

COMPARISON OF SELECTED PROVISIONS OF
BILLS TO AMEND THE TOXIC SUBSTANCES CONTROL ACT (TSCA)
TOGETHER WITH CMA'S POSITIONS AND PROPOSALS

ISSUE	Senator Durenberger's Bill S. 3075, October, 1984	Congressman Florio's Bill H.R. 4304, November, 1983	CMA Position or Proposal
I. NEW CHEMICALS REVIEW AND FOLLOW-UP			
A. Information Requirements for Premanufacture Notifications (PMNs)			
• Assessment	• Requires PMN to contain the manufacturer's evaluation of the potential risk to health and the environment posed by the chemical, supported by information.	(No comparable provision)	• <u>Proposal</u> : Require submitters to provide a "new chemical assessment" of chemical's potential for adverse acute, chronic, or environmental effects under anticipated conditions of use and exposure; assessment to be supported by information, including test data if appropriate.
• Testing	• Creates presumption that PMN information to support the evaluation must include OECD base set of tests <u>unless</u> submitter shows: <ul style="list-style-type: none"> ** tests are technically infeasible; ** test data are not needed for "reasoned evaluation"; or ** conditions of exposure show no unreasonable risk. 	• Requires EPA to develop a "tiered system of tests" to determine if the new chemical may present an unreasonable risk, to be required for all PMNs, with <u>exemptions</u> if: <ul style="list-style-type: none"> ** data are already available; ** the class of chemicals has been determined by EPA to present no unreasonable risk; or ** quantities or exposures are "insubstantial" or "insignificant". 	• <u>Position</u> : Oppose fixed set of tests as PMN requirement. If testing is to be required, seek broad categorical exemptions.
B. Early Release from PMN Review			
	• Grants EPA discretion to release a chemical from PMN review when it determines that it will not take action to control it. • Restrict manufacture, distribution, or use after early release to the uses described in the PMN.	(No comparable provision)	• <u>Position</u> : Support early release once EPA has completed its review. • <u>Position</u> : Oppose any conditions on early release.

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C. Follow-Up -- Restrictions on Production and Reporting Requirements			
• Section 5(e) Orders	<ul style="list-style-type: none"> • Makes 5(e) orders apply to processors and users as well as manufacturers. • Requires objections to draft 5(e) orders to be made in writing. • Shifts burden of judicial review to persons who object to 5(e) orders. 	<ul style="list-style-type: none"> • Allows EPA to issue 5(e) orders solely on basis of insufficiency of information. (Removes requirement that EPA find chemical may present unreasonable risk). 	<ul style="list-style-type: none"> • <u>Position:</u> Oppose any changes to preconditions for 5(e) orders or process for issuing such orders. But see proposal below for "interim list".
• "Interim List" Concepts	(No comparable provision)	<ul style="list-style-type: none"> • Creates a new "interim list" of all new chemicals which were exempt from testing or were subject to orders or agreements under section 5(e). These chemicals do not go on inventory; thus, subsequent manufacturers must file separate PMNs. Provision is made for placing chemicals on inventory if information or circumstances change. 	<ul style="list-style-type: none"> • <u>Proposal:</u> Exclude all substances subject to 5(e) order from the Inventory and place them on a published "interim list." Effect of interim list and conditions for transfer to Inventory similar to Florio bill. Automatic placement on Inventory after 10 years unless EPA reconfirms 5(e) concerns.
• Significant New Use Rules (SNURs)	<ul style="list-style-type: none"> • Changes SNURs to significant new <u>exposure</u> or <u>release</u> rules, including changes in manufacturing practices or processing. 	<ul style="list-style-type: none"> • Loosens preconditions for promulgation of SNUR; allows SNUR for control of any one of factors listed in TSCA §5(a)(2). 	<ul style="list-style-type: none"> • <u>Position:</u> Accept general principle of follow-up authority for changes in exposure, but oppose the approaches of House and Senate bills. Assert interrelationship between SNUR issue, PMN requirements, and 5(e)/interim list concepts.

