Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Barr, William: Files
Folder Title: TRIS (Chemical Flame Retardant) (1 of 3)
Box: 11

To see more digitized collections visit:
https://reaganlibrary.gov/archives/digital-library

To see all Ronald Reagan Presidential Library inventories visit:
https://reaganlibrary.gov/document-collection

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: https://reaganlibrary.gov/citing

National Archives Catalogue: https://catalog.archives.gov/

97TH CONGRESS
1ST SESSION

H. R. 4011

To provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1981

Mr. CAMPBELL introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the Court of Claims shall have jurisdiction to hear, determine, and render judgment upon any claim for losses sustained by any producer, manufacturer, distributor, or retailer of children's sleepwear, or by any producer, converter, manufacturer, distributor, or retailer of fabric, yarn, or fiber contained in or intended for use in children's sleepwear, as a result of the actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate: *Provided however,* That such children's sleepwear and such fabric, yarn, or fiber contained in or intended for use in children's sleepwear was subject to the requirements of or was subject to use in compliance with the mandatory Federal flammability standard FF3–71 or FF5–74, at the time of its manufacture.

(b)(1) In determining the validity of any claim under this Act and the amount of the losses sustained for which such a claim is brought, the court shall consider the following factors:

(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard referred to in subsection (a).

(B) Whether it would have been feasible or reasonable for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.

(C) The degree to which the Federal Government, or other nationally known researchers, tested Tris (2,3-

dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the results of these tests.

(D) The degree of good faith demonstrated by a claimant in seeking to comply fully with such Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith upon assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.

(G) The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.

(H) The degree to which a claimant, in good faith, complied with the export provisions of the Federal Hazardous Substances Act and the Consumer Product Safety Act.

(2) In determining the amount of the losses for which a claim is brought under this Act, the amount of such losses shall not include lost profits, proceeds from distress sales, attorney's fees, or interest on any such loss suffered by any producer, converter, manufacturer, distributor, or retailer of

such children's sleepwear, or to any producer, or manufacturer of fabric, yarn, or fiber.

(c)(1) The measure of losses for producers or manufacturers of children's sleepwear shall be the cost of producing or manufacturing the sleepwear garment, plus the cost of the fabric, yarn, or fiber used for such production or manufacture, or the cost of such goods held in stock on the date of enactment of this Act, less the fair market value, if any, of the sleepwear garment, or the fabric yarn, or fiber. If such garment, fabric, yarn, or fiber was resold after April 8, 1977, but prior to the date of enactment of this Act, then the measure of losses shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber less the proceeds from any such sale.

(2) The measure of losses for producers, converters, or manufacturers of fabric, yarn, or fiber shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber, plus the cost of the raw materials used for such production, converting, or manufacturing or the cost of such goods held in stock on the date of enactment of this Act, less the fair market value, if any, of the fabric, yarn, or fiber on such date. If the fabric, yarn, or fiber was resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw

materials used for such production, converting, or manufacturing less proceeds from any such sale.

(3) The measure of losses for distributors and retailers shall be the distributor's or retailer's purchase price for goods referred to in paragraphs (1) and (2) of this subsection, held in stock on the date of enactment of this Act, less the fair market value, if any, of such goods, and less the amount of any reimbursement received. A distributor or retailer shall, notwithstanding the lack of possession of such merchandise, qualify to claim for the unreimbursed portion of its losses, as limited by this paragraph.

(4) In addition to the losses determined under paragraphs (1), (2), and (3) of this subsection, a claimant may also be compensated for unreimbursed costs of transportation paid for the return of such sleepwear garments, fabric, yarn, or fiber.

(d) No claim under this Act may be brought as a class action nor may any claim under this Act be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among the parties.

(e) Upon payment of any claim under this Act, regardless of whether such payment is the result of a court judgment or a settlement, the United States shall be subrogated to the claimant's rights to recover losses or to assert a claim against any person or organization relating to the subject matter of such claim paid by the United States. The claimant shall execute and deliver instruments and papers and take whatever steps are necessary to secure such rights in the United States in order to be entitled to the entry of a judgment by the court and payment under this Act, and the failure of the claimant to perform such acts or take such steps shall constitute cause to deny the entry of such judgment and payment. The failure of the claimant to perform such acts or to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act. Any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant shall be without any effect, to the extent that the United States has made payments under this Act.

(f) Any claim under this Act shall be barred unless commenced within two years after the date of enactment of this Act.

(g) No payment shall be made under this Act upon any claim for losses sustained by any such producer, processor, manufacturer, distributor or other retailer, for apparel, fabric, yarn or fiber containing Tris phophate until such time as the claimant produces proof of the proper disposal of such goods.

O

Calendar No. 156

97TH CONGRESS
1ST SESSION

S. 823

[Report No. 97–130]

To provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 27 (legislative day, FEBRUARY 16), 1981

Mr. THURMOND (for himself, Mr. KENNEDY, Mr. HARRY F. BYRD, JR., Mr. HOLLINGS, Mr. WARNER, Mr. HELMS, Mr. HEFLIN, Mr. DENTON, and Mr. EAST) introduced the following bill; which was referred to the Committee on the Judiciary

JUNE 3 (legislative day, JUNE 1), 1981

Reported by Mr. EAST (for Mr. THURMOND), with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That (a) the Court of Claims shall have jurisdiction to hear,~~

~~determine, and render judgment upon any claim for losses sustained by any producer, manufacturer, distributor, or retailer of children's sleepwear, or by any producer, converter, manufacturer, distributor, or retailer of fabric, yarn, or fiber contained in or intended for use in children's sleepwear, as a result of the actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber containing Tris (2,3-dibromopropyl) phosphate: *Provided, however,* That such children's sleepwear and such fabric, yarn, or fiber contained in or intended for use in children's sleepwear was subject to the requirements of or for use in compliance with the mandatory Federal flammability standard FF3–71, or FF5–74, at the time of its manufacture.~~

~~(b)(1) In determining the validity of any claim under this Act and the amount of the losses sustained for which such a claim is brought, the court shall consider the following factors:~~

~~(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard referred to in subsection (a).~~

~~(B) Whether it would have been feasible, or reasonable, for the claimant to have tested Tris (2,3-dibro-~~

~~mopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.~~

~~(C) The degree to which the Federal Government, prior to establishing such flammability standard, tested Tris (2,3-dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the results of these tests.~~

~~(D) The degree of good faith demonstrated by a claimant in seeking to comply fully with such Federal flammability standard.~~

~~(E) The extent to which a claimant may have relied in good faith on assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.~~

~~(F) The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.~~

~~(G) The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.~~

~~(2) In determining the amount of the losses for which a claim is brought under this Act, the amount of such losses shall not include lost profits, proceeds from distress sales,~~

