

Pragmatic Compromises to Revise the Chemical Safety Improvement Act Yields a Stronger Draft Bill with Growing Support

Senator Tom Udall (D-NM) and Senator David Vitter (R-LA) have released a revised draft of the Chemical Safety Improvement Act (CSIA), which would reform the Toxic Substances Control Act (TSCA) and strengthen the regulation of chemicals in commerce. After over a year of negotiation, the Senators have reached a reasonable, balanced compromise on the environment and health-related provisions of the CSIA. While some work remains to address the role of state regulation in an enhanced federal regulatory system and ensure adequate resources to carry out a reformed TSCA, this revised draft has been significantly strengthened and shares significantly broader bipartisan support. Senators Udall and Vitter believe that illustrating the significant progress on the draft will help stakeholders achieve a consensus on the remaining details of the legislation and finally update this 38-year-old law.

The CSIA of 2013: A Major Milestone on the Road to Reform

In May of 2013, the late Senator Frank Lautenberg and Senator David Vitter were joined by a bipartisan coalition of 24 other Senators to introduce the original CSIA. With the unfortunate passing of Senator Lautenberg, Senator Tom Udall joined Senator Vitter as the lead co-sponsor of the bill and strong proponent of meaningful and practical TSCA reform. The original CSIA sought to enhance public health and protect the environment while also preserving America's place as a resurgent leader in innovation and manufacturing by:

- Requiring all chemicals in commerce, including "grandfathered" chemicals which were already in use before TSCA became law, to undergo a systematic evaluation.
- Establishing a three-part framework for chemical evaluations: prioritization screening; safety assessment and determination; and regulation, based on an integrated analysis of hazard, exposure and risk.
- Screening chemicals to identify those in the greatest need of safety evaluations.
- Granting EPA greater authority to require manufacturers and processors to conduct more health and safety testing on their chemicals, including "grandfathered" chemicals.
- Clarifying Intellectual property protections to ensure continued reasonable protections of proprietary information and continued innovation.
- Reducing testing on animals by utilizing new testing technologies.
- Establishing a regulatory program that could meet the needs of the national marketplace.
- Requiring EPA to be more efficient and transparent in making decisions and granting greater access to information about chemicals, including more accountability for decisions on chemical safety.

Fast Forward to a Better CSIA

While the CSIA's introduction in 2013 was a major milestone on the road to stronger oversight of chemicals, more work to secure additional cosponsors and garner more support from environmental and public health groups was necessary to build momentum for the bill's passage. Senators Udall and Vitter have negotiated balanced solutions that make substantial changes from the original CSIA to make it even stronger while preserving the bill's fundamental improvements to TSCA.

The revised CSIA released by Senators Udall and Vitter makes numerous modifications:

➤ ***Strengthens the Safety Standard***

- Mandates that EPA base chemical safety decisions solely on considerations of risk to public health and the environment. The legislation makes clear that cost and benefit information may not factor into a chemical safety evaluation.

➤ ***Strengthens Protections for the Most Vulnerable***

- Places greater emphasis on protecting those who may be more exposed or particularly vulnerable to the effects of exposure to chemicals and clearly defines them for the first time as including *infants, children, pregnant women, workers and the elderly*.
- Requires EPA to explain in each safety evaluation which susceptible populations were considered, why and, where needed, how they will be protected.

➤ ***Sets Aggressive and Attainable Deadlines***

- Imposes at least 15 deadlines for EPA action, developed with input from the Agency, including:
 - ✓ **Six months** to begin prioritization screening, allowing EPA to leverage ongoing work.
 - ✓ **Three years** to complete a safety assessment and determination after a chemical has been designated as a high-priority.
 - ✓ **Two years** to publish a final rule outlining risk management requirements after a safety determination is complete.
- Limits extensions on safety evaluations and risk management to a total of two years.

➤ ***Makes Substantial Changes to Strengthen the Prioritization Screening Process***

- Directs EPA to establish an initial list of at least 10 high-priority chemicals and requires that each time a chemical evaluation is completed a new chemical is added to the high-priority list.
- Provides EPA authority to mandate health and safety testing for prioritization purposes.
- Requires EPA to prioritize chemicals at the rate the agency can reasonably conduct safety assessments and determinations in order to prevent a backlog.
- Outlines specific criteria that will be used to determine whether a chemical is high- or low-priority and establishes that a lack of information can lead to a high-priority designation and cannot be used as a reason for a low-priority designation.
- Further clarifies that a chemical may be reprioritized at any time based on new information.

➤ ***Creates additional requirements and sets reasonable limits on CBI claims***

- Requires that confidentiality claims be substantiated up front and imposes a 10-year, renewable time limit on such claims.
- Directs EPA to review prior claims to keep chemical identity confidential within 5 years.
- Eliminates the ability to protect confidential information for banned substances.
- Allows disclosure of CBI to physicians, first responders, and public health officials in an emergency.

➤ ***Preserves Existing Private Rights of Action***

- Clarifies that the existing right of Americans to sue and seek damages when they believe harm has been done is not affected by the bill.
- Makes clear that nothing in the bill affects the ability of litigants to obtain confidential information in a judicial proceeding.