



July 22, 2010

THE TOXIC CHEMICALS SAFETY ACT OF 2010 (H.R. 5820)
SECTION-BY-SECTION SUMMARY
Committee on Energy and Commerce

Section 1. Short Title.

This Act may be cited as the “Toxic Chemicals Safety Act of 2010.”

Section 2. Findings, Policy, and Goal.

This section would amend Section 2 of the Toxic Substances Control Act of 1976 by updating the stated findings, policy, and goal to reflect scientific advances and changes in international chemical regulation.

Section 3. Definitions and Determinations.

This section would amend Section 3 of the Toxic Substances Control Act of 1976. Definitions for the following terms would be amended: chemical substance, distribute in commerce, environment, health, and safety study, manufacture, mixture, new chemical substance, and process. The definition for the following term would be struck: standards for the development of test data. Definitions for the following terms would be added: adverse effect, aggregate exposure, bioaccumulative, chemical identity, cumulative exposure, Federal agency, importer, persistent, substance characteristic, toxic, toxicological property, use, and vulnerable population. Determinations related to the definitions of chemical substance and use would be included in a new subsection.

Section 4. Minimum Data Set and Testing of Chemical Substances and Mixtures.

This section would amend Section 4 of the Toxic Substances Control Act of 1976 to require submission of a minimum data set for all chemical substances, which would include information on chemical identity, substance characteristics, toxicological properties, hazard, exposure, and use. The Administrator would set out data requirements in a minimum data set rule within one year of enactment. Submission of the data sets would be staggered for existing chemicals based on when a chemical substance is prioritized for a safety standard determination and its production volume. For new chemicals, the minimum data set would be submitted with the pre-manufacture notice. Data sets would be required for any mixtures prioritized for safety standard determinations by the Administrator.

This section would also amend existing testing provisions by granting the Administrator the authority to use orders to compel testing. Other Federal agencies would be permitted to request that the Administrator share existing data or require the development of testing or monitoring data under this section to assist such agencies in exercising their authority.

Section 5. Manufacture and Processing Notices.

This section would amend Section 5 of the Toxic Substances Control Act of 1976 by requiring safety standard determinations in the pre-manufacture stage for new chemicals or new uses of chemicals that have already received safety standard determinations, unless the proposed use is critical. For new uses of chemicals that have not yet received determinations, the section would require submission of the declaration required by section 8 not later than 6 months after production for the new use begins.

This section would maintain the requirements of existing Significant New Use Rules until the chemical substance that is subject to the rule receives a safety standard determination.

This section would also require a notice of manufacture or processing for new chemicals or new uses of existing chemicals as determined in this section, which notice would be due no later than 30 days after the date on which the activity commences.

The requirements of this section would not apply to any new chemical or new use which is determined to be a safer alternative under Section 35 or which is exempted by the Administrator under Section 39.

Section 6. Prioritization, Safety Standard Determination, and Risk Management.

This section would amend Section 6 of the Toxic Substances Control Act of 1976 by establishing a prioritization system and requiring a safety standard determination for chemical substances and mixtures that are prioritized. The initial priority list, for which safety standard determinations would first be made, would consist of 19 named chemicals. The Administrator would be required to expand the list to 300 chemical substances and mixtures within a year of enactment. The list would be published in the Federal Register and updated when a safety standard determination is made so that all chemical substances that have not been exempted are eventually listed. The Administrator would have discretionary authority to add mixtures to the list.

Listed chemical substances and mixtures would be subject to a safety standard determination, made by the Administrator based on information submitted by all of the manufacturers and processors of the chemical substance or mixture. The Administrator would apply, as the safety standard, a standard that ensures for all intended uses, a reasonable certainty that no harm would result to public health, including to vulnerable populations, and that protects the public welfare. The standard would take into account aggregate exposure to the chemical substance or mixture. The Administrator would be required to develop and publish science-based standards for assessment of submitted information within 18 months after enactment, and review these standards every 5 years.

The determination would be made publicly available, along with a list of uses and any conditions on those uses necessary to ensure that the safety standard is met for the chemical substance or mixture. This section would require compliance with any risk management conditions imposed in the safety standard determination within a period set by the Administrator of not longer than 3 years. If a determination is made that a chemical substance or mixture would not meet the safety standard, even after imposition of conditions under this section, the manufacture and processing of the chemical substance or mixture would be prohibited, unless subject to a critical use exemption.

