TSCA Quick Summary

Current law

§2601. Findings, policy, and intent

(a) Findings

The Congress finds that—
(1) human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;
(2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury 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) adequate information should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such information 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 present an unreasonable risk of injury 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 to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this chapter to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment.

(c) Intent of Congress

It is the intent of Congress that the Administrator shall carry out this chapter in a reasonable and prudent manner, and that the Administrator shall consider the environmental, economic, and social impact of any action the Administrator takes or proposes as provided under this chapter.

([HYPERLINK "http://uscode.house.gov/statviewer.htm?volume=90&page=2003"]; renumbered title I, [HYPERLINK "http://uscode.house.gov/statviewer.htm?volume=100&page=2989"]; amended [HYPERLINK "http://uscode.house.gov/statviewer.htm?volume=130&page=448"], [HYPERLINK "http://uscode.house.gov/statviewer.htm?volume=130&page=505"].)

From <[HYPERLINK "http://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter53&edition=prelim"]>

§2605. Prioritization, risk evaluation, and regulation of chemical substances and mixtures

(e) Polychlorinated biphenyls

(1) Within six months after January 1, 1977, the Administrator shall promulgate 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 of paragraphs (2) and (3).

(2)(A) Except as provided under subparagraph (B), effective one year after January 1, 1977, no person may manufacture, process, or distribute in commerce or use any polychlorinated biphenyl in any manner other than in a totally enclosed manner.

(B) The Administrator may by rule authorize the manufacture, processing, distribution in commerce or use (or any combination of such activities) of any polychlorinated biphenyl in a manner other than in a totally enclosed manner if the Administrator finds that such manufacture, processing, distribution in commerce, or use (or combination of such activities) will not present an unreasonable risk of injury 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 exposure of human beings or the environment to a polychlorinated biphenyl will be insignificant as determined by the Administrator by rule.

(3)(A) Except as provided in subparagraphs (B) and (C)—

(i) no person may manufacture any polychlorinated biphenyl after two years after January 1, 1977, and

(ii) no person may process or distribute in commerce any polychlorinated biphenyl after two and one-half years after such date.

(B) Any person may petition the Administrator for an exemption from the requirements of subparagraph (A), and the Administrator may grant by rule such an exemption if the Administrator finds that—

(i) an unreasonable risk of injury to health or environment would not result, and

(ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl.

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 polychlorinated biphenyl if such polychlorinated biphenyl was sold for purposes other than resale before two and one half years after October 11, 1976.

(4) Any rule under paragraph (1), (2)(B), or (3)(B) shall be promulgated in accordance with paragraph (3) of subsection (c).

(5) This subsection does not limit the authority of the Administrator, under any other provision of this chapter or any other Federal law, to take action respecting any polychlorinated biphenyl.

From <[HYPERLINK "http://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter53&edition=prelim"]>

1977-78 Documents

Microeconomic Impacts of the Proposed 'PCB Ban Regulations'
Final Task Report
Versar, Inc., Contract 68-01-4771; May 16, 1978

"This analysis of the proposed regulations considered both the direct costs of complying with the requirements and the indirect effects of these requirements on price levels, capital needs, employment, energy consumption, and the availability of strategic materials. The calculated economic impacts were the incremental impacts of the proposed regulations on a base of 1976 practices as modified by the previously promulgated PCB effluent standards and the marking and disposal regulations. The costs of these other PCB regulations were considered during their development and not considered to be a result of these proposed ban regulations."

[*Effluent standards for PCB equipment manufacturers issued in 1977]

PCB Manufacturing, Processing, Distribution in Commerce and Use Ban Regulation
Proposed Rule-Support Document/Voluntary Draft Environmental Impact Statement
Environmental Protection Agency (40 CFR 761)

p. 29

Conclusions:
PCBs have been demonstrated to cause a number of severe adverse effects on living organisms at very low concentrations. As a practical matter, it is not possible to determine a "safe" level of exposure to these chemicals. Because PCBs are already widely distributed throughout the biosphere, they presently pose a significant risk to the health of man as well as that of numerous other living things. AS a consequence, any further increase in levels of PCBs in the biosphere is deemed unacceptable by EPA . It has also been demonstrated that PCBs release anywhere into the environment will eventually enter the biosphere. Therefore, as a corollary, EPA has determined that any such release of PCBs must be considered "significant".

