

113TH CONGRESS
2^D SESSION

S. 2656

To provide for the regulation of persistent, bioaccumulative, and toxic chemical substances, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 24, 2014

Mr. MERKLEY introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To provide for the regulation of persistent, bioaccumulative, and toxic chemical substances, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protecting America’s
5 Families from Toxic Chemicals Act of 2014”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to ensure that the uses
8 of chemical substances, for which there is evidence of per-
9 sistence, bioaccumulation, toxicity, and exposure to hu-

1 mans or the environment, are limited to those uses that
2 are critical or essential.

3 **SEC. 3. DEFINITIONS.**

4 In this Act:

5 (1) ADMINISTRATOR.—The term “Adminis-
6 trator” means the Administrator of the Environ-
7 mental Protection Agency.

8 (2) CHEMICAL SUBSTANCE.—The term “chem-
9 ical substance” has the meaning given the term in
10 section 3 of the Toxic Substances Control Act (15
11 U.S.C. 2602).

12 **SEC. 4. IDENTIFICATION AND RESTRICTION OF PER-**
13 **SISTENT, BIOACCUMULATIVE, AND TOXIC**
14 **CHEMICAL SUBSTANCES.**

15 (a) IDENTIFICATION.—

16 (1) CRITERIA.—

17 (A) IN GENERAL.—Not later than 1 year
18 after the date of enactment of this Act, the Ad-
19 ministrator shall establish, by rule, criteria to
20 identify chemical substances that—

21 (i)(I) are persistent, bioaccumulative,
22 and toxic; or

23 (II) are transformed through metabo-
24 lism or environmental degradation into

1 chemical substances that are persistent,
2 bioaccumulative, and toxic; and

3 (ii) for which there is evidence of ex-
4 posure or likely exposure to humans or the
5 environment.

6 (B) CONSIDERATIONS.—In establishing the
7 criteria pursuant to subparagraph (A), the Ad-
8 ministrator shall consider a chemical sub-
9 stance—

10 (i) to be bioaccumulative if, based on
11 monitoring data or other evidence, the Ad-
12 ministrator determines that a chemical
13 substance significantly accumulates or is
14 likely to significantly accumulate in biota;

15 (ii) to be persistent if the Adminis-
16 trator determines that the chemical sub-
17 stance significantly persists or is likely to
18 significantly persist in 1 or more environ-
19 mental media, including the indoor envi-
20 ronment; and

21 (iii) to be toxic if the Administrator
22 determines that the chemical substance
23 demonstrates or is likely to demonstrate 1
24 or more toxicological properties in humans
25 or animals.

1 (C) REVISIONS.—The Administrator may,
2 by rule, revise the criteria established pursuant
3 to this paragraph to reflect the best available
4 science and provide for equal or greater protec-
5 tion of human health and the environment.

6 (2) LIST.—

7 (A) IN GENERAL.—Not later than 180
8 days after the date on which the rule under
9 paragraph (1) is finalized, the Administrator
10 shall, by order, publish a list of all chemical
11 substances that meet those criteria, based on
12 information available to the Administrator.

13 (B) UPDATES.—Not less frequently than
14 once every 3 years after the initial publication
15 of the list under subparagraph (A), the Admin-
16 istrator shall update and republish the list to
17 incorporate new information that becomes avail-
18 able to the Administrator.

19 (3) PRIOR EVIDENCE.—The following chemical
20 substances are considered, on the basis of existing
21 evidence, to meet the criteria established under para-
22 graph (1):

23 (A) Anthracene, pure.

24 (B) Asbestos.

25 (C) Cadmium and cadmium compounds.

- 1 (D) Chloroalkanes, C10–13 (short-chain
2 chlorinated paraffins).
- 3 (E) p-Dichlorobenzene.
- 4 (F) Hexabromocyclododecane, including all
5 major diastereomers.
- 6 (G) Hexachlorobutadiene.
- 7 (H) Lead and lead compounds.
- 8 (I) Mercury and mercury compounds.
- 9 (J) Musk xylene.
- 10 (K) Pentachlorobenzene.
- 11 (L) Perfluorooctane sulfonic acid, its salts,
12 and perfluorooctane sulfonyl fluoride.
- 13 (M) Phenanthrene.
- 14 (N) Polybrominated biphenyls.
- 15 (O) Polybrominated diphenylethers.
- 16 (P) Polychlorinated terphenyls.
- 17 (Q) Tetrabromobisphenol A.
- 18 (R) 1,2,3-Trichlorobenzene.
- 19 (S) 1,2,4-Trichlorobenzene.
- 20 (T) 1,2,3,4-Tetrachlorobenzene.
- 21 (U) 1,2,4,5-Tetrachlorobenzene.

