative of an employee) may request the Administrator to make an investigation of—

(A) a discharge or layoff or threatened discharge or layoff of the employee, or

(B) adverse or threatened adverse effects on the employee's employment,

allegedly resulting from a rule or order under section 4, 5, or 6 or a requirement of section 5. Any such request shall be made in writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request.

We have a provision in this bill and in the terminology, of the report as written up to provide for any interested civic group to enter into this intervention action. The lawyer of this civic group is paid by the court on a full fee scale above his regular salary level. It seems to encourage these foundations and civic groups to have their salaried people enter into legal proceedings, because they are going to draw even more in compensation.

If I ever saw a mumbo-jumbo bill encouraging an employee to do a bad job for a company, this is it. It encourages lawyers, if they are not fully occupied, to stir up one of these lawsuits under this bill.

We have passed more laws in this session of Congress than in any session of the Congress. Yet, when we go home to talk to the folks back home, they will tell us that this is a poor Congress. The reason is that we are passing more bills than the public needs, more than it wants, and certainly more than it can afford. The only ones I can see who are going to benefit from this particular piece of legislation are lawyers.

At this time I would like to include the minority views that were filed with this bill where I was joined by my colleague, the gentleman from Ohio (Mr. DEVINE).

Mr. Chairman, the bill, H.R. 14032, which was reported by the Committee on Interstate and Foreign Commerce on June 9, would give the Administrator of the Environmental Protection Agency broad new powers over this country's chemical industry. In its barest form, the bill authorizes the EPA to require that manufacturers perform tests prescribed by the Agency, and give the Agency advance notification of its intent to market new chemicals or existing chemicals for new uses. Further, EPA is authorized to issue rules regulating the manufacturing processing, use or disposal of a chemical as well as require that the company maintain records and submit reports as required by the EPA.

The House has passed toxic substances legislation in both the 92d and 93d Congresses, but this bill goes far beyond anything we have ever voted on. We are especially disappointed that the committee abandoned the approach adopted in the 93d Congress with respect to premarket notification and screening—section 5. In earlier bills, the Administrator of EPA was authorized to compile a list of those chemicals which he finds pose a danger to health or the environment and the manufacturer of a listed chemical must then provide EPA with notice prior to marketing. In this manner the Administrator's attention would be focused on those potentially dangerous chemicals. The bill reported by the committee, on the other hand, would require that manufacturers of all new chemicals and new uses of existing chemicals notify and supply EPA with specified information 90 days prior to manufacture or marketing. EPA could extend that period another 90 days. This approach is objectionable because EPA will have to draw upon already limited staff and resources to give each reported substance or use thorough scrutiny within the time allotted. Further, we fear that EPA will be able to hold up the manufacturing of a chemical for up to 6 months for no better reason than administrative backlog.

We fear that this legislation will prove ruinous for the small companies which make up much of this country's chemical industry. Industry estimates put the cost of this legislation at between $358 million and $1.3 billion annually. Even the General Accounting Office estimated an annual cost of as much as $200 million. Further, it can cost as much as $800,000 to test a single chemical. Although we hope that EPA would not be so unreasonable as to routinely require testing of this magnitude, the costs of testing could be considerable, and the costs of testing will fall heaviest on smaller companies.

Further, in the more than 100 pages making up this legislation, there is set out an incredibly complicated regulatory maze which is guaranteed to completely baffle any layman attempting to pick his way through it. And the bill will be augmented by more rules and regulations issued by the EPA. As we add these increased layers of bureaucracy, it will become more and more difficult to develop and process new chemical compounds. This will not present a great problem to the large chemical companies with their vast legal staffs. But for the small company, the time and expense of fighting the bureaucratic machine, as well as the significant costs of testing, may serve to discourage him from undertaking the project at all. This is especially true when he is not able to predict the market a particular chemical may have.

We fear that the end result of this bill will be a long-range and insidious effect on inventiveness and innovation in the American chemical industry. Faced with extensive testing, the burden of premarket screening, and the rigors of regulation under this bill, development and innovation in the chemical industry will inevitably be curtailed.

Although the above observations are of a general nature, we are specifically concerned about sections 20, 21, 23, and 24, and recommend that they be deleted from the legislation. We do not believe that these provisions do anything to improve the legislation but, in fact, could be used to harass companies regulated by EPA.

Section 20 provides that any person may bring a civil action against a company regulated under this act or against the EPA in order to enforce the act. Further, the bill specifies that complete costs of the suit, plus attorneys' and expert witnesses' fees, will be paid. If any

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individual has any idea about suing, he will find an eager lawyer who will bring this case to the already overcrowded judicial docket.

Section 21 provides that any person may petition EPA to issue a rule requiring testing or regulating of a substance. If EPA denies the petition and if the petitioner can show, by a preponderance of the evidence in a de novo proceeding in U.S. district court, that the substance may cause or contribute to an unreasonable risk, the court must order EPA to begin the requested proceeding. The citizen petition provision, with its requirement for a trial de novo, will force the Federal courts to hear complex, scientific testimony and make technical decisions more appropriately left to an expert regulatory agency. In essence, the court will be called upon to second-guess the judgment of the EPA in areas in which it has no expertise. Requiring that courts consider and decide technical and scientific factual questions rather than questions of law, not only places an undue burden on the Federal courts but also destroys the purpose for creating EPA as an expert agency. Further, this provision substantially diminishes the agency's ability to determine its priorities and channel its resources.

Section 23 is entitled "Employee Protection" and would prohibit an employer from disciplining an employee because that employee may have or is about to issue a complaint with the EPA. Of course, this means that any time there is an incompetent employee who has been put on notice that he is doing a poor job, one can anticipate that he will commence a proceeding against the company. He will, thereby, have the Secretary of Labor and the Administrator of the EPA protecting him until the case is disposed of—possibly years in the future.

This section, along with section 24, which authorizes EPA to conduct investigations, issue subpenas and hold hearings to determine the effects on employment from threatened plant closing which might be brought about by this act, provide so much potential for harassment that we strenuously object to their inclusion in any final legislation.

Finally, we note that section 14(e) of the bill provides that information reported or obtained by the Administrator under this bill shall be made available upon written request of any duly authorized committee of Congress. We firmly believe that such a provision is needed in that both courts and Attorneys General of the United States have traditionally taken the position that disclosure to Congress of "trade secret" information which was statutorily obtained by agencies of the U.S. Government would be a breach of confidentiality. A clear example of this position is enunciated in the case of *Hearst* v. *Black*, 87 F. 2d 68 (D.C. 1936). In this case, the Federal Communications Commission was enjoined from turning over to a Senate committee certain material which the agency was statutorily required to treat as confidential. In the Hearst case there was no provision similar to section 14(e); if there had been Hearst would have had no case. Our position then is that Congress does have the power to acquire information of this sort, but not without the benefit of legislation that specifies that Congress can acquire it. The question of inherent authority is a matter for the courts to determine.

This provision in the bill raises an equally important question which the committee chose not to address. That question is: What is Congress obligation to keep "trade secret" material confidential? This bill recognizes that there is certain information that should be kept confidential by the executive branch, but then Congress grants itself access to this information with no restrictions on disclosure. We believe that if Congress grants itself access to this type of material then Congress should establish the internal mechanism that would insure that "trade secrets" be kept confidential. Bear in mind that Congress is continually requiring the business community to turn over highly valuable and sometimes sensitive material to Federal agencies, and the business community is complying. They are complying because they understand that their trade secret and proprietary data will not be disclosed. If it becomes painfully apparent to the business community that these valuable materials will not be safeguarded, we believe that this climate of cooperation will seriously deteriorate.

Mr. Chairman, I recommend that we vote against this bill.

Mr. MURPHY of New York. Mr. Chairman, I yield such time as he may consume to the chairman of the full committee, the gentleman from West Virginia (Mr. STAGGERS).

(Mr. STAGGERS asked and was given permission to revise and extend his remarks.)

Mr. STAGGERS. Mr. Chairman, I thank the chairman for yielding to me.

Mr. Chairman, members of the Committee, this bill has been considered in the 92d, 93d, and now the 94th Congress. The House has passed it twice, and so has the Senate. We have never been able to come to agreement in conference.

I would be remiss if I did not say that this is not a perfect bill. I do not know of a perfect bill that has passed this House. There are some flaws in it, but we will try to work them out in conference. This bill should be passed.

This bill principally is intended to have new chemicals coming on the market regularly tested to see that they are not going to harm people or the environment.

Mr. Chairman, as I said, it is not a perfect bill. We all know that. There are some imperfections, and there may be some amendments made to it. I am sure that if we find some things that are wrong with it, we can try to correct them. But this is legislation which has been needed for a great many years.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Nebraska (Mr. McCOLLISTER).

Mr. McCOLLISTER. I thank the gentleman for yielding.

Mr. Chairman, I want to say that we are at the point where we are because a great many difficult issues have been compromised and agreed upon, and I would hope we would not go further in our conference with the Senate than we have gone here; that we have a very delicate balance now, and I am just cautioning the Members that that balance can be destroyed rather readily.

Mr. STAGGERS. Mr. Chairman, I can agree with the gentleman. The gentleman remembers that is one of the reasons the first bill did not pass. The Senate insisted upon theirs, and we said, "We have to be reasonable to the business people of America," and we did not compromise on what we thought was right for business in the land.

Mr. Chairman, I want to compliment the gentleman from Nebraska on his part through the years in working on this legislation and for his interest. He has done a great job, as well as the chairman, the ranking member on the other side, and the gentleman from Texas (Mr. ECKHARDT). They have all been very interested in these 4 or 5 years that we have been working on this bill and they have done an excellent job.

Mr. HICKS. Mr. Chairman, will the gentleman yield?

Mr. STAGGERS. I yield to the gentleman from Washington (Mr. HICKS).

(Mr. HICKS asked and was given permission to revise and extend his remarks.)

Mr. HICKS. Mr. Chairman, the action the Congress takes in considering the Toxic Substances Control Act is a test of our concern for the American people. It is also a test of our consistency. My special concern with this legislation stems from hearings that the Manpower and Housing subcommittee of the Government Operations Committee held on controlling toxic substances in the workplace. We all know that controlling hazardous materials is important in the marketplace and on the farm, but those who must handle potentially dangerous chemicals every day they earn their bread are at even greater hazard. They can neither select the chemicals to which they will be exposed, nor avoid such exposure except at the cost of their job.

The vote on this legislation will show where we strike the balance between imposing more requirements on those who produce and market chemicals—a fact we must recognize—and providing protection to many who cannot by any means provide it for themselves. I think this balance has to be struck by placing more responsibility on those who mnaufacture and formulate chemicals. A recent study by the National Institute for Occupational Safety and Health disclosed that almost half the exposures to identified cancer-causing chemicals was attributable to the use of products that were identified only by trade-names. The composition of these was treated as a secret by their formulators. Our hearings showed that we are way behind in our ability to identify chemicals that can destroy the health of workers who are exposed to them daily. We are even fur-

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ther behind in developing standards for the labeling and control of those chemicals that we already know are hazardous. Presently, complete standards exist for fewer than 2 dozen chemicals. Even here, the fact of exposure to these chemicals was unknown in close to half the cases because the ingredients of the products used were not disclosed. Surely this is a situation that we can no longer tolerate.

I said that our vote will also be a test of our consistency. In 1970, we passed the Occupational Safety and Health Act. As we all know, the Act has been the subject of much controversy. That controversy, however, has centered on some of the standards and the way they are applied; it has not swirled around the requirement in the act that an employer tell his employees whenever they are exposed to a dangerous concentration of hazardous chemicals. Since the passage of this act, employers have had a legal requirement to inform employees about dangerously high levels of exposure. Such a requirement is certainly warranted in these days when thousands of new chemical products are flowing into the workplace every year. Yet, in our hearings this year, the Assistant Secretary of Labor for Occupational Safety and Health agreed that employers could not comply with the law because they did not know the composition of products that they use in their plants.

Look at the size of the problem—the NIOSH Registry of Toxic Chemicals lists over 19,000 unique chemical substances. The Council on Environmental Quality estimates that 700 new chemicals enter commercial production each year. Yet, the Occupational Safety and Health Administration has been able to issue standards at a rate of only three per year. Both the Assistant Secretary for Occupational Safety and Health and the Director for the Institute of Occupational Safety and Health testified at our hearings that without a toxic substances control act, federal regulatory machinery will never catch up. Unless we require testing of chemicals before they are marketed, how are we to know the toxic effects of new chemicals? Regulation after the fact not only uses our workers as experimental groups without their consent, but also fails to protect them even after damage to their co-workers establishes that a chemical is dangerous.

It can be contended that the burden should be put on the employer—that he should refuse to purchase products unless the manufacturer discloses their composition. This approach is used by some large companies today, with varying degrees of success. In our hearings, we looked at the practices of the Federal Government—the Nation's largest employer—to determine how successfully the Government itself was complying with the law that this Congress passed 6 years ago. For the past 5 of these years, there has been a Federal standard that required Government purchasers to obtain hazardous material data sheets that disclosed the hazardous substances in any product. Despite this, the large purchasing agencies of the Government have obtained these sheets only in a few scattered instances, and Government hygienists, safety professionals, and doctors in the field installations we visited often had never received any data sheets on the hundreds of chemicals that these installations use daily. If the Federal Government cannot tell its employees what they are exposed to, what chance does the owner of a small establishment have of demanding and receiving this information from suppliers who have been effectively denying it to the Federal Government in the fact of existing regulations?

Mr. Chairman, our hearings have shown that the 1970 law is not being obeyed. Employers are not telling employees when they are using hazardous substances, and it seems doubtful that they will be able to unless they are able to find out the contents of the products that they purchase for their businesses.

It would be vastly more effective and less expensive, to identify these substances from the initial manufacturing process onward. Detective work to identify the ingredients of individual formulated products come only after they are already in American marketplaces and factories. The initial producer knows, or can find out, what chemicals he is using. In the chain of marketing, the level at which a substance is first introduced is the most effective and cheapest place to identify it. At this level, it is nearly always know, or can readily be determined. Without the requirement of disclosure by those who develop chemicals or blend them into products, millions of American workers will continue to be exposed to substances that can cause disease and death.

For some of these substances, there may not be an acceptable substitute, but there are protective measures available to reduce or eliminate the hazards to health. These protective measures will not be taken unless the employer and the workers are aware that they are needed. In 1970, the Congress said that American workers should not have to pay for their jobs with their health. In this legislation, we have the opportunity to fulfill the promise of that legislation. The toll of occupationally caused diseases and deaths is our workplaces today makes using that opportunity an obligation.

Mr. STAGGERS. With what I have said, Mr. Chairman, I would conclude. I believe the time has come when we must do something to protect the health of the people of America with regard to the new chemicals which are coming on the market, and this is about the only way we can do it.

I would hope that the EPA, in the administration of the bill, will use discretion. I think the committee will look into EPA's activities and see that they administer the bill fairly while protecting the people of this country.

Mr. McCOLLISTER. Mr. Chairman, I yield 5 minutes to the gentleman from North Carolina (Mr. BROYHILL).

(Mr. BROYHILL asked and was given permission to revise and extend his remarks.)

Mr. BROYHILL. Mr. Chairman, I rise in support of this bill. As has been documented, there are chemicals which have been coming on the market, new chemicals, by the thousands. Studies have shown that many of these chemicals, in many cases, are harmful to the health of humans and the environment. Facts have been presented to the committee which indicate that streams have been polluted as a result of dangerous chemicals having been dumped in the streams. The health of human is directly affected by their coming in direct contact with these dangerous chemicals.

There is no legal authority to deal with testing of dangerous chemicals or those that may pose danger to the health or the environment. We do have laws which regulate disposal of chemicals, but we do not have any laws relating to the testing of chemicals, that is, to assess the safety of these chemicals before they are marketed or before exposure does occur.

So what this bill would do would be to require that the manufacturers who bring new chemicals onto the market, or find any new uses for old chemicals, test them to assure that they are safe for use. This testing would be done by uniform regulations of EPA and the test results would be submitted to the EPA in advance of marketing.

Mr. Chairman, as has been stated, a number of amendments and compromises have been agreed to in this bill. I think that as a result of that we have made it a workable bill. I urge that the House adopt it in its present form.

As a cosponser of the bill, I want to commend the gentleman from Texas (Mr. ECKHARDT) and the gentleman from New York, (Mr. MURPHY), the chairman of the subcommittee, and the ranking minority member of the subcommittee, the gentleman from Nebraska, (Mr. McCOLLISTER) for their hardwork and cooperation in working out this compromise bill. This is balanced legislation. A balance has been reached between the need to protect health of humans and protection of the environment, and the concerns of small businesses and other industrial and marketing problems that give concern.

Mr. MURPHY of New York. Mr. Chairman, I yield 3 minutes to the gentleman man from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. Mr. Chairman, I heard the expressed hope of the gentleman from Nebraska (Mr. McCOLLISTER) that this bill, which is well balanced, be retained in its present form in conference. Of course, in conference there is always a certain give and take which must take place.

As to this Member's feelings, I would hope that the considerations and resulting accommodations that I think have made this bill generally acceptable both to industry and to those concerned with the environment will in large measure be kept, and I would certainly attempt to keep them. I believe we have a good bill.

We started out with two deep and somewhat conflicting concerns. One was the deep concern of those primarily concerned with health and the environment that no new chemical that is in development stages will in effect sneak up on

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us before we have time to do something about it. On the other side was the concern of industry that we not adopt such a busybody policy as to interminably investigate, thus inordinately delaying the final decision so that chemicals could not flow to the marketplace. Industry insisted that innovation must be given some freedom of movement.