p. 15 Inability to establish a safe level of exposure for PCBs

p. 31

" . . . To control all PCBs in this regulation would be impractical and unreasonable. . . .Moreover, EPA has the authority to regulate these low PCB concentrations under other statutes. This proposed regulation would not preempt those statutes."

p. 32 (paraphrase)

The rule is just intended to address manufacturing, processing, and distribution in commerce since if it regulated anything with a detectable concentration of PCBs then every object would be subject to regulation and it is unreasonable to regulate background concentrations of PCBs.
EPA recognizes that you can't control background concentrations but you can control the PCBs activities associated with manufacture and distribution in commerce.

p. 42 Reasonable Use Determination

Section 6 (c) (1) of TSCA in 1977 --- "to authorize a use EPA must show that the authorized activity won't cause unreasonable risk of injury to health or the environment" The evaluation includes "the economic significance of the activity, including its importance to the national economy, small business, technological innovation, the environment, and public health.

Summary of the Scope of the Economic Analysis in 1977-79

[Note: Economic analysis does not include effluent costs. Also not a "life cycle" analysis in that it considers impacts to the equipment manufacturers and other PCB users but not the life cycle of PCB in commerce and the environment]

PCB White Paper

REGULATION OF PCBs

From July 1969 to August 1971, nine incidents of PCB contamination of food were reported. No record of human PCB poisoning in the U.S. has occurred, but near disasters have resulted in regulatory action. In 1973, the FDA established temporary limitations of PCBs in food. A surveillance and inspection program by the FDA detected numerous lots of contaminated foods.

The Clean Water Act of 1977 contains the first regulation by the Environmental Protection Agency (EPA) regarding PCBs. Under Section 307(a), manufacturers of electrical transformers and capacitors were prohibited from discharging PCBs into waterways (Federal Register, Vol. 42, February 2, 1977, pp. 6532-6556). These regulations stipulated February 2, 1978, as the deadline for compliance, allowing affected manufacturers 1 year to take the necessary steps (e.g., use of substitute materials and equipment or process changes) to eliminate PCBs from their effluents.

On March 26, 1976, as work was being performed on promulgation of regulations for toxic effluents under the Clean Water Act, Senator Gaylord Nelson of Wisconsin introduced an amendment to the Toxic Substances Control Act (TSCA) for the phasing out of PCBs in manufacturing processes in the U.S. The TSCA was promulgated on October 11, 1976, and contained this amendment as Section 6(e). Section 6(e) requires the EPA to control the manufacture, processing, distribution, use, and disposal and marking of PCBs.

ECONOMIC ANALYSES FOR THE FINAL RULE

Prior to the promulgation of the final rule, economic analyses were conducted to assess the impact of the proposed rule. Versar, Inc., of Springfield, Virginia, prepared two documents for EPA: Microeconomic Impacts of the Proposed Marking and Disposal Regulations for PCBs (April 1977) and Microeconomic Impacts of the Proposed "PCB Ban Regulations" (May 1978). Versar revised these documents upon the request of EPA prior to the promulgation of the final rule. The final report is entitled PCB Manufacturing Processing, Distribution in Commerce, and Use Ban Regulation: Economic Impact Analysis, March 30, 1979.

Versar concluded that the proposed marking and disposal regulation would cost an estimated $62.2 million the first year. The cost would include new incinerators, new storage facilities, operating costs, chemical waste landfill charges, disposal transportation costs, recordkeeping for marking, and maintenance of storage facilities. The major economic impacts would apply to: utilities owning and using large high voltage capacitors; owners and users of high intensity discharge lighting capacitors, small capacitors, large low voltage capacitors, or equipment containing such capacitors; manufacturers of equipment containing PCB articles; and manufacturers of large low voltage capacitors, small capacitors and fluorescent light ballasts.

ED_005530B_00003052-00005

The analysis of economic impacts for the PCB ban regulation was divided into transitional and long-term cost impacts. The transitional costs are those costs necessary to eliminate all existing PCB-containing equipment from service. For example, the total cost of the ban on sales of PCB capacitors and equipment after July 1, 1979, including inspection and rework costs, could easily exceed $1 billion. The long-term costs will be continuing costs and will have a long-term economic impact. Examples include the increased cost of non-PCB transformers and power factor capacitors.