A determination under this section would remain in effect for 15 years, unless a new use of such chemical substance or mixture is proposed or new information on such chemical substance or mixture warrants a redetermination.

If the Administrator fails to meet the deadline for completing a safety standard determination, this section would prohibit the entry of new manufacturers and processors into the market for the chemical substance or mixture and would prohibit the manufacture or processing of the chemical substance or mixture for new uses until the determination is published.

This section would also provide for critical use exemptions to protect national security, prevent significant disruption of the economy, or allow critical or essential uses for which no substitutes are available or

which provide a net benefit in comparison to alternatives. These exemptions would expire after a period not to exceed 5 years, but could be renewed for one or more additional 5 year periods.

Section 7. Imminent Hazards.

This section would amend Section 7 of the Toxic Substances Control Act of 1976 to allow the Administrator to issue orders as may be necessary to protect health or the environment from a chemical substance or mixture that may present an imminent and substantial endangerment to health or the environment.

Section 8. Reporting and Retention of Information.

This section would amend Section 8 of the Toxic Substances Control Act of 1976 to require reporting to the Environmental Protection Agency (EPA) on all chemical substances distributed in commerce, as well as any mixtures for which the Administrator determines such reporting is needed. The section would also require manufacturers and processors to disclose ingredient information for their products down the supply chain to their commercial purchasers.

Reporting to the Administrator under this section would include the chemical identity of the chemical substance or mixture, data about where manufacture, processing, and distribution occurs, existing health and safety studies, production volume, use, exposure data, and all other known or available information regarding the physical, chemical, and toxicological properties of the chemical substance or mixture. This declaration would be updated every 3 years, or immediately when new information arises that is relevant to an analysis of whether the chemical substance or mixture meets the safety standard under Section 6. This section would also require a notice whenever a manufacturer or processor ceases the manufacture or processing of a chemical substance or mixture.

The information submitted under this section would be compiled into an online database, an inventory, and a categorized inventory.

Section 9. Relationship to Other Federal Laws.

This section would amend Section 9 of the Toxic Substances Control Act of 1976 to require the Administrator to submit a report to other Federal agencies when the chemical substance or mixture does not meet the safety standard and when action may be taken under laws administered by other Federal agencies to address to a sufficient extent the risk associated with the chemical substance or mixture. This section also would establish a deadline for response from another Federal agency to such a report.

Section 10. Mixtures.

This section would provide clarity regarding mixtures by amending sections 3 and 8 of the Toxic Substances Control Act of 1976.

This section would amend the definition of “mixture” in Section 3 to make clear that mixtures are compositions of two or more chemical substances and that compositions with the same constituents can be grouped as the same mixture for purposes of this Act if they have the same substance characteristics.

This section would also amend Section 8 to require the Administrator to conduct a mixtures survey within 6 years of enactment to determine the number of mixtures in commerce, including the number of mixtures with substance characteristics different from their constituent chemical substances.

Section 11. Inspections and Subpoenas.

This section would amend Section 11 of the Toxic Substances Control Act of 1976 to expand the authority for inspections and subpoenas under this title.

Section 12. Exports.

This section would amend Section 12 of the Toxic Substances Control Act of 1976 to provide a timeline for export notice to be submitted by manufacturers and processors to the Administrator and by the Administrator to importing countries for chemicals subject to testing or restriction under the Act. This section also provides a different timeline for chemicals listed under the Prior Informed Consent, or PIC, Convention, so that notice will be provided for those chemicals before exportation.

Section 13. Entry into Customs Territory of the United States.

This section would amend Section 13 of the Toxic Substances Control Act of 1976 to clarify that importers of chemical substances or mixtures are subject to the applicable requirements under Sections 4, 5, 6, and 8 of the Toxic Substances Control Act, without regard to whether the chemical substance or mixture has been formed into an article prior to importation.

Section 14. Disclosure of Information.

This section would amend Section 14 of the Toxic Substances Control Act of 1976 to require manufacturer and processor substantiation and agency approval of confidentiality claims, to clarify what types of information are not eligible for protected status, and to promote the sharing of confidential information among regulators and with states and affected workers.

