American Chemistry Council

State of TSCA Report:

Fix Implementation Now Before It Is Too Late

Providing reliability and certainty in TSCA implementation is critical to American competitiveness, innovation and meeting supply chain, climate, sustainability, energy efficiency, and infrastructure needs

A Message from Chris Jahn, President & CEO of the American Chemistry Council:

After years of work and negotiations among lawmakers of both parties, as well as extensive engagement by stakeholders from industrial, environmental, public health, animal rights, and labor organizations, in 2016 Congress overwhelmingly passed the bipartisan Frank R. Lautenberg Chemical Safety for the 21st Century Act to modernize the Toxic Substances Control Act (TSCA) for the first time since the original law was passed more than 40 years ago.

The American Chemistry Council (ACC) and its members were key supporters of this historic, bipartisan effort.

Congress knew that human health, the environment, and economic growth are not mutually exclusive. Congress intended the amended TSCA to protect human health and the environment, while promoting America's role as the world's leading innovator.

Chemistry is inextricably linked to innovation and scientific advancements needed to accomplish a wide range of our nation's and the world's goals. And Americans agree. According to a recent Morning Consult poll conducted on behalf of ACC, **seven in ten adults agreed that chemistry is essential to our economy and plays a vital role in innovation** and the creation of products and technologies needed to accomplish a wide range of supply chain, climate, sustainability, energy efficiency, and infrastructure goals.[i]

Six years later where do we stand? Unfortunately, EPA has been implementing policy changes that run counter to congressional intent, counter to the bipartisan compromise that made TSCA modernization possible, and that inhibit American innovation and the ability to compete in the global market.

Recent EPA policy changes include:

- Ignoring the existence, applicability, and jurisdiction of other federal laws, and industry's compliance with those laws, when it evaluates the conditions of use of new and existing chemicals
- Improperly branding entire chemicals as unsafe—even when safe uses have been identified—instead of making safety determinations on a use-by-use basis
- Making incorrect assumptions about worker protections and workplace environments instead of using real data
- Failing to follow statutory requirements to use best available science and weight of the evidence in accordance with TSCA's scientific requirements
- Stalling reviews of new chemicals, stopping new innovations from being available for use and from being manufactured in the U.S.
- Increasing fees with no accountability and no corresponding improvements to service

EPA is out of touch with regulatory and economic reality. It's painfully clear why these policy changes and their impacts are so concerning. They cause unnecessary public alarm about the safety of chemicals and unwarranted regulation that deprives society of economic and other benefits without meaningful increases in public health and environmental protection. Delays in approvals of new, innovative chemistries; decreased U.S. manufacturing and innovation; branding chemicals as unsafe based on faulty science; considering burdensome, unwarranted workplace requirements that increase costs and deliver no additional worker safety; stifled innovation; and misguided market deselection for chemistries used to make essential products from building and construction materials to computers, healthcare, and clean energy solutions like batteries and solar panels.

Getting TSCA implementation right is critical. To help put this in perspective, just think about the first 33 commercial substances EPA has currently in the queue for risk evaluation and possible risk management. These alone support all sectors of the U.S. economy, including agriculture and food production, building and construction, computers, and electronics (e.g., printed circuit boards), health care (e.g., pharmaceuticals, medical devices), personal care products (e.g., fragrances, shampoos), textiles, and transportation (e.g., aerospace, and automotive applications); as well as products that address sustainability concerns, including electric cars and trucks, solar panels, and replacements for ozone-depleting substances.

If the U.S. is to remain a global leader in innovation, TSCA must be a reliable and fully functioning program. Promoting the safe use of the essential products of chemistry is a shared responsibility of manufacturers, the government, and those who use or sell chemical products. TSCA can either be a catalyst to addressing our nation's and the world's pressing challenges, or it can create an unnecessary barrier to progress. Implementing TSCA in the sensible, risk- and science-based manner the 2016 bipartisan amendments call for is the best way to move forward to a safer, more prosperous future.

We are urgently calling on EPA to reverse these misguided policy changes and get TSCA implementation back on track.

Chris Jahn
President & CEO
American Chemistry Council

Six Key Problems.
Six Key Solutions.

"The TSCA program can't afford mission creep. TSCA should 'stay in its own lane' and EPA should return to its policy of deferring to other program offices and experts that are already addressing air, water, and waste under other environmental statutes."