I believe that initially the Senate's approach was too tight in this respect. It came very close to embracing premarket screening. Under premarket screening no chemical could go into the market unless it had gone through the governmental screen.

We cannot be 100 percent sure that no danger will exist, no matter what legislation we pass. On the other hand, the environmentalists and those primarily concerned with health simply were not satisfied with an attempt to identify all dangerous chemicals and then let anything we had not thought of before go on to the market without notice.

I believe we have resolved the differences between these two groups in this act. Within the general parameters of this concept, I feel we should try to hold the bill to the position of the House. I think we can do that because I believe we have a good bill. It satisfies those two legitimate objectives.

Mr. McCOLLISTER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, as we proceed to the reading of the bill for amendment—and there will be amendments—I would simply like to add to what the gentleman from Texas (Mr. ECKHARDT) so kindly referred to earlier in regard to my interest in small business. I am very concerned about the impact of this legislation on small business. I hope that we have drafted a bill that will protect the interests of small business as well as the interest of the public.

Whether we have done that or not will, I think, probably be determined by the attitude of the EPA in administering the law. I would urge my colleagues to watch very carefully to see how that is done in order that some remedy can be fashioned, if it is necessary, so that we will not further concentrate our economic powers in fewer and fewer companies. I am very much concerned about the impact of this legislation on small business.

Mr. METCALFE. Mr. Chairman, I rise in strong support of H.R. 14032, the Toxic Substance Control Act. While the bill before us differs to some extent from the bill reported out of the Consumer Protection Subcommittee on which I serve, I nonetheless support the objectives of this legislation.

Testimony before our subcommittee clearly indicated the need for this type of legislation.

In April 1971, the Council on Environmental Quality released a report entitled "Toxic Substances." The Council reached the following startling conclusion: Several thousand new chemicals are discovered each year and we do not know which chemicals and at which level each chemical causes cancer, genetic mutation, or physical or chemical defects in offspring.

The Council on Environmental Quality as early as 1971 stated that:

We should no longer be limited to repairing the damage after it has been done; nor should we continue to allow the entire population or the entire environment to be used as a laboratory.

Five years after this report was issued, the Congress is still grappling with a legislative response to this problem. We are still permitting our planet to be used as a giant laboratory and our population to be used as little more than passive participants in the experiments.

The inadequacy of current law is already documented in the hearing record established by the subcommittee. The point to be stressed is that we must have control of these chemicals before they are produced and entered into commerce. For all too long we have directed our attention to the effect of these toxic substances after the chemical is in the mass-production stage. We now propose to establish a schema whereby we can test and monitor these chemicals before they endanger our fellow man, the environment, and the very planet itself.

Recent studies of cancer mortality conducted by Drs. Robert Hoover and Joseph F. Fraumeni of the epidemiology branch of the National Cancer Institute show rates of cancer which are far in excess of the normal rate in 139 counties where there is a high concentration of chemical production facilities. The National Cancer Institute estimates that as high as 90 percent of all human cancer is environmentally caused. The World Health Organization estimates are as high as 85 percent.

Mr. Chairman, we either learn to control those products which are having a deleterious effect on the environment and on our fellow human beings or we will continue to endanger the health and well-being of generations to come.

The committee report clearly indicates that this bill is a major step forward. It does this primarily "through its testing and premarket notification provisions." Thus, this bill "provides for the evaluation of the hazard-causing potential of new chemicals before commercial production begins."

Mr. SLACK. Mr. Chairman, due to the particular problems of small business, the costs of testing are critical. The "basis for the legislation" section of the "report" accompanying TSCA—page 5—mentions that there are significant new methods which reduce the time required and the costs of testing for the cancer-causing properties of chemicals. The Ames test is specifically noted. Can we assume that the Ames test will be accepted as an effective indication of the carcenogenicity of new compounds?

Section 8(a)—(1)(A)&(B) generally exempts the small manufacturer from the reporting provisions of the bill. However later paragraphs (8(a)—(3)(A) (i) and (ii)) detail broad instances where this exemption may be canceled by the Administrator. Due to the general financial inability of small businesses to resist in court, they are anxious to be protected from arbitrary administration. Are there any assurances that can be given that real justification will be present before reporting will be required by small manufacturers?

In the same vein, section 3(2)(B)(i), excludes mixtures from jurisdiction, however later sections—4, 6, and 7—give the Administrator authority to include mixtures where deemed necessary. Since most small chemical manufacturers produce primarily mixtures, the exemption is critical. What assurances can be offered against arbitrary action on the case of: being required to report and test due to supposed "indications" that a hazard may exist? And being required to report and test due to supposedly "insufficient" data on a mixture?

Can some instances be hypothesized where a mixture might be required to comply as above?

Section 2(b)(3) states that there is no intention to impede or create unnecessary economic barriers to technical innovation. There are a group of specialized small companies who are engaged in the manufacture of highly sophisticated intermediate compounds which are marketed to other chemical concerns, universities, et cetera, who use these compounds as starting points in wide-ranging research. The demand for these chemicals is such that very small amounts of a large number of substances are produced annually. Since revenues from the sale of substances produced in such small quantities could not reasonably be expected to be sufficient to defray the costs involved in reporting and testing as could be required under the act, it is conceivable that these manufacturers might be forced to stop making these important items. Is there any way that these chemicals are exempted under the act as it now reads?

Section 5 establishes a 90-day period by the end of which the Administrator must take action on a substance of which he has been notified. A 90-day extension is also provided where deemed necessary. It seems possible that an agency deluged with newly reported chemicals might be tempted to require testing, on the basis of insufficient data, rather than take a chance on not objecting to a substance which they have not been able to find time or manpower to properly review. Are there assurances that this will not be the case?

Mr. MURPHY of New York. Mr. Chairman, the Ames test is certainly an exciting new testing method, and I would expect the Administrator to make considerable use of it. Especially with respect to organic chemicals, the Ames test should be particularly useful in determining if a chemical should be regarded as a carcinogen.

The bill requires specific justifications before reporting can be required of small companies. I assure you that my subcommittee will exercise careful oversight to see that the standards in the bill are adhered to.

Likewise, the bill sets out careful standards before mixtures can be subjected to testing or before reporting can be required. In addition to judicial review to strike down action by the Administration acting outside the bounds of the bill, my subcommittee will exercise very careful oversight to protect against abuses.

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These chemicals are not exempted per se. However, before they can be subject to regulation, there must be a finding by the Administrator that the chemical may be hazardous. In making such a determination, the Administrator obviously will have to consider the quantities and the use of the chemical. The risk must be unreasonable in light of the use and amount produced or likely to be produced.

The language of the bill does not permit this result. Only in situations where there is insufficient information and the possibility of an unreasonable risk can production be stopped.

Mr. ASHBROOK. Mr. Chairman, I rise in opposition to H.R. 14032, the toxic substance control bill. This legislation would have severe repercussions on the Nation's cremical industry, pushing up prices, impeding research and development of new products that would aid the public and driving small firms out of business.

I want to make it clear that I support reasonable legislation to strengthen the control of toxic substances. The Government has a responsibility to protect the public from harmful chemicals and substances. We must not neglect matters of human health and environmental safety.

I cannot support H.R. 14032, nowever, because of its overburdensome regulations. These regulations would result in massive reporting requirements, yards of redtape and high costs.

Most disturbing is the part of the bill requiring premarket notification and screening of new chemical substances. The Environmental Protection Agency would be empowered to require manufacturers to give the Agency advance notification of their intent to market new chemicals. The Agency could also require manufacturers to conduct tests prescribed by the EPA. In addition, the EPA would be authorized to promulgate rules on the manufacture, processing, use and disposal of a chemical.

Under the provisions of H. R. 14032, manufacturers of all new chemicals as well as existing chemicals with new uses would have to notify EPA 90 days in advance of manufacturing or marketing. At that time they would also have to furnish EPA with specified information.

This may look good on the surface. The problem, however, is that there are approximately 2 million known chemical compounds with about 25,000 new ones added each year. Although most of these are confined to the laboratory, there are roughly 30,000 chemicals in commercial production. And that number is growing by 700 to 1,000 each year.

Consequently, it would be very difficult for EPA to give its approval in the time allowed. Manufacturing of a new chemical could be delayed for as much as 6 months simply because of administrative backlog.

Furthermore, the potential cost of this legislation is staggering. According to industry estimates, the cost could range between $358 million and $1.3 billion annually. The testing of a single chemical alone could run into the hundreds of thousands of dollars.

These regulations would be bad enough for large companies, resulting in higher product costs and less development of new products. For small companies, however, the impact would be even more disastrous. The expensive reporting requirements, filing fees and testing procedures would place a severe strain on their financial resources.

Small chemical companies play an important role in the economy of our Nation. Of the 11,000 chemical companies now operating, over 10,000 of them are small. It would be tragic if the Congress passed legislation pushing these small companies into oblivion. It would be tragic to create a situation where only the large companies can survive.

Mr. McCOLLISTER. Mr. Chairman, I have no further requests for time.

Mr. MURPHY of New York. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. Pursuant to the rule, the Clerk will read the committee amendment in the nature of a substitute recommended by the Committee on Interstate and Foreign Commerce, now printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Toxic Substances Control Act".

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Sec. 29. Annual report.
Sec. 30. Effective date.

Mr. MURPHY of New York (during the reading). Mr. Chairman, I ask unanimous consent that section 1 be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Are there any amendments to section 1? If not, the clerk will read.

The clerk read as follows:

FINDINGS, POLICY, AND INTENT

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) humans and the environment are being exposed to a large number of chemical substances and mixtures each year;

(2) among the many chemical substances and mixtures constantly being developed and produced are some whose manufacture, processing, distribution in commerce, use, or disposal may cause or significantly contribute to an unreasonable risk to health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances and mixtures also necessitates the regulation of intrastate commerce in such chemical substances and mixtures.

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

(1) hazardous and potentially hazardous chemical substances and mixtures should be adequately tested with respect to their effect on health and the environment and that such testing should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;

(2) adequate authority should exist to regulate chemical substances and mixtures which cause or significantly contribute to an unreasonable risk to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and

(3) authority over chemical substances and mixtures should be exercised in such a manner as not unduly to impede, or to create unnecessary economic barriers to, technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical substances and mixtures do not cause or significantly contribute to an unreasonable risk to health or the environment.

(c) INTENT OF CONGRESS.—It is the intent of Congress that the Administrator shall carry out this Act in a reasonable and prudent manner, and that the Administrator shall consider the environmental, economic, and social impact of any action the Administrator proposes to take under this Act.

Mr. MURPHY of New York. Mr. Chairman, I ask unanimous consent that section 2 be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

The CHAIRMAN. Are there any amendments to section 2? If not, the Clerk will read.

The Clerk read as follows:

DEFINITIONS

SEC. 3. As used in this Act:

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

(2) (A) Except as provided in subparagraph (B), the term "chemical substance" means—

(i) any organic or inorganic substance of a particular molecular identity including a combination of such substances occurring (I) in whole or in part as a result of a chemical reaction or (II) in nature, or

(ii) any element or uncombined radical.

(B) Such term does not include—

(i) any mixture,

(ii) any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide,

(iii) tobacco or any tobacco product,

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(iv) any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 and regulations issued under such Act).

(v) any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such Code), and

(vi) any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

The term "food" as used in clause (vi) of this subparagraph includes poultry and poultry products (as defined in sections 4(e) and 4(f) of the Poultry Products Inspection Act), meat and meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

(3) The term "commerce" means trade, traffic, or transportation (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, or transportation described in clause (A).

(4) The term "distribute in commerce" or "distribution in commerce" when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture means to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introducing or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

(5) The term "environment" includes water, air, and land and the interrelationship which exist among and between water, air, and land and all living things.

(6) The term "health and safety study" means any study of any effect of a chemical substance or mixture on health or the environment, including epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this Act.

(7) The term "manufacture" means to import, produce, or manufacture.

(8) The term "mixture" means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that such term does include a combination which occurs, in whole or in part, as a result of a chemical reaction if each of the chemical substances comprising the combination is not a new chemical substance and if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined.

(9) The term "new chemical substance" means any chemical substance not included in the chemical substance list compiled and published under section 8(b).

(10) The term "process" means the preparation of a chemical substance or mixture for distribution in commerce—

(A) in the same form or physical state, or in a different form or physical state from that, in which it was received by the person making such preparation, or

(B) as part of an article containing the chemical substance or mixture.

(11) The term "processor" means any person who processes a chemical substance or mixture.

(12) The term "standards for the development of test data" means a prescription of—

(A) the—

(i) health and environmental effects, and

(ii) information relating to toxicity, persistence, and other characteristics which affect health and the environment,

for which test data for a chemical substance or mixture are to be developed and any analysis that is to be performed on such data, and

(B) to the extent necessary to assure that such data are reliable and adequate, the manner in which such data are to be developed, the specification of any test protocol or methodology to be employed in the development of such data, and such other requirements as are necessary to provide such assurance.

(13) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, or the Trust Territory of the Pacific Islands.

(14) The term "United States", when used in the geographic sense, means all the States.

Mr. MURPHY of New York (during the reading). Mr. Chairman, I ask unanimous consent that section 3 be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. HAGEDORN

Mr. HAGEDORN. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HAGEDORN: On page 105, line 15, insert the following after the comma "including those combinations which would be mixtures but for the exclusion of all their component substances from the list drawn up by the Administrator pursuant to section 5(c)(2)(A)(i),". On page 108, line 5, substitute a comma for the period and add the following "provided that the combination contains component substances listed by the Administrator pursuant to section 5(c)(2)(A)(i)."

(Mr. HAGEDORN asked and was given permission to revise and extend his remarks.)

Mr. HAGEDORN. Mr. Chairman, the purpose of my amendment is to exempt from the act mixtures which contain no chemicals contained on the section 5(c)(2)(A)(i) list. This list is to be compiled by the Administrator of EPA and is to contain chemical substances which might significantly contribute to an unreasonable risk to health or the environment.

Although "mixtures" are explicitly excluded from the definition of "chemical substance" on page 105, the effect of this is only to exclude them from the operations of section 5, premarket notification procedures. They remain potentially subject to the entire network of regulations and recordkeeping contemplated by the rest of the act.

Mixtures are unlike other chemical formulations in the respect that the component elements do not have their chemical properties altered. Generally, they are as safe or unsafe as their components. While mixtures may result in the alteration of the physical properties of the components, as in shampoos or dish detergents, they retain the same chemical qualities as the substances which comprise them. There is no reason to burden chemical companies with the retesting of mixtures which simply partake of the qualities of their components, which have already been admitted to the marketplace. If they have not been, then the premarket notification requirements could be applied to the individual components, rather than requiring the entire mixture to be tested.

The great majority of the smaller chemical companies in this country make nothing but formulations of chemicals that are accepted as safe. If they are not, the Administrator always has the option, under my amendment, to place them on his section 5 list. If they are safe, I see no reason to subject these manufacturers to the extremely heavy testing and paperwork burdens of the bill. I believe that my amendment would markedly streamline the bill by requiring EPA to concentrate its focus on those chemicals which he considers harmful.

Most of the larger chemical companies say that they can live with this bill; that may be. The smaller chemical companies, however—the ones that produce 100 formulations and employ 50 to 100 people—they cannot live with this quite so easily. They cannot afford to hire new bookkeepers and paper-shufflers to comply with EPA regulations, they cannot afford the high-power legal staffs to challenge abuses of EPA authority, and they cannot afford legislative liaisons to work hand in hand with Congress in drafting and amending legislation to suit their needs. The Small Business Administration has already estimated that the average small chemical company spends approximately 10 percent of their pretax profits to comply with existing EPA rules. One small company in my district, employing less than 100 persons, claims that it is spending well over 25 percent of their time of Government compliance activities, nearly six times the amount spent only 3 years ago.

There has got to be some recognition of cost-benefit relationships by Congress. The smaller the company, the greater is the ratio of time spent testing and conforming to EPA edict to the volume of chemicals produced. There is no alternative for the small formulator but to hire new personnel that he cannot afford.

Finally, I am aware of the provisions in this bill that either give lip service to the small manufacturer, or distinguish between the treatment given chemical substances and mixtures. I have yet to speak to a small manufacturer, however, who feels comfortable with these. As one of them said to me—

The people who drew up this bill seem to assume EPA will act reasonably. On the basis of past experience, I have to assume otherwise.

I read section 4(a)(2) as imposing that section's testing requirements upon all mixtures unless the Administrator makes certain findings that such testing will be duplicative or wasteful. To do this, undoubtedly he will have to overcome the presumption that the testing of chemical components is insufficient to enable conclusions about the mixture. Hearings may be required, rules necessitated, and civil suits, by those groups assuming that

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man is an intruder upon his environment, may have to be overcome.

Opponents of eliminating mixtures from the act argue that they may sometimes result in a synergistic effect, whereby the mixture takes on additional qualities beyond the qualities of the components. Although a detrimental synergistic effect may occur in one in a million mixtures, this bill may end up requiring the testing of the million in order to uncover the exception. Chemical producers rarely test their chemicals for every conceivable purpose to which they might be put. The Administrator would have extremely broad discretion under the act to contend that a chemical had not been tested for a particular application; hence, requiring additional testing for that application. Once the Administrator argues—correctly—that the hazard is always in the application of a chemical, the exemptions in this bill are effectively rendered meaningless.

