

State of TSCA Report: Fix Implementation Now Before It Is Too Late



Providing reliability and certainty in TSCA implementation is critical to American competitiveness, innovation and meeting supply chain, climate, sustainability, energy efficiency, and infrastructure needs

A Message from Chris Jahn, President & CEO of the American Chemistry Council:

After years of work and negotiations, in 2016 Congress overwhelmingly passed the bipartisan Frank R. Lautenberg Chemical Safety for the 21st Century Act to modernize the Toxic Substances Control Act (TSCA).

The American Chemistry Council (ACC) and its members were key supporters of this historic, bipartisan effort.



Six years later where do we stand? Unfortunately, EPA has been implementing policy changes that run counter to congressional intent, counter to the bipartisan compromise that made TSCA modernization possible, and that inhibit American innovation and the ability to compete in the global market.

If the U.S. is to remain a global leader in innovation, TSCA must be a reliable and fully functioning program. TSCA can either be a catalyst to addressing our nation's and the world's pressing challenges, or it can create an unnecessary barrier to progress. Implementing TSCA in the sensible, risk- and science-based manner the 2016 bipartisan amendments call for is the best way to move forward to a safer, more prosperous future.

We are urgently calling on EPA to reverse its misguided policy changes and get TSCA implementation back on track.

Six Key Problems. Six Key Solutions.

Problem

Veering Out of Its Lane

EPA has hundreds of experts outside of its TSCA program office whose job it is to measure chemical impacts on air, water, and waste. However, EPA is failing to utilize and rely on these other program offices and experts as it reviews chemical risks under TSCA. The result is regulatory overreach, mission creep, confusion, and a waste of already stretched EPA resources.

Solution

EPA should return to its policy of deferring to other program offices and experts that are already better addressing air, water, and waste under other environmental statutes. EPA must allow other regulatory programs (e.g., Air, Water) to address community environmental issues under their jurisdiction, as they already do and are equipped to do, and use that information to inform any TSCA evaluations.

"The TSCA program can't afford mission creep. TSCA should 'stay in its own lane' and EPA should return to its policy of deferring to other program offices and experts that are already addressing air, water, and waste under other environmental statutes."

— Chris Jahn

Problem

Failing to Make Safety Determinations on a Use-by-Use Basis

EPA's failure to make safety determinations on a use-by-use basis means that instead of being able to complete a risk evaluation and segregate the uses that require further risk management measures from those that don't, EPA is pushing all the uses into the risk management step of the process. This risks misleading and confusing the regulated community and the public.

Solution

EPA should make safety determinations on a use-by-use basis at the end of the risk evaluation. For uses that "do not present unreasonable risk" the process is then completed, and no further risk management measures are needed. Uses that are deemed to present unreasonable risk should proceed to risk management. Providing clear, accurate and complete risk information to decision makers is critical.

Americans agree that EPA is on the wrong track. According to a recent Morning Consult survey, a bi-partisan majority of adults prefer that EPA make multiple determinations of risk rather than labeling the whole chemical as presenting risk.ⁱ

Multiple Determinations 56%

One Determination 44%

Problem

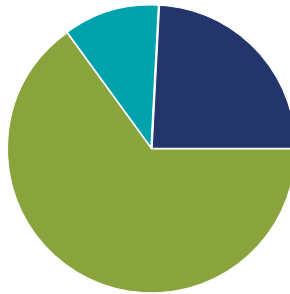
Assuming Laws Are Not Followed, and PPE Is Not Used

Instead of looking at actual workplace conditions and requirements, EPA is now assuming that workplace requirements and protocols to use personal protective equipment (PPE), including PPE required by OSHA, are not actually being used in the workplace.

Solution

EPA must consider existing workplace controls that are either industry practice or requirements and PPE. EPA must acknowledge conditions of use that incorporate existing industrial hygiene protective measures, such as engineering controls and PPE, and EPA should not ignore, undervalue, or undermine OSHA-required worker protection practices in TSCA risk determinations and risk management actions.

A majority of Americans think this doesn't make sense. Two-thirds of adults are most likely to feel that when PPE is required by law, the EPA should consider the use of PPE in its risk evaluations.ⁱ



Should Consider	65%
Should Not Consider	11%
Don't Know/No Opinion	24%

Problem

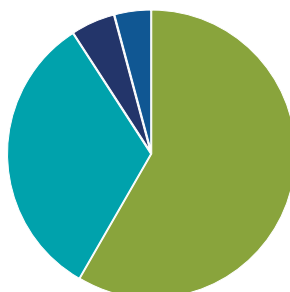
Using Flawed Science, and Overestimating Risk

Too often EPA is not properly considering real-world and real workplace uses and exposures, requiring unnecessary and wasteful testing, failing to fully apply the weight of the evidence approach required by Section 26 of the statute, and failing to adequately consult subject matter experts in areas that are beyond EPA's expertise.

Solution

TSCA evaluations must be risk-based, based on real exposure scenarios, use scientific information provided by industry and stakeholders and adhere to statutorily mandated TSCA science standards, and stop overestimating risk.

More than four in five adults feel it is important for EPA to use the best available science and to make decisions based on risk, meaning that hazards, use, and exposure should be considered when determining if a chemical can be used safely.ⁱ



Very Important	58%
Somewhat Important	32%
Not Too Important	5%
Not Important At All	4%

Problem

Stifling Innovation

EPA routinely misses the statutorily mandated 90-day deadline to review and approve new chemicals. Delays in the new chemicals process have a significant adverse impact on research and development expenditures, planning product launches, development of new sustainable chemistries, innovation, and competitiveness, and prevent the availability of new and innovative chemistries to support important climate, sustainability, and infrastructure goals.

Solution

EPA must put forth a comprehensive plan to reform its processes to ensure the New Chemicals program meets its obligation to complete reviews within 90 days. The Agency must enhance its communication with manufacturers, update its processes to be transparent and objective, ensure relevant supporting documents from companies are reviewed and adequately considered in a timely manner, and ensure that relevant information from actual use and exposures is considered and incorporated based on the best available scientific practices and approaches.

A majority of adults believe that EPA meeting its 90-day deadline requirement is very important to R&D, jobs, and the development of new, sustainable chemistries. As a matter of fact, two-thirds of adults agree that the EPA's funding should be impacted by whether it meets its 90-day deadline requirement.ⁱ

Very Important	74%
Somewhat Important	18%
Not Too Important	4%
Not Important At All	4%

Problem

Not Justifying High Fees

Recently, EPA has increased the amount it charges chemical manufacturers for risk evaluations of existing chemicals and plans to raise these fees even further. These significant costs are paid directly by industry. It is completely unclear what EPA is doing with this money. There is no clear accounting of these fees and how they are spent. The Agency is raising fees but not providing justification for how the fees are supporting effective TSCA implementation or impacting the timeliness of reviews.

Solution

Increased fees must support better service and result in improved timeliness and improvements in the science basis of TSCA evaluations. EPA must provide an accounting of fees and how they are spent and send a report to Congress. The Agency must provide clear justification for how it is using the fees to meet its risk evaluation duties and document any proposed rationale for increasing fees.

ⁱMorning Consult poll on behalf of the American Chemistry Council (ACC) was conducted between April 9-April 11, 2022, among a sample of 2210 Adults. The interviews were conducted online, and the data were weighted to approximate a target sample of adults based on gender, educational attainment, age, race, and region. Results from the full survey have a margin of error of plus or minus 2 percentage points.