~~attorney's fees, or interest on any such loss resulting to any producer, converter, manufacturer, distributor, or retailer of such children's sleepwear, or to any producer or manufacturer of fabric, yarn, or fiber.~~

~~(c)(1) The measure of losses for producers or manufacturers of children's sleepwear shall be the cost of producing goods referred to in paragraphs (1) and (2) of this subsection, held in stock on the date of enactment of this Act, less the fair market value, if any, of such goods and less the amount of any reimbursement received.~~

~~(2) In addition to the losses determined under paragraphs (1), (2), and (3) of this subsection, a claimant may also be compensated for unreimbursed costs of transportation paid for the return of such sleepwear garments, fabric, yarn, or fiber.~~

~~(d) No claim under this Act may be brought as a class action nor may any claim under this Act be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among the parties claimant.~~

~~(e) Upon payment of any claim under this Act, by court judgment or by settlement, the United States shall be subrogated to the claimant's rights to recover losses or assert a claim against any person or organization relating to the subject matter of the claim paid by the United States. The claimant shall execute and deliver instruments and papers and~~

~~take whatever steps are necessary to secure such rights in the United States in order to be entitled to the entry of a judgment by the Court and payment under this Act, and the failure of the claimant to perform such acts or take such steps shall constitute cause to deny the entry of such judgment and manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber used for such production or manufacture, held in stock on the date of enactment of this Act, less the fair market value, if any, of the sleepwear garment or the fabric, yarn, or fiber. If the sleepwear garment or the fabric, yarn, or fiber has been resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber less the proceeds from any such sale.~~

~~(3) The measure of losses for producers, converters, or manufacturers of fabric, yarn, or fiber shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacture, held in stock on the date of enactment of this Act, less the fair market value, if any, of the fabric, yarn, or fiber. If the fabric, yarn, or fiber had been resold after April 8, 1977, but prior to such date of enactment, than the measure of losses shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber~~

~~plus the cost of the raw materials used for such production, converting, or manufacture less the proceeds from any such sale.~~

~~(4) The measure of losses for distributors and retailers shall be the distributor's or the retailer's purchase price for payment. The failure of the claimant to perform such acts or to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act. Any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant shall be without any effect, to the extent that the United States has made payments under the Act.~~

~~(f) Any claim under this Act shall be barred unless commenced within two years after the date of enactment of this Act.~~

That (a) the Court of Claims shall have jurisdiction to hear, determine, and render judgment upon any claim for losses sustained by any producer, manufacturer, distributor, or retailer of children's sleepwear, or by any producer, converter, manufacturer, distributor, or retailer of fabric, yarn, or fiber contained in or intended for use in children's sleepwear, as a result of the actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977, and thereafter relating to apparel, fabric, yarn, or fiber contain-

ing Tris (2,3-dibromopropyl) phosphate: Provided, however, That such children's sleepwear and such fabric, yarn, or fiber contained in or intended for use in children's sleepwear was subject to the requirements of or was subject to use in compliance with the mandatory Federal flammability standard FF3–71 or FF5–74, at the time of its manufacture.

(b)(1) In determining the validity of any claim under this Act and the amount of the losses sustained for which such a claim is brought, the court shall consider the following factors:

(A) The degree to which reasonable alternatives to Tris (2,3-dibromopropyl) phosphate existed at the time the Federal Government established the applicable mandatory Federal flammability standard referred to in subsection (a).

(B) Whether it would have been feasible, or reasonable, for the claimant to have tested Tris (2,3-dibromopropyl) phosphate for chronic hazards at the time the Federal Government established such flammability standard.

(C) The degree to which the Federal Government, or other nationally known researchers tested Tris (2,3-dibromopropyl) phosphate for toxicity, or other health hazards, and disseminated the results of these tests.

(D) The degree of good faith demonstrated by a claimant in seeking to comply fully with such Federal flammability standard.

(E) The extent to which a claimant may have relied in good faith upon assurances from suppliers that the products containing Tris (2,3-dibromopropyl) phosphate were safe.

(F) The degree to which a claimant acted reasonably in using Tris (2,3-dibromopropyl) phosphate for the time period that such substance was used.

(G) The degree to which a claimant, in good faith, complied with actions taken by the United States under the Federal Hazardous Substances Act on April 8, 1977.

(H) The degree to which a claimant, in good faith, complied with the export provisions of the Federal Hazardous Substances Act and the Consumer Product Safety Act.

(2) In determining the amount of the losses for which a claim is brought under this Act, the amount of such losses shall not include lost profits, proceeds from distress sales, attorney's fees, or interest on any such resulting loss suffered by any producer, converter, manufacturer, distributor, or retailer of such children's sleepwear, or to any producer, or manufacturer of fabric, yarn, or fiber.

(c)(1) The measure of losses for producers or manufacturers of children's sleepwear shall be the cost of producing or manufacturing the sleepwear garment, plus the cost of the fabric, yarn, or fiber used for such production or manufacture, or the cost of such goods held in stock on the date of enactment of this Act, less the fair market value, if any, of the sleepwear garment, or the fabric, yarn, or fiber. If such garment, fabric, yarn, or fiber was resold after April 8, 1977, but prior to the date of enactment of this Act, then the measure of losses shall be the cost of producing or manufacturing the sleepwear garment plus the cost of the fabric, yarn, or fiber less the proceeds from any such sale.

(2) The measure of losses for producers, converters, or manufacturers of fabric, yarn, or fiber shall be the cost of producing, converting, or manufacturing the fabric, yarn, or fiber, plus the cost of the raw materials used for such production, converting, or manufacturing or the cost of such goods held in stock on the date of enactment of this Act, less the fair market value, if any, of the fabric, yarn, or fiber on such date. If the fabric, yarn, or fiber was resold after April 8, 1977, but prior to such date of enactment, then the measure of losses shall be the cost or producing, converting, or manufacturing the fabric, yarn, or fiber plus the cost of the raw materials used for such production, converting, or manufacturing less proceeds from any such sale.

(3) The measure of losses for distributors and retailers shall be the distributor's or retailer's purchase price for goods referred to in paragraphs (1) and (2) of this subsection, held in stock on the date of enactment of this Act, less the fair market value, if any, of such goods, and less the amount of any reimbursement received. A distributor or retailer shall, notwithstanding the lack of possession of such merchandise, qualify to claim for the unreimbursed portion of its losses, as limited by this paragraph.

(4) In addition to the losses determined under paragraphs (1), (2), and (3) of this subsection, a claimant may also be compensated for unreimbursed costs of transportation paid for the return of such sleepwear garments, fabric, yarn, or fiber.

(d) No claim under this Act may be brought as a class action nor may any claim under this Act be brought by two or more parties unless damages are claimed to be jointly recoverable or are disputed among the parties.