The committee states that it has limited the Administrator to taking action only against unreasonable risks because to do otherwise assumes that a risk-free society is attainable, an assumption that the committee does not make. The inclusion of mixtures in this bill does not comport with that premise. Rather than requiring EPA to take affirmative action to exclude a mixture from testing, the resources of EPA—and the chemical industry—could far more properly be used if affirmative action was required prior to inclusion. Neither my amendment, nor the bill will do anything about the basic problem involved—abuse and misuse of chemicals; where, however, the chemical itself is the problem, I believe that my amendment strikes a far more reasonable balance between environmental and economic concerns.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. McCOLLISTER, and by unanimous consent, Mr. HAGEDORN was allowed to proceed for 3 additional minutes.)

Mr. McCOLLISTER. Mr. Chairman, I would like to have some clarification of the gentleman's amendment. Is it the gentleman's intent that the Administrator of EPA should be able to exempt the testing of mixtures if the component parts of that mixture can be tested?

Mr. HAGEDORN. Yes, if they have been tested.

Mr. McCOLLISTER. If they have been tested.

Mr. HAGEDORN. If they are listed as a priority or a section 5 chemical, then certainly they ought to be tested. If they are not included in the EPA list, then it is my feeling that they ought to be excluded, unless the EPA Director can show good cause for inclusion, which is still his discretion.

Mr. McCOLLISTER. In section 4, the testing section, at the bottom of page 110, line 21, it says:

(2) in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such actions may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture;

In other words, the Administrator has the options?

Mr. HAGEDORN. Yes.

Mr. McCOLLISTER. It is not mandatory?

Mr. HAGEDORN. Right.

Mr. McCOLLISTER. He has the option of exempting the mixture from tests if the component parts have been tested?

Mr. HAGEDORN. That is true, but the presumption of innocence always has to be found on that chemical where we are reversing a finding of fault or of possible harm, and putting that burden on the EPA Director to evaluate the mixture as to its potential harmful effects.

Mr. McCOLLISTER. And the gentleman's testing of the components would be limited to only those chemicals that are on the list, that have a hazardous chemicals listing?

Mr. HAGEDORN. If the gentleman will yield further, certainly any of those lists can be expanded. If the EPA Director so chooses to include them, then my amendment would have no effect. I am not arguing that point. I am only talking about the unlisted chemicals not on the priority list or section 5 list as being included.

Mr. McCOLLISTER. I thank the gentleman.

The CHAIRMAN. The time of the gentleman has expired.

Mr. ECKHARDT. Mr. Chairman, I rise in opposition to the amendment.

(Mr. ECKHARDT asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Chairman, I must say at the outset that I had great difficulty in understanding what this amendment means. It is an addition that is sought to be added after the term "mixture" on line 15, providing including those combinations which would be mixtures, but providing for the exclusion of all their component substances from the list drawn up by the Administrator pursuant to section 5(c)(2)(A)(i).

I do not see where 5(c)(2)(A)(i) which is contained on page 127 of the act, excludes things from the definition of "mixture" at all. I simply do not understand what the gentleman is trying to do. In the bill we provided that wherever possible, and unless a rule were made by the Administrator, testing of the ingredients of the mixture would be enough, and only in the event that that was not enough and found not to be, and positive action taken by the Administrator, would a mixture have to be tested separately.

In the argument in favor of the amendment it seems to me that the author seems to reach much further and go to the proposition of excluding everything that has not previously been identified on the list provided for in (2)(A)(i). I, frankly, do not understand what the amendment is attempting to get at. It seems to me that, if the amendment is trying to force the Administrator to leave alone a mixture that is properly tested because its ingredients are tested, the bill already takes care of that proposition. If it goes further than that, I do not agree that we should go further than that. I think it would be in opposition to the major thrust of the bill.

Mr. HAGEDORN. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman.

Mr. HAGEDORN. I thank the gentleman for yielding.

I think what we are doing here, Mr. Chairman, is reversing the finding of fault. In other words, the chemical is presumed to be noncarcinogenic and nontoxic, unless the EPA Director, looking at the components involved in that mixture, concludes that it could be harmful.

Mr. ECKHARDT. We do not create any presumption of danger in the bill as it stands. We required in every instance that the EPA take the laboring oar in identifying the danger or else the chemical flows to the market. And even when the EPA does identify a potential danger, and says, "We cannot determine positively whether it is safe or it is not safe and, therefore, we cannot act finally," the EPA cannot make a ruling and keep the chemical off of the market. It flows right into the market just the same, unless an order by a court determines that, because of the great quantity of the substance going into the marketplace—and potentially into the environment—or because of the great risk involved that cannot be positively ascertained, harm would be done unless an injunction is issued.

We have tried to avoid the evil that the gentleman very properly points out, the evil of creating a presumption of risk without any proof of it, the evil of making the defendant prove himself not guilty with respect to the chemical. We put the burden on the EPA to identify the danger in every respect. I cannot see how the language of this amendment improves the bill and I think it might do mischief which might be inadvertent as far as the author is concerned.

I would urge that the committee vote against the amendment.

Mr. HAGEDORN. Mr. Chairman, if the gentleman would yield further, we are not trying to be mischievous, that is for sure, with this legislation. What we are attempting to do is to insure we will not put undue burdens on the small businessmen as far as testing, the small businessmen who will be manufacturing the vast majority of chemical substances. But with my amendment we will not give EPA any additional powers unless they act in a positive manner indicating that certain mixtures may have a potential of being toxic or carcinogenic agents and will be taken off. Otherwise there will not be testing requirements placed on that small manufacturer. That is my intent.

Mr. McCOLLISTER. Mr. Chairman, I move to strike the last word.

Mr. Chairman, if I might have the attention of the gentleman, as far as the comment he just made, I want to repeat that is my understanding of the bill the way it is now, that testing is required only when there is an unreasonable risk imposed and, if there is no such risk no testing is required. Further the Administrator is told both by the language of

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the bill and by the comment of the gentleman from Texas a moment ago, that with the testing of the basic components, if that has been accomplished, then the testing of the mixture ought not to be required since the testing of the components has been made.

Mr. HAGEDORN. But the intent, Mr. Chairman, if the gentleman will yield, would be to exempt those chemicals not under section 5 or the list, they would be eliminated unless they are added in an affirmative manner to the required testing.

Mr. McCOLLISTER. As far as the required testing.

Mr. HAGEDORN. Yes.

Mr. SMITH of Iowa. Mr. Chairman, if the gentleman will yield, how will the manufacturer know what is required to be tested?

Mr. McCOLLISTER. He will know because it will be on the list and because there is a rulemaking process by which a potentially dangerous chemical is judged to be a dangerous chemical, and then there follows the testing of it and all other requirements associated with it, and the manufacturer will have notice through the usual processes and in the Federal Register, and in the lists.

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield, actually I think the author of the amendment may be under the misconception that merely by identifying a chemical the EPA may require testing. Actually of course there is a rulemaking process which must determine that the chemical poses the risk and should be tested in order to determine whether or not the risk is in actuality.

I am inclined to think that the terms of the act may be even stricter than the gentleman may conceive in his amendment because we do not permit the EPA merely by putting the chemical on the list to require its testing. The EPA must identify the chemical and by rule direct testing in the case.

Mr. McCOLLISTER. Mr. Chairman, if the gentleman will yield back to me, that rulemaking process is a good deal more different and more stringent and more formal, with cross-examination and substantial evidence and so forth, than the rulemaking processes we usually associate with what the earlier legislation provided.

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield further, it is not quite so with respect to the testing rulemaking, because we do not want to overload an intermediate process to identify danger or to show that it does not exist. Where we put in the complete cross-examination rights is with respect to keeping the chemical ultimately off the market or limiting its entry into the market.

Mr. SMITH of Iowa. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I am concerned about this kind of legislation. I know the committee did its best to try to work out something acceptable and that the overriding reason for the legislation is to protect people. But, I think we have gone too far in running small business out of business in this country. Even if all they have to do is watch the Federal Register, it is too much for many small businessmen that are in this business.

Mr. Chairman, take for example a small business. One of them tells me he last year sold 300 formulations. He may only sell 1 ton of a certain product. He cannot afford to watch the Federal Register. He does not have time to watch the Federal Register all the time.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from New York.

Mr. OTTINGER. Mr. Chairman, the gentleman does not want to say that we want small business to be permitted to poison the populace? There has to be some protection here.

Mr. SMITH of Iowa. No. If the gentleman will listen. I am saying that it is not enough to work out an agreement with the big companies as to what will satisfy them and forget small business. That is what the committee did in this bill. It does something for companies like Du Pont but forgets all about small business. They did not even know this bill was under consideration until it was out of the full committee. How are they going to know how to protect themselves?

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Texas.

Mr. ECKHARDT. Will the gentleman please heed me on this? This bill has been before the Congress, or this concept has been before the Congress in a series of bills, for 5 years. There were full hearings in both the Senate and in the House in at least two terms of Congress. There was full opportunity and notice to everyone involved.

Mr. SMITH of Iowa. How do you give notice to all these manufacturers out there working 40, 50, and 60 hours a week in their plants making a living? How do they know what you are doing?

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield further, are they going to manufacture poisons in their plants?

Mr. SMITH of Iowa. Oh, no, it is not poison.

I just want to give this example. This manufacturer mixes coconut oil with some other reactants to form a wetting agent for washing floors. If he buys that from Du Pont, it costs twice as much as if he mixes it in his own plant. That is what this legislation does to small business. That is what it does to people who buy the product. It makes them buy it at a much higher price then they would have to. This legislation does for large companies what they are not allowed to do under the antitrust laws. It runs small business out of business by making it so expensive. They are subject to a $2,500 fee or they have to come to Washington to see the EPA. Or they may have to get the CONGRESSIONAL RECORD and watch it every day and to hire legal help. Many small businesses cannot operate that way, but the big companies can and after running their small business competition out of business, they can triple and quadruple their prices. That is what happens under too much of this kind of legislation.

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield further, the gentleman gave an example of a company mixing coconut oil with a compound for cleaning floors. No. 1, the chances are there is no rule made with respect to testing either product.

Mr. SMITH of Iowa. How is this small businessman going to know there is a rule for that?

Mr. ECKHARDT. If there were a rule on that, the person producing the active ingredients in the product would be the one to give notice, not the man mixing the two compounds, because if the basic components had been tested he is under no responsibility.

Mr. SMITH of Iowa. We are forcing him to go to see a "Philadelphia lawyer". He would have to watch the CONGRESSIONAL RECORD and he would be afraid to be in business at all. If they catch one of them in some violation, if one slips up, he will be out of business and then others are afraid.

I think we have passed too much of this kind of legislation. I know it is worked out so big companies will be satisfied, but I think we ought to work it out for small business in this country. I understand the need to protect people, but we have gone too far. This is not the only bill in which we have been doing this. Month after month, we pass additional legislation. The importance of it and the intent of it is good, but it goes too far.

I think we have got to come to the time when we, as Members of Congress, are watching out for these people who are not here for the hearings, who are not here to have their side of the story heard. In fact, many of them do not even know what is about to be done to them, and they will not know until they find out in the newspaper, about a month or 2 months from now, that this bill has passed.

What I am saying is that it is too burdensome to make the little manufacturer pay up to $2,500 in fees, to come to Washington and get permission from the EPA, and to file numerous papers. There are too many legalities, and somehow we have to work it out better than what has been done in this bill.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from New York.

Mr. OTTINGER. First of all, small chemical manufacturers do have an association, and they were heard. We did make provision for the small manufacturers in the bill.

Mr. SMITH of Iowa. The gentleman gave some discretion to the agency to make exemptions. That is not the same thing.

Mr. OTTINGER. It is my understanding that the committee is going to waive the fees for small business, even further aiding small business, in an amendment that is going to be offered. I do think we have considered small businesses and their problems, but their in-

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clusion is vitally important because the incidence of cancer has grown so rapidly from environmental causes.

The time of the gentleman has expired.

(On request of Mr. OTTINGER and by unanimous consent Mr. SMITH of Iowa was allowed to proceed for 2 additional minutes.)

Mr. SMITH of Iowa. What we are doing here primarily is running small businesses out of business, and helping big companies to take more business and do what they could not do under the antitrust laws to run the small businesses competitors out of business.

Mr. OTTINGER. There is nothing in this bill which forces a man to buy from Du Pont if he is using a mixture of two chemicals that have already been tested.

Mr. SMITH of Iowa. If the people buying a few tons from this little manufacturer cannot buy it from him because he is no longer in business because fees are too high, they are going to have to buy it from a big company at a much higher cost.

Mr. OTTINGER. We are not going to drive him out of business unless his business is introducing toxic substances into the environment.

Mr. SMITH of Iowa. He gets driven out if he does not have a place to sell his product.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Nebraska.

Mr. McCOLLISTER. Would the gentleman consider transferring from the Budget Committee to the Committee on Interstate and Foreign Commerce, where we need him badly?

Mr. SMITH of Iowa. I appreciate the compliment but I doubt that it would make that much difference.

Mr. HAGEDORN. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Minnesota.

Mr. HAGEDORN. I want to commend the gentleman from Iowa for his very appropriate remarks as to what the impact of this legislation can be on the small businessman, because this is where new compounds are coming out. When we talk about poisons in our society today, it is true that there are a few that are mishandled and misused; but there are hundreds, literally thousands, of different compounds that are safe for society in a very positive way. I think we ought to look at it from that basis as well.

Mr. SMITH of Iowa. There is surely some way we can protect society without running out competition and running up the price.

Mr. MURPHY of New York. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I can understand the concern of my colleague from Minnesota in offering this language, but I think the needed protection is already provided. Throughout the hearings and throughout the markup session, the committee carefully considered and evaluated the effects on small business, and built safeguards into this legislation for the small businessman.

The committee does not feel and I do not feel that we can exempt certain mixtures and substances. We have so carefully considered and responded to small businesses. We have responded to the small business associations and representative groups which are here in Washington and across the country. This is the type of response that we have received in committee from their inquiries and from our reaction to those inquiries, and this is an example of one such from a small company in Iowa. It says:

DEAR MR. MURPHY: Thank you for your very comprehensive reply to our inquiry into the Toxic Substance Control legislation. In all of the reply's from other members of Congress, we were not granted such a detailed and clear cut understanding of this bill. The other replys were vague or down-right pro T.S.C.A.

Since we first became aware of this bill, April of this year, our future plans have been in a state of limbo. Now, with the receipt of your letter we feel that we can get back to business without the threat of the second shoe hanging over our head.

By design, we are a very small regional company that has been successful through quality, rather than quantity. We do not subscribe to the theory that "bigger is better", and have been extremely careful to maintain a close personal contact with our clients. The information we received on this bill convinced us that our days were numbered. Now, we will proceed with business as usual based upon the information which you have supplied.

We have carefully considered small business. We have other amendments that the Members have been kind enough to furnish us with that we will accept, which further consider small business. But I think in a consideration of balance and the health of the Nation, we cannot accept this amendment.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Nebraska (Mr. McCOLLISTER).

Mr. McCOLLISTER. I thank the gentleman for yielding.

Mr. Chairman, many of those comments which all of us received I think were directed to the original bill, H.R. 10318. The work of the gentleman from Texas and the gentleman from North Carolina to produce H.R. 14032 made it quite different from the original bill. I think many small chemical companies were concerned, and justifiably so, about the original bill. I have not heard from any small chemical companies on H.R. 14032 and the changes we have made in it.

Mr. BROYHILL. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from North Carolina.

Mr. BROYHILL. I thank the gentleman for yielding.

Mr. Chairman, I think the key word that was used by the gentleman from New York (Mr. MURPHY) is the word "balance." We have achieved balance in this bill, and we have taken into consideration the needs to protect the environment and at the same time we make sure that we do not do undue harm to the small business interests or any other commercial interests.

Mr. HAGEDORN. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Minnesota (Mr. HAGEDORN).

Mr. HAGEDORN. I thank the gentleman for yielding.

Mr. Chairman, I want to thank the gentleman from New York for his input, and the gentleman from Texas, as well. It can give reassurance to the small company about the role-making process.

The CHAIRMAN. The time of the gentleman from New York (Mr. MURPHY) has expired.

(By unanimous consent, Mr. MURPHY of New York was allowed to proceed for 1 additional minute.)

Mr. HAGEDORN. If the gentleman will yield further, I think this has been worthwhile from that standpoint alone. When we talk about the role-making process, that is another matter, where the small company must come in and bring in his attorneys and legal counsel to fight this, as well, so that is an added burden, in addition to all the other problems of increasing costs that they face.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. HAGEDORN).

The question was taken; and on a division (demanded by Mr. HAGEDORN) there were—ayes 10, noes 15.

So the amendment was rejected.

AMENDMENTS OFFERED BY MR. FUQUA

Mr. FUQUA. Mr. Chairman, I offer amendments.

The Clerk read as follows:

Amendments offered by Mr. FUQUA: Page 106, line 5, strike out "and"; at the end of line 10 strike out the period and insert ", and"; and after line 10 insert the following:

"(vii) any chemical substance manufactured or processed in small quantities (as defined by the Administrator by rule) solely for scientific experimentation or analysis or chemical research or analysis on such substance or another substance."

Page 141, strike out lines 6 through 21 and redesignate the succeeding paragraphs accordingly.

Page 159, beginning in line 1, strike out "(other than a chemical substance described in subparagraph (B)(ii))".

