New legislative efforts at the federal and state level are seeking to amend longstanding policies for the management of new and existing chemicals in the marketplace. At the federal level, the focus is on modernizing the Toxic Substances Control Act (TSCA), the 39-year-old statute that regulates chemicals in commerce. The American Coatings Association (ACA) fully supports proposals to reform TSCA to encourage the safe use of chemicals, the use of sound science, the development of new products, job growth, and a strong, consistent, reliable national program.

ACA represents approximately 250 manufacturers of paints, coatings, adhesives, sealants, and caulks; raw material suppliers; and product distributors operating in all 50 states. The paint and coatings industry is a $20 billion dollar industry, employing over 250,000 individuals and supporting approximately 44,700 establishments in the United States.

The industry is regulated by myriad safety and environmental statutes, including those that regulate the building blocks of paint and coatings products — chemicals. This Issue Backgrounder addresses the coatings industry’s position that, for chemicals management reform, pre-emptive federal regulations make the most sense as opposed to a multitude of inconsistent and competing state regulations. In addition, ACA and industry strongly believe that a risk-based, scientific approach to chemicals management is an integral foundation that will enhance the public’s trust in our government agencies to protect the public and the environment.

**TSCA BACKGROUND**

Enacted in 1976, TSCA was designed to protect the public from unreasonable risks of harm to human health or the environment by regulating the manufacture and sale of new and existing chemicals. The U.S. Environmental Protection Agency (EPA) is responsible for implementing and carrying out the goals of TSCA. TSCA provides EPA with authority to require reporting of new chemicals before manufacturing, existing chemicals with significant new uses, record-keeping, testing, and restrictions relating to chemical substances and mixtures. TSCA also requires EPA to maintain an inventory of existing chemicals. In 1979, there were 61,000 chemicals grandfathered into TSCA’s inventory, but the inventory currently includes approximately 84,000 chemicals. While there are thousands of chemicals in the TSCA inventory, only a few thousand of these chemicals are actually active in commerce today. The law also contains provisions for the import and export of certain chemicals, including certification and reporting requirements. Additionally, TSCA provides provisions for imminent hazards, protection of confidential business information, penalties, citizen actions, and addresses specific chemicals, including polychlorinated biphenyls (PCBs), asbestos, and radon.

The vast majority of paint manufacturers do not make chemicals, but rather, are engaged in processing them into complex mixtures. This processing activity has not been subject to extensive regulatory pressure under TSCA, owing in large part to the fact that the chemical raw materials used had been assessed for safety prior to their manufacture, and do not form a new substance within the mixture. In addition, TSCA operates in conjunction with a number of other health, safety, and environmental statutes, and associated regulatory requirements that offer a broad chemical use “safety net.”

The main objective of TSCA is to characterize and understand the risks a chemical poses to human health and the environment before it is introduced into commerce. TSCA does not regulate all chemicals that present a risk, but rather, only those chemicals that do not meet EPA’s safety standard. In addition to TSCA, a number of other health, safety, and environmental regulations also seek to reduce risks to workers (Occupational Safety and Health Act), consumers (Federal Hazardous Substances Act and Consumer Product Safety Act), and the environment (Clean Air Act, Clean Water Act, and the Resource Conservation and Recovery Act). Despite this wide-range of controls, there is a vigorous, ongoing policy debate as to the effectiveness of the current federal approach to regulating chemicals.

**REASONS FOR REFORM**

Given that the core provisions of TSCA are outdated, stakeholders including ACA and members of Congress alike have advocated for reform in order to address the inefficiencies of the current regulations. Numerous advocacy groups believe that TSCA has outlived its usefulness and has failed to address potential new and emerging public health risks associated with chemicals of concern. Specifically, ACA and other industry groups are calling for EPA to have more authority to request information or testing of chemicals, strengthen the safety standard, adopt a risk-based approach to evaluating chemicals, and have strong, federal pre-emption of state and local laws.
A more effective TSCA is not only important for promoting commerce across the United States, but it is also critical for doing business with other countries. TSCA modernization is crucial to keep up with other international chemicals management programs, and for U.S. chemical manufactures to remain competitive. For example, Europe’s Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) program is an EU regulation adopted in 2007 to protect human health and the environment from risks posed by chemicals, which specifies procedures for collecting and assessing information on chemicals and requires companies to register their substances with the European Chemicals Agency. Other countries have adopted REACH-like regulations such as Korea (K-REACH) and China, and a number of other countries have modernized existing programs or have emerging chemicals programs, including Canada, Taiwan, India, Brazil, Malaysia and Vietnam.

If TSCA continues to be perceived by the international community as outdated or ineffective at managing the safety of chemicals in the United States, American businesses could face challenges to remaining competitive in the global marketplace. Moreover, an updated TSCA would allow the chemical industry in the United States to maintain leadership in the market, due to TSCA’s unique chemical review process.