(e) Upon payment of any claim under this Act, regardless of whether such payment is the result of a court judgment or a settlement, the United States shall be subrogated to the claimant's rights to recover losses or to assert a claim against any person or organization relating to the subject matter of such claim paid by the United States. The claimant shall execute and deliver instruments and papers and

take whatever steps are necessary to secure such rights in the United States in order to be entitled to the entry of a judgment by the Court and payment under this Act, and the failure of the claimant to perform such acts or take such steps shall constitute cause to deny the entry of such judgment and payment. The failure of the claimant to perform such acts or to take such steps shall not limit or adversely affect the right of the United States to act as subrogee or assignee to the full extent of its payments under this Act. Any purported limitation on the right of the United States to act as assignee or to become subrogated to the rights of a claimant shall be without any effect, to the extent that the United States has made payments under this Act.

(f) Any claim under this Act shall be barred unless commenced within two years after the date of enactment of this Act.

(g) No payment shall be made under this Act upon any claim for losses sustained by any such producer, processor, manufacturer, distributor or other retailer, for apparel, fabric, yarn or fiber containing Tris phosphate until such time as the claimant produces proof of the proper disposal of such goods.

Calendar No. 156

97TH CONGRESS
1ST SESSION

S. 823

[Report No. 97-130]

A BILL

To provide for the payment of losses incurred as a result of the ban on the use of the chemical Tris in apparel, fabric, yarn, or fiber, and for other purposes.

JUNE 3 (legislative day, JUNE 1), 1981

Reported with an amendment

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 3, 1982

MEMORANDUM FOR: MICHAEL UHLMANN

FROM: DENNIS KASS

SUBJECT: Attached Staffing Memo

Judy wasn't sure whether you or I should handle this. The issue involves primarily legal and regulatory precedent in the product liability area, so it seems to be in your court. Judy asked that we adhere to her instructions under "Remarks".

- A. Anderson's March 1, 1982 memo

- DOJ position
  OMB position

- etc.

- bill

THE WHITE HOUSE
WASHINGTON
March 4, 1982

Ed,

This little hot potato has been up, down, and all around for many months. Everyone from DOJ to Commerce to OMB to OPD has said privately that the bill as drafted is spinach and to hell with it, but in public everyone is hoping that someone else will bite the bullet.

As I am not privy to whatever discussions may have taken place among Thurmond, Campbell, Stockman, et al, I do not know how much flexibility the sponsors have. Even if it proves feckless in the end, I think some sort of effort to find a middle ground should be made.

Mike

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

March 4, 1982

FOR: ANNELISE ANDERSON

FROM: ED HARPER

SUBJECT: TRIS Indemnification Legislation

It's a close call, but I have a marginal preference for exploring Option 2. The undesirable consequences of unqualified support are, I think, obvious, whereas flat-out opposition to <u>any</u> indemnification ignores certain facts on which a fair-minded man might conclude that some form of compensation was just.

The argument for some form of indemnification can be analogized to a case arising in a court of equity as opposed to a court of law. Claimants should not be indemnified indiscriminately, but I think Justice is correct in suggesting the feasibility of indemnification for those who acted in good faith. The fact-finding required to identify this latter group and assess an equitable level of compensation could impose substantial burdens on both DOJ and the Court of Claims. For that reason, I would hope that the legislation itself would specifiy the criteria for indemnification with as much clarity as possible.

As you suggest in the final paragraph of your March 1 memorandum, we need a reading from Legislative Affairs. If some variation on a theme of Option 2 is not practicable, and we are faced with a flat up-or-down choice on the pending bill, I think we should have to oppose it on policy grounds. But let us hope it does not come to that.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MEMORANDUM

March 11, 1982

To: Ed Harper

From: Mike Horowitz MH

Subject: TRIS Situation

I have a copy of your memo to Annelise on the above subject.

I am sending along a copy of an earlier memo I had prepared for Dave that urges a middle ground that may be worth considering. It opposes the bill in its present form, but not a genuine "day in court" approach.

Attachment

cc: Annelise Anderson
Mike Uhlmann

MEMORANDUM August 7, 1981

To: Dave Stockman

From: Mike Horowitz

Subject: Tris Legislation

Sympathy for the plight of an industry hurt by arbitrary regulatory action should not translate to support for the Tris bill. There are a number of reasons for this conclusion:

1. The childrens' sleepwear manufacturers' industry ["the industry"] consciously failed to pursue available judicial remedies against their suppliers, or against the manufacturer of Tris, choosing instead to seek federal reimbursement of their losses. What happened is this: After an initial CPSC ban on Tris treated sleepwear alone, the industry successfully petitioned CPSC to expand the ban to the sale of all Tris-treated fabrics, and to Tris itself. Under the terms of the Hazardous Substance Act, such an expanded ban permitted industry recapture of its losses from its suppliers. Before such recapture took place, however, the entire ban was successfully overturned by the fabric manufacturers on the ground that CPSC had not conducted fair hearings on the carcinogenic qualities of Tris. Rather than petitioning CPSC to reinstitute the ban, however, and rather than pursuing other court remedies against its suppliers, the industry made a conscious decision to seek legislative relief — i.e. taxpayer support. We should hardly pay an industry for its losses when it failed to exhaust likely remedies under the law — remedies now lost under the statute of limitations.

2. The proposed legislation does not require proof of negligence or arbitrary conduct on the part of the government, but rather assumes the existence of government liability. Thus, contrary to Caroll Campbell's point, the industry does not merely seek "its day in court" through the Tris bill. It rather seeks a guaranteed award of damages, with the litigation being confined to a determination of the extent of the government's liability.

3. Even here, however, the statute is stacked. Rather than permitting industry recovery only following proof that the government caused each element of damage and that the industry was not culpable for its own losses, the proposed statute merely

requires the court to "consider" some (but not all) factors relevant to the damages sustained by the industry.

4. To the extent that the industry has a case, any problems in recovering from the government flow from the restrictive provisions of the Federal Tort Claims Act, equally applicable to all similarly situated parties. The Act bars recovery against the government for all damages caused by "agency action," a likely but not certain basis for defeating any industry claim. Many parties are regularly injured by arbitrary agency action, and it is not clear why the industry is entitled to better treatment than other parties who are adversely effected by such conduct.

5. Notwithstanding some adverse rulings, a major industry suit is still pending against the United States under the Federal Tort Claims Act. While prospects for the suit are problematic, the fact that it was brought makes clear that the industry's critical problem flows from the restrictive quality of a Tort Claims Act which should be no different for any affected party.

6. Even though the proposed statute requires the court to "consider ... [t]he degree to which ... claimant[s] acted reasonably in using Tris ... for the time period that such substance was used," certain members of the industry used alternatives to Tris during the period beginning in 1976 when the Environmental Defense Fund and many Members of Congress were claiming that it was carcinogenic. Thus, another question is raised with regard to the industry's right to recover, given the fact that public attacks on Tris were so damaging as to have made the industry's product hard to sell. Unless the industry is able to show that the original sleepwear standard was arbitrary — and it did not challege the standard when it was issued — the industry should recover only those damages that flowed from the 1977 CPSC ban. The government should not be responsible for damages caused by the adverse publicity generated by EDF, NCI, Members of Congress, the media, etc. The proposed statute does not permit an effective government claim on this ground.

