The Real Meaning of TSCA Modernization

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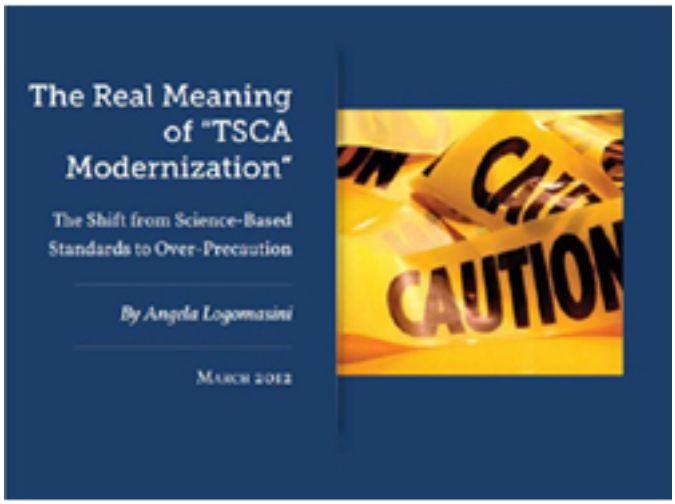

Republicans, Democrats, industry representatives and environmentalists all say that they agree that it is time to “modernize” the Toxic Substances Control Act (TSCA — also pronounced “tosca”), the federal law that regulates chemicals not covered under other federal laws. Some say the law needs an overhaul because it is too weak and has accomplished little, while others maintain that modest changes to facilitate greater data collection and chemical testing by the U.S. Environmental Protection Agency (EPA) could improve implementation. Both views suggest that reforms should grant the EPA greater powers to advance public health.

In reality, changes to TSCA are highly unlikely to have any measurable positive effect on public health, given the scant evidence that the trace-level chemicals that TSCA regulates have any significant health impacts. Rather, a stronger TSCA law may harm human well being by leading to bans on many valuable products, undermining innovation and diverting resources from valuable enterprises to meet burdensome regulatory mandates.

TSCA’s one commendable attribute is that it imposes a reasonable risk-based standard, one that applies many regulatory accountability standards, including some covered in President Obama’s executive order on regulatory reform. It allows the EPA to regulate when a chemical poses an “unreasonable risk of injury to health or the environment.” If the EPA finds that a chemical does, in fact, pose such an unreasonable risk, it may prohibit its use, impose regulations limiting its use, mandate recordkeeping, set disposal regulations, require posted warnings related to its use and other requirements. It states further that the agency must apply such

restrictions “to the extent necessary to protect adequately against such risk using the least burdensome requirements.”

This is a rational and solid risk-based standard that is unique within U.S. environmental law. It directs the EPA to focus on scientifically robust, well-designed studies. It also demands that the agency consider both cost-benefit considerations and potentially adverse outcomes of its regulatory actions. Citizens should demand at least as much before any governmental body issues regulations that undermine the freedoms necessary for society to progress and innovate.

Yet TSCA reform proposals all strike at the heart of this standard, calling instead for a hazard-based, precautionary approach. Some would model the new rule after the “reasonable certainty of no harm” standard set in the Food Quality Protection Act, which has produced a host of unnecessary bans and regulations on valuable products that are used to help ensure affordable food production and control of dangerous pests.

Additional data mandates under TSCA are also unnecessary and dangerous. Contrary to many claims, the EPA has managed to use the law to impose thousands of regulations, collect substantial data under both mandatory and voluntary programs, and demand testing of chemicals. Still, the EPA and environmentalists would like greater power to collect “new” data on a number of chemicals that have already been studied extensively by private companies, government agencies and research bodies around the world.

The EPA is unlikely to discover damning information regarding chemicals that have been used for decades without indication of adverse health concerns. Instead, mandates for additional study will simply divert research dollars away from more valuable research and development efforts.

TSCA’s actual failures stem from cases where the EPA has succeeded in taking regulatory actions under the law. The agency has been able to use the law to impose some needless regulations related to lead-based paint, polychlorinated biphenyls, dioxin and other substances. Obama administration efforts to revitalize the law indicate that the EPA can use the law to impose a host of new regulations as well as make symbolic statements about chemicals to adversely impact their use in the U.S. marketplace — even without congressional authorization.

“Modernization” will most likely empower the agency to take these programs in an even more arbitrary and capricious direction, undermining freedom, innovation and economic growth in exchange for no measurable public health benefits.

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