**STATE GREEN CHEMISTRY MEASURES**

In the absence of federal TSCA reform, a number of state legislatures have created their own chemical regulatory systems by passing “Green Chemistry” programs. According to EPA, Green Chemistry is a concept by which chemical products and processes are redesigned to reduce or eliminate the use or generation of hazardous substances. One of the principles of Green Chemistry is the design of safer chemicals in products so that the products are fully effective yet have little or no toxicity.

**Maine**

In 2008, Maine’s state legislature passed the Toxic Chemicals in Children’s Products law to reduce the exposure of children and other vulnerable populations to chemicals of high concern by substituting safer alternatives where feasible. The law allows Maine’s Department of Environmental Protection to collect information on chemical use, identify chemicals of concern and prioritize chemicals to act on, require reporting of the use of priority chemicals, and prohibit the sale of children’s products containing priority chemicals when safer alternatives are available. So far, Maine has promulgated rules to regulate chemicals such as cadmium, nonylphenols, mercury and arsenic. In 2015, Maine proposed regulations for certain phthalates and formaldehyde in children’s products.

**Minnesota**

In Minnesota, the state legislature passed the Toxic Free Kids Act in 2009 to identify chemicals of high concern that could be harmful to human health, and establish a method by which to prioritize chemicals. The law also allows the state to cooperate with other states in an interstate clearinghouse for chemicals in consumer products.

**Washington**

Similarly, in Washington, the Children’s Safe Products Act was enacted in 2008, creating a list of chemicals of high concern and requiring manufacturers of children’s products sold in Washington to report if their product contains a high priority chemical. The law also prohibits the manufacture and sale of children’s products containing lead, cadmium or phthalates.

**Vermont**

In 2014, the state of Vermont narrowly passed its own chemicals management program, requiring reporting for the same 66 chemicals of concern listed in Washington, and requiring that manufacturers who intentionally add these chemicals to their children's products notify the Vermont Department of Health. The law also allows the state to regulate the sale or distribution of children’s products, containing a chemical of high concern. This law did not pass without significant controversy, as the scope of the initial draft (before amended to its current version) covered all consumer products, rather than children’s products, and contained high reporting fees for manufacturers. These programs illustrate the diverse approaches states have taken to prioritize, evaluate, gather information and regulate chemicals in a variety of products.

**California**

While those states primarily focus on children’s products, all eyes are on California as it implements the largest and most aggressive “Green Chemistry Initiative” in the country through its California’s Safer Consumer Products Regulations, also called California's Green Chemistry Regulations. California’s Green Chemistry Initiative seeks to reduce the amount of “toxics” in a broad class of consumer products, under a regulatory program enacted by state law in September 2008. According to California’s A.B. 1879, the regulations designed by the state’s Department of Toxic Substances Control (DTSC) must provide a science-based approach for building a list of chemicals that pose the greatest risks, identify products that contain those chemicals, and evaluate products for safer alternatives to specified chemicals. California’s Green Chemistry Initiative and Regulations became effective on Oct. 1, 2013. To date, California has proposed three chemical products to be designated for review to determine if a substitute chemical is available: 1) spray foam systems containing unreacted diisocyanates; 2) paint and varnish strippers containing methylene chloride; and 3) children’s sleeping pads containing chlormated tris.

ACA has been active in responding to California’s Safer Consumer Products regulations, expressing serious concerns about the broad scope of products regulated in the program, the potential stifling of innovation, and the negative economic impacts on companies doing business in California. In DTSC’s draft three-year work plan, it describes seven broad product categories and a list of potential chemicals or chemical classes for consideration under each broad product category, including thousands of products — everything from personal care and cleaning products to building products, like paint and coatings.
ACA believes that DTSC should refine its product prioritization to address meaningful risks to Californians, and also provide clarity to stakeholders across all affected industries by being more transparent about the selection process. ACA has repeatedly emphasized that the Safer Consumer Products regulations should reflect the intent of the law, which is to establish a process “for evaluating chemicals of concern in consumer products, and their potential alternatives, to determine how best to limit exposure or to reduce the level of hazard posed by a chemical of concern.” To date, in actions surrounding the initial Priority Products, DTSC appears to focus exclusively on assessing the potential hazards, while not considering options that may limit or reduce exposure consistent with its statutory mandate.

**Additional State Proposals**

According to the National Conference of State Legislatures, about 450 bills involving toxics and chemicals were filed in 2014, covering 39 states. Some of these regulations addressed specific chemicals, such as bisphenol A (BPA) in certain products, and some were more comprehensive proposals for evaluating chemicals or requirements for businesses using these chemicals in certain products to report their use (stemming in response to “right to know” campaigns). As the 2015 state legislatures progress, there are a multitude of proposals looming that would further add to the patchwork of chemical regulations in the country. Florida, Connecticut, New York, Oregon, North Carolina, and Massachusetts are introducing new programs, and Minnesota and Washington state legislatures are attempting to amplify their current chemicals management programs.