7. To summarize:

- The industry failed to pursue available remedies against its suppliers.

- If the industry cannot now sue the federal government, it is for reasons applicable to similarly situated parties i.e. the deliberately restrictive language of the Federal Tort Claims Act.

- o The Tris statute does not even require the industry to prove arbitrariness or negligence on the part of the government. While it is true that CPSC acted in a procedurally arbitrary fashion in banning Tris, there has been no determination that Tris is not carcinogenic. Thus, the government's action may have been substantively correct and the ban may have been appropriate. The proposed statute does not permit the government to show this.

- o The statute merely requires the court to "consider" evidence potentially damaging to the industry, rather than flatly barring industry recovery of damages for which it was culpable.

3. I strongly recommend against the proposed Tris legislation.

cc: Annelise Anderson
Jim Frey

THE WHITE HOUSE

WASHINGTON

March 12, 1982

MEMORANDUM TO ANNELISE ANDERSON

FROM: EDWIN L. HARPER

SUBJECT: TRIS Indemnification Legislation

It's a close call, but I have a preference for exploring Option 3. The undesirable consequences of unqualified support are, I think, obvious. Flat-out opposition to any indemnification is a tough position about which a fair-minded person might disagree.

The argument for some form of indemnification can be analogized to a case arising in a court of equity as opposed to a court of law. Claimants should not be indemnified indiscriminately, but I think Justice is correct in suggesting the feasibility of indemnification for those who acted in good faith. The fact-finding required to identify this latter group and assess an equitable level of compensation could impose substantial burdens on both DOJ and the Court of Claims. But in the end the corporations invoked were not naive and are responsible for their decisions.

I have asked for a reading from Legislative Affairs. If some variation on a theme of Option 2 is not practicable, and we are faced with a flat up-and-down choice on the pending bill, I think we should have to oppose it on policy grounds.

The issue of indemnification is always a nettlesome one. I am asking Mike Uhlmann to come up with a suggested set of criteria regarding when we should and should not go along with indemnification schemes.

TRIS

THE WHITE HOUSE

WASHINGTON

March 3, 1982

MEMORANDUM FOR ANNELISE ANDERSON

FROM: EDWIN L. HARPER

SUBJECT: TRIS Situation

I raised the TRIS issue with Ed Meese on March 1. His general reaction was that we should stay as far away as we can from any kind of indemnification package for TRIS related manufacturers.

I'm sending a copy of your March 1st memo and the back-up package to Mike Uhlmann for his further consideration at the Cabinet Council on Legal Affairs. However, I can't imagine that we would have any position now or in the future other than opposition to an indemnification bill such as this.

Official file

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

March 1, 1982

MEMORANDUM

TO: ED HARPER

FROM: ANNELISE ANDERSON

SUBJECT: TRIS Indemnification Legislation (S.823/H.R. 4011)

We need to arrive at an Administration position on this legislation, which is sponsored by Senator Thurmond and Representative Campbell, both of whom have written David Stockman urging Administration support.

Briefly, these bills, which are identical, establish a mechanism for Federal indemnification of clothing manufacturers and businesses which suffered losses as a result of the Consumer Product Safety Commission's 1977 ban on the domestic sale of children's sleepwear treated with the chemical flame retardant TRIS. TRIS was used by the industry to meet a 1971 Federal flammability standard, but was banned in 1977 as a hazardous substance because it is carcinogenic. Exports of TRIS-treated clothing were banned in 1978 by CPSC. Under this legislation, the Court of Claims is to consider various factors in determining what level of recovery each claimant is to be awarded; the legislation presumes recovery in that it does not include criteria upon which recovery is to be denied. Current estimates are that total awards approximate $50 million, but there is no ceiling that would preclude a larger amount.

The issue posed by this legislation is precedential: whether the Government should indemnify industry for its compliance with one regulatory performance standard when later evidence shows that the means selected by industry is hazardous.

Justice, Commerce, and SBA neither object to the legislation nor support it; CPSC would support it if amended to establish certain criteria to bar recovery when industry continued to market TRIS-treated goods when it knew of the dangers.

Attached is a paper outlining the history of this issue, its budgetary, regulatory, and judicial impacts, and a 1977 radio commentary by President Reagan on the issue. Three options are presented for an Administration position:

(1) support;

(2) support if amended to bar recovery for continued marketing of TRIS products after the dangers were known; and

(3) oppose on fundamental regulatory policy grounds--the basis upon which President Carter pocket-vetoed a similar 95th Congress bill in 1978.

An assessment by Legislative Affairs on (1) how receptive the sponsors are to amendments, and (2) the prospects of favorable House and Senate action if we choose to oppose the bill would be helpful in reaching a decision.

Attachment

cc: J. Wright
Chris deMuth
Mike Horowitz
Don Moran

TO: The Vice President
Messrs. Meese, Baker, Deaver,
Anderson, Friedersdorf, and Harper

FROM: David A. Stockman

SUBJECT: TRIS Indemnification Legislation (S. 823/H.R. 4011)

We need to arrive at an Administration position on this legislation, which is sponsored by Senator Thurmond and Representative Campbell, both of whom have written me urging Administration support. We should place this issue on the Senior Staff agenda for the near future.

Briefly, these bills, which are identical, establish a mechanism for Federal indemnification of clothing manufacturers and businesses which suffered losses as a result of the Consumer Product Safety Commission's 1977 ban on the domestic sale of children's sleepwear treated with the chemical flame retardant TRIS. TRIS was used by the industry to meet a 1971 Federal flammability standard, but was banned in 1977 as a hazardous substance because it is carcinogenic. Exports of TRIS-treated clothing were banned in 1978 by CPSC. Under this legislation, the Court of Claims is to consider various factors in determining what level of recovery each claimant is to be awarded; the legislation presumes recovery in that it does not include criteria upon which recovery is to be denied. Current estimates are that total awards approximate $50 million, but there is no ceiling that would preclude a larger amount.

The issue posed by this legislation is precedential: whether the Government should indemnify industry for its compliance with one regulatory performance standard when later evidence shows that the means selected by industry is hazardous.

Justice, Commerce, and SBA neither object to the legislation nor support it; CPSC would support it if amended to establish certain criteria to bar recovery when industry continued to market TRIS-treated goods when it knew of the dangers.

Attached is a paper outlining the history of this issue, its budgetary, regulatory, and judicial impacts, and a 1977 radio commentary by President Reagan on the issue. Three options are presented for an Administration position:

(1) support;

(2) support if amended to bar recovery for continued marketing of TRIS products after the dangers were known; and

(3) oppose on fundamental regulatory policy grounds -- the basis upon which President Carter pocket-vetoed a similar 95th Congress bill in 1978.