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<ul style="list-style-type: none"> Follow-up Reporting Requirements 	(No comparable provision)	(No comparable provision)	<ul style="list-style-type: none"> <u>Proposal</u>: Require manufacturers to supply EPA with additional health and environmental effects data that is generated voluntarily. <u>Proposal</u>: Require manufacturers to submit follow-up reports on new chemicals at 5 years and 10 years (extendable by EPA). <u>Proposal</u>: Authorize EPA to issue administrative order requesting additional information upon receipt of 5-year reports.
<p>II. <u>EXISTING CHEMICALS TESTING</u></p>			
<p>A. Substances to be Tested</p>	<ul style="list-style-type: none"> Removes 50-chemical cap on designations by the Interagency Testing Committee (ITC). Requires testing of all chemicals whose manufacturing or processing exceeds 100 million pounds/year, <u>unless</u> manufacturer shows: <ul style="list-style-type: none"> adequate data already exist; test cannot be performed for technical reasons; or actual exposure or release is not significant. 	(No comparable provisions)	<ul style="list-style-type: none"> <u>Position</u>: Maintain 50-chemical cap. <u>Position</u>: Volume should not be principal criterion for selection of chemicals for testing <u>Proposal</u>: Strengthen ITC through changes in membership and administration of ITC; open ITC process to more public input and review. <u>Proposal</u>: Direct ITC to compile and consider all toxicity and exposure information before recommending testing, using TSCA reporting requirements to collect data. <u>Proposal</u>: Have ITC designations published immediately as advance notices

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B. Scope of Testing	<ul style="list-style-type: none"> • Testing by manufacturers or processors for array of health and environmental effects. • Allow EPA to use test rule authority to require monitoring studies and development of other exposure information. 	(No comparable provisions)	<p>of proposed rulemaking.</p> <ul style="list-style-type: none"> • <u>Position:</u> All tests are not needed for all chemicals. Some of tests listed not yet scientifically validated (e.g., behavioral). • <u>Position:</u> Recognizing importance of exposure in risk assessment, prepared to accept some EPA authority to develop and collect exposure information.
C. Negotiated Testing Agreements	<ul style="list-style-type: none"> • Permits EPA to enter into negotiated agreements for testing. • Provides that agreements must have the same elements as test rules. • Requires EPA to publish text of agreement in <u>Federal Register</u> and allow 60 days for public comment. • Requires negotiated agreements to be supported by information in the public record. • Allows EPA to reopen an agreement if circumstances change. • If agreement is violated, requires EPA to promulgate the agreement as a test rule. 	<p>- Same -</p> <p>- Same -</p> <p>- Same -</p> <p>- Same -</p> <p>- Same -</p>	<p><u>Position:</u> Strongly support value of negotiated testing agreements. In light of recent court ruling, support amendment of TSCA to authorize such agreements. Agree to provisions for notice and public comment. Do not favor EPA power to re-open agreement.</p> <ul style="list-style-type: none"> • <u>Position:</u> Committed to full compliance with negotiated agreements. Accept proposal to make agreements enforceable by EPA. Oppose linking agreements to other sections of TSCA, such as judicial review and export notice.
		<ul style="list-style-type: none"> • Makes testing agreements subject to general enforcement provisions, as well as other provisions such as judicial review and export notice requirements. 	

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III. EXISTING CHEMICAL REGULATION			
A. Priority Review of High Risks -- Section 4(f)	<ul style="list-style-type: none">Allows EPA to perform or contract for exposure, release, or effect studies on priority chemicals in order to develop information to support regulatory action; allows EPA to seek industry reimbursement of study costs; postpones time for rulemaking while studies are done.	<ul style="list-style-type: none">Requires EPA to take appropriate action on formaldehyde under sections 5, 6, or 7 within 6 months, based on acute as well as chronic effects.	<ul style="list-style-type: none"><u>Position:</u> A more precise approach to section 4(f) procedures is needed; reforms could be achieved through administrative direction without the need for statutory amendment. Oppose Florio proposal on formaldehyde, which is being addressed by EPA.
B. Regulatory Authority -- Section 6	<ul style="list-style-type: none">Broadens regulatory options to cover all phases of the product life cycle.Grants EPA authority to limit commercial activities based on levels of exposure or release.Loosens the stipulation that EPA select the least burdensome regulatory alternative, requiring only a "reasonable attempt" to do so.Deletes the requirement that EPA find use of TSCA authority to be "in the public interest" when other statutory authorities are available. (See VI. - Inter-Agency Coordination).	<ul style="list-style-type: none">Directs EPA to promulgate new rules to require treaters or disposers of hazardous wastes containing PCBs to certify to the generator that treatment or disposal was carried out in compliance with the law.Prohibits land disposal of liquid wastes in landfills with PCB concentrations greater than 50ppm.	<ul style="list-style-type: none"><u>Position:</u> EPA's current authorities under section 6 are adequate; oppose or see no need for amendments proposed in Durenberger bill. No position on PCB amendments in Florio bill.