Page 159, strike out lines 8 through 15 and insert in lieu thereof the following: to manufacture or process a mixture,".

Mr. FUQUA. Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Florida?

There was no objection.

(Mr. FUQUA asked and was given permission to revise and extend his remarks.)

Mr. FUQUA. Mr. Chairman, I wish to thank the committee for offering some conciliatory concern about the effects of this legislation on small business, but what I am concerned about is research chemicals, those chemicals specifically used for research processes.

I have in my district a small business employing approximately 60 persons, and that business deals solely in research chemicals. These are not chemicals that one may buy in a drug store; they are not chemicals that any individual could

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purchase from another person. These chemicals are in most cases purchased in very small quantities, sometimes as small an amount as 1 gram and in other cases perhaps a hundred grams.

This company offers a catalogue that contains several thousand chemical formulations that it has the capability of making. They transport the chemical in public commerce, and it is treated as a toxic substance. It does not get into the hands of, for instance, some 10th grade chemistry buff.

With all of these complex compounds that they offer solely for research purposes to universities, to those in research labs, and perhaps to a few other companies, they provide a short circuit for the researcher so that he can work further down the chain of the chemical compound rather than having to take simple compounds and breaking them down into these other types of compounds.

While we have waived the requirement of their having to pay the fee and given other considerations, they should be totally exempt from this because they would then be subject to having to see that every compound is tested and tested until it is proven that it is not toxic. They realize these compounds are toxic.

One can even go into a store today and buy nitric acid and glycerine in separate compounds and then put them together. We know, of course, what we then; we have nitroglycerine, which is a very dangerous substance.

Mr. Chairman, I plead with the committee to consider this amendment favorably. However, I think that in this particular case, in dealing with research chemicals, we are certainly going too far.

One of the more toxic substances that is now made in these labs is one that is used in one of the compounds for the treatment of cancer. Here we would be subjecting researchers to spending much more time, and it would probably cost twice as much because of the additional research necessary.

As I pointed out earlier, these substances do not get into the hands of incompetent individuals such as myself or any other lay person. These are research scientists; they are using these substances in universities, and they are used in other products.

Mr. Chairman, I believe this is a very, very important amendment. This bill will produce voluminous amounts of paperwork for the administration and for the EPA Administrator.

It would almost be too complicated to handle. There are very few of these companies in business today. As the gentleman from Iowa (Mr. SMITH) pointed out, these are very small individuals, not the large companies, even though sometimes they sell research chemicals to many of the large companies. However, these are small operators. They do not have attorneys here in Washington or a Washington staff to be up here every day and to get the permits that would be necessary for the manufacturing of these chemicals.

Mr. Chairman, I would hope that the committee would see fit to accept this amendment. I talked to them about it. I think it is also desirable because of the competitive nature involved, and these are not large amounts, but very small amounts.

Mr. Chairman, I am informed that with the increased cost involved these people may probably be forced to go to some other country in order to produce research chemicals. It is providing jobs in this country and the expertise that we need plus the technology that we need in this country.

Therefore, Mr. Chairman, I would certainly hope that the committee would accept this amendment. I think it goes a long way. It does not do violence to the purpose and intent of what the committee is trying to do.

Again, I say I support the committee's position, but I do think that in this particular instance with respect to research chemicals, those chemicals should be exempted from this requirement.

Mr. ECKHARDT. Mr. Chairman, I rise in opposition to the amendments.

(Mr. ECKHARDT asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Chairman, the provisions for premarket notification are contained in section 5 of the bill.

Chemical substances which are for scientific experimentation or analysis or chemical research or analysis on such substances are presently exempted from the premarket notification requirement.

Mr. Chairman, this is certainly enough. Mind you, no chemical, whether it is research or otherwise, is absolutely required to be tested. Therefore, it would not even come under section 6 providing a ban or limitation on its use unless there were some very good reason that it should not be distributed.

Mr. Chairman, it is perfectly proper not to inject control of EPA with respect to research chemicals for the purpose of notice. In most instances, since no notice is required, no testing would be applied and no ban or limitation would be placed on those chemicals. However, even if a chemical is produced in small quantities and used for analysis, it may be so dangerous and it may be so unnecessary to be used in that particular analysis as to require some limitation on its distribution.

Mr. Chairman, the Fuqua amendment would not only exempt some chemicals from the notification provisions, but it would also prevent the administrator, when he finds that the chemical causes or significantly contributes to or will cause or significantly contribute to an unreasonable risk to health or the environment from applying any of the remedies contained on page 143 and the following pages, a requirement prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture. Nor would it permit limiting the amount of such substance or mixture, or a requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate warnings and instructions with respect to its use or disposal, or with respect to both.

Mr. Chairman, it seems to me that in many instances it would be most desirable to notify students, for instance, engaged in analysis, in a university laboratory by having the mixture marked with accompanying clear and adequate warnings and instructions with respect to its use.

I give a lot of credit to the teachers in colleges, high schools, and technical institutions with respect to their expertise but we have some 800 new chemicals coming on the market each year. I think that the analysts and laboratory workers are entitled to know something about the dangers of those new chemicals. We do not require that those be covered by premarket notification but we do leave open the door to a situation where EPA has determined that this is a most dangerous chemical, perhaps it is a carcinogen. Why in those instances should we exempt it, so that we do not extend protection of persons working in laboratories? I do not think this is going to be abused. We do not require notification in advance. We cannot require any limitation until there is a full scale hearing and a ruling as required in section 6 of the act.

The CHAIRMAN. The time of the gentleman has expired.

(On request of Mr. FUQUA, and by unanimous consent, Mr. ECKHARDT was allowed to proceed for 2 additional minutes.)

Mr. ECKHARDT. Mr. Chairman, I yield to the distinguished gentleman from Florida.

Mr. FUQUA. Mr. Chairman, I certainly appreciate the concern that the gentleman from Texas (Mr. ECKHARDT) is making and I support that, but the point the gentleman is missing is that these are research chemists. They take it at face value that they are toxic and that they are not to breathe them. But research scientists know how to handle very highly toxic materials, and they can be handled. In addition, they are using these materials so as to break down other materials, if you please, to prove their acceptability or toxicity in the open market. So these materials are not available to just any person. They are available only to research people and they treat them as highly toxic and as something that should not be handled without due care. They are toxic but they are being handled by people who know chemicals and who know how to handle them. I think without that we will be stifling the very purpose of evaluating many products that later will be sold and that it impedes, really, what the purpose of the act is.

Mr. ECKHARDT. If the gentleman from Florida would yield back to me. Reading from the proposed bill, it says:

. . . any chemical substance which is manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for—

Let us take one of these bases:

. . . for scientific analysis . . .

Chemicals may be used for scientific analysis in a laboratory by not very well trained people and if that is done why should not the Administrator do what he can do under section 6—and, inciden-

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tally, he is not going to limit it at all unless he does something under section 6. Why should he not have the authority to say what the dangers are? This is a requirement that says any substances, mixtures, or any mixture thereof is supposed to be marked and accompanied by clear and adequate analysis and instruction. That is not too heavy a burden.

The CHAIRMAN. The time of the gentleman has again expired.

(On request of Mr. FUQUA, and by unanimous consent, Mr. ECKHARDT was allowed to proceed for 1 additional minute.)

Mr. ECKHARDT. I yield to the gentleman from Florida (Mr. FUQUA).

Mr. FUQUA. Mr. Chairman, some of the things that they use in chemical analysis are exotic chemicals that are used to check other chemicals for toxic material and to secure a true analysis. We are only talking about research chemists, people who know what they are doing, not a 10th grade chemistry buff, or children playing with chemicals they buy at a toy store; we are talking about universities, research laboratories, professional people trained in this area so that they can use these chemicals or their components to break other materials down, so that they can shortcircuit the work that would otherwise be necessary, so by using these chemicals they can break these compounds down.

Mr. ECKHARDT. I do not think that the Administrator is going to restrict that kind of use anyway. In the first place, they are not required to give notice; therefore, he is not going to issue a rule requiring testing. But even if he did, the only limitation he would ultimately place on some such chemicals is the requirement that instructions be given concerning their danger. It seems to me that the bill is perfectly adequate as written, and there is no reason to alter it in this way.

The CHAIRMAN. The time of the gentleman has expired.

Mr. MURPHY of New York. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I reluctantly oppose the Fuqua amendment which would exempt chemicals manufactured in small quantities for scientific experimentation or analysis, or chemical research or analysis, from the legislation. The reason is that the Fuqua amendment would create a dangerous loophole in the protection provided by the legislation, and it is not necessary to protect chemical research and innovation.

The bill already makes special provisions for research chemicals in order to insure that chemical research and innovation is not unduly impeded. Research chemicals are exempted from the premarket notification provisions of the bill. Thus there will be no slowdown in researchers obtaining chemicals they need to conduct their research.

During the subcommittee hearings on the legislation, representatives of the American Chemical Society, a professional organization comprised of more than 110,000 chemists, recommended that research chemicals be exempted from the premarket notification provisions of the bill. This the committee has done. The American Chemical Society, however, did not recommend that research chemicals be exempted from the other regulatory provisions. When questioned about the need for such an exemption, the chairman of the American Chemical Society Board of Directors specifically recommended against it. He pointed out that chemicals which find their way into supply houses for sale to anyone who wishes to purchase them are often purchased by high school students or people who have home laboratories. Such people may need protection from hazardous chemicals.

For example, if Mr. FUQUA's amendment is agreed to, the EPA could not require a manufacturer of a particularly hazardous research chemical to place warnings on the chemical, so that high school students using the chemical will be informed of the dangers of the chemical.

Before EPA could take regulatory action against a research chemical under the bill, the agency would have to find an unreasonable risk associated with the chemical. This requires that EPA weigh the risks against the benefits presented by the chemical. The risks would have to outweigh the research benefits before EPA could take regulatory action. If EPA can make the requisite showing that even considering the benefits of the research chemical, the dangers are so great that the public needs protection, should EPA not be authorized to take such necessary protective action? This does not necessarily mean that the chemical will be banned. All that may be necessary are warning labels. Or it may be necessary to prescribe disposal techniques.

It is instructive to note that other existing laws which regulate chemicals do not provide total exemptions for research chemicals. For example, the Food, Drug, and Cosmetic Act does not exempt chemicals used for research for drugs. Like the toxic substances bill, research drugs are exempted from the premarket clearance provisions. However, if FDA determined that a research drug were unreasonably endangering public health, it could act to protect against it.

Thus the Fuqua amendment is totally unnecessary to protect against chemical research and development. Further, it creates a gap in the protections provided by the bill. Therefore, it should be defeated.

Mr. BROYHILL. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from North Carolina.

Mr. BROYHILL. I thank the gentleman for yielding.

I want to compliment the gentleman for giving a very adequate explanation of the many provisions in the bill that do exempt research chemicals from provisions of this bill. But would the gentleman not agree with me that striking the reporting requirements altogether would not be wise, because there is one thing the EPA should have, and that is adequate knowledge of the new chemicals that are being developed?

Mr. MURPHY of New York. That is one of the thrusts of this bill.

Mr. BROYHILL. That is not certainly an onerous burden to know the formulas of new chemicals that are being developed, is it?

Mr. MURPHY of New York. It is not.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Florida (Mr. FUQUA).

The amendments were rejected.

The CHAIRMAN. There being no further amendments to section 3, the Clerk will read.

The Clerk read as follows:

TESTING OF CHEMICAL SUBSTANCES AND MIXTURES

SEC. 4. (a) TESTING REQUIREMENTS.—If the Administrator finds that—

(1)(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture or any combination of such actions may cause or significantly contribute to an unreasonable risk to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal or combination of such actions on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and it enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or any combination of such actions on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; and

(2) in the case of a mixture, the effects which the mixture's manufacture, distribution in commerce, processing, use, or disposal or any combination of such actions may have on health or the environment may not be reasonably and more efficiently determined or predicted by testing the chemical substances which comprise the mixture;

the Administrator shall by rule require that testing be conducted on such substance or mixture to develop data with respect to the health and environmental effects for which there is an insufficiency of data and experience and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or any combination of such actions does or does not cause or significantly contribute to an unreasonable risk to health or the environment.

(b)(1) TESTING REQUIREMENT RULE.—A rule under subsection (a) requiring the testing of a chemical substance or mixture shall include—

(A) identification of the substance or mixture for which testing is required,

(B) standards for the development of test data for such substance or mixture, and

(C) a specification of the period (which period may not be unreasonable) within which the persons required to conduct the testing shall submit to the Administrator data developed in accordance with the standards referred to in subparagraph (E).

In determining the standards and period to be included, pursuant to subparagraphs (B) and (C), in a rule under subsection (a), the Administrator shall consider the relative

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costs of the various test protocols and methodologies which may be required under the rule and the reasonably foreseeable availability of facilities and personnel for performing testing under the rule. Such a rule may require the submission of preliminary data during the period prescribed under subparagraph (C).

(2)(A) The health and environmental effects for which standards for the development of test data may be prescribed include carcinogenesis, mutagenesis, teratogenesis, behavioral disorders, cumulative or synergistic effects, and any other effect which may cause or significantly contribute to an unreasonable risk to health or the environment, and the characteristics of chemical substances and mixtures for which such standards may be prescribed include persistence, acute toxicity, subacute toxicity, chronic toxicity, and any other characteristic which may cause or significantly contribute to such a risk. The methodologies that may be prescribed in such standards include epidemiology, serial, or hierarchical tests; in vitro tests; and whole animal tests. Before prescribing epidemiology tests in such standards, the Administrator shall consult with the Director of the National Institute for Occupational Safety and Health.

(B) From time to time, but not less than once each twelve months, the Administrator shall review the adequacy of the standards for development of data prescribed in rules under subsection (a) and shall, if necessary, institute proceedings to make appropriate revisions of such standards.

(3)(A) A rule under subsection (a) respecting a chemical substance or mixture shall require the persons described in subparagraph (B) to conduct tests and submit data on such substance or mixture, except that the Administrator may permit two or more of such persons to designate one such person or a qualified third party to conduct such tests and submit such data on behalf of the persons making the designation.

(B) The following persons shall be required to conduct tests and submit data on a chemical substance or mixture subject to a rule under subsection (a):

(i) Each person who manufactures or intends to manufacture such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) with respect to the manufacture of such substance or mixture.

(ii) Each person who processes or intends to process such substance or mixture if the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii) with respect to the processing of such substance or mixture.

(iii) Each person who manufactures or processes or intends to manufacture or process such substance or mixture for distribution in commerce if with respect to the distribution in commerce of such substance or mixture the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii).

(iv) Each person who manufactures or processes or intends to manufacture or process such substance of mixture if with respect to the disposal of such substance or mixture the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii).

(v) Each person who manufacturers or processes or intends to manufacture or process such chemical substance or mixture for a use with respect to which the Administrator makes a finding described in subsection (a)(1)(A)(ii) or (a)(1)(B)(ii).

(4) A rule under subsection (a) requiring the testing of a chemical substance or mixture shall expire at the end of the reimbursement period (as defined in subsection (c)(3)(B)) applicable to test data for such substance or mixture, unless the Administrator repeals the rule before such date.

(5) Rules issued under subsection (a) [and any amendment thereto or repeal thereof] shall be promulgated pursuant to section 553 of title 5, United States Code, except that in promulgating, amending, or repealing any such rule (A) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; and (B) a transcript shall be made of any oral presentation. The Administrator may not promulgate a rule under subsection (a) respecting a substance or mixture unless the Administrator makes and publishes with the rule the findings described in paragraph (1)(A) or (1)(B) of such subsection and, in the case of a rule respecting a mixture, the finding described in paragraph (2) of such subsection.

(c) EXEMPTION.—(1) Any person required by a rule under subsection (a) to conduct tests and submit data on a chemical substance or mixture may apply to the Administrator (in such form and manner as the Administrator shall prescribe) for an exemption from such requirement.

(2) If, upon receipt of an application under paragraph (1), the Administrator determines that—

(A) the chemical substance or mixture (including any contaminant present in such substance or mixture) with respect to which such application was submitted is equivalent to a chemical substance or mixture for which data has been submitted to the Administrator in accordance with a rule under subsection (a) or for which data is being developed pursuant to such a rule, and

(B) submission of data by the applicant on such substance or mixture would be duplicative of data which has been submitted to the Administrator in accordance with such rule or which is being developed pursuant to such rule,

the Administrator shall exempt, in accordance with paragraph (3) or (4), the applicant from conducting tests and submitting data on such substance or mixture.

(3)(A) If the exemption of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the existence of previously submitted test data and if such exemption is granted during the reimbursement period for such test data (as prescribed by subparagraph (B)), then (unless such person and the persons referred to in clauses (i) and (ii) 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 determined under rules of the Administrator)—

(i) to the person who previously submitted such test data, for a portion of the costs incurred by such person in complying with the requirement to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the persons to be reimbursed and the share of the market for such substance or mixture of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) For purposes of subparagraph (A), the reimbursement period for any test data for a chemical substance or mixture is a period—

(i) beginning on the date such data was submitted in accordance with a rule promulgated under subsection (a), and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and is equal to the period which the Administrator determines was necessary to develop such data,

whichever is later.

(4)(A) If the exemption of any person from the requirement to conduct tests and submit test data on a chemical substance or mixture is granted on the basis of the fact that test data is being developed by one or more persons pursuant to a rule promulgated under subsection (a), then (unless such person and the persons referred to in clauses (i) and (ii) 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 determined under rules by the Administrator)—

(i) to each such person who is developing such test data, for a portion of the costs incurred by each such person in complying with such rule, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to the costs of complying with such rule, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance or mixture, the Administrator shall consider the factors described in the second sentence of paragraph (3)(A). An order under this subparagraph shall, for purposes of judicial review, be considered final agency action.