— Chris Jahn

Problem

Veering Out of Its Lane

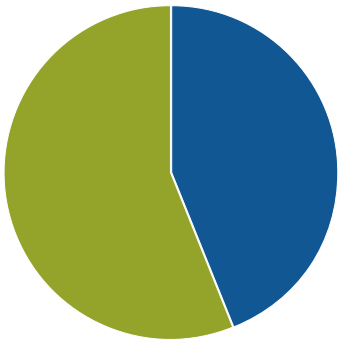
EPA has hundreds of experts outside of its TSCA program office whose job are to measure chemical impacts on air, water, and waste. However, EPA is failing to utilize and rely on these other program offices and experts as it reviews chemical risks under TSCA. The result is regulatory overreach, mission creep, confusion, and a waste of already stretched EPA resources.

Solution

EPA should stick to the TSCA statutory requirements and stay in its lane. Specifically, EPA should return to its policy of deferring to other program offices and experts that are already better addressing air, water, and waste under other environmental statutes. At a minimum, EPA must allow other regulatory programs (e.g., Air, Water) to address community environmental issues under their jurisdiction, as they already do and are equipped to do, and use that information to inform any TSCA evaluations.

2

Americans agree that EPA is on the wrong track. According to a recent Morning Consult survey, a bi-partisan majority of adults prefer that EPA make multiple determinations of risk rather than labeling the whole chemical as presenting risk.[i]



Multiple Determinations	56%
One Determination	44%

Problem

Failing to Make Safety Determinations on a Use-by-Use Basis

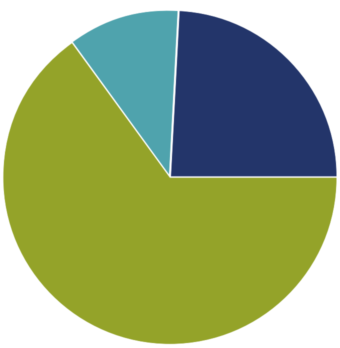
The same chemical is often used to make many products and in multiple applications. The point of risk evaluation is to examine how chemicals are actually being used; chemical uses that are currently being safely used do not need further regulation, while those that present unreasonable risk should go to risk management for appropriate regulatory measures. But EPA is now failing to make safety determinations on a use-by-use basis. It is instead making its safety determination under what it calls a “whole chemical” approach. This means that instead of being able to complete a risk evaluation and segregate the uses that require further risk management measures from those that don’t, EPA is pushing all the uses into the risk management step of the process. This risks misleading and confusing the regulated community and the public. Providing clear, accurate and complete risk information to decision makers is critical.

Solution

EPA should make safety determinations on a use-by-use basis at the end of the risk evaluation. For uses that "do not present unreasonable risk" the process is then completed, and no further risk management measures are needed. Uses that are deemed to present unreasonable risk should proceed to risk management.

3

A majority of Americans think this doesn't make sense. Two-thirds of adults are most likely to feel that when PPE is required by law, the EPA should consider the use of PPE in its risk evaluations.[i]



Should Consider	65%
Should Not Consider	11%
Don't Know/No Opinion	24%

Problem

Assuming Laws Are Not Followed, and PPE Is Not Used

EPA is disregarding critical and essential information during its risk evaluation process. Instead of looking at actual workplace conditions and requirements, EPA is now assuming that workplace requirements and protocols to use personal protective equipment (PPE), including PPE required by OSHA, are not actually being used in the workplace.

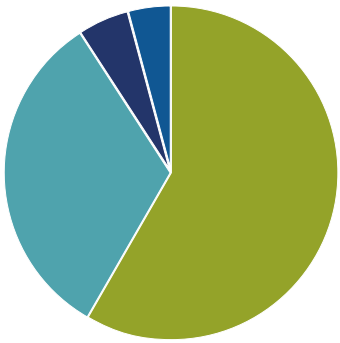
Solution

EPA should calculate risk to workers by taking into account actual exposures to workers. This means considering existing workplace controls that are either industry practice or requirements and PPE.

EPA must acknowledge conditions of use that incorporate existing industrial hygiene protective measures, such as engineering controls and PPE, and EPA should not ignore, undervalue, or undermine OSHA-required worker protection practices in TSCA risk determinations and risk management actions.