Within one year of enactment, the Administrator would be required to publish guidance that specifies the acceptable bases for claiming confidentiality to provide notice and clarity for manufacturers and processors, agency employees, and the public. The Administrator would be required to review a representative sample of confidentiality designations within 60 days after receipt and decide whether to approve or deny each designation. If a request is denied, the Administrator would make the information available to the public and impose penalties as appropriate on the party that made the designation. If a request is approved, the Administrator would specify a time period for effectiveness of the designation of not greater than 5 years, subject to renewal.

This section would allow the Administrator to require reasonable fees from those designating information for protection under this section to defray the costs of reviewing those designations.

This section would also require the Administrator to provide standards for and facilitate the sharing of chemical identity and safety information with workers and their representatives.

Section 15. Prohibited Acts.

This section would amend Section 15 of the Toxic Substances Control Act of 1976 to remove references to specific sections to make clear that it is unlawful to make a false submission under this Act or to fail or refuse to comply with any rule, order, prohibition, restriction, or other requirement imposed by this Act or by the Administrator under this Act. This section would also prohibit any person from manufacturing, processing, or knowingly distributing in commerce a chemical substance or mixture with misleading labeling or for a use that has not been declared to the Administrator.

Section 16. Penalties.

This section would amend Section 16 of the Toxic Substances Control Act of 1976 to allow for penalties for any violation under this Act, and increase civil penalties for such violations. The amended section would also include significant criminal penalties for knowing endangerment, similar to provisions in the Resource Conservation and Recovery Act.

Section 17. Specific Enforcement and Seizure.

This section would amend Section 17 of the Toxic Substances Control Act of 1976 to clarify, but not expand, the EPA Administrator's enforcement authority under the Act. The section would clearly state that the Administrator is authorized to compel compliance with any provision of this Act or any rule or order issued or promulgated under the Act through administrative and civil proceedings.

Section 18. Preemption.

This section would amend Section 18 of the Toxic Substances Control Act of 1976 to protect the right of states or political subdivisions to impose requirements that are different from or in addition to the requirements of this Act, so long as compliance with both this Act and the state or political subdivision requirement is not impossible.

Section 19. Judicial Review.

This section would amend Section 19 of the Toxic Substances Control Act of 1976 to ensure that agency action taken under this Act is subject to the same standard as other agency action under the Administrative Procedure Act. Specifically, the section would remove the definition of rulemaking record, which has a general meaning, and remove the exception from general Administrative Procedure Act requirements regarding standard of review.

Section 20. Citizens' Civil Actions.

This section would amend Section 20 of the Toxic Substances Control Act of 1976 to harmonize the provision with citizen suit provisions in other statutes by clarifying the available relief and allowing suits to address past violations of the Act.

Section 21. Citizens' Petitions.

This section would amend Section 21 of the Toxic Substances Control Act of 1976 to remove restrictions on the availability of petitions for rules, orders, or other actions authorized under this Act.

Section 22. Employee Protection.

This section would amend Section 23 of the Toxic Substances Control Act of 1976 to make these provisions consistent with employee protection provisions in other federal legislation by clarifying the process for review of complaints.

Section 23. Employment Effects.

This section would amend Section 24 of the Toxic Substances Control Act of 1976 to clarify when evaluation of employment effects is required and the relationship between this section and other provisions of the Act.

Section 24. Administration of the Act.

This section would amend Section 26 of the Toxic Substances Control Act of 1976 to allow for increased fees from any person required to submit data under this Act. This section would also clarify when the Administrator should act through orders and when through rules, and would clarify that articles already in

commerce would not be affected by an action taken by the Administrator under this Act, unless those articles are found to present imminent hazards under Section 7.

Section 25. State Programs.

This section would amend Section 28 of the Toxic Substances Control Act of 1976 to allow the Administrator to provide grants to states and tribes for technical assistance and training and to require establishment of a process to coordinate with states and tribes to share data and priorities.

Section 26. Authorization for Appropriations.

This section would amend Section 29 of the Toxic Substances Control Act of 1976 to authorize appropriations for each of fiscal years 2011 through 2018.

Section 27. Additional Requirements.