(B) If an exemption is granted on the basis of the fact that one or more persons are developing test data pursuant to a rule promulgated under subsection (a) and if after such exemption is granted the Administrator determines that no such person has complied with such rule, the Administrator shall (i) after providing written notice to the person who holds such exemption and an opportunity for a hearing, by order terminate such exemption, and (ii) notify in writing such person of the requirements of the rule with respect to which such exemption was granted.

(d) NOTICE.—Upon the receipt of any test data pursuant to a rule under subsection (a), the Administrator shall, subject to section 14, promptly publish a notice of the receipt of such data in the Federal Register. Each such notice shall (1) identify the chemical substance or mixture for which data have been received; (2) list the uses or intended uses of such substance or mixture and the information required by the applicable standards for the development of test data; and (3) describe the nature of the test data developed. Except as otherwise provided in section 14, such data shall be made available by the Administrator for examination by any person.

(e) PRIORITY LIST.—(1)(A) There is established a committee to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule under subsection (a). In making such a recommendation with respect to any chem-

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ical substance or mixture, the committee shall consider all relevant factors, including—

(i) the quantities in which the substance or mixture is or will be manufactured,

(ii) the quantities in which the substance or mixture enters the environment,

(iii) the number of persons who will be exposed to the substance or mixture in their places of employment and the duration of such exposure,

(iv) the extent of human exposure to the substance or mixture,

(v) the extent to which the substance or mixture is closely related to a chemical substance or mixture which is known to cause or significantly contribute to an unreasonable risk to health or the environment,

(vi) the existence of data concerning the effects of the substance or mixture on health or the environment,

(vii) the extent to which testing of the substance or mixture may result in the development of data upon which the effects of the substance or mixture on health or the environment can reasonably be determined or predicted, and

(viii) the reasonably foreseeable availability of facilities and personnel for performing testing on the substance or mixture.

The recommendations of the committee shall be in the form of a list of chemical substances and mixtures which shall be listed, either by individual substance or mixture or by groups of substances or mixtures, in the order in which the committee determines the Administrator should take action under subsection (a) with respect to the substances and mixtures.

(B) Not later than twelve months after the effective date of this Act, the committee shall transmit to the Administrator the list required by subparagraph (A) together with the reasons for the committee's inclusion of each chemical substance or mixture on the lists. At least every six months after the transmission to the Administrator of the list pursuant to the preceding sentence, the committee shall make such revisions in the list as it determines to be necessary and shall transmit them to the Administrator together with the committee's reasons for the revisions. The Administrator shall make available to the public the list transmitted by the committee, any revision by the committee in such list (including the date on which such revision was transmitted to the Administrator), and the reasons of the committee for inclusion of a chemical substance or mixture on the list and for any revision in the list. The Administrator shall provide reasonable opportunity to any interested person to file with the Administrator written comments on the committee's list or any revision of the committee of such list and shall make such comments available to the public.

(C) The Administrator may promulgate a rule under subsection (a) with respect to a chemical substance or mixture which is not contained on a list published under this subsection.

(2)(A) The committee established by paragraph (1)(A) shall consist of eight members as follows:

(i) One member (or designee of the member) appointed from the Environmental Protection Agency by the Administrator.

(ii) One member (or designee of the member) appointed by the Secretary of Labor from officers of the Department of Labor engaged in the Secretary's activities under the Occupational Safety and Health Act of 1970.

(iii) One member (or designee of the member) appointed from the Council on Environmental Quality by the Chairman of the Council.

(iv) One member (or designee of the member) appointed from the National Institute for Occupational Safety and Health by the Director of the Institute.

(v) One member (or the designee of the member) appointed from the National Institute of Environmental Health Sciences by the Director of the Institute.

(vi) One member (or designee of the member) appointed from the National Cancer Institute by the Director of the Institute.

(vii) One member (or designee of the member) appointed from the National Science Foundation by the Director of the Foundation.

(viii) One member (or designee of the member) appointed from the Department of Commerce by the Secretary of Commerce.

A member may designate an individual to serve on the member's behalf only with the approval of the applicable appointing authority and only if the individual is from the entity from which the member was appointed. A vacancy in the committee shall be filled in the same manner in which the original appointment was made.

(B)(i) The term of office of a member of the committee is four years, except that of the members first appointed, four members shall have initial terms of two years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term. If any member of the committee leaves the office or entity from which the member was appointed, such member may not continue as a member of the committee, and, for purposes of the preceding sentence, the member's position shall be considered as being vacant. A member may serve after the expiration of the member's term of office until a successor has taken office.

(ii) Initial appointments to the committee shall be made not later than the sixtieth day after the effective date of this Act. Not later than the ninetieth day after such date the members of the committee shall hold a meeting for the selection of a chairman from among their number and to determine, by lot, the four members who shall have initial terms of two years.

(C) The Administrator shall provide the committee such administrative support services as may be necessary for the committee to carry out its function under this subsection.

Mr. MURPHY of New York (during the reading). Mr. Chairman, I ask unanimous consent that section 4 be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. OTTINGER

Mr. OTTINGER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. OTTINGER: Page 112, strike out the period in line 20, and insert in lieu thereof a semicolon and the following: "except that in prescribing tests the Administrator in his or her discretion shall give preference to available tests which do not involve the use of animals if such tests provide an adequate and accurate means for ascertaining the effect of a chemical substance or mixture on humans and the environment."

(Mr. OTTINGER asked and was given permission to revise and extend his remarks.)

Mr. OTTINGER. Mr. Chairman, as I have stated previously, I strongly support the Toxic Substances Control Act and I am proud to be one of its cosponsors. I believe it needs to be improved, however, with respect to use of nonanimal tests where they are adequate and accurate. Therefore, I offer now the amendment which I previously offered in committee and which was not adopted there, but I think it is a tremendously important amendment because there is a history of abuse of laboratory animals, and the use of animals where they are not necessary, and it results in pain and cruelty to animals which is totally unnecessary and which this amendment seeks to avoid.

The amendment requires the Administrator of the EPA to give preference to tests which do not involve the use of animals but which are found by him in his sole discretion to be accurate and adequate for testing the toxicity of any chemicals to be tested.

In committee it was argued that this would subject the enforcement of the act to possible litigation, but we did provide in the amendment that the Administrator will have sole discretion in making testing determination; all he has to do is to consider the use of nonanimal tests where they are available and make a determination that they are adequate and accurate, and if he does make that determination he is to give preference to those tests.

It seems to me that is a reasonable requirement which does not subject the implementation of the act to interference. Again, the amendment does not ban the use of animals, but it requires the Administrator to use nonanimal tests where, in his sole discretion, he finds them to be adequate and accurate.

The intent of the amendment is to require the Administrator to consider tests which do not involve the use of animals, and thus prevent unnecessary pain and suffering to which laboratory animals are often subjected—and provide much cheaper and equally accurate testing in many instances.

Two alternative testing methodologies presently exist and are used for testing possible carcinogenic substances. One test uses Salmonella bacteria grown upon animal tissues instead of animals themselves. It has been determined that the mutation of the bacteria catches between 80 to 90 percent of all cancer-causing chemicals. It has roughly the same accuracy as is found in animal tests.

The other test, a new laboratory procedure, involves the growth of mammal cancer cells or primary cells, and their exposure to a potentially carcinogenic chemical. These nonanimal tests achieve striking savings in time and dollars. To illustrate, the average animal test for carcinogenic substances costs $150,000 and uses 400 animals over a period averaging 3 years. The nonanimal Ames Salmonella test costs $500 to $750 and can be completed in 2 days. The mammal cell tests I referred to cost between $1,000 and $3,000 and take 3 to 6 weeks.

Nobel prize-winning biologist, Dr. Renato Dulbecco, in his prize-winning lecture printed in Science Magazine of April 1976, said:

Identificaton by conventional (animal) tests is difficult because they are costly and laborious, but they can now be replaced by

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the bacterial tests for promutagens. Since these tests are easy and inexpensive, it should be possible to investigate many normal constituents of the environment, and every compound, before it is offered to the public.

Similarly, Friends of the Earth conducted research which demonstrates that these bacterial tests achieve the same 85 to 90 percent accuracy as animal tests, at considerably less cost.

In addition, the Salem Research Institute of Germany recently published a bibliography of the many already published experiments using tissue culture to solve scientific problems. It published this compendium in an effort to spur researchers into using nonanimal experiments. The bibliography lists 286 selected tissue cultures used solely for cancer research; 626 such experiments for pharmacological research.

Congress involved itself in protecting animals in laboratory experimentation when it passed the Animal Welfare Act. We were responsible for changing existing attitudes about the treatment of laboratory animals, and these changes have been positive. We must continue what we have started and I believe my amendment is one more step in that direction.

In their book entitled, "The Principles of Humane Experimental Techniques," Russel and Burch presented a formula for alleviating suffering of laboratory animals, stating three criteria:

First. Refinement of experimental techniques.

Second. Reduction of animals used.

Third. Replacement by less or nonsentient material.

My amendment is fashioned around this formula. It has the support of the Society for Animal Protective Legislation, which sent a "Dear Colleague" letter to all offices to support the amendment; the Humane Society of the United States; Defenders of Wildlife; Friends of the Earth; and Fund for Animals.

Mr. Chairman, at the appropriate time, I will ask unanimous consent to have these statements of support put in the RECORD.

I just want to read briefly from the Fund for Animals:

Reducing the unnecessary use of animals in experimentation is a subject that is of deep concern to the Fund for Animals and our 60,000 members across the country. Congressman Ottinger's amendment is an excellent step in the right direction which sets a valuable precedent in protecting animals without detracting one iota from the public's right to be safeguarded from toxic substances.

Mr. Chairman, I urge my colleagues to support the amendment and to support this important legislation.

Mr. WHITEHURST. Mr. Chairman, I rise in support of the gentleman's amendment.

(Mr. WHITEHURST asked and was given permission to revise and extend his remarks.)

Mr. WHITEHURST. Mr. Chairman, I rise in support of the amendment offered by the gentleman from New York which would prevent the unnecessary use of animals in laboratory experiments. This amendment would direct the Administrator to utilize available tests which do not involve the use of animals and which provide an adequate and accurate means of ascertaining the effects of chemical substances on humans and the environment.

It is important to note that this amendment does not ban the use of animal tests nor does it make it more difficult for the Administrator to prescribe animal tests if he feels they are necessary. The amendment simply requires the Administrator to consider alternate testing methods and directs him to use them when he finds they are adequate and accurate.

Fortunately, technology now exists to test the impact of chemicals on humans without the use of animals. These tests have the same 85 to 90 percent accuracy of animal tests and are actually much cheaper to perform. Current tests using animals to determine the cancer-causing potential of a chemical are expensive and lengthy, costing as much as $150,000 a test for 400 animals and 3 years of work. One alternative test using bacteria costs approximately $500 to $700 per test for a 2-day experiment. Another test involving lab-grown mammal cells costs about $1,000 to $3,000 a test and takes 3 to 6 weeks. Consequently, these newly developed tests are cheaper, easier, faster, and equally effective as the tests involving animals.

While it is true that we probably cannot eliminate the use of animals altogether, I believe that we have a responsibility to limit the pain and suffering of animals used in laboratory experiments to the maximum feasible extent. Since realistic and proven alternatives to the use of animals exist, I feel the Congress should make clear its desire to have these sound alternatives used whenever feasible. Once again, I urge the adoption of this humane amendment offered by the gentleman from New York.

Mr. ECKHARDT. Mr. Chairman, I rise in opposition to the amendment.

(Mr. ECKHARDT asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Now, Mr. Chairman, I recognize that it is always with some trepidation that one should take the floor opposing a fund for animals or a fund for anything else, because all these funds have behind them the people with long memories and they have an intense interest in the particular subject matter. Yet it seems to me inadvisable to direct the Administrator with respect to the manner in which he determines a danger to exist. In the first place, some of the dangers involve dangers to the lower species themselves. For instance, in the case of PCB there is danger to fish and in many instances new chemicals affect the environment by affecting animals.

Now, it is true, of course, that the amendment only applies if tests which do not involve the use of animals provide an adequate and accurate means for ascertaining the effect of a chemical substance or mixture on humans and the environment.

But actually, the Administrator usually does not come into the game early enough to determine what kind of tests are to be used, whether they are on animals or not on animals, because the Administrator ordinarily merely requires testing. He does not determine the precise nature of the tests in most instances. He only prescribes the tests to be applied to the extent necessary to assure that such data are reliable and adequate, the manner in which such data are to be developed, the specification of any test protocol or methodology to be employed in the development of such data, and such other requirements as are necessary to provide such assurance.

Of course, this amendment only goes to the Administrator's choice of the use of tests. Ordinarily, the choice of use of tests is with the person producing the chemical. He is conducting the tests, he is presenting the data, and the Administrator may either accept the data or may prescribe additional testing.

Now I suggest, Mr. Chairman, that we are ill advised to place in the law itself this kind of directive. If we do, we are going to have people meddling with the Administrator's process, with all good intention, and thus holding up the ultimate result of the tests for inordinately long periods of time.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. ECKHARDT. I yield to the gentleman from New York.

Mr. OTTINGER. On page 112, section (2)(A), it says that the Administrator can prescribe the standards for the development of test data, and says specifically, starting on line 18, "The methodologies that may be prescribed in such standards include * * *" and names the various kinds of tests.

So that there is provision here for the Secretary to prescribe the kinds of tests, and where there are nonanimal tests that are adequate, he should prefer those. I do not think that does any mischief, and I think it will help prevent some of the unnecessary carnage to animals that does unfortunately occur in some laboratories today.

Mr. ECKHARDT. It is true that he may prescribe the standards, and he may ultimately prescribe the tests in certain instances, but it seems to me that we would do great mischief to permit anyone who wants to, to come in and make an objection to the nature of these tests on the grounds of some particular preference or some particular kind of test or some particular prejudice against the use of a kind of testing.

For instance, concerning PCB's, I have a very interesting little document here that was sent to me by the gentleman from Michigan (Mr. DINGELL). One of the statements is with reference to rhesus monkeys:

Rhesus monkeys exposed to dietary levels as low as 2.5 and 5.0 ppm of PCB (lower than Lake Michigan fish) developed facial acne, subcutaneous edema and loss of eyelashes.

Why not use these tests, and why should it be available for anyone who has a particular love for rhesus monkeys, to come in and try to hold up the testing and get some kind of a court determination as to whether or not there is an adequate and accurate means of ascertaining whether a poison would cause injury to people by some other means?

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The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. OTTINGER. Mr. Chairman, I ask unanimous consent that the gentleman from Texas be allowed 30 seconds more.

Mr. ECKHARDT. I do not know whether I want 30 seconds. I might not be able to reply.

Mr. OTTINGER. I just want to say that the gentleman is playing monkeyshines with my amendment.

Mr. BROYHILL. Mr. Chairman, I move to strike the last word.

Just briefly, I want to say that I can understand the gentleman's concern, but our concern, of course, is that this amendment could do undue harm to testing of chemicals that might be dangerous to the health of mankind and to the environment. For these reasons, I oppose the amendment.

Mr. KOCH. Mr. Chairman, I move to strike the last word.

(Mr. KOCH asked and was given permission to revise and extend his remarks.)

Mr. KOCH. Mr. Chairman, I rise in support of the amendment. I think it is a good one, and let me tell the Members why I think it is a good amendment. I am not someone who is an antivivisectionist. I believe that there is appropriate experimentation on animals to be done. That includes basic research; that includes matters which would relate to the welfare and the health of humankind as well as animals that are not human. But, obviously there are limitations, and wherever it is possible to use nonanimal substances for experimentation, surely that is to be preferred instead of the use of animals.

I do not think anyone would want to quarrel with that. But even those who would not want to quarrel with it are always reluctant, so to speak, to enter the battle because in some way or other we think we are going to limit the scope of experimentation and impose restraints on those who "know better" than we do.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. KOCH. I yield to the gentleman from Texas (Mr. ECKHARDT).

Mr. ECKHARDT. I thank the gentleman for yielding.

Who is to determine whether other experimentation is adequate? Is it going to be the court, or is it going to be a scientist?

Mr. KOCH. I will read the amendment. The amendment says:

> . . . except that in prescribing tests the Administrator in his or her discretion shall give preference to available tests which do not involve the use of animals if such tests provide an adequate and accurate means for ascertaining the effect of a chemical substance or mixture on humans and the environment.

It seems to me the amendment is very carefully drawn so as to allow that discretion to the Administrator, who certainly should know whether or not there are adequate substitutes.

Why would the gentleman not want to use a nonanimal substitute, if one is available, in the discretion of the Administrator?

Mr. ECKHARDT. If the gentleman will yield to permit me to answer the question, I would say he would have the discretion, clearly, if we did not put this in the bill. I would hope he would lean in the direction of humaneness.

Mr. KOCH. Let me tell the gentleman why it does not always happen.

Mr. ECKHARDT. The thing is that this discretion, as I understand it, is limited to a situation where there is not an adequate or an accurate means for ascertaining the effects of a chemical substance.

Mr. KOCH. Let me tell the gentleman a story, which happens to be true and which happens to be current.

