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Latest Version of Safe Chemicals Act Called 'Remarkably Different' From 2011 Bill

**36 CRR 979**

## **Congress**

### **Latest Version of Safe Chemicals Act Called 'Remarkably Different' From 2011 Bill**

*By Pat Rizzuto*

The version of the Safe Chemicals Act that a Senate Committee approved in July is "remarkably different" from the version introduced in 2011, and the bill is likely to be part of continued discussions on ways to update the Toxic Substances Control Act, an attorney with Keller and Heckman LLP said Sept. 13.

The bill has "many bad ideas," but it also has ideas "worthy of further discussion," Herb Estreicher said during a webinar held by Keller and Heckman to discuss the version of the Safe Chemicals Act (S. 847) that the Senate Environment and Public Works Committee approved July 25 (36 CRR 811, 7/30/12).

"It is important, and I get the feeling it'll be part of the discussion," Estreicher said.

#### **Changes in Committee-Approved Bill**

The marked-up version of S. 847 would apply many aspects of the Environmental Protection Agency's current strategy for regulating new chemicals to existing chemicals, Estreicher said. Chemical manufacturers often commend EPA's new chemicals program.

Under EPA's new chemicals program, the agency seeks data on chemicals it is reviewing when the need for information is triggered by something specific, such as a chemical having a structure similar to that of another compound that has caused a health or environmental problem.

The original version of the Safe Chemicals Act was criticized by manufacturers for requiring companies to generate vast amounts of toxicity data on all chemicals whether its use or structure suggested a need or not.

The marked-up bill uses a triggering approach under which data may be sought after a minimum amount of preliminary information, or "screening" data, has been submitted by companies, Estreicher said.

In most cases companies would not be required to generate extensive data sets for their chemicals, Estreicher said. "That will be the exception."

The new version of the bill also allows chemical companies to make more confidential business information claims to protect their intellectual property than did the original legislation, said Adrienne Timmel, an associate with the law firm.

During a question-and-answer portion of the webinar, Richard Denison, a senior scientist with the Environmental Defense Fund, thanked the Keller and Heckman team for stating that the marked up version of S. 847 reflected a lot of work and made significant changes from the introduced bill. That perspective has not received much attention, he said.

Many of the provisions of the marked-up bill that the Keller and Heckman team highlighted as positive changes reflected tough compromises that environmental health organizations and some companies and trade associations negotiated that have not received much attention, Denison told BNA after the webinar.

#### **Objections to Safety Standard**

Notwithstanding the positive changes, Estreicher and Timmel described in the Safe Chemicals Act, the Keller and Heckman team said the revised legislation continues to pose many problems for chemical manufacturers.

As the American Chemistry Council, the Society of Chemical Manufacturers and Affiliates, and other industry trade associations have done, Peter de la Cruz, another partner at the law firm, and Estreicher objected to S. 847's safety standard.

The safety standard set under S. 847 is the same as that used under the Food Quality Protection Act, which covers food-use pesticides. The standard is "a reasonable certainty that no harm will result to human health or the environment from aggregate exposure to the chemical substance."

That safety standard can be used for food-use pesticides because their uses are limited, but it would not be appropriate for industrial chemicals that can have uses as varied as being in a space shuttle to never being found outside a closed system in which they are used to make other chemicals, Estreicher said.

Eric Gotting, another partner at Keller and Heckman, said EPA's decision that a chemical failed to meet the safety standard set by S. 847 would not be subject to judicial review, which means some companies could be put out of business.

De la Cruz suggested legislators keep TSCA's safety standard, which is to require that a chemical does not pose an "unreasonable risk" to human health or the environment.

The American Chemistry Council would support a safety standard in which EPA would be directed to find that a chemical is safe if it posed "no significant risk of material harm under the intended conditions of use," spokesman Scott Jensen told BNA Sept. 14.

That standard is drawn from the Occupational Safety and Health Act, he added.

### **No Preemption of State Authority**

Other concerns the Keller and Heckman attorneys raised included deadlines in the Safe Chemicals Act, which they said neither industry nor EPA could meet, and the legislation's failure to preempt state authority over chemicals.

One of the drivers for TSCA reform has been the problems chemical manufacturers face as U.S. states increasingly regulate chemicals, Jensen told BNA.

There would seem to be little value in establishing a robust federal program if chemical manufacturers continue to face dozens of divergent chemical regulations across the country, he said.

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