22 (b) RESTRICTIONS.—Not later than 1 year after the
23 date of enactment of this Act, for chemical substances list-
24 ed in subsection (a)(3), and not later than 1 year after
25 the date on which the Administrator identifies a chemical

1 substance pursuant to subsection (a)(2), the Adminis-
2 trator shall by order—

3 (1) identify the allowed uses, if any, of each
4 such chemical substance, pursuant to subsection (c);

5 (2) specify an effective date by which manufac-
6 ture, processing, and distribution in commerce of the
7 chemical substance for any uses not identified in
8 paragraph (1) are required to cease, with such effec-
9 tive date not to exceed 5 years from the date of the
10 allowable use determination;

11 (3) identify any conditions on the manufacture,
12 processing, use, distribution in commerce, and dis-
13 posal of the chemical substance applicable to the al-
14 lowed uses that the Administrator determines are
15 needed to protect public health and the environment,
16 with which manufacturers and processors of the
17 chemical substance must comply as of the effective
18 date specified by the Administrator under paragraph
19 (2); and

20 (4) make public the determination of the Ad-
21 ministrator under this subsection, including—

22 (A) the basis for the determination;

23 (B) a list of allowed uses of the chemical
24 substance; and

1 (C) any conditions on manufacture, proc-
2 essing, use, distribution in commerce, or dis-
3 posal identified by the Administrator.

4 (c) ALLOWABLE USES.—

5 (1) IN GENERAL.—The Administrator, by order
6 issued under subsection (b) or by separate order,
7 may allow manufacturing, processing, and distribu-
8 tion in commerce for a specified use of a chemical
9 substance identified under subsection (b), if the Ad-
10 ministrator first reviews and considers available evi-
11 dence and determines that—

12 (A) the use is a critical or essential use,
13 consistent with the criteria established pursuant
14 to subsection (d); or

15 (B) there is no discernible exposure to hu-
16 mans or the environment, consistent with the
17 criteria established pursuant to subsection (e).

18 (2) PRESUMPTION.—Allowable uses of chemical
19 substances identified pursuant to subsection (b)
20 shall include, unless the Administrator determines
21 by order that such uses do not meet the require-
22 ments under paragraph (1)—

23 (A) a specific use of lead or cadmium, or
24 a compound of lead or cadmium, in lamps, sol-
25 der, glass, ceramics, metal alloys, plating, con-

1 nectors, or electronic components exempted
2 from the Restriction on Hazardous Substances
3 Directive, Directive 2011/65/EU;

4 (B) a specific use of mercury compounds
5 in lamps in accordance with the Restriction on
6 Hazardous Substances Directive, Directive
7 2011/65/EU;

8 (C) the use of lead or lead compounds in
9 lead-acid batteries; and

10 (D) a specific use of perfluorooctane sul-
11 fonic acid, the salts of perfluorooctane sulfonic
12 acid, and perfluorooctane sulfonyl fluoride if the
13 specific use is designated as 1 of the acceptable
14 purposes or specific exemptions under Part III
15 of Annex B of the Stockholm Convention on
16 Persistent Organic Pollutants.

17 (3) PETITION.—

18 (A) IN GENERAL.—The Administrator
19 may, on receipt of a petition from the manufac-
20 turer or processor of a chemical substance iden-
21 tified pursuant to subsection (b), by order,
22 allow manufacturing, processing, and distribu-
23 tion in commerce for a specified use of the
24 chemical substance if the Administrator deter-
25 mines that the manufacturer or processor has

1 established by clear and convincing evidence
2 that the use qualifies as an allowable use pursu-
3 ant to the requirements under paragraph (1).

4 (B) NOTICE.—Before making a determina-
5 tion under subparagraph (A), the Administrator
6 shall—

7 (i) in the case of petitions involving
8 uses of a chemical substance restricted by
9 State law, consult with the relevant State
10 agencies;

11 (ii) publish in the Federal Register a
12 notice of receipt of the petition that speci-
13 fies the chemical identity of the chemical
14 substance to which the petition pertains;

15 (iii) make the petition available on re-
16 quest;

17 (iv) provide a reasonable opportunity
18 for review and comment on the petition;
19 and

20 (v) if the Administrator decides to
21 allow a specific use of a chemical substance
22 under this paragraph, consider any com-
23 ments received by the Administrator in
24 making a determination as to which, if

1 any, conditions shall apply to the allowed
2 use.