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IV. CONFIDENTIAL BUSINESS INFORMATION			
A. Release of CBI to State Governments	<ul style="list-style-type: none"> • Authorizes disclosure of CBI to state officials if the state has sanctions for wrongful disclosure at least as strict as federal law. 	(No comparable provision)	<ul style="list-style-type: none"> • <u>Position:</u> Agree with amendment; authorization of CBI release responds to needs of state agency officials for access to CBI material without impairing manufacturers right to claim such information confidential.
B. Protection for CBI	<ul style="list-style-type: none"> • Makes it a federal misdemeanor to knowingly solicit wrongful disclosure of CBI. 	(No comparable provision)	<ul style="list-style-type: none"> • <u>Position:</u> Approve of the amendment; making knowing solicitation of wrongful disclosure a federal crime should deter misappropriation of data that EPA releases to its contractors.
C. Justification of CBI Claims	<ul style="list-style-type: none"> • Requires up-front justification of all CBI claims. • Requires renewal (and rejustification) of CBI claims every 3 years. 	<ul style="list-style-type: none"> • Specific items of information regarding disposal, treatment of storage of hazardous wastes cannot be claimed confidential and withheld from public disclosure. • Requires PMN and 8(e) submitters to justify their confidentiality claims in advance. • Where EPA and PMN submitters disagree about eligibility of particular information for confidential treatment, PMN review period will not commence until the disagreement is resolved. 	<ul style="list-style-type: none"> • <u>Position:</u> Accept the amendments in the bills regarding justification and periodic renewal of CBI claims; these are responsive to the concerns expressed about perceived abuses of CBI privileges. • <u>Position:</u> Oppose Florio proposal regarding resolution of disputes over eligibility for CBI protection; it makes PMN hostage to CBI claims.

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<u>V. REPORTING REQUIREMENTS</u>	<ul style="list-style-type: none"> • Makes each provision of the reporting requirement applicable to all phases of the product life cycle. • Brings "impurities" and "extent" of exposure under section 8. • Gives EPA authority to require reports from individual entities by letter request rather than by rule. • Adds shipment and storage of chemicals and data on economic consequences of regulation to the list of issues for which reporting may be required. • Authorizes EPA to require small manufacturers to keep records and reports under some circumstances. • Requires EPA to update the Inventory every 5 years. 	<p style="text-align: center;">(No comparable provisions)</p>	<ul style="list-style-type: none"> • <u>Proposal</u>: Require EPA to trigger generic reporting rules for chemicals on the ITC "candidate list." (list of no more than 100 chemicals) (see II. Existing Chemicals Testing) • <u>Proposal</u>: Require reporting of all voluntary testing of PMN chemicals; require 5-year and 10-year reports on PMN chemicals (see I. - New Chemicals: PMN Review and Follow-up). • <u>Position</u>: No defined positions on other features of Durenberger bill; some of the proposals appear reasonable, but some raise concerns.
<u>VI. INTER-AGENCY COORDINATION</u>	<ul style="list-style-type: none"> • Deletes most of current section 9 and replaces it with a requirement to "consult and coordinate with" heads of other federal agencies. 	<ul style="list-style-type: none"> • Deletes requirement that Administrator consider using his or her authority under all other environmental statutes before using authority under TSCA • Deletes most of current section 9; substitutes requirement that Administrator give at least 20 days prior notice to other agencies of intended TSCA regulations 	<ul style="list-style-type: none"> • <u>Position</u>: Oppose wholesale deletion of section 9; changes to section 9 should be designed to avoid duplication of effort, protect against inconsistent requirements, and make the most efficient use of skills and resources of other agencies