Before we meet on this, we need an assessment by Legislative Affairs (Friedersdorf) on (1) how receptive the sponsors are to amendments, and (2) the prospects of favorable House and Senate action if we choose to oppose the bill.

Attachment

LRD/RECarlstrom/pjw,dsh 11/13/81
CC:
Official File LRD/ESGG Branch
DO Records
DO Chron
Dep. Director
LRD Chron
Rm. 7220
Mr. White
Dr. Anderson
Leg. Affairs

RECarlstrom

TRIS Indemnification

Table of Contents

TRIS INDEMNIFICATION
(S. 823 -- Thurmond (R., S.C.) and 8 others
and H.R. 4011 -- Campbell (R., S.C.)
and 8 others)

This paper provides (1) a detailed history of the TRIS ban, (2) an analysis of the subject bills and their implications for budget, regulatory, and judicial policy, and (3) options for consideration.

BACKGROUND

Flammability standards developed by the National Bureau of Standards were first applied in 1971 to small children's sleepwear through Commerce Department regulation, pursuant to the Flammable Fabrics Act of 1967. (That Act was passed as a result of evidence that 3,000-5,000 deaths and 200,000 injuries were caused each year because of burns associated with flammable fabrics.) Upon its creation in 1972, the Consumer Product Safety Commission (CPSC) assumed responsibility for these standards and in 1974 expanded their application to larger size children's sleepwear.

The CPSC standards were performance standards in terms of flammability and did not mandate the use of TRIS or any other chemical treatment. At that time, there were other flame retardant materials available such as modacrylics and cordelon or blends thereof. TRIS was chosen by industry and widely used because fabric treated with it met the greatest level of market response in terms of the "feel" of the garment and price -- according to the American Apparel Manufacturers Association witness during the 95th Congress on the bill later pocket-vetoed by President Carter.

Federal research on TRIS, begun in 1974 by the National Cancer Institute (NCI), led to the discovery that TRIS had mutagenic qualities. By 1975 evidence indicated that TRIS was capable of inducing mutations and was carcinogenic. In March 1976 the Environmental Defense Fund petitioned the CPSC to require cautionary labelling of TRIS-treated products because of evidence of its carcinogenicity, and the CPSC requested the NCI to expedite its nearly three year investigation of the chemical. The CPSC received NCI's preliminary report in February 1977 establishing TRIS as an animal carcinogen. After conducting its own laboratory analysis and examining other data provided by FDA, the CPSC published notice on April 8, 1977, that sale of TRIS-treated children's wearing apparel was determined to be a banned hazardous substance under the Federal Hazardous Substances Act (FHSA), which has been administered by the CPSC since April 1973. This action triggered the repurchase provisions of the FHSA, which require retail establishments to provide refunds to consumers who returned goods containing TRIS and for manufacturers to provide refunds to retail establishments that returned the goods, in turn, to them. Because the manufacturers possessed no recourse under the Act, they bore the loss.

On April 20, 1977, the American Apparel Manufacturers Association (AAMA) brought suit in the U.S. District Court for the District of Columbia against CPSC seeking an order to ban TRIS-treated fabric, fiber, and yarn already used in children's wearing apparel in order to extend the repurchase "benefits" of the FHSA to the clothing manufacturers as well. The Court ruled in favor of AAMA and enjoined CPSC from enforcing a FHSA repurchase unless it expanded the scope of the ban. On June 1, 1977, CPSC expanded the ban to include TRIS-treated fabric, yarn, fiber, and chemical, but in a second case, brought in the U.S. District Court in South Carolina, the court enjoined enforcement of these regulations. The Court of Appeals (4th Circuit) upheld in August 1977 the South Carolina District Court order, but indicated that CPSC could bring individual enforcement actions.

At this point, the CPSC could either issue new valid regulations or seek to obtain final judgment in suits brought by it during May-September 1977 against eight major retailers. CPSC chose the latter course and in January 1978 seized TRIS goods sold by a North Carolina company and on February 1978 sued for a declaratory judgment and injunctive relief against six manufacturers. In June 1978, CPSC banned exports of TRIS products -- an action coinciding with the beginnings of 95th Congress' hearings on TRIS indemnification. In July 1978, the suit against the manufacturers was settled with the Commission left "free to protect consumers by filing individual enforcement actions which would seek to enjoin the retail sale of TRIS goods."

On October 30, 1978, the Court of Appeals (5th Circuit) upheld the January seizure of TRIS products and on November 8, 1978, President Carter pocket-vetoed the TRIS indemnification bill.

CPSC continues to monitor the disposition of TRIS goods. As of January 3, 1981, 4.6 million garments and 535,000 yards of fabric are undergoing disposition -- largely being cut into industrial wiping cloths by eight firms. Remaining goods held by forty manufacturers include 4.4 million garments, and 940,000 yards of fabric are being warehoused in anticipation of enactment of TRIS indemnification legislation.

DESCRIPTION OF S. 823/H.R. 4011

S. 823 and H.R. 4011, identical bills, would confer jurisdiction on the U.S. Court of Claims to adjudicate claims brought within two years of its enactment by producers, manufacturers, distributers, converters, or retailers of children's sleepwear (or of fabric, yarn, or fiber used in the sleepwear), which sustained losses as a result of the CPSC's ban on TRIS. The court would be authorized to decide the amount of indemnification after it had heard the facts and weighed the evidence to determine whether the Government had any liability with respect to each claimant. Class actions would be prohibited and individual claims could not be joined with others, unless the damages are jointly recoverable or disputed among the claimants.

The burden would be on the claimant to prove Government liability and the court would have to consider to what extent or degree the individual claimant: (1) had a reasonable alternative to the use of TRIS; (2) feasibly or reasonably could have tested TRIS for chronic hazards; (3) acted in good faith to comply fully with Federal flammability standards; (4) relied in good faith upon assurances from suppliers that TRIS was safe; (5) acted reasonably in using TRIS; and (6) complied with the April 8, 1977, ban action. The court would also have to consider the degree to which the Government tested TRIS for toxicity or other health hazards and disseminated the test results.

The bill would limit indemnification of producers and manufacturers through retailers to the actual costs of obtaining and/or manufacturing the TRIS-treated products still held by them. Proceeds of sales after the ban would be subtracted from this amount. Lost profits, attorneys' fees, and interests on losses would not be recoverable.

Finally, once a claim has been adjudicated and paid by the United States, the claimant's cause of action against any person or company relating to losses incurred from the ban on TRIS would be vested in the Government, which could then bring an action to recover damages.