In the city of New York today, the Museum of Natural History in engaging, quite properly, in experimentation with respect to basic research. But there are those who believe—and I am one of them—that the experimentation that they are undertaking with respect to cats is unwarranted.

That is a layman's opinion, and I have asked the National Institute of Health for its opinion on it. I happen to have a lay opinion which will not decide for me what I will ultimately do without getting a more expert opinion, but it is a gut reaction.

I want to tell the Members what happened when I went to the Museum of Natural History, at the request of constituents who were distressed that the museum had received a grant from the Federal Government, NIH, to engage in an experimentation on cats relating to hyper- and hyposexuality. My constituents were told, based on the grant application, that this museum was going to engage in the following experimentation:

One, it was going to blind the cats. The fact is that they never did that. I want to make that very clear. But it was one of the programs that it was allowed to engage in under the grant that it received. And, second, it was going to surgically affect the penises of kittens to ascertain what effect that would have on sexuality, in addition to other experimentation. So I went to the museum and I asked them to tell me what it is that they were actually doing, and they asked me if I would like to go in and see the cats in their cages. I said yes, and I went there, and there were about 35 cats. They appeared well treated, in the sense that they were in clean cages, and they did not seem to be in any pain. So I said to the doctor who was explaining what was happening, "What do you do here? What is the purpose of this experiment?" And she said, "Well, the purpose is to look at the effects of hyper- and hyposexuality in cats. We find," said she, "that if you take a normal male cat and you place that cat in a room with a female cat that is in heat," said the professor, "the male cat would mount the female cat."

The CHAIRMAN. The time of the gentleman from New York has expired.

(By unanimous consent, Mr. KOCH was allowed to proceed for 2 additional minutes.)

I said, "That sounds very reasonable to me."

Then she said, "Now, if you take a cat, a male cat, and you put lesions in its brain—"

I interrupted and asked, "What are lesions?"

She said, "Well, you destroy part of the brain cells."

I asked, "What happens then?"

She said, "Well, if you take that male cat that has lesions in its brain and you place it in a room with a female cat and a female rabbit, the cat will mount the rabbit."

I said to her, "How does the rabbit feel about all this?"

There was no response.

Then I said to this professor, "Now, tell me, after you have taken a deranged male cat with brain lesions and you place it in a room and you find that it is going to mount a rabbit instead of a female cat, what have you got?"

There was no response.

Then I ask, "How long, by the way, have you been doing this?"

She said, "Since the early 1940's."

I said, "How much has this cost the Government?"

She said, "$435,000."

Mr. Chairman, I tell this story, not because I am prepared to say that experimentation on cats is wrong. I repeat I am not an antivivisectionist. I am simply saying that there is a role here for lay persons and an opportunity for people to be interested in what is taking place in this field, and where we can explore any of these basic problems with nonanimal substitutes, if that is possible, then we should. Where it is not possible and if the project is scientifically worthwhile—and I am not the one to suggest which projects are worthwhile; I am going to leave that to the Administrator—then obviously it should proceed.

All the amendment offered by the gentleman from New York (Mr. OTTINGER) does is it says that the Administrator in his discretion shall give preference to nonanimal tests wherever those are available, and that is on the basis of the facts as I have outlined them.

The CHAIRMAN. The time of the gentleman from New York (Mr. KOCH) has expired.

(By unanimous consent, Mr. KOCH was allowed to proceed for 1 additional minute.)

Mr. KOCH. Mr. Chairman, on that basis would the gentleman not wish to support this Ottinger amendment?

Mr. ECKHARDT. Mr. Chairman, if the gentleman will yield, I think that the cat and rabbit situation may be most interesting, and it would be more interesting if they used a male rabbit and a female cat. However, it seems to me it is far beside the point. This is an experiment for the sake of experimentation.

What we are talking about is experimentation with respect to a poison. If it affects a cat or a rabbit, it will probably, or may possibly, affect a person.

Mr. KOCH. Mr. Chairman, if the gentleman will bear with me, I repeat if there is no other way, if there is no nonanimal substitute available, the gentleman from New York (Mr. OTTINGER) and I do not disagree with the gentleman from Texas. What we are saying is that there ought to be consideration given to the use of nonanimal substitutes when they are available.

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Mr. Chairman, I think this is a very reasonable amendment, and I urge the Committee to accept it.

Mr. MURPHY of New York. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I regretfully oppose the amendment offered by my colleague, the gentleman from New York (Mr. OTTINGER). The Ottinger amendment on its face directs the Administrator in his or her discretion to give preference to tests which do not involve the use of animals if such tests provide an adequate and accurate means of ascertaining the health and the environmental effects of a chemical.

This amendment could result in undermining the protection of human health which can be achieved under this bill. The amendment could result in EPA's not receiving the use of the most reliable and effective means of determining the effect that a chemical might have on a human being.

Although a nonanimal test may be adequate and accurate, a test using animals may be more acceptable and more reliable. When the objective is to protect human health, EPA should not be discouraged from using the best means available of determining whether a chemical is safe.

The gentleman from New York (Mr. OTTINGER) argues that the amendment will result in reducing testing costs to manufacturers because nonanimal tests are less expensive to perform. The bill already fully protects manufacturers from being subjected to unnecessarily expensive testing.

What it does do is that it permits a scientific evaluation by the Environmental Protection Administrator as to whether to use photochromatography or necessary animal testing, if that is required to protect human health and human life.

Mr. Chairman, I think we should respect the various test protocols and methodologies and the discretion of scientists within the tight guidelines that we have in this bill.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from New York.

Mr. OTTINGER. Mr. Chairman, my good colleague, the gentleman from Tennessee (Mr. ALLEN) points out that we could even insulate this further from the courts if, before the word "discretion," we put "sole," so that it would read: "The Administrator, in his sole discretion, shall give preference * * *."

Mr. Chairman, I have no objection to that.

Mr. Chairman, I ask unanimous consent that the word "sole" be inserted before the word "discretion."

The CHAIRMAN. Is there objection to the request of the gentleman from New York (Mr. OTTINGER)?

There was no objection.

The CHAIRMAN. The amendment is modified accordingly.

Mr. MURPHY of New York. Mr. Chairman, if I might close, my colleague, the gentleman from New York (Mr. OTTINGER) and I have supported legislation with respect to the slaughtering of animals in laboratory animal testing, and our committee put strict Federal guidelines on animal testing in laboratories.

We also worked very closely on humane slaughtering in the slaughter houses of America.

Mr. Chairman, with respect to the fact that certain societies have written and have said that they support this amendment on the basis of humane conditions for animals, I certainly can understand their feelings; but I think we should underscore the philosophy here that we are trying to protect humans as well as animals and that we should use the most effective and reliable methods. If animal testing is needed, the discretion should be with the scientists at EPA to make that determination.

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of New York. I yield to the gentleman from Nebraska.

Mr. McCOLLISTER. Mr. Chairman, I wish to associate myself with the remarks of the gentleman from New York (Mr. MURPHY).

As I said, the sole basis for determining what tests are to be run ought to be: What is best to preserve and protect human life?

Mr. Chairman, I think the amendment of the gentleman from New York (Mr. OTTINGER) provides additional criteria that might well interfere with that objective.

Mr. MURPHY of New York. Mr. Chairman, I urge my colleagues to reject the Ottinger amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York (Mr. OTTINGER), as modified.

The question was taken; and on a division (demanded by Mr. OTTINGER) there were—ayes 14, noes 19.

Mr. OTTINGER. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The CHAIRMAN. Evidently a quorum is not present.

The Chair announces that pursuant to clause 2, rule XXIII, he will vacate proceedings under the call when a quorum of the Committee appears.

Mr. OTTINGER. Mr. Chairman, I will withhold my request for a quorum and see whether we get enough people to stand for the recorded vote so that we will just have the recorded vote.

The CHAIRMAN. The Chair will state to the gentleman from New York (Mr. OTTINGER) that the Chair has already announced the absence of a quorum. The withdrawal of the point of order comes too late. We will therefore proceed with the quorum call.

Members will record their presence by electronic device.

The call was taken by electronic device.

QUORUM CALL VACATED

The CHAIRMAN. One hundred Members have appeared. A quorum of the Committee of the Whole is present. Pursuant to rule XXIII, clause 2, further proceedings under the call shall be considered as vacated.

The Committee will resume its business.

The CHAIRMAN. The pending business is the demand of the gentleman from New York (Mr. OTTINGER) for a recorded vote.

A recorded vote was refused.

So the amendment, as modified, was rejected.

The CHAIRMAN. Are there further amendments to section 4? If not, the Clerk will read.

The Clerk read as follows:

MANUFACTURING AND PROCESSING NOTICES

SEC. 5. (a) NOTIFICATION FOR MANUFACTURE OF NEW CHEMICAL SUBSTANCES.—On and after the date on which the Administrator first publishes under section 8(b) a list of chemical substances manufactured or processed in the United States, no person may manufacture a new chemical substance unless (except as provided in subsection (i) (relating to exemptions)) such person—

(1) has, at least ninety days before such manufacture, submitted to the Administrator, in accordance with subsection (f) (relating to notice content), a notice of such person's intention to manufacture such substance, and

(2) has complied with any applicable requirement of subsection (d) (relating to submission of test data).

(b) NOTIFICATION FOR THE MANUFACTURE OR PROCESSING OF A CHEMICAL SUBSTANCE FOR A SIGNIFICANT NEW USE.—(1) No person may manufacture or process a chemical substance for a use which the Administrator has determined, in accordance with paragraph (2), is a significant new use of such substance unless (except as provided in subsection (i)) such person—

(A) has, at least ninety days before such manufacture or processing, submitted to the Administrator, in accordance with subsection (f), a notice of such person's intention to manufacture or process such substance for such use, and

(B) has complied with any applicable requirement of subsection (d).

(2) A determination by the Administrator that a new use of a chemical substance is a significant new use with respect to which notification is required under paragraph (1) or subsection (c)(1)(B) shall be made by a rule promulgated after a consideration of all relevant factors, including—

(A) the projected volume of manufacturing and processing of such substance for such use,

(B) the extent to which such use changes the type or form of exposure of humans or the environment to such substance, and

(C) the extent to which such use increases the magnitude and duration of exposure of humans or the environment to such substance.

The last sentence of section 19(c)(1) shall not apply to judicial review of any rule promulgated under this paragraph.

(c) NOTIFICATION FOR THE MANUFACTURE OR PROCESSING OF LISTED CHEMICAL SUBSTANCES.—(1)(A) No person may manufacture a chemical substance—

(i) which is listed under paragraph (2), and

(ii) which was a new chemical substance at the time of publication of the earliest proposed rule under paragraph (2) listing such substance,

unless (except as provided in subsection (i)) such person has, at least ninety days before such manufacture, submitted to the Administrator, in accordance with subsection (f), a notice of such person's intention to manufacture such substance and has complied with the requirement of subsection (d).

(B) No person may manufacture or process a chemical substance, listed under paragraph

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(2), for a use which the Administrator has determined, in accordance with subsection (b)(2), is a significant new use of such substance unless (except as provided in subsection (i)) such person—

(i) has, at least ninety days before such manufacture or processing, submitted to the Administrator, in accordance with subsection (f), a notice of such person's intention to manufacture or process such substance for such use, and

(ii) has complied with the requirement of subsection (d).

(2)(A)(i) Within twelve months after the effective date of this Act, the Administrator shall, by rule, compile, and from time to time thereafter revise, a list of chemical substances the manufacture, processing, distribution in commerce, use, or disposal of which, or any combination of such actions respecting which, the Administrator finds causes or significantly contributes to or may cause or significantly contribute to an unreasonable risk to health or the environment.

(ii) In making a finding under clause (i) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or any combination of such actions causes or significantly contributes to or may cause or significantly contribute to an unreasonable risk to health or the environment, the Administrator shall consider all relevant factors, including—

(I) the effects of the chemical substance on health and the magnitude of human exposure to it; and

(II) the effects of the chemical substance on the environment and the magnitude of environmental exposure to it.

(B) The Administrator shall, in prescribing a rule under subparagraph (A) which lists any chemical substance, identify those uses, if any, which the Administrator determines, in accordance with subsection (b)(2), would constitute a significant new use of such substance. The last sentence of section 19(c)(1) shall not apply to judicial review of any provision of a rule under subparagraph (A) which provision is prescribed pursuant to this subparagraph.

(C) Any rule under subparagraph (A), and any amendment or repeal of such a rule, shall be promulgated pursuant to the procedures specified in section 553 of title 5, United States Code, except that (i) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions, and (ii) a transcript shall be kept of any oral presentation. The Administrator may not promulgate under subparagraph (A) a rule listing a chemical substance unless the Administrator makes and publishes with the rule the finding described in such subparagraph.

(d) REQUIREMENT RESPECTING SUBMISSION OF TEST DATA.—(1)(A) If—

(i) a person is required by subsection (a), (b), or (c) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance, and

(ii) such person is required to submit test data for such substance pursuant to a rule promulgated under section 4 before the submission of such notice or such person has been granted an exemption under section 4(c) from the requirement of such rule,

such person may not, before the expiration of the period prescribed by subparagraph (B), manufacture such substance if the person is subject to subsection (a) or (c)(1)(A) or manufacture of process such substance for a significant new use if the person is subject to subsection (b) or (c)(1)(B).

(B) The period referred to in subparagraph (A) is—

(i) in the case of a person required to submit test data pursuant to a rule promulgated under section 4(a) a period of ninety days which begins on the date on which such person submits to the Administrator such data in accordance with such rule, and

(ii) in the case of a person who under section 4(c) is exempt from a requirement to submit test data pursuant to a rule promulgated under section 4(a), a period of ninety days which begins on the date of the submission in accordance with such rule of the test data the submission or the development of which was the basis for the exemption.

(2)(A) If—

(i) a person is required by subsection (c) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance, and

(ii)(I) a rule promulgated under section 4 before the submission of such notice requiring the submission of test data for such substance does not require such person to submit such data, or

(II) the Administrator has not promulgated such a rule for such substance before the submission of such notice,

such person may not, before the expiration of the ninety-day period which begins on the date such person submits to the Administrator data prescribed by subparagraph (B), manufacture such substance if such person is subject to subsection (c)(1)(A) or manufacture or process such substance for a significant new use if such person is subject to subsection (c)(1)(B).

(B) Data submitted pursuant to subparagraph (A) shall be data which the person submitting the data believes show that—

(i) in the case of a substance for which notice is required under subsection (c)(1)(A), the manufacture, processing, distribution in commerce, use, and disposal of the chemical substance or any combination of such actions would not cause or significantly contribute to an unreasonable risk to health or the environment, or

(ii) in the case of a chemical substance for which notice is required under subsection (c)(1)(B), the intended significant new use of the chemical substance would not cause or significantly contribute to an unreasonable risk to health or the environment.

(3) Data submitted under paragraph (1) or (2) shall be made available, subject to section 14, for examination by interested persons.

(e) EXTENSION OF NOTICE PERIOD.—The Administrator may for good cause extend for one additional period of not to exceed ninety days the period prescribed by subsection (a), (b), (c), or (d), before which the manufacturing or processing of a chemical substance subject to such subsection may begin. Subject to section 14, such an extension and the reasons therefor shall be published in the Federal Register and shall constitute a final agency action subject to judicial review.

(f) CONTENT OF NOTICE; PUBLICATION IN THE FEDERAL REGISTER.—(1) The notice required by subsections (a), (b), and (c) respecting a chemical substance shall include—

(A) the name of the chemical substance;

(B) the chemical identity and molecular structure of the substance, insofar as such are reasonably ascertainable;

(C) the proposed categories of use of such substance, insofar as such are reasonably ascertainable;

(D) a reasonable estimate of the amount of the substance to be manufactured or processed and, insofar as reasonably ascertainable, a reasonable estimate of the amount of the substance to be manufactured or processed for each proposed category of use of the substance;

(E) a description of the byproducts, if any, resulting from the manufacture, processing, use, or disposal of the substance, insofar as such are reasonably ascertainable; and

(F) any test data in the possession or control of the person giving such notice which are related to the effect on health or the environment of any manufacture, processing, distribution in commerce, use, or disposal of the substance or any article containing such substance.

Such a notice shall be made available, subject to section 14, for examination by interested persons.

(2) Subject to section 14, not later than five days (excluding Saturdays, Sundays and legal holidays) after the date of the receipt of a notice under subsection (a), (b), or (c) or data under subsection (d) the Administrator shall publish in the Federal Register a notice which—

(A) identifies the chemical substance for which notice or data has been received;

(B) lists the uses or intended uses of such substance; and

(C) in the case of the receipt of data under subsection (d), describes the nature of tests performed on such substance and any data which was developed pursuant to subsection (d) or a rule under section 4.

Notice under this paragraph respecting a chemical substance shall identify the chemical substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(g) REGULATION PENDING DEVELOPMENT OF INFORMATION.—(1)(A) The district courts of the United States shall, upon application of the Administrator made through attorneys of the Environmental Protection Agency, have jurisdiction to enjoin in accordance with subparagraph (B), the manufacture, processing, or distribution in commerce of a chemical substance subject to a notification requirement of subsection (a), (b), or (c) if the court finds that—

(i) information available to the Administrator is insufficient to permit a reasoned evaluation of the effects on health or the environment of the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance or any combination of such actions, and

(ii) in the absence of such information, the manufacture, processing, distribution in commerce, use, or disposal of such substance or any combination of such actions may cause or significantly contribute to an unreasonable risk to health or the environment.

