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Toxic ignorance and the challenge for Congress

By Noah M. Sachs and Matthew Shudtz



The House of Representatives recently passed a bill to reform the Toxic Substances Control Act (TSCA), a law widely viewed both by industry players and environmental groups as outdated and in desperate need of improvement. But that bill, like a similar bill in the Senate, does not go far enough to protect Americans. Both bills tolerate continued toxic ignorance. Both bills will lead to unnecessary delay.

Because TSCA does not require safety testing for the vast majority of chemicals on the market, we have no idea of the true health risks of chemicals used in consumer products, toys, home construction materials, furniture, and other items.

The problem is that while 85,000 chemicals have been introduced into commerce in the United States, the Environmental Protection Agency (EPA) has collected comprehensive toxicity information for less than 1,000 chemicals. This head-in-the-sand situation occurs because the existing law does not require chemical companies to test their own products, and EPA must jump through complex procedural hoops when it chooses to require testing.

The new bills are touted as giving EPA more sweeping powers. But neither bill provides the authority, the mandate, or the money that's needed to protect Americans.

Both bills, for example, require EPA to move through the backlog of untested chemicals and make safety determinations. A safety determination is a ruling by the agency about whether the chemical poses "unreasonable risk" to human health or the environment – a first step for further regulatory action.

But astoundingly, the House bill requires the agency to initiate only 10 chemical evaluations per year "subject to the availability of appropriations," and the Senate bill requires EPA to make these safety determinations for only 25 chemicals over five years.

Worse yet, the key phrase "unreasonable risk" is left undefined in both bills. What that means is that when EPA does get around to taking regulatory action, it will be challenged in court. We will likely see a decade of litigation before the courts sort out the ambiguity and decide how much risk is "unreasonable."

Delay has always been the Achilles heel of American chemical regulation under TSCA – one of the reasons the Government Accountability Office has listed these programs as "high risk" and in need

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or urgent reform. Yet under these new bills, we'll have to settle in for decades more of waiting for results. EPA could perhaps choose to review more chemicals, but we rarely see agencies moving faster than Congress requires.

The bill that the House passed is particularly problematic because it allows any chemical manufacturer to propose that EPA test its chemicals for safety, and the bill obligates EPA to do the testing that a manufacturer wants.

The result will be that industry will increasingly set the testing priorities for the agency. Instead of EPA being a watchdog for the riskiest chemicals, industry will clamor for a government blessing of the most profitable ones.

To overhaul TSCA for the 21st century, any new legislation must end our ignorance about the safety of chemicals—on a much faster schedule. Five components are essential:

First, TSCA should require chemical manufacturers to develop and share with EPA a basic set of toxicology data for each chemical on the market and should provide a phase-in period for companies to compile the data. Many manufacturers are already developing that information to comply with European Union regulations, and we need the same information here, audited for accuracy.

Second, the safety standard by which EPA reviews chemicals must be robust and account for the unique risks to the most vulnerable members of our society—children, the elderly, and other sensitive groups.

Third, EPA needs a dedicated funding stream to cover its oversight. The agency has suffered a reduced workforce in recent years, and it will need more personnel to review the new data and expeditiously move through the backlog of untested chemicals. Funding can come partially through fees on chemical manufacturers, but more likely it will require additional appropriations.

Fourth, TSCA needs more ambitious deadlines. The new bills take a positive step by putting deadlines into the statute. But the number of assessments required and the leisurely timetable the bill lays out are not suitable to meet the challenge of near total ignorance about the toxics chemicals surrounding us.

Finally, EPA needs the power to take action once it identifies a chemical that endangers public health – including everything from labeling requirements to complete bans. Both bills would hamstring the agency by requiring more studies, findings, and bureaucratic steps before the agency can regulate a chemical.

Now that the House has moved TSCA reform legislation, the action shifts to the Senate. Some are saying this is the best chance in a generation to reform TSCA. These high stakes make it all the more important to get the reform right.

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