POLICY IMPLICATIONS

(a) Budgetary Impact

CBO estimates that the cost of the bill would be $56 million. The American Apparel Manufacturers Association estimates a cost of $50.1 million -- which is represented as an actual loss figure. (In 1977, the same association had estimated losses as high as $150 million; the apparent reason for the reduced estimate lies in the sale of TRIS-treated fabrics as industrial wiping cloths and to other countries prior to the export ban.) The bill, however, does not set a ceiling on the amount of awards and cannot because it involves judgments against the Government; thus, there is no guarantee that indemnification will not exceed these estimates.

Whether the Court of Claims, under the bill, would reimburse the industry for the full $50 million would depend on its determinations on the following questions posed by the bill's criteria:

-- The marketability of fabrics treated with other available flame retardant chemicals versus industry arguments that the use of these alternatives would have made the sleepwear less marketable;

-- The degree and type of individual responsibility among the classes of businesses involved -- from manufacturers through retailers -- for either ensuring the safety of the product or being knowledgeable about TRIS' toxicity;

-- How responsibly the Government acted in analyzing and disseminating information on the hazards of Tris in view of its widespread use.

Arriving at these determinations would be a highly complex matter in the case of each affected business class. Once the essential determinations have been made for the initial claimants from each class, however, these determinations would tend to drive the court's decision for the remaining claimants.

(b) <u>Regulatory Policy</u>

The primary issue is whether (a) the issuance of the mandatory flammability standards by CPSC carried collateral responsibility under its FHSA authority to assess at the same time the toxicity of the flame retardant chemical used to meet that standard, or (b) it was the clothing manufacturer's responsibilty to make this assessment at the time it purchased the chemical and before it introduced its treated fabrics into the marketplace.

In the TRIS matter, the National Cancer Institute toxicity testing began in 1974 -- three years after the first flammability standards were promulgated in 1971 and one year after the FHSA authorities were transferred to CPSC. The question is whether at the initiation of this testing, industry was put on notice and had a responsibility to cease using TRIS and substitute other chemicals or whether the industry could reasonably wait until the conclusion of the NCI testing in 1977. According to CPSC, the industry voluntarily stopped treating children's sleepwear with TRIS sometime during 1976, based on early scientific risk data. The committee hearing record does indicate, however, that some manufacturers stopped using TRIS in 1976 not because of any conclusion about its safety but because of marketplace problems caused by the Environmental Defense Fund's publicity concerning the potential hazards. (Testimony of Leo J. Feuer, President, William Carter Company before the Senate Judiciary Committee on S. 1503, 95th Congress.) Consequently, even without the CPSC ruling, manufacturers could well have sustained heavy losses on TRIS-treated products because of the unfavorable publicity.

Essentially, S. 823 would refer to Court of Claims the question of what legal obligations or responsibility exist for the collateral effects of a government agency's single standards setting decision under one statute, the Flammable Fabrics Act. It would set a precedent of Government responsibility, even in the absence of finding fault, for industry losses when there is any connection to agency regulations. This would reduce incentives for industry to make use of the best and safest product available to meet Government standards, not just the best known product.

Judicial Policy

A Court of Claims determination resulting in a Governmental liability to businesses affected by the TRIS ban would result in a Federal policy to pay industry for losses that occur when a product is used to meet a regulatory standard and the product is later found to be hazardous. This precedent could be cited in other areas of health and safety regulations. Although the magnitude of such a precedent is unclear, the possibility of increasing numbers of claims against the Government for other regulatory actions in an increasingly litigious society is strong. Whether such liability should generally exist, in the absence of Government fault, should not be determined by the courts, but rather by a general act of Congress. Such a policy would involve substantial budgetary costs.

AGENCY VIEWS

Justice does not object to establishment of a compensation plan stating that it "do[es] not believe it would be inappropriate for those who undertake a significant effort to comply with Government regulations and market a product in a responsible and reasonable manner to be compensated for their losses in these circumstances." Justice, however, defers to OMB and Treasury on the availability of funds and resources for the Courts and the Department in litigating the claims.

Commerce will not oppose the bill or object to OMB opposition. Commerce believes that it is reasonable for the Court of Claims to delve into questions of whether there should be indemnification in certain circumstances.

SBA has no objection to the bill and is only concerned that there be a requirement that those businesses that received economic disaster assistance loans for TRIS repay those loans.

CPSC defers to the Administration and Congress on the overall merits of this legislation, although it supported the bill in the 96th Congress because it believed the bill provided a reasonable opportunity for judicial resolution of whether reasonable claims for indemnification exist. CPSC, in its May 5, 1981, letter to the Senate Judiciary Committee on S. 823 points out that enactment could serve at least two safety-related purposes, if amended accordingly:

(1) Those holding TRIS products could be required to give the goods to the Government, thus ensuring their destruction.

(2) Indemnification legislation could bar payments to firms that allowed the goods to be sold to consumers after sufficient knowledge was available on TRIS' hazards, thereby giving a public policy notice that the Government does not reimburse firms that choose to take any chance with health and safety.

PRESIDENT'S EARLIER COMMENTS

On October 4, 1977, President Reagan's radio commentary on TRIS (Tab A) noted that, at that time, he believed that:

> "Compared to tobacco or alcohol, both of which can be sold, the threat to health from TRIS is minimal. And remember TRIS isn't something the industry dreamed up with profit in mind. It was a government idea and a panic decision of the kind we're getting altogether too familiar with these days.
>
> The Consumer Product Safety Commission, so sure the fire risk was immediate, asked no questions about TRIS except was it a flame retardant. Now comes the cancer possibility and again, emergency action is ordered -- clear the shelves; stop production. But what about the original emergency? The fire hazard? They haven't found a substitute fire retardant. In other words, we're back where we were in the first place, with the kind of sleepwear we'd always had. Except that hundreds of millions of dollars [$200 million was the estimate used] have been lost for which the government accepts no responsibility."

OPTIONS

Option 1: Support S. 823/H.R. 4011 without amendment

This accepts the view that the actions of CPSC in both requiring the use of a flame retardant in sleepwear and the subsequent banning of the substance selected by this industry to meet the standard are inconsistent actions of the government and that a reimbursement action should be established. Specifically, it assumes that CPSC should have been more vigilant and prompt in studying the health risks associated with TRIS before industry began using it. Federal regulatory actions prompting the use of chemicals for public safety purposes must also take into account the other types of risks associated with chemicals used to meet one standard; failure to do so could result in future indemnification questions.

Basic liability would be assumed inasmuch as the court only needs to consider criteria relating to the reasonableness of the claimants' actions in determining the validity of a claim and amount of losses sustained; the bill provides no factor which would bar an award or reduce the amount of an award by the amount of losses incurred as a result of adverse publicity prior to the 1977 ban.

This option presents the easiest method for industry indemnification. Claims Court's review would be primarily concerned with calculating the amount of indemnification -- adjusting the amount based on its consideration of the "good faith" compliance of the claimant -- rather than with the question of whether any claimant should be totally denied recovery because of its own action or inaction when the TRIS dangers were discovered. It is also the most costly option for this same reason.