(B) An injunction issued under subparagraph (A) with respect to a chemical substance subject to a notification requirement under subsection (b) or (c)(1)(B) respecting a significant new use of such substance shall apply only to the manufacture, processing, or distribution in commerce, as the case may be, of the substance for such use.

(C) An injunction issued under subparagraph (A) with respect to a chemical substance shall expire—

(i) upon the expiration of the five-day period beginning on the day after the issuance of the injunction, if the Administrator does not within such period publish the notice required by paragraph (2), or

(ii) if the Administrator publishes such notice within such period, upon the completion or termination of the proceeding begun by publication of such notice.

(2)(A) Within five days after the issuance of an injunction under paragraph (1) with respect to a chemical substance, the Administrator shall publish, in accordance with section 553(b) of title 5, United States Code, a general notice of proposed rulemaking to begin proceedings for the promulgation of a rule to apply to such substance one or more of the requirements described in section 6(a) as is necessary to adequately protect against the risk to health or the environment found by the court under paragraph (1)(A)(ii).

(B) Upon publication of such a notice the Administrator shall, as expeditiously as pos-

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sible, provide reasonable opportunity for a hearing (in accordance with paragraphs (2) and (3) of section 6(c)) on such proposed rule, and either adopt such rule (as proposed or with modifications) or by notice published in the Federal Register terminate the proceeding for the promulgation of the rule. If such a hearing is requested, the Administrator shall commence the hearing within fifteen days from the date such request is made unless the Administrator and each person making the request agree upon a later date for the hearing to begin, and after the hearing is concluded the Administrator shall, within thirty days of the conclusion of the hearing, either adopt such rule (as proposed or with modifications) or terminate the proceeding (as prescribed in the preceding sentence).

(3) After a rule promulgated under paragraph (2) has taken effect any person may petition the Administrator to initiate a proceeding to amend or repeal such rule. Within thirty days of the receipt of such a petition, the Administrator shall by order either grant or deny the petition. If the Administrator grants such petition, the Administrator shall promptly initiate a proceeding for the amendment or repeal, as the case may be, of such rule. Such a proceeding shall be conducted in accordance with paragraphs (2) and (3) of section 6(c).

(h) PETITION FOR STANDARDS FOR THE DEVELOPMENT OF TEST DATA.—A person intending to manufacture or process a chemical substance for which notice is required under subsection (a), (b), or (c) and who is not required under a rule under section 4 to conduct tests and submit data on such substance may petition the Administrator to prescribe standards for the development of test data for such substance. The Administrator shall either grant or deny any such petition within sixty days of its receipt. If the petition is granted, the Administrator shall prescribe such standards for such substance within seventy-five days of the date the petition is granted. If the petition is denied, the Administrator shall publish in the Federal Register the reasons for such denial.

(i) EXEMPTION.—(1) The Administrator may, upon application (made in such form and manner as the Administrator may prescribe) exempt any person from the requirement of susbsection (a), (b), (c), or (d) or of any combination of such subsections to enable such person to manufacture or process a chemical substance for test marketing purposes—

(A) upon a showing by such person satisfactory to the Administrator that the manufacture, processing, distribution in commerce, use, and disposal of such substance for such purposes would not cause or significantly contribute to any unreasonable risk to health or the environment, and

(B) under such restrictions as the Administrator considers appropriate.

Within forty-five days of the receipt of an application under this paragraph the Administrator shall either approve or deny such application.

(2) (A) The Administrator may upon application (made in such form and manner as the Administrator may prescribe) exempt any person from the requirement of subsection (d) (2) to submit data for a chemical substance. If, upon receipt of an application under the preceding sentence, the Administrator determines that—

(i) the chemical substance (including any contaminant present in such substance) with respect to which such application was submitted is equivalent to a chemical substance for which data has been submitted to the Administrator in accordance with subsection (d) (2), and

(ii) submission of data by the applicant on such substance would be duplicative of data which has been submitted to the Administrator in accordance with such subsection,

the Administrator shall exempt the applicant from submitting such data on such substance. No exemption granted under this subparagraph with respect to the submission of data for a chemical substance may take effect before the beginning of the reimbursement period applicable to such data.

(B) If the Administrator, under subparagraph (A), exempts any person from submitting under subsection (d) (2) data for a chemical substance because of the existence of previously submitted data and if such exemption is granted during the reimbursement period for such data, then (unless such person and the persons referred to in clauses (i) and (ii) 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 determined under rules of the Administrator)—

(i) to the person who previously submitted the data on which the exemption was based, for a portion of the costs incurred by such person in complying with the requirement under subsection (d) (2) to submit such data, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance, the Administrator shall consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the persons to be reimbursed and the share of the market for such substance of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. An order under this subparagraph shall be considered final agency action, for purposes of judicial review.

(C) For purposes of this paragraph, the reimbursement period for any previously submitted data for a chemical substance is a period—

(i) beginning on the date of the termination of the prohibition, imposed under this section, on the manufacture or processing of such substance by the person who submitted such data to the Administrator, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and is equal to the period which the Administrator determines was necessary to develop such data,

whichever is later.

(3) The requirements of subsections (a), (b), (c), and (d) do not apply with respect to the manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for—

(A) scientific experimentation or analysis, or

(B) chemical research or analysis on such substance or another substance, including such research or analysis for the development of a product,

if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer or processor has reason to believe may be associated with such chemical substance.

(4) (A) The requirements of subsections (a) and (e) (1) (A) do not apply with respect to the manufacturing or processing of any chemical substance which is the same as a listed chemical substance.

(B) For purposes of subparagraph (A), a chemical substance shall not be considered as different from a listed chemical substance solely because—

(i) the proportion of the inert chemical substances which are present in the listed chemical substance is different from the proportion of such substances present in the chemical substance being compared to the listed chemical substance; or

(ii) an inert listed chemical substance has been added to or deleted from the chemical substance being compared.

(C) For purposes of this paragraph—

(i) the term "inert chemical substance" means a chemical substance which when combined with other chemical substances to produce another chemical substance does not react chemically with such other chemical substances; and

(ii) the term "listed chemical substance" means a chemical substance included in the list compiled and published under section 8(b).

(5) The Administrator may, upon application, by rule exempt the manufacturer of any new chemical substance from all or part of the requirements of this section if the Administrator determines that such chemical substance will not cause or significantly contribute to an unreasonable risk to health or the environment. A rule under this paragraph (and any substantive amendment to, or repeal of, such a rule) shall be promulgated in accordance with pagraraphs (2) and (3) of section 6(e).

(j) DEFINITION.—For purposes of this section, the terms "manufacture" and "process" mean to manufacture or to process for commercial purposes.

Mr. MURPHY of New York (during the reading). Mr. Chairman, I ask unanimous consent that section 5 be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. MURPHY of New York. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I think it is important to point out to my colleagues that research chemicals are exempted from the requirements of section 5. It has come to my attention that some people have interpreted this exemption as applying only to research chemicals which are manufactured and used in-house by a company. While the exemption does include such research chemicals, it is not limited to them. If a chemical is manufactured by one person in small quantities for use as a research chemical and sold to another person to use for research purposes, then the exemption covers such a chemical. In other words, one company can make chemicals to be used for research by another company or by another person and the exemption covers that chemical.

I would like to ask the authors of the legislation the gentleman from Texas (Mr. ECKHARDT) and the gentleman from North Carolina (Mr. BROYHILL) if that is their understanding of the exemption?

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Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of New York. I am happy to yield.

Mr. ECKHARDT. Mr. Chairman, that is my understanding of the exemption.

Mr. BROYHILL. Mr. Chairman, will the gentleman yield?

Mr. MURPHY of New York. I am happy to yield.

Mr. BROYHILL. Mr. Chairman, I agree with the gentleman from New York.

Mr. MURPHY. of New York. Mr. Chairman, I would also like to note that there are requirements in section 5 and elsewhere in the bill that the Administrator publish information in the Federal Register within a set number of days. The committee recognizes, of course, that the Administrator does not have control over the printing schedule of the Federal Register. Thus, the requirement should be construed as imposing on the Administrator the duty to submit the information to the Federal Register for publication within the requisite time period.

One further points on section 5. A small manufacturer told me the other day that he interpreted section 5 as permitting the Administrator to stop manufacture of a new chemical solely on the basis that the new chemical would not be effective for its proposed use. Mr. Chairman, I just want to clarify that this is totally untrue. Section 5 does not permit the Administrator to stop manufacture on the grounds that a chemical will not be effective.

The CHAIRMAN. Are there amendments to section 5? If not, the Clerk will read.

The Clerk read as follows:

REGULATION OF HAZARDOUS CHEMICAL SUBSTANCES AND MIXTURES

SEC. 6 (a) SCOPE OF REGULATION.—If the Administrator finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture or any combination of such actions causes or significantly contributes to or will cause or significantly contribute to an unreasonable risk to health or the environment, the Administrator shall by rule apply to such substance or mixture one or more of the following requirements as is necessary to adequately protect against such risk:

(1) A requirement prohibiting the manufacturing, processing, or distribution in commerce of such substance or mixture or limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce.

(2) A requirement—

(A) prohibiting the manufacture, processing or distribution in commerce of such substance or mixture for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement, or

(B) limiting the amount of such substance or mixture which may be manufactured, processed, or distributed in commerce for (i) a particular use or (ii) a particular use in a concentration in excess of a level specified by the Administrator in the rule imposing the requirement.

(3) A requirement that such substance or mixture or any article containing such substance or mixture be marked with or accompanied by clear and adequate warnings and instructions with respect to its use or disposal or with respect to both. The form and content of such warnings and instructions shall be prescribed by the Administrator.

(4) A requirement that manufacturers and processors of such substance or mixture make and retain records of the processes used to manufacture or process such substance or mixture.

(5) (A) A requirement regulating the manner or method of disposal of such substance or mixture or article containing such substance or mixture by its manufacturer or processor or any other person who uses it for commercial purposes.

(B) A requirement under subparagraph (A) may not require any person to take any action which would be in violation of any law of a State or political subdivision, and shall require each person subject to it to notify each State and political subdivision in which a required disposal may occur of such requirement.

(6) If the rule imposes on a chemical substance or mixture a requirement described in paragraph (1) or (2), a requirement directing the manufacturer, processor, or distributor in commerce of such substance or mixture or article containing such substance or mixture or directing any combination of such persons (A) to give notice of such risk to processors or distributors in commerce of such substance, mixture, or article, or to both, and, to the extent reasonably ascertainable, to any other person in possession of or exposed to such substance, mixture, or article; (B) to give public notice of such risk; or (C) to give both such notices.

A requirement imposed under this subsection shall be the least burdensome requirement necessary to adequately protect against the risk with respect to which the requirement was imposed and may be limited in application to specified geographic areas.

(b) PROTECTION AGAINST ADULTERATION OR CONTAMINATION OF SUBSTANCES AND MIXTURES.—If the Administrator has good cause to believe that a particular manufacturer or processor is manufacturing or processing a chemical substance or mixture in a manner which unintentionally causes the chemical substance or mixture to cause or significantly contribute to or to be likely to cause or significantly contribute to an unreasonable risk to health or the environment—

(1) the Administrator may by order require such manufacturer or processor to submit a description of the relevant quality control procedures followed in the manufacturing or processing of such chemical substance or mixture; and

(2) if the Administrator determines after the issuance of an order described in paragraph (1)—

(A) that such quality control procedures are inadequate to prevent the chemical substance or mixture from causing or significantly contributing to such risk, the Administrator may order the manufacturer or processor to revise such quality control procedures to the extent necessary to remedy such inadequacy; or

(B) that the use of such quality control procedures has resulted in the distribution in commerce of chemical substances or mixtures which cause or significantly contribute to an unreasonable risk to health or the environment, the Administrator may order the manufacture or processor to (i) give notice of such risk to processors or distributors in commerce of any such substance or mixture, or to both, and, to the extent reasonably ascertainable, to any other person in possession of or exposed to any such substance, (ii) to give public notice of such risk, and (iii) to provide such replacement or repurchase of any such substance or mixture as is necessary to adequately protect health or the environment.

A determination under subparagraph (A) or (B) of paragraph (2) shall be made on the record after opportunity for hearing in accordance with section 554 of title 5, United States Code. The manufacturer or processor subject to a requirement to replace or repurchase a chemical substance or mixture may decide whether to replace or repurchase the substance or mixture and shall take either such action in the manner prescribed by the Administrator.

(c) PROMULGATION OF SUBSECTION (a) RULES.—(1) In promulgating any rule under subsection (a) with respect to a chemical substance or mixture, the Administrator shall consider all relevant factors and make findings with respect to—

(A) the effects of such substance or mixture on health and the magnitude of human exposure to such substance or mixture,

(B) the effects of such substance or mixture on the environment and the magnitude of environmental exposure to such substance or mixture,

(C) the benefits of such substance or mixture for various uses and the availability of other substances or mixtures for such uses, and

(D) the reasonably ascertainable economic consequences of such rule taking into account the impact on small business.

If the Administrator determines that a risk to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another Federal law (or laws) administered in whole or in part by the Administrator, the Administrator may not promulgate a rule under subsection (a) to protect against such risk unless the Administrator makes a finding that it is in the public interest to protect against such risk under such rule taking into consideration all aspects of the risk, the authorities under this Act and such other law (or laws) to enforce actions taken under this Act or such law (or laws) to protect against such risk, a comparison of the estimated costs of complying with actions taken under such law (or laws), and the relative efficiency of actions under this Act and under such law (or laws). In the judicial review of a rule under subsection (a) the last sentence of section 19(c)(1) shall not apply with respect to the determinations and findings required to be made by this paragraph.

(2)(A) Rules under subsection (a) shall be promulgated pursuant to section 553 of title 5 of the United States Code; except that in promulgating any such rule (i) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (ii) a transcript shall be kept of any oral presentation; and (iii) during any such oral presentation, the Administrator shall include an opportunity for cross-examination as provided in subparagraph (B). The Administrator may not promulgate a rule under subsection (a) respecting a chemical substance or mixture unless the Administrator makes and publishes with the rule the finding described in such subsection.

(B) An interested person is entitled, if the Administrator determines that it is necessary to resolve disputed issues of material fact, to conduct or have conducted by the Administrator such cross-examination of persons as the Administrator determines (i) to be appropriate in view of any need for expedition, the nature of the issues involved, and the number of participants and the nature of their interests, and (ii) to be required for a full and true disclosure with respect to such issues.

(C)(i) If the Administrator determines that a group of persons, each of whom would but for this subparagraph be entitled to conduct (or have conducted) cross-examination, has the same or similar interests in a proceeding, the Administrator may (I) conduct cross-examination on behalf of such group, or (II) require such group to designate a

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single representative of such interests for purposes of conducting cross-examination in such proceeding and such representative shall, except as provided in clause (ii), conduct such cross-examination. If such group cannot agree upon a single representative for such purposes, the Administrator may limit the representation of such interests for such purposes.

(ii) When any person who is a member of a group with respect to which the Administrator has made a determination under clause (i) is unable to agree upon group representation with the other members of the group, then such person shall not be denied under the authority of such clause the opportunity to conduct (or have conducted) cross-examination as to issues affecting the person's particular interests if (I) the person satisfies the Administrator that the person has made a reasonable and good faith effort to reach agreement upon group representation with the other members of the group and (II) the Administrator determines that there are substantial and relevant issues which are not adequately presented by the group representative.

(D) The Administrator may issue procedural rules for the conduct of any oral presentation (including cross-examination) under this paragraph and may impose such reasonable time limits on each person's oral presentations authorized by this paragraph as may be appropriate in view of any need for expedition, the nature of the issues involved, and the number of participants and the nature of their interests.

(E) In the judicial review of a rule under subsection (a) the last sentence of section 19(c)(1) shall not apply to any determination of the Administrator under this paragraph.

(3)(A) The Administrator may, pursuant to rules prescribed by it, provide compensation for reasonable attorneys' fees, expert witness fees, and other costs of participating in a rulemaking proceeding for the promulgation of a rule under subsection (a) to any person who represents an interest which will substantially contribute to a fair determination of the issues to be resolved in the proceeding taking into account the number and complexity of such issues and whether representation of such interest will contribute to widespread public participation in the proceeding and representation of a fair balance of interests for the resolution of such issues if—

(i) the economic interest of such person is small in comparison to the costs of effective participation in the proceeding by such person, or

(ii) such person demonstrates to the satisfaction of the Administrator that such person does not have sufficient resources adequately to participate in the proceeding in the absence of compensation under this subparagraph.

In determining whether compensation should be provided to a person under this subparagraph and the amount of such compensation, the Administrator shall take into account the financial burden which will be incurred by such person in participating in the rulemaking proceeding.

(B) The aggregate amount of compensation paid under this paragraph in any fiscal year to all persons who, in rulemaking proceedings in which they receive compensation, are persons who either—

(i) would be regulated by the proposed rule, or

(ii) represent persons who would be so regulated, may not exceed 25 per centum of the aggregate amount paid as compensation under this paragraph to all persons in such fiscal year.

(4) Paragraphs (1), (2), and (3) of this subsection apply to the promulgation of a rule repealing, or making a substantive amendment to, a rule promulgated under subsection (a).

(d) Effective Date.—(1) The Administrator shall specify in any rule under subsection (a) the date on which it shall take effect, which date shall be as soon as feasible.