ACA understands that states may be trying to innovate by way of green chemistry regulations in the absence of stronger federal action. ACA also recognizes the need for appropriate modernization of current chemicals management policy and, specifically, the need to look fairly at the systems put in place over the past 39 years under TSCA. However, ACA strongly believes that any legislative or regulatory approach taken must ensure appropriate action on the part of the regulatory agency and the regulated community, and in particular, be based on sound science, protective of health and the environment, and consistent throughout the country.

**TSCA REFORM EFFORTS IN THE U.S. CONGRESS**

ACA and its industry believe that federal legislation through TSCA reform is the best path forward for a nationally coordinated approach to chemicals management. The coatings industry understands the reality and need for a revised chemicals management policy, and is taking part in the process for a meaningful, achievable, risk-based, scientific approach that increases the public’s trust in EPA to protect human health and the environment without sacrificing American jobs.

**TSCA and the 113th Congress**

The 113th Congress addressed TSCA reform with the movement of two major proposals to reform the law: the Chemical Safety Improvement Act (CSIA), or S. 1009, in the Senate and the Chemicals in Commerce Act in the House (CICA), which was a discussion draft. CSIA was introduced in May 2013 by the late Sen. Frank Lautenberg (D-NJ) and Sen. David Vitter (R-LA) and had 26 co-sponsors, evenly split Democrat and Republican. The CICA was introduced by Rep. John Shimkus (R-IL) in early 2014 and also garnered support in its early stages.

ACA, as part of the American Alliance for Innovation — a large and diverse coalition of trade associations representing a broad spectrum of the economy — submitted letters in support of both the CSIA and CICA. Both bills strengthened the safety standard, provided EPA with more authority to evaluate and test chemicals, set up a mechanism for EPA to sort chemicals into low- or high-priority categories based on likelihood of presenting an unreasonable (CSIA) or significant (CICA) risk of harm to the public, and provided strong federal pre-emption. The bills also included provisions for existing chemicals and chemicals with significant new uses, but did not deviate much from current law. The legislation would also require EPA to make safety determinations for chemicals based on intended conditions of use and a risk-based assessment incorporating exposure, hazard, and use information. Both CICA and the Udall/Vitter revisions to CSIA leaked in late 2014 also required EPA to specifically consider vulnerable subpopulations, such as children, when evaluating chemical safety, and included clear deadlines for EPA to evaluate chemicals for their safety and for promulgating rules on a chemical, if necessary.

Regarding confidential business information (CBI), both bills provided strong CBI protections in order to promote innovation and research and development (R&D). CBI protection is important for the coatings industry. The paint and coatings industry is currently conducting extensive R&D inside the United States to develop coatings that are safer for the user and the environment. If the intellectual property surrounding these new developments cannot be protected through legitimate CBI claims, there will be less R&D conducted, resulting in fewer “greener” products available to consumers.

Despite the level of support for reform, CSIA ultimately did not advance out of the Senate Environment and Public Works Committee due to opposition from Chairwoman Barbara Boxer (D-CA), who represents the state with the most robust chemicals management program in the country — California. Negotiations over a new draft of CSIA halted given the Chairwoman’s concerns with how federal pre-emption language would impact California’s law. Similarly, in the House, negotiations on CICA stalled following the circulation of a “counterproposal” by a number of members of the House Energy and Commerce Committee lead by

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The American Coatings Association (ACA) is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory, and judicial issues, and provides forums and educational opportunities for its members.

Current Efforts to Reform TSCA

In 2015, both the Chairman of the Senate Environment and Public Works Committee and Chairman of the House Energy and Commerce Committee have identified TSCA reform as a priority for the 114th Congress. Senators David Vitter (R-LA) and Mark Udall (D-NM) picked up the reigns and introduced a new, comprehensive, bipartisan bill on March 10, 2015 — the “Frank R. Lautenberg Chemical Safety for the 21st Century Act.” The bill has seven Democrat and eight Republican original co-sponsors.

Efforts in the House are ongoing, and Representatives are considering a more narrow approach to reform than the Senate version. ACA is supportive of these reform efforts, which provide EPA with authority to secure necessary health and safety information from chemical manufacturers, while directing the agency to rely first on existing information to avoid duplicative testing. ACA also supports reform efforts that would allow EPA to focus its efforts on existing information to avoid duplicative testing. ACA is supportive of these reform efforts, which provide EPA with authority to secure necessary health and safety information from chemical manufacturers, while directing the agency to rely first on existing information to avoid duplicative testing. ACA also supports reform efforts that would allow EPA to focus its efforts on existing information to avoid duplicative testing.

Most importantly, given that TSCA regulates the interstate commerce of chemicals, ACA believes Congress must include explicit federal pre-emption language in order to provide consistency and predictability for those who do business across state lines. Having a multitude of states enforcing different environmental standards for the management of chemicals is inefficient, unreasonable, and counterproductive.

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