

The Chemical Safety Improvement Act

By

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Senators David Vitter (R-LA) and the late Frank Lautenberg (D-NJ) introduced S. 1009, the Chemical Safety Improvement Act (CSIA), in May. CSIA provides a new approach to Toxic Substances Control Act (TSCA) reform that to date has met with broad stakeholder approval. Highlights of the draft bill are below.

Key Provisions

CSIA establishes a new safety standard of “no unreasonable risk of harm to human health or the environment will result from exposure to the chemical substance.” All assessments, determinations, or other analyses are whether a chemical meets this safety standard “under its intended conditions of use.”

Chemical Assessment Framework

The U.S. Environmental Protection Agency (EPA) is required to use a risk-based evaluative framework for decision-making that employs the best available science and risk assessment principles. CSIA specifies data and information quality requirements and ensures that EPA consider data and information submitted by the public.

Chemical Prioritization Screening Process

EPA must propose a screening process and criteria to identify substances as either high or low priority for safety assessment and determination. EPA must prioritize chemicals in active commerce; it may prioritize unregulated, inactive chemicals of high hazard and high exposure.

Safety Assessments

EPA is required to conduct a “safety assessment” for each high priority substance. Safety assessments must evaluate hazard, use, and exposure information, including vulnerability of exposed subpopulations, and must include a weight of the evidence summary.

Safety Determination

EPA must determine whether or not the chemical meets the safety standard under intended conditions of use. In cases where the safety standard is not met, EPA must impose additional restrictions to abate the risks. Safety determinations are subject to notice and comment and to judicial review.

Risk Management

If EPA determines additional restrictions are required, it must establish these and the magnitude of risk. These restrictions include a range of options such as requirements for warnings, recordkeeping, testing, quantity limitations, notifications to value chain, bans, and phase-outs. Exemptions from restrictions include, among others, national security.

Inventory ReSet

CSIA requires EPA to “reset” the TSCA Chemical Inventory by requiring EPA to create a Candidate List of Active Substances in Commerce consisting of two lists: the Active Inventory and the Inactive Inventory.

Confidential Business Information (CBI)

CSIA prohibits disclosure of information that is exempt from disclosure and establishes the types of information that are presumed confidential and not confidential. Information on specific chemical identity is presumed confidential, but requires up-front justification. Confidentiality lasts as long as requested by the submitter or as EPA deems reasonable, and is renewable.

Preemption

Some EPA actions under CSIA retrospectively and prospectively preempt state chemical regulatory requirements. Decisions by EPA to designate a substance as high or low priority preempt state/local regulations. Existing requirements would continue until a safety determination is made. As under TSCA, states may seek a waiver from the preemptive effect of an EPA action, but must meet eligibility criteria. The waiver decision is subject to notice and comment and is judicially reviewable. EPA safety determinations are admissible in state tort actions as determinative evidence of whether the chemical meets the safety standard.

Discussion

CSIA has met with broad stakeholder approval. There is, however, controversy over CSIA's preemption provisions, the standard safety applicable in EPA's determinations of an "unreasonable risk," and the lack of deadlines for EPA actions. The U.S. House of Representatives scheduled a TSCA "informational" hearing on June 13, 2013, to help Members understand TSCA and concerns with the current law. No TSCA legislation has been introduced in the House. As Congress begins the process of hearings and legislative mark-up, a more focused review of CSIA will commence. As the expression goes, the devil is in the details and it is far from certain that TSCA modernization legislation will happen any time soon.

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