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SOCMA Position on Reforming the Toxic Substances Control Act (TSCA)

The Toxic Substances Control Act (TSCA)¹ was enacted to protect human health and the environment from potential risks resulting from exposures to industrial chemicals without “imped[ing] unduly or creat[ing] unnecessary economic barriers to technical innovation” On balance, TSCA has done its job admirably. SOCMA believes the law can be improved in some respects, and that EPA could do a better job of exercising its existing TSCA authority. Sweeping revisions of TSCA, however, could be highly detrimental to innovation and quality of life, yet paradoxically not produce major changes in our ability to protect health or the environment.

TSCA has faced criticism over the years from a variety of sources. Environmentalists, academia, and some in Congress have argued that TSCA does not give EPA enough ability to regulate chemicals or gather health data, and that it allows too much information to be claimed as confidential. However, SOCMA believes that TSCA’s critics fail to recognize its successes, which have been substantial. These critics also do not appreciate the potential of the Chemical Assessment and Management Program (ChAMP), a new, voluntary program the United States committed to in 2007 under the Security and Prosperity Partnership (SPP).

Any evaluation of TSCA must recognize that the chemical industry’s innovation has played a huge part in giving the United States one of the highest standards of living in the world, even as overall indices of public health and environmental quality have improved. SOCMA believes this combined success has been achieved due to TSCA’s flexibility. Since TSCA was enacted in 1976, the United States chemical industry has developed roughly 22,000 new chemicals. This number dwarfs that of any other industrialized country. Vast amounts of data have been submitted by the industry to EPA (and to other agencies under other statutes that regulate the chemical industry).² This is not to say that innovation precludes protection of human health and the environment, or that TSCA does not necessarily require revision. But it does mean that an appropriate balance needs to be maintained when considering a revised approach to chemical risk management.





The following points highlight SOCMA's position on TSCA issues:

- Congress should ask EPA whether it believes TSCA should be amended to enable fuller implementation of ChAMP.
- Any enhancements to TSCA should consider how the costs and delays associated with increased data submission requirements could impair innovation or the sustainability of the chemical industry.
- Existing chemicals should be prioritized in clusters like they are under ChAMP. The prioritization process could be conducted more quickly and EPA's rationale for prioritization could be more transparent. In particular, EPA needs to factor the potential for exposure into the prioritization process.
- The "unreasonable risk" standard in TSCA has stood the test of time. It serves its purpose by giving EPA scientists and policymakers the authority to reach sound conclusions. By contrast, a standard of "reasonable certainty of no harm" to vulnerable subgroups is really no less vague, but arguably is impossible to meet.
- The Inventory Update Rule (IUR) process enables EPA to gather some information regarding potential exposures to children or other vulnerable groups. EPA should evaluate the adequacy of that process, and should consider revising its Premanufacture Notice (PMN) rules to enable comparable data to be reported to the EPA and made public without compromising Confidential Business Information (CBI).
- Mandating submission of complete sets of data on individual chemicals is unnecessary; the existing TSCA framework is sufficient and already provides EPA adequate ways of gathering and analyzing data. In particular, it allows EPA to prioritize its data collection and analysis on the basis of risk, and to rely on approaches like structure-activity relationships. Also, vast amounts of test data collected under REACH will become available to EPA; there is no need to establish a duplicate process in the United States.
- Risk-assessments should be based on aggregate exposures from single chemicals; the science of assessing cumulative exposures is still evolving and a framework should be developed and validated before considering it as a method.
- Congress should review the authorities and results of other regulatory statutes that are similar to TSCA (e.g., the Consumer Product Safety Act) to avoid creating redundant requirements – especially since the chemical industry is highly regulated already.
- Companies should not make unjustified CBI claims. EPA has the authority to penalize companies that overclaim, and it should make examples of companies that do. The existing CBI framework is sufficient: it does not allow industry to claim confidentiality for generic chemical names or for health and safety studies.
- TSCA should preempt state authority in regulating the manufacture, process and use of industrial chemicals.



In summary, an effort to address some of TSCA's shortcomings is appropriate, but the approach should not overlook or undermine the many ways in which TSCA has worked effectively for over three decades. A complete overhaul of TSCA, as proposed by the Kids-Safe Chemicals Act, is unnecessary. Such an approach would have unintended consequences, such as delaying the introduction of new products and hastening the move to offshore manufacturing, particularly impacting smaller businesses, such as SOCMA members. It may have no change on how risks are mitigated, as existing control measures may already be in place. Congress should also look at the role of ChAMP, other statutes that regulate chemicals, and international efforts, as it assesses whether better use of existing authorities could meet Congress's goals. A careful process of oversight would help Congress assess where TSCA currently demonstrates effectiveness, where it could if implemented better, and where revision is necessary.

Notes

¹ 15 U.S.C. §§ 2601-2629

² Other statutes that have driven the creation of data relevant to assessing potential risks from chemicals include the Occupational Safety and Health Act (OSHA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Hazardous Materials Transportation Act (HMTA), Consumer Product Safety Act (CPSA), Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), and Emergency Planning and Community Right-to-Know Act (EPCRA).