4

More than four in five adults feel it is important for EPA to use the best available science and to make decisions based on risk, meaning that hazards, use, and exposure should be considered when determining if a chemical can be used safely.[i]



Very Important	58%
Somewhat Important	32%
Not Too Important	5%
Not Important At All	4%

Problem

Using Flawed Science, and Overestimating Risk

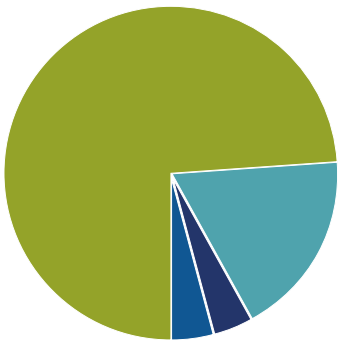
Most of EPA's TSCA risk evaluations to date have failed on the science and overestimated risks. Time and time again the Agency is not properly considering real-world and real workplace uses and exposures, requiring unnecessary and wasteful testing, failing to fully apply the weight of the evidence approach required by Section 26 of the statue, and failing to adequately consult subject matter experts in areas that are beyond EPA's expertise.

Solution

TSCA evaluations must be risk-based, based on real exposure scenarios, use scientific information provided by industry and stakeholders–for known conditions of use as the baseline case — and adhere to statutorily mandated TSCA science standards, and stop overestimating risk. If EPA uses an IRIS assessment to inform a TSCA risk evaluation, EPA must show that the particular IRIS assessment satisfies the TSCA statutory standard (e.g., best available science and weight of the evidence). If it does not, it cannot be relied on.

5

A majority of adults believe that EPA meeting its 90-day deadline requirement is very important to R&D, jobs, and the development of new, sustainable chemistries. As a matter of fact, two-thirds of adults agree that the EPA's funding should be impacted by whether it meets its 90-day deadline requirement.[i]



Very Important	74%
Somewhat Important	18%
Not Too Important	4%
Not Important At All	4%

Problem

Stifling Innovation

EPA routinely misses the statutorily mandated 90 day deadline to review and approve new chemicals. EPA's process suffers from lack of staff expertise, inconsistencies in evaluation methods, lack of clear guidance on data needs, and inadequate communication and engagement with stakeholders. Delays in the new chemicals process have a significant adverse impact on research and development expenditures, planning product launches, development of new sustainable chemistries, innovation, and competitiveness, and prevent the availability of new and innovative chemistries to support important climate, sustainability, and infrastructure goals.

Solution

EPA must put forth a comprehensive plan to reform its processes to ensure the New Chemicals program meets its obligation to complete reviews within 90 days. The Agency must enhance its communication with manufacturers, update its processes to be transparent and objective, ensure relevant supporting documents from companies are reviewed and adequately considered in a timely manner, and ensure that relevant information from actual use and exposures is considered and incorporated based on the best available scientific practices and approaches.

6

"If EPA continues to increase the cost of chemical reviews, it's got to improve the service it's supposed to be providing. Right now, American businesses are seeing too many problems, too many delays, and that hurts innovation. Bottom line: as it stands now, we're not getting what we're already paying for."

— Chris Jahn

Problem

Not Justifying High Fees

Recently, EPA significantly increased the amount it charges chemical manufacturers for risk evaluations of existing chemicals. The Agency's latest proposed supplement to the rule, expected in 2022, is expected to continue to increase these fees and the Agency has told the public to prepare for some "sticker shock" on TSCA fees. These significant costs are paid directly by industry. It is completely unclear what EPA is doing with this money. There is no clear accounting of these fees and how they are spent. The Agency is raising fees but not providing justification for how the fees are supporting effective TSCA implementation or impacting the timeliness of reviews.

Solution

Good governance, fairness, and accountability require agencies to be good stewards of both public funds and fees paid for services. The forthcoming fee rule must result in improved implementation and adherence to the TSCA science standards and timelines. EPA must provide an accounting of fees and how they are spent and send a report to the Senate Committee on Environment and Public Works and the House Committee on Energy and Commerce, as required by TSCA Section 26. At a minimum, the Agency must provide clear justification for how it is using the fees to meet its risk evaluation duties, including the cost for redoing the first 10 risk evaluations, and document any proposed rationale for increasing fees. Any fee increase should be justified and support better service, improved timeliness, and improvements in the science basis of TSCA evaluations.

[i] Morning Consult poll on behalf of the American Chemistry Council (ACC) was conducted between April 9-April 11, 2022, among a sample of 2210 Adults. The interviews were conducted online, and the data were weighted to approximate a target sample of adults based on gender, educational attainment, age, race, and region. Results from the full survey have a margin of error of plus or minus 2 percentage points.

americanchemistry.com