3 (4) TERM.—

4 (A) IN GENERAL.—Any use allowed under
5 paragraph (1), (2), or (3) shall be granted for
6 a term of not more than 5 years, but may be
7 renewed or revised in accordance with subpara-
8 graph (B) if the Administrator finds, after pro-
9 viding public notice and opportunity for com-
10 ment, that the allowed use or a revision to the
11 allowed use will continue to meet the require-
12 ments under paragraph (1).

13 (B) RENEWAL.—The Administrator may
14 renew the term of the allowed use granted
15 under subparagraph (A) for 1 or more addi-
16 tional terms of not more than 5 years each, if
17 the Administrator finds, after providing public
18 notice and opportunity for comment, that the
19 allowed use will continue to meet the require-
20 ments under paragraph (1).

21 (C) REVISION.—The Administrator may
22 revise any allowed use under consideration for
23 renewal, taking into account regulatory pro-
24 grams in States, new amendments to the Re-
25 striction on Hazardous Substances Directive,

1 the Stockholm Convention on Persistent Or-
2 ganic Pollutants, to ensure that the allowed use
3 continues to meet the requirements under para-
4 graph (1).

5 (d) CRITERIA TO IDENTIFY CRITICAL OR ESSENTIAL
6 USES.—

7 (1) IN GENERAL.—Not later than 180 days
8 after the date of enactment of this Act, the Adminis-
9 trator shall, by order, establish criteria to identify
10 critical or essential uses of chemical substances.

11 (2) APPLICABILITY.—The criteria under para-
12 graph (1) shall identify as critical or essential any
13 use for which the Administrator determines—

14 (A)(i) the use is in the paramount interest
15 of national security; or

16 (ii) the lack of availability of the chemical
17 substance would cause significant disruption in
18 the economy;

19 (B)(i) no feasible alternative for the speci-
20 fied use is available; or

21 (ii) the specified use provides a net benefit
22 to public health, the environment, or public
23 safety when compared to all available alter-
24 natives, taking comparative risks into account;
25 and

1 (C) the use is consistent with international
2 legal obligations.

3 (e) CRITERIA TO IDENTIFY USES WITH NO DIS-
4 CERNIBLE EXPOSURE.—Not later than 180 days after the
5 date of enactment of this Act, the Administrator shall, by
6 rule, establish criteria for use in making the determina-
7 tions under subsection (d)(2), to identify uses of chemical
8 substances for which there is clear and convincing evi-
9 dence that there is no discernible exposure to humans and
10 the environment from the manufacturing, processing, dis-
11 tribution in commerce, use, or disposal of—

12 (1) the chemical substance; or

13 (2) any article containing the chemical sub-
14 stance.

15 (f) NEW CHEMICAL SUBSTANCES.—

16 (1) IN GENERAL.—For each new chemical sub-
17 stance subject to section 5(a)(1) of the Toxic Sub-
18 stances Control Act (15 U.S.C. 2604(a)(1)), the Ad-
19 ministrator shall determine, during the period of no-
20 tice review, whether the chemical substance, or a
21 degradation product or metabolite of the chemical
22 substance, meets the criteria established under sub-
23 section (a)(1).

1 (2) ALLOWABLE USES.—For each chemical sub-
2 stance identified under paragraph (1), the Adminis-
3 trator shall, by order—

4 (A) allow, in a manner consistent with sub-
5 section (b), manufacture, processing, and dis-
6 tribution in commerce of the substance for a
7 use which the Administrator determines meets
8 the requirements of subsection (c);

9 (B) identify any conditions on the manu-
10 facture, processing, use, distribution in com-
11 merce, and disposal of the chemical substance
12 applicable to the allowed use that the Adminis-
13 trator determines may be needed to protect
14 public health and the environment, which shall
15 be complied with by a manufacturer or proc-
16 essor of the chemical substance on the date on
17 which the manufacturer or processor com-
18 mences manufacturing or processing of the new
19 chemical substance; and

20 (C) make public—

21 (i) the determination of the Adminis-
22 trator under this paragraph;

23 (ii) the basis for the determination;

24 (iii) a list of allowed uses of the chem-
25 ical substance; and

- 1 (iv) any conditions on the manufac-
- 2 ture, processing, use, distribution in com-
- 3 merce, or disposal of the chemical sub-
- 4 stance identified by the Administrator.

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