

February 12, 2016

The Honorable James M. Inhofe
Chairman
Committee on Environment and Public Works
U.S. Senate
410 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
Ranking Member
Committee on Environment and Public Works
U.S. Senate
456 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Frederick S. Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2183 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
237 Cannon House Office Building
Washington, DC 20515

As organizations dedicated to ensuring the health and safety of the public, we write to urge Congress to continue to prioritize public health during its consideration of legislation to update the 1976 Toxic Substances Control Act (TSCA).

The bipartisan bills in the House and the Senate represent the most significant progress on reform in recent years. The TSCA Modernization Act of 2015 (H.R. 2576) and the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697) both passed with overwhelming bipartisan support. We remain encouraged that a final compromise bill will soon become law. As you move forward in the reconciliation process, we offer the following recommendations to ensure the public health.

Our recommendations focus on the following priorities:

- A safety standard that protects public health
- Preemption provisions that ensure protections from unsafe chemicals
- Protections for vulnerable populations against harmful exposures
- Access to confidential business information by public health and other professionals

Safety Standard

In the four decades since TSCA, EPA has reviewed fewer than 200 chemicals. The agency has restricted fewer than a dozen dangerous chemical families from the market. A major reason for this is the current safety standard, which requires a balancing of health and economic factors before the agency can act. The sponsors and committees of jurisdiction have taken a significant step in both bills to remove the consideration of costs from chemical safety assessments. We support a health-based standard and urge Congress to preserve or build upon efforts to adopt a strong, workable standard during the reconciliation of these bills.

Preemption

While both bills grandfather state rules adopted before August 2015, we recommend avoiding preemption language that has the potential to create a lengthy regulatory pause or institute a procedurally difficult waiver process. States and the federal government have worked collaboratively in protecting citizens from toxic substances for many years. Moving away from this historical understanding of preemption would create uncertainty and hinder ongoing state efforts to protect their citizens from hazardous chemicals. Preemption provisions must:

- Maintain the ability of states to protect their citizens in the absence of a federal rule directly addressing the scope of a state regulation;
- Preserve states' ability to request chemical reporting information while federal rules are being finalized; and
- During federal review and once a federal rule is promulgated, provide states with a timely waiver process that is clear, not unduly burdensome, and avoids creating any gaps in chemical oversight that would prolong exposures to dangerous substances.

Protect Vulnerable Populations

Outcomes of toxic chemical exposures can be more severe, occur at much lower doses, and even impact different tissues in developing embryos and young children than in adults. The bills increase protections for children and pregnant women, about whom the current law is silent. However, neither bill sufficiently addresses the type of testing necessary to ascertain risks to these vulnerable populations before potentially harmful products become pervasive in the consumer market. The final bill should:

- Address the use of currently available science to ensure adequate protections for vulnerable populations. EPA often relies upon predictive modeling when conducting new chemical reviews. Since there are no validated predictive models for the developmental impacts of chemicals, the final bill should address the use of currently available methods, such as reproductive and developmental assays; and
- Address other harms for which vulnerable subpopulations may be at a greater risk, including endocrine disruption, immune damage, cancer, and genotoxicity.

Confidential Business Information

We support increasing the availability of confidential chemical information to public health professionals, health care providers, tribes, and state and local governments. Both bills would allow this for the first time. The Senate bill is more comprehensive in its approach to expiring claims, requiring manufacturers to re-substantiate the basis for confidentiality. Its language also expressly includes first responders and poison control centers. First responders, public health officials, and health care professionals are often on the front lines of disasters, industrial accidents, and hazardous spills. These professionals need access to appropriate data about such incidents to be effective during emergencies and to protect the long-term health of their communities. As such, the relevant provisions must be drafted with sufficient breadth and clarity to ensure:

- Necessary parties have adequate and timely access to information; and
- Increased transparency around the chemical composition of products, including the results of toxicity studies for individual chemicals, chemical mixtures and additives.

As the committee processes revealed, the nation's major chemical safety law is badly in need of an update. We commend the commitment of both chambers in passing reform and thank you for your consideration of our recommendations during the process of negotiating a final bill.

Sincerely,

American Academy of Family Physicians
 American Academy of Pediatrics
 American Congress of Obstetricians and Gynecologists
 American Public Health Association

American Society for Reproductive Medicine
Association of Public Health Laboratories
Association of Reproductive Health Professionals
Association of State and Territorial Health Officials
Children's Environmental Health Network
Council of State and Territorial Epidemiologists
Endocrine Society
National Association of County and City Health Officials
National Environmental Health Association
Society for Maternal-Fetal Medicine