(2)(A) The Administrator may declare a proposed rule under subsection (a) to be effective upon its publication in the Federal Register and until the effective date of final action taken, in accordance with subparagraph (B), respecting such rule if—

(i) the Administrator determines that—

(I) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to such proposed rule or any combination of such activities is likely to result in an unreasonable risk of serious or widespread harm to health or the environment before such effective date; and

(II) making such proposed rule so effective is necessary to protect the public interest; and

(ii) in the case of a proposed rule to prohibit the manufacture, processing, or distribution of a chemical substance or mixture because of the risk determined under clause (i)(I), a court has in an action under section 7 granted relief with respect to such risk associated with such substance or mixture.

(B) If the Administrator makes a proposed rule effective upon its publication in the Federal Register, the Administrator shall, as expeditiously as possible, give interested persons prompt notice of such action, provide reasonable opportunity, in accordance with paragraphs (2) and (3) of subsection (c), for a hearing on such rule, and either affirm such rule (as proposed or with modifications) or revoke it; and if such a hearing is requested, the Administrator shall commence the hearing within five days from the date such request is made unless the Administrator and the person making the request agree upon a later date for the hearing to begin, and after the hearing is concluded the Administrator shall, within ten days of the conclusion of the hearing, either affirm such rule (as proposed or with modifications) or revoke it.

Mr. MURPHY of New York (during the reading). Mr. Chairman, I ask unanimous consent that section 6 be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New York?

There was no objection.

AMENDMENT OFFERED BY MR. M'COLLISTER

Mr. McCOLLISTER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. McCOLLISTER: Page 145, line 6, strike out "law of" and insert "law or requirement of or in effect for".

(Mr. McCOLLISTER asked and was given permission to revise and extend his remarks.)

Mr. McCOLLISTER. Mr. Chairman, I will not take the 5 minutes.

Mr. Chairman, this is in the nature of a technical or clarifying amendment. Under the bill, EPA can issue regulations concerning the manner and method of disposal. These regulations must be in conformity with State law. This amendment would make clear that when State regulations are in effect as required by Federal law, such as the Clean Air Act or the proposed Solid Waste Disposal bill—which would require State plans—the EPA disposal regulations would also have to be in conformity with these requirements.

I have discussed the amendment with the gentleman from New York and the gentleman from Texas, and I believe that they are in agreement on the clarifying intent of it.

Mr. MURPHY of New York. Mr. Chairman, will the gentleman yield?

Mr. McCOLLISTER. I yield to the gentleman from New York.

Mr. MURPHY of New York. Mr. Chairman, the ranking minority member has well stated the case, and I am happy to accept this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Nebraska (Mr. McCOLLISTER).

The amendment was agreed to.

Mr. HAGEDORN. Mr. Chairman, I move to strike the last word.

I have just two points I would like to cover in a colloquy with the gentleman from New York (Mr. MURPHY).

On page 148 the Administrator is directed to consider various factors before imposing sanctions permitted under section (6)(a). Among these are (C) "the benefits of such substance or mixture for various uses and the availability of other substances or mixtures for such uses . . ."

My question is this intended to involve the Administrator ruling upon the efficacy of a chemical for its intended purpose in any way?

Mr. MURPHY of New York. No. The purpose of this language is to be certain that the benefits of a substance are considered in any determination of whether a risk is an unreasonable one.

Mr. HAGEDORN. I thank the gentleman. I have a further question, Mr. Chairman, for the gentleman from New York.

Section (6)(a) permits the Administrator to prohibit the manufacturing, processing or distribution of a chemical substance, or to limit the amount which may be manufactured, processed or distributed in commerce. My question is at this point, what does the term "limit" contemplate? Does it mean quotas or levels of production, or how is that word "limit" to be defined?

Mr. MURPHY of New York. This would in no way mean quotas for individuals. It would mean a limitation on the total manufactured volume. Such limitations would have to apply equally to all companies.

Mr. HAGEDORN. Throughout all chemical companies?

Mr. MURPHY of New York. On that particular chemical.

Mr. HAGEDORN. Would all companies be able to participate in the manufacturing of that chemical, or would it be given possibly to certain companies for that process?

Mr. MURPHY of New York. No, it would not be limited by companies. It would be limited by volume.

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Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. HAGEDORN. I yield to the gentleman from Texas.

Mr. ECKHARDT. I would think that the bill would envisage the Administrator treating all manufacturers desiring to produce a limited quantity of a substance equitably, and in that way there would have to be a division among companies.

Mr. HAGEDORN. Then there is adequate protection for the small businessmen so that they will not be squeezed out?

Mr. ECKHARDT. I would think not only should it be equitably divided as among companies, but should be in terms of something like equal quantities so as to give small producers something of an advantage.

Mr. HAGEDORN. I thank the gentleman.

AMENDMENT OFFERED BY MR. DINGELL

Mr. DINGELL. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. DINGELL: Page 154, insert after line 21 the following:

(e) POLYCHLORINATED BIPHENYLS.—(1) Within 6 months after the effective date of this Act the Administrator shall initiate proceedings for the promulgation of rules to—

(A) prescribe methods for the disposal of polychlorinated biphenyls, and

(B) require polychlorinated biphenyls to be marked with clear and adequate warnings and instructions with respect to their processing, distribution in commerce, use, or disposal or with respect to any combination of such activities. Requirements prescribed by rules under this paragraph shall be consistent with the requirements prescribed by or under paragraphs (2) and (3).

(2) (A) Except as provided under subparagraph (B), effective one year after the effective date of this Act no person may manufacture, process, or distribute in commerce any polychlorinated biphenyl for any use other than a use in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, or distribution in commerce (or any combination of such activities) of any polychlorinated biphenyl for any use other than a use in a totally enclosed manner if the Administrator finds that such manufacture, processing, or distribution in commerce (or combination of such activities) will not cause or significantly contribute to an unreasonable risk to health or the environment.

(C) For the purposes of this paragraph, the term "totally enclosed manner" means any manner which will ensure that any leakage of a polychlorinated biphenyl from its enclosure will be insignificant as determined by the Administrator by rule.

(3) (A) Except as provided in subparagraphs (B) and (C), effective two years after the effective date of this Act no person may manufacture any polychlorinated biphenyl, and effective two and one-half years after such effective date no person may process or distribute in commerce any polychlorinated biphenyl.

(B) Any interested person may petition the Administrator for an exemption from the requirements of subparagraph (A) for a particular use of a polychlorinated biphenyl, and the Administrator may grant by rule such an exemption if the Administrator determines that—

(i) the exemption is necessary for the protection of the health or environment, and

(ii) good faith efforts have been made to develop a chemical substance which may be substituted for such polychlorinated biphenyl in such use and which does not cause or significantly contribute to an unreasonable risk to health or the environment.

An exemption granted under this subparagraph shall be subject to such terms and conditions as the Administrator may prescribe and shall be in effect for such period (but not more than one year from the date it is granted) as the Administrator may prescribe.

(C) Subparagraph (A) shall not apply to the distribution in commerce of any article containing any polychlorinated biphenyl if such article was manufactured before two and one half years after the effective date of this Act.

(4) Any rule under paragraph (1), (2) (B), or (3) (B) shall be promulgated in accordance with paragraphs (2) and (3) of subsection (c).

Mr. DINGELL (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the amendment be dispensed with and that it be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Chairman, this is a very simple amendment. My colleagues have recently received "Dear Colleague" letters from both my friend and colleague, the gentleman from Maryland (Mr. GUDE), who joins me in the sponsorship of it, and from myself. It has the support of all of the conservation organizations.

The amendment directs itself very clearly and very directly at one substance, polychlorinated biphenyls. Polychlorinated biphenyls have been one of the biggest environmental problems that we have had in the State of Michigan. And PCB's are also one of the biggest problems that most of the States in the Union have, in terms of long-term degradation of the human environment and hazard to human health. They are found in fish, they are found in the flesh of cattle, they are found in fowl, and they are found in the milk of the mothers of the State of Michigan. They are a long-term hazard to human beings. They are not biodegradable. They do not break down. They persist. They accumulate in the food chain. They are in the fish in the Hudson River, they are in the fish in the Great Lakes, and they are one of the reasons that the fish caught in the Great Lakes cannot be marketed commercially, in many instances.

Mr. Chairman, the Toxic Substances Control Act is a good proposal and it provides environmental protection, with urgently needed authority. But there are no clear requirements in the bill mandating action by EPA within a specified period of time to control or to regulate this most persistent and this most hazardous of substances, the polychlorinated biphenyls.

The amendment requires the Environmental Protection Agency to initiate proceedings within 6 months to prescribe methods for the disposal of the polychlorinated biphenyls. There is no such requirement in the bill. It requires them to be marked with warnings and with instructions for disposal, and it requires certain safeguards with regard to rulemaking for the manufacture, processing and distributing in commerce of the polychlorinated biphenyls for any other use except in a totally enclosed container. It also authorizes certain minor exemptions which may become necessary where the requirement is quite clear that there is going to be no hazard to human health.

Mr. Chairman, in a large number of other instances, such as the Federal Water Pollution Control Act, the Administrator has authority to control the discharge of PCB's, but it should be noted that this authority, which was given in 1970, was not exercised by EPA until July 23, 1976, after this amendment had been brought forward.

We must ask: Why did EPA issue proposed regulations that would prohibit discharges of this substance which will not become effective for another 2 years? Why do we single out PCB's?

For many reasons. First of all, they are enormously persistent. Second, they are enormously dangerous. Third, they accumulate in the food chain. They flow upward toward human use. As I pointed out, they are found not only in fish, the flesh of fowl and animals, but also in the milk of human mothers concentrating on the feeding of children.

Under section 6 of the bill the Administrator does not have authority during the pendency of administrative decisionmaking to effect the immediate prohibition of manufacture, processing or distribution of any chemical substance. This amendment gives him that authority, and I say that it is desperately needed.

Curiously enough, I spoke, on the way over here, to a representative of one of the major manufacturers of PCB's, and he advised me his company does not object to this amendment. His company felt that it is a good one and it would help his company to be citizens. The amendment does not call, I want my colleagues to know, for immediate prohibition but, rather, a gradual phase out, to assure action within a reasonable period of time.

As previously noted, the history of EPA is not one of vigorous and quick action.

This amendment defines PCB's to be bad, hazardous, and dangerous, and it mandates a program for their gradual removal, beginning with those uses which are outside of enclosed containers.

The CHAIRMAN. The time of the gentleman from Michigan (Mr. DINGELL) has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 3 additional minutes.)

Mr. McCOLLISTER. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I am very happy to yield to my good friend, the gentleman from Nebraska.

Mr. McCOLLISTER. Mr. Chairman, the gentleman describes the risks assosociated with PCB's. Is the gentleman aware of similar risks with PBB's?

Mr. DINGELL. Mr. Chairman, I am fully aware of those risks, and it would be my hope that some of my colleagues would offer an amendment to apply this same principle to PBB's.

Mr. McCOLLISTER. Mr. Chairman, on my own time and not on the gentle-

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man's time, I will suggest that we could go on and on and on with these substances, but that is not what this whole legislation is about.

Mr. DINGELL. Mr. Chairman, if the gentleman wishes to offer an amendment to add PBB's, I will support it, because I am fully aware of the perils of PBB's. If the gentleman wants to offer such an amendment, I would be happy to support it. I think it might be a meritorious amendment.

I would point out that we have a long history of PCB's. We know of their perils, we know that PCB's are not biodegradable, we know that they accumulate in the food chain, we know they are a hazard, we knew they are universal, and we know that they actually have a longer life than many radioactive substances. For those reasons, I urge my colleagues to support the amendment.

I would point out that PCB's have caused a major cessation of commercial fishing activities in all the Great Lakes. A $95 million-a-year industry could be shut down because of PCB's. A similar situation has occurred in the rivers of New York, in the rivers of New England, in the Mississippi River, the Missouri, the Ohio, the Columbia River system, and in the Sacramento River. It even extends to the Gulf Stream and to the Yukon in Alaska.

Mr. OTTINGER. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from New York.

Mr. OTTINGER. Mr. Chairman, I rise in support of the gentleman's amendment.

All of the commercial fishing activities have been very substantially damaged in the Hudson River. Even fishing has been barred because of the presence of PCB's in the Hudson River at the present time, and that has caused tremendous damage to the commercial fishing industry in New York. I think the gentlemen's amendment is a very important one.

Mr. DINGELL. Mr. Chairman, I thank my good friend, the gentleman from New York.

There is no assurance unless this amendment is adopted that PCB's will be attacked. Section 6 does not give immediate power to the EPA to get PCB's off the market and out of places where they are a hazard to humankind.

Mr. Chairman, I urge my colleagues to support the amendment which my colleague and friend, the gentleman from Maryland (Mr. GUDE), and I have offered to the House at this time.

Mr. McCOLLISTER. Mr. Chairman, I rise in opposition to the amendment.

(Mr. McCOLLISTER asked and was given permission to revise and extend his remarks.)

Mr. McCOLLISTER. Mr. Chairman, I oppose the amendments for some of the reasons that our brief colloquy suggested.

This legislation that we are considering gives the EPA general authority to regulate hazardous chemicals. I think consequently it is improper in the context of this legislation to attempt to regulate a specific chemical in a specific fashion. Further, there is no reason why PCB's should be treated in this fashion and other known environmental hazards such as perhaps vinyl chloride or asbestos, for example, should be excluded from the same specific treatment.

Second, the amendment would restrict EPA to an inflexible schedule. Under the provisions of the bill EPA could do all of the things that the gentleman from Michigan (Mr. DINGELL) would like to do. However, EPA has the authority to establish its own timetable for regulating PCB's. Indeed, the EPA may feel that the 2½ years the gentleman from Michigan (Mr. DINGELL) suggests is too long and that more immediate action might be necessary. The Dingell amendment could in this case actually slow down the regulatory process.

Mr. Russell Train, the Administrator of EPA, has indicated in a press report that I have seen that he would prefer that the bill did not set specific deadlines for phasing out PCB's.

The third reason why I am opposed to the amendment offered by the gentleman from Michigan (Mr. DINGELL) is that by mandating a complete phasing out of PCB's in 2½ years the amendment is attempting to legislate technology. Although substitutes with the necessary electrical characteristics are now being developed, the perfect substitute for PCB's in closed electrical systems does not yet exist.

Banning the use of PCB's in closed electrical systems before a suitable substitute has been developed may result in a cure which is worse than the problem. For example, PCB's are used in capacitors and transformers not only because of their electrical characteristics, but also because the substance is nonflammable. Therefore, any substitute for PCB's must also have the same fire-resistant properties. Such a substitute has not yet been developed.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. McCOLLISTER. I yield to the gentleman from Michigan.

Mr. DINGELL. Mr. Chairman, I would like to point out to my good friend, the gentleman from Nebraska (Mr. McCOLLISTER), that, first of all, the phaseout is required to take place over a period of time. Second of all, there is provision for an exemption in the amendment which we have offered to allow year-by-year extension where no substitute is available.

Mr. McCOLLISTER. Fourth, Mr. Chairman, there is no need for the amendment since the EPA has indicated a willingness to proceed expeditiously in this area. For example, in April of this year, EPA published its "Recommended Procedures for Disposal," applicable to wastes containing PCB's. PCB's are found in many small appliances as well as in fluorescent light bulbs, and, consequently, disposal of these items must be closely checked. Further, on July 23 of this year, EPA issued proposed effluent standards for PCB's affecting all PCB manufacturers and transformer and capacitor manufacturers. These standards were issued pursuant to a consent agreement entered into between EPA and the National Resource Defense Council.

Fifth and finally, Mr. Chairman, coverage under the amendment is unclear. It would appear, although it is not certain, that the Dingell amendment would not require that existing equipment containing PCB's must be discarded. That existing equipment could be used for the rest of the useful life should be made clear. Further, it would be helpful if the gentleman from Michigan (Mr. DINGELL) would state that the amendment is not intended to curtail the resale or repair of existing equipment.

For all these reasons, Mr. Chairman, I oppose the amendment of the gentleman from Michigan (Mr. DINGELL).

Mr. GUDE. Mr. Chairman, I move to strike the requisite number of words, and I rise in support of the amendment.

(Mr. GUDE asked and was given permission to revise and extend his remarks.)

Mr. GUDE. Mr. Chairman, this legislation is certainly meritorious and goes a long way to deal with toxic substances in our environment. But, in the case of PCB's, however, we have a problem that is a little different from some of the ones that have been discussed on the floor.

There has been concern about the act injuring small business; but our amendment does not affect small business except in the handling of articles that have PCB's in them; in such cases there is a provision whereby small firms would be protected.

Mr. Chairman, there is only one company, which is a large manufacturer of PCB's in this country; they have already indicated to EPA their interest in phasing out this material.

But, the most important thing about PCB's, as opposed to other materials which are unknown quantities as far as danger is concerned, is that we have identified a mad dog—a known bad actor in the case of PCB. There is no doubt about its toxicity and danger in the environment. It has caused millions of dollars worth of damage in the United States; the time has arrived to get rid of it.

Mr. Chairman, State governments all across the country, not just the Federal Government, have been concerned.

The States of New Jersey, Georgia, California, Washington, Texas, Michigan, and my own State of Maryland favor this amendment and wish to see the PCB's phased out.

As my colleague, the gentleman from Michigan (Mr. DINGELL), has pointed out, this amendment does not specify replacement of PCB's in existing equipment or the equipment itself. New language that we have added to the amendment makes it clear that the distribution as well as the resale of PCB-containing equipment manufactured prior to the ban, is not prohibited. This would apply to such everyday products as air conditioners.

Also, the amendment does have flexibility in it in that it includes exemptions

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