This section would amend the Toxic Substances Control Act of 1976 by adding the following new sections:

Section 32. Risk Assessment for Chemical Substances and Mixtures that are Persistent, Bioaccumulative, and Toxic.

New section 32 would require the Administrator to establish criteria for identifying chemical substances and mixtures that are persistent, bioaccumulative, and toxic no later than one year after enactment. The Administrator would be required to impose exposure reduction conditions for such chemical substances and mixtures and to address any residual risk identified during a safety standard determination under Section 6.

Section 33. Children's Environmental Health Program.

New section 34 would require the Administrator to enter into contracts and make grants to further the understanding of the vulnerability of children to chemical substances and mixtures and establish a Science Advisory Board on Children's Health and Toxic Substances to provide independent advice, expert consultation, and peer review to the Administrator on children's health in the context of this Act. This section would also require the Administrator, with the Secretary of Health and Human Services, to conduct biomonitoring studies and make public any information regarding positive biomonitoring results.

Section 34. Reduction of Animal-Based Testing.

New section 35 would require the Administrator to minimize the use of animals in the testing of chemical substances or mixtures by encouraging the use of existing data, grouping of chemical substances for testing, formation of industry consortia to reduce redundancy, use of existing methods that eliminate or reduce the use of animals, and the development and validation of emerging methods and models. The Administrator would be required to publish a list of these demonstrated testing methods. This section would also allow a manufacturer or processor to request an adaptation or waiver of animal testing requirements.

Section 35. Safer Alternatives and Green Chemistry and Engineering.

New section 36 would require the Administrator to create incentives for the development of safer alternatives to existing chemical substances and mixtures, including special designations, public awards, and rewards to recognize substances or products determined by the Administrator to be safer alternatives.

This section would create an approval process for manufacturers and processors seeking designations as safer alternatives. The process would include a comparative data set and an assessment by the

Administrator of whether the applicant alternative is effective for the proposed use and safer than the chemical substance or mixture targeted for substitution. A chemical substance or mixture approved under this process would be exempt from the requirements of sections 4, 5, and 6 until a renewal or redetermination is required.

The section would also require establishment of a green chemistry research network and a green chemistry workforce education and training program to facilitate the expansion of green chemistry in the United States to create new and safer jobs and to develop a scientifically and technically trained green chemistry workforce in the United States.

Section 36. Cooperation with International Efforts.

New section 36 would require the Administrator to cooperate in international efforts to develop a common electronic database or develop safer alternatives, and establishes procedures to be implemented if or when the United States becomes a party to international agreements on the regulation of chemical substances and mixtures. This section would also prohibit the manufacture, processing, distribution in commerce, use, disposal, or taking of any other action with respect to a chemical substance or mixture in a manner inconsistent with applicable obligations for such substance or mixture under the Stockholm Convention, the Protocol on Persistent Organic Pollutants to the Long-Range Transboundary Air Pollution Convention (LRTAP POPs Protocol), or the PIC Convention.

Section 37. Data Quality.

New section 38 would require the Administrator to establish and implement procedures to ensure data quality. The procedures would include inspection of commercial and private laboratories that develop data required under this Act, comprehensive data audits, and disclosure of funding sources.

Section 38. Hot Spots.

New section 38 would require the Administrator to identify, assess, and develop action plans to address disproportionate exposures of residential populations in certain localities to toxic chemical substances and mixtures. The section would establish criteria for the determination of disproportionate exposure. Within one year of publishing or updating a list of such “hot spots”, the Administrator would be required to develop and publish an action plan for each identified locality that includes the chemical substances and mixtures contributing to the disproportionate exposure.

The section would require an annual report to Congress on the listing and action taken pursuant to these provisions.

Section 39. Exemption for Chemical Substances or Mixtures Based on Intrinsic Properties.

New section 39 would provide the Administrator authority to exempt chemical substances and mixtures from certain requirements of the Act if there is scientific consensus that any such substance or mixture does not and would not pose any risk of injury to health or the environment across its lifecycle.

Section 40. Application of this Act to Federal Agencies.

New section 40 would apply the requirements of the Toxic Substances Control Act to Federal agencies, departments, and instrumentalities that manufacture or produce chemical substances or mixtures.