Option 2. Support S. 823/H.R. 4011 if amended to include criteria upon which a claim should be denied.

This accepts the view that government actions on the ban are subject to legitimate question (i.e., failure to analyze the health risks of TRIS at the outset of its use) and that businesses that acted in "good faith" should not suffer losses as a result of regulatory action. It also recognizes the equal responsibilities of industry to be vigilant about both the safety and health risks associated with chemicals used to meet a single regulatory standard. Like Option 1, it does not require proof of negligence or arbitrary conduct on the part of the Government, but rather assumes the existence of Government liability for most of the claims.

Amendment A: Bar recovery to "firms that are found to have knowingly acted without sufficient regard for the public's health and safety interests" (per CPSC). The court would be required to rule, on evidence presented by both the firm and the Government (presumably, the Justice Department in coordination with CPSC) that (1) the claimant did or did not continue to market TRIS products for consumer use upon receiving notice through industry publications or CPSC information disseminated to the industry of indications that TRIS may be a hazardous substance under the Federal Hazardous Substances Act, or (2) the claimant did not seek to export TRIS-treated products after the April 8, 1977, ban on domestic sales, which did not bar exports. Unlike Option 1, this amendment establishes a policy that the government will not indemnify firms that choose to pursue conduct which, though legal, jeopardizes consumer health and safety.

Amendment B: Deny recovery for those goods voluntarily withdrawn from from the market as a result of adverse publicity prior to the ban. This amendment adopts the view that the Government should not be responsible for damages caused by adverse publicity, only those that flowed from the 1977 ban. This alternative amendment may substantially reduce costs but will be viewed as punitive measure against those who voluntarily withdrew their goods from the marketplace in advance of the ban.

This option, because the amendments by which recovery could be denied create significant issues for each claim, will require more extensive and complex litigation than Option 1 and will further burden Justice Department resources as a result. Like Option 1, it creates a precedent for future government liability as a result of regulatory actions taken under a particular statute that may have a "spill-over" effect in involving standards in other statutes. If the claimant, however, is not barred from recovery by either of the two criteria, then the court, as in Option 1, need only "consider" some, but not all, factors relevant to the damages sustained by the industry.

Option 3: Oppose S. 823/H.R. 4011.

This option continues the policy that the government should not be liable for the consequences of its regulatory actions each time new information arises that shows a product used to meet regulatory standards is hazardous. Producers and retailers have a basic responsibility for insuring the safety of the consumer goods they market, and, as part of this responsibility, industry and business cannot excuse the continued marketing of dangerous products in advance of a government ban when it was widely known that TRIS may be hazardous.

This option also maintains that there should be no confusion on the nature of the regulatory activities involved: TRIS was the chemical chosen by industry, not mandated by the Government, to meet a general performance standard. Therefore, the Government should not encourage industry, as S. 823 would, to rely upon government compensation when it fails to meet its responsibility to market clothing that is safe to wear.

This option avoids further litigation and unknown future added costs to the government in paying the TRIS claims.

DECISION

/__/ Option 1: Support S. 823/H.R. 4011 without amendment.

/__/ Option 2: Support S. 823/H.R. 4011 if amended to include criteria upon which a claim could be denied:

A. /__/ Bar recovery if claimant continued to market TRIS-treated products, or export them, when it should have reasonably known of their dangerousness.

B. /__/ Limit indemnification for only those goods still on the market at the time of the domestic ban or destined for export, but not yet exported.

/__/ Option 3: Oppose S. 823/H.R. 4011.

CC:
Official File LRD/ESGG Branch
DO Records
DO Chron
Dep. Director
LRD Chron
Rm. 7220
Mr. White
Dr. Anderson

LRD/RECarlstrom/pjw 11/13/81

Appendix

Tab A - President's Comments

RADIO-TV MONITORING SERVICE, INC. 1901
3408 WISCONSIN AVENUE N.W. · WASHINGTON, D.C. 20016 · ~~244-0000~~

PROGRAM: ALL NEWS 98	DATE: TUES., OCT. 4, 1977
STATION OR NETWORK: WRC RADIO	TIME: 8:25 AM, EDT

REAGAN COMMENTS ON TRIS

RONALD REAGAN: A few years ago the farmers of America were victims of a middle of the game rule change by government that left them holding the bag. And the bag was filled with unsold wheat.

They had been told by the Department of Agriculture to plant fence row to fence row, to raise all the wheat they could and sell it on the world market, which meant, in reality, sell it to the Russians. With the wheat harvest in, the government under pressure from the hierarchy of organized labor, stopped the sale. The financial hardship was monumental.

There is another case. This time not involving farmers but could mean bankrupcty for some members of the business community. This one involves the self-appointed protectors of the consumer who ride in like vigilantes to ban the sale of anything they even suspect might endanger consumer health and safety.

Some time ago, the Consumer Product Safety Commission decided the possibility of small children accidentally setting their sleep wear on fire was a risk so deadly that immediate action had to be taken. The action involved a chemical flame retardant called TRIS. The Commission virtually compelled the makers of children's sleepwear to impregnate the fabric with TRIS. There's no way to estimate the cost as concerned parents replaced their children's clothing or the even greater loss to merchants whose shelves were filled with merchandise that had been made before the TRIS order. But patient parents went along if it added to the safety of their children. So, pretty soon all the tots were protected against accidental incineration.

The textile industry and the merchants accepted in good faith the government's assurance that TRIS was the answer. But now, that same government has discovered TRIS might cause cancer in the children wearing the sleepwear. The ban is immediate. No TRIS-treated sleepwear or clothing can be made or sold.

What happens now to wholesalers with warehouses filled with unsalable merchandise? Then there are the retail merchants with the same problem. Do they return the merchandise, putting

more

all the burden on wholesaler and manufacturer? And of course, mama can only empty the dresser drawers and start buying again.

We're talking about a $200 million loss which must be borne by someone. If business can weather this economic jolt, the $200 million would eventually have to be recovered in the price paid by the consumer. Of course, if the threat is real, no price is too high to protect our children. But the cancer risk in TRIS is extremely small. This is another saccharine case. There's no record of anyone contracting cancer. No death to report and science says the supposed risk is estimated at a possible four in ten thousand. Compared to tobacco or alcohol, both of which can be sold, the threat to health from TRIS is minimal. And remember TRIS isn't something the industry dreamed up with profit in mind. It was a government idea and a panic decision of the kind we're getting altogether too familiar with these days.

The Consumer Protection Commission, so sure the fire risk was immediate, asked no questions about TRIS except was it a fire retardant. Now comes the cancer possibility and again, emergency action is ordered--clear the shelves; stop production. But what about the orginal emergency? The fire hazard? They haven't found a substitute fire retardant. In other words, we're back where we were in the first place, with the kind of sleepwear we'd always had. Except that hundreds of millions of dollars have been lost for which government accepts no responsibility.

