

# What's Up with TSCA Reform

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# ***U.S. Legislation: Current and Proposed***

- Toxic Substances Control Act of 1976 (TSCA)
  - Covers most chemicals used in industry and in commercial/consumer products
  - Excludes:
    - uses in drugs, cosmetics, food packaging regulated by FDA
    - uses in pesticides covered by EPA under FIFRA
- Reform legislation: *Safe Chemicals Act* of 2011 (S. 847)
  - Introduced by Senators Lautenberg, Schumer, Franken, Klobuchar and Boxer
  - Co-sponsors: Blumenthal, Durbin, Gillibrand, Leahy, Menendez, Merkley, Sanders, and Whitehouse

# *Green chemistry provisions*

## *TSCA*

- No provisions

## *Safe Chemicals Act*

- Establishes programs, policies and research programs promoting green chemistry and safer alternatives.
- Provides expedited pathway onto market for new chemicals shown to be inherently safe or safer than an existing chemical substances for a given use.

# *Supply side of Green Chemistry*

- Supply-side options help to facilitate innovation in the creation and dissemination of greener chemicals, processes and technologies.


# ***Demand side of Green Chemistry***

- Demand-side options help to ensure the economic viability of greener chemicals by better informing the market, leveling the playing field on which greener options compete, and creating a regulatory climate that drives both the development and the adoption of safer alternatives.

# *Supply-side Options*

- Instill green chemistry into education
  - Support research and innovation in green chemistry and engineering
  - Build capacity through development of tools, methodologies and strategies for developing greener chemicals
  - Provide incentives to industry and recognition of its efforts
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# ***Demand-side Options***

- Push chemical information out into marketplace
  - Identify and prioritize chemicals or chemical uses of concern for assessment
  - Require proof of safety to stay on market
  - Develop, improve and effectively employ regulations to address unsafe chemicals or uses
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# *DuPont's view of EU's REACH*

“We are implementing REACH as a global program across DuPont, and the impact of REACH will be varied and widespread. We see it as potential to drive market innovation.”

There are chemicals that may be restricted under REACH, and it'll provide the opportunity for a science company like DuPont to develop replacement products to satisfy market needs.”

- Rick Straitman, DuPont, quoted in *Greenwire*, 6/08

# *Public policy drives innovation*

EU survey of 90 leading environmental technology companies in 13 countries\*

Q: What are the key external success factors for innovation:

#1: Government policy: Most effective are traditional regulations

#2: Market demand, best driven by government policy

# TSCA vs. Safe Chemicals Act of 2011

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SAFETY DATA	
<p>Few data call-ins are issued, even fewer chemicals are required to be tested and no minimum data set is required even for new chemicals.</p>	<p>Up-front data call-ins for all chemicals would be required. Minimum data sets (MDSs) on all new and existing chemicals sufficient to determine safety would be required to be developed and made public.</p>

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ASSESSMENT OF SAFETY	
<p>No mandate exists to assess the safety of existing chemicals. New chemicals undergo a severely time-limited and highly data-constrained review.</p>	<p>Both new and existing chemicals would generally be subject to safety determinations as a condition of entering or remaining on the market, using the best available science that relies on the advice of the National Academy of Sciences.</p> <p>Chemicals designated by EPA to be intrinsically safe would not require assessment or further action unless new information altered their designation.</p>

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SCOPE OF ASSESSMENT	
<p>Where the rare chemical assessment is undertaken, there is no requirement to assess exposure to all sources of exposure to a chemical, or to assess risk to vulnerable populations.</p> <p>No guidance is provided on how to determine whether a chemical presents an "unreasonable risk."</p>	<p>A health-based safety standard would require EPA to account for aggregate exposures to all uses and sources of a chemical, and to ensure protection of vulnerable populations that may be especially susceptible to chemical effects (e.g., children, the developing fetus) or subject to disproportionately high exposure (e.g., low-income communities living near contaminated sites or chemical production facilities).</p>

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BURDEN OF PROOF	
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CHEMICALS AND EXPOSURES OF HIGH CONCERN	
<p>No criteria are provided for EPA to use to identify and prioritize chemicals or exposures of greatest concern, leaving such decisions to case-by-case judgments.</p>	<p>EPA would be required to develop and apply criteria to identify toxic chemicals to which people are exposed that persist and build up in the environment and people (PBTs). “Hot spots” where people are subject to disproportionately high exposures would be specifically identified and addressed.</p>

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REGULATORY ACTION	
<p>Even chemicals of highest concern, such as asbestos, have not been able to be regulated under TSCA’s “unreasonable risk” cost-benefit standard. Instead, assessments often drag on indefinitely without conclusion or decision.</p>	<p>PBTs to which people are exposed would be moved directly to mandatory exposure reduction. The remaining chemicals would be prioritized for assessment against a health-based standard, and deadlines for decisions would be specified. EPA would have authority to restrict production and use or place conditions on any stage of the lifecycle of a chemical needed to ensure safety.</p>

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INFORMATION ACCESS	
<p>Companies are free to claim, often without providing justification, most information they submit to EPA to be confidential business information (CBI), denying access to the public and even to state and local government. EPA is not required to review such claims, and the claims never expire.</p>	<p>All CBI claims would have to be justified up front. EPA would be required to review them, and only approved claims would stand. Approved claims would expire after no more than five years, except for types of claims for which EPA determines the five-year term would not apply. Other levels of government would have access to CBI.</p>

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<b>RULEMAKING REQUIREMENTS</b>	
<p>To require testing or take other actions, EPA must promulgate regulations that take many years and resources to develop. EPA must show potential for a chemical to cause harm or widespread exposure in order to require testing, a Catch-22.</p>	<p>In addition to the MDS requirement, EPA would have authority to issue an order rather than a regulation to require reporting of existing data or additional testing, and need not first show evidence of harm.</p>

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# *The chemical industry then and now*

- "In our view, TSCA is a sound statutory and regulatory system. It is a robust vehicle that can effectively address emerging chemical issues ... The American Chemistry Council believes that the Toxic Substances Control Act provides a high level of health and environmental protection in the manufacture and use of chemical substances."

Mike Walls, Managing Director, American Chemistry Council (ACC)  
Congressional testimony, August 2, 2006

- "TSCA is in dire need of modernization."

Cal Dooley, President, American Chemistry Council (ACC)  
Congressional testimony, February 26, 2009

# *Why the shift?*

“The lack of confidence in our current chemicals management system has led to a panoply of state and local laws affecting chemicals management or products that rely on chemistry for critical components. ... The lack of certainty makes it difficult for companies that produce and use chemicals to operate efficiently.”

Cal Dooley, President, American Chemistry Council  
*GLOBALCHEM remarks, March 24, 2011*

“In the absence of reforms to TSCA we are seeing a plethora of State actions that are serving to create tremendous uncertainty in our markets.”

Linda Fisher, Chief Sustainability Officer, DuPont  
Congressional testimony, March 9, 2010

# RECENT DEVELOPMENTS



# ***For more information***

*EDF's Chemicals Policy Webpage*

[www.edf.org/health/policy/chemicals-policy-reform](http://www.edf.org/health/policy/chemicals-policy-reform)

*Safer Chemicals, Healthy Families*

[www.saferchemicals.org](http://www.saferchemicals.org)

*Not a Guinea Pig*

[www.notaguineapig.org](http://www.notaguineapig.org)

*EDF Chemicals & Nanomaterials Blog*

[www.edf.org/chemandnano](http://www.edf.org/chemandnano)