

Ask the 3Expert

“What’s the latest status of the U.S. TSCA reform?”

In the evening of 17 December 2015, the U.S. Senate passed the “Frank R. Lautenberg Chemical Safety for the 21st Century Act” (S. 697), which reforms the Toxic Substances Control Act (TSCA) for the first time since its enactment in 1976. The Senate approved the legislation by unanimous consent in a voice vote and broke its months-long deadlock on the floor vote. The language of the passed bill is an updated version of S. 697 from October. Sponsored by Senators David Vitter (R-LA) and Tom Udall (D-NM), S. 697 has gained filibuster-proof support this year. The next phase of the legislative process is a conference committee to reconcile the differences in the House and Senate versions of TSCA reform.

RECENT OBSTACLES

One major obstacle in getting S. 697 to a Senate Floor vote was the hold put on the bill by Senators Richard Burr (R-NC) and Kelly Ayotte (R-NH) until a vote was guaranteed to add an amendment to the bill reauthorizing the Land and Water Conservation Fund (LWCF) program appropriations that had expired on 1 October. The LWCF is a federal program created by Congress in 1965 to collect revenues from offshore oil and gas production to fund the conservation of land and water in the U.S. The Senate eventually renewed the fund in a separate legislation on 15 December 2015, the hold was lifted, and two days later S. 697 was passed.

Another obstacle was that Sen. Barbara Boxer (D-CA), who has led the Democratic Party’s opposition to S.697 in recent years, had vowed to block a vote on the bill. Last minute concessions seem to have been made to Boxer, which are not clear at this time. After the concessions were made, Sen. James Inhofe (R-OK), chairman of the Senate Environment and Public Works Committee brought up S. 697 for the floor vote without opposition on the night of 17 December.

IMPORTANT CHANGES

The historic passing of the bipartisan bill S. 697 is the Senate's attempt to modernize the Toxic Substances Control Act for the first time in 40 years. Under the current TSCA, the Environmental Protection Agency (EPA) has been unable to restrict or ban a chemical's use, or even request new toxicity data from its manufacturers, without first proving that the chemical carries a certain level of risk to human health or the environment. EPA also must look into the potential costs of regulating a chemical when determining whether it is safe for use, and choose the "least burdensome" method of regulation. These requirements have made it very difficult for EPA to take actions under TSCA.

Under S. 697, EPA would no longer have to satisfy these cost-related requirements, and would have more authority to restrict or ban chemicals or require companies to submit new toxicity data. The Senate bill directs EPA to review the safety of chemicals that the agency determines to be a high priority. The bill establishes the standard for prioritizing chemicals that do not break down easily in the environment, that accumulate in the human body, or that are already known to be highly toxic.

NEW REQUIREMENTS

Notable provisions in S. 697 that are not found in the current TSCA include:

- Requires EPA to establish a risk-based prioritization screening process to designate substances as high- or low-priority for safety assessment and determination, including review of every chemical already in commerce;
- Provides EPA with broad authority to obtain new information from manufacturers or processors on all chemical substances in U.S. commerce for the safety review and evaluation process;
- Ensures new chemicals pass a safety check before they can be placed on the market;

- Gives EPA new authority to require the testing of new and existing chemicals for safety;
- Requires protection for populations whose exposures, age or other conditions make them vulnerable to chemicals;
- Elaborates on the federal preemption of state actions by validating existing state regulations and laws for chemicals, but preempts state actions regarding testing, the notification of significant new uses, and the restriction of high-priority substances if EPA has made findings based on a safety determination on the same uses and conditions of use. EPA may also temporarily stop new state regulations while the agency is assessing a chemical's risks;
- Establishes a new Scientific Advisory Committee on Chemicals to provide EPA independent scientific advice;
- Requires EPA to review all prior claims for the protection of confidential chemical identities for active substances within five years of enactment;
- Makes several modifications to the process by which confidential business information (CBI) protection can be claimed;
- Requires EPA to develop necessary policies, procedures, and guidance within two years of enactment;
- Expands EPA's existing TSCA fee authority.

The bill passed on 17 December also includes a new provision requiring the development of a long-term storage facility for elemental mercury, provides for interim storage by mercury generators and prohibits the export of certain mercury compounds.

UNKNOWN AHEAD

The Senate and the House now will have to work to resolve the differences in their respective bills before putting the final version on the President's desk for his signature. The House bill, "TSCA Modernization Act of 2015" (H.R. 2576), was

passed in June with a 398-1 vote. The House bill is a far narrower in scope and, like the Senate bill, strongly bipartisan. It is unknown at this point whether the final bill will look more like S. 697 or H.R. 2576.

If the Senate and House manage to pass a final version (most likely in 2016), there still remains the question of whether President Obama will approve the bill. The White House in recent years has indicated its general support of TSCA reform so it is not predicted that the President will veto the final bill.

Another unpredictable aspect of TSCA reform is future rulemaking by the EPA. S. 697 requires EPA to implement TSCA reform by promulgating regulations within two years of enactment. With EPA's limited resources, a high volume of stakeholder input, and a limited timeframe, the rulemaking process under the reformed TSCA will likely be contentious and difficult.

INDUSTRY IMPACT

It is no doubt that whether in the form of the Senate proposal or the House proposal, TSCA reform will have significant impacts on chemical manufacturers, importers, distributors, processors and other downstream users. Important issues include the restriction and ban of chemicals, CBI substantiation, data gathering, chemical testing, and federal preemption. Businesses that would be affected by the proposed legislation may wish to provide comments on the bills to their legislative representatives or to their industry representatives. Understanding the content of the legislation can also prepare companies to adapt to a new regulatory framework, as these passed bills are early indicators of potential regulations from EPA, which will have more practical day-to-day impacts on the industry.

The latest version of S. 697 can be found [here](#).

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