This is Ronald Reagan. Thanks for listening.

Tab B - CPSC Chronology

TRIS CHRONOLOGY

<u>March 1976</u>

The Environmental Defense Fund (EDF), petitioned the Commission to require cautionary labeling for wearing apparel containing the chemical flame-retardant TRIS.

<u>February 4, 1977</u>

The Commission obtained preliminary test data from the National Cancer Institute establishing TRIS as an animal carcenogen in two species and at multiple sites.

<u>February 8, 1977</u>

EDF petitioned the Commission to ban the sale of wearing apparel containing TRIS.

<u>April 8, 1977</u>

CPSC published FR notice which interpreted certain TRIS-treated children's wearing apparel to be banned hazardous substances under the FHSA and subject to repurchase under Section 15 of the Act.

<u>April 20, 1977</u>

American Apparel Manufacturers Association (AAMA) filed an action against the Commission in the U.S. District Court for the District of Columbia seeking an order that would ban TRIS-treated fabric, fiber and yarn already used in children's wearing apparel. A ban defined in this manner would extend the repurchase requirements of the FHSA to these manufacturers as well.

<u>April 25, 1977</u>

Area Offices were directed by C&E to initiate inspections at assigned garment manufacturers to assure repurchase and a stop sale.

<u>April 28, 1977</u>

U.S. District Court for the District of Columbia ruled on AAMA suits that the Commission acted arbitrarily and capriciously in limiting the April 8 ban. The Court enjoined the Commission from enforcing FHSA repurchase, unless it expanded the scope of the ban.

May 4, 1977

Area Offices were directed by C&E to inspect retail outlets to stop the sale of TRIS goods to the consumer approx. 20% of the stores visited were found to be selling TRIS-treated products.

May through September 1977

During this period the Commission successfully obtained in the Federal Courts, Temporary Restraining Orders, Preliminary Injunctions, or Consent Injunctions against the following retailers found selling TRIS-treated sleepwear in violation of the FHSA:

F.W. Woolworth Co.	Allied Stores Corp.
Ayr-Way Stores, Inc.	Lamonts Apparel Inc.
R.H. Macey & Co., Inc.	Federated Dept. Stores, Inc.
Zayre Corp.	E.B. Mott & Co., Inc.

May 5, 1977

CPSC published FR notice to expand the scope of the banning interpretation to include TRIS-treated fabric, yarn, fiber, and chemical.

May 23, 1977

Judge Chapman, U.S. District Court for South Carolina entered a preliminary injunction in an action filed by Springs Mills. Injunction restrained the Commission from applying or enforcing its TRIS regulations against TRIS-treated fabrics, yarns or fibers manufactured by Spring Mills.

June 1, 1977

CPSC published FR reissuing under its own authority the expanded interpretation that TRIS-treated fabric, yarn, fiber and chemical are also banned hazardous substances.

June 23, 1977

Judge Chapman set aside the TRIS regulations and enjoined the Commission from enforcing them.

August 11, 1977

U.S. Court of Appeals for the Fourth Circuit denied the Commission's motion for a stay of Judge Chapman's order; however the decision indicated that the Commission could bring individual enforcement actions.

<u>September 13, 1977</u>

CPSC received copy of 8/17/77 order of final judgement in the Springs Mill case. CPSC restrained from enforcing or applying TRIS regulations, <u>unless</u> CPSC adopts valid regulations or obtains a final judgment from this or any other district court declaring such fabrics, yarns, etc. to be banned hazardous substances.

<u>December 6, 1977</u>

CPSC withdrew the TRIS interpretations or regulations and published an enforcement policy statement. "CPSC believes the items in question are banned hazardous substances and the Commission intends to file individual enforcement actions to prevent sale and require repurchase."

<u>January 18, 1978</u>

CPSC obtained a warrant of seizure to seize TRIS goods being sold by Troxler Hoisery Co., Inc. Troxler promptly filed a motion to quash. (U.S. District Court for the Middle District of North Carolina, Greensboro Division)

<u>February 1, 1978</u>

CPSC filed request for declaratory judgment and injunctive relief against 6 manufacturers of children's sleepwear fabric to order repurchase. (CPSC vs. Burlington)

<u>April 11, 1978</u>

C&E notified garment manufacturers of the Commission's TRIS decision and requested repurchase.

<u>May 3, 1978</u>

Area Offices were requested by C&E to confirm reports that TRIS goods were being exported. Such action was confirmed.

<u>June 14, 1978</u>

CPSC published its TRIS export policy following reconsideration of the issue on May 5, 1978. Policy: CPSC has authority to prohibit and will take enforcement action to stop the export.

<u>June 14-15, 1978</u>

Hearings on TRIS indemnification bill. CPSC supported indemnification <u>if</u> the bill contained specified criteria for payment.

June 16, 1978

A special order was issued to approximately 100 firms requesting information concerning their current inventories of TRIS-treated products. A total of 9,113,199 garments and 958,804 yards of fabric were reported. Firms must report to the Commission their plans for disposition prior to such action.

July 17, 1978

Commission settled Springs Mill case (filed May 23, 1977) and dismissed the Burlington Case (filed Feb. 1, 1978). Settlement/dismissal left the Commission "free to protect consumers by filing individual enforcement actions which would seek to enjoin the retail sale of TRIS goods".

August 9, 1978

C&E directed Area Offices to check retail outlets for the presence of TRIS goods and to visit selected manufacturers under special order to confirm reported information. No TRIS goods were being offered for sale.

October 30, 1978

Court of Appeals upheld the Troxler Seizure.

November 8, 1978

Carter withheld approval of the indemnification bill.

January 9, 1979

Firms known to be holding inventories of TRIS goods as reported under the special order were advised of the EPA recommended methods of disposing of the goods.

February 27, 1979

A special order was issued to 3 distributors known to be holding inventories of TRIS-treated products. Firms must report to the Commission their plans for disposition prior to such action.

February 1979

Staff agreed to allow TRIS-treated goods to be cut into industrial wiping cloths.

September 26, 1980

TRIS Surveillance Program was initiated to determine the status of TRIS inventories still being held at 43 garment manufacturers. As of January 31, 1981, 24 inspections were conducted. One firm exported the goods without reporting disposition to the Commission and one firm had destroyed the goods without reporting. The remaining 22 firms still had the reported inventory.

January 31, 1981

Staff continues to monitor disposition of TRIS goods as firms decide to dispose of the goods. To date we have and/or are monitoring disposition of 4.6 million garments and 535 thousand yards of fabric. For the most part these goods are being cut into industrial wiping cloths by 8 firms. Remaining goods (held by 40 manufacturers) to be disposed of include:

Approx. 4.4 million garments
940 thousand yards of fabric