

**Opening Statement of the Honorable Phil Gingrey  
Subcommittee on Environment and the Economy  
Hearing on “Regulation of New Chemicals, Protection of Confidential Business  
Information, and Innovation”  
July 11, 2013**

*(As Prepared for Delivery)*

Last month, the subcommittee held a hearing on the history and impact of Title I of the Toxic Substances Control Act (TSCA). The June 13th hearing was a good start to understanding a law as complex as it is broad. Today, we take a deeper dive and focus on new chemical regulation, protection of sensitive business information, and their effect on innovation.

I believe evaluating TSCA sections 5 (new chemicals) and 14 (disclosure of data) is fundamental to judging progress in new technologies and manufacturing frontiers in our country. Testimony in our June 13th hearing supports this notion: American companies are on the cutting edge of chemical innovation, and the new chemical structure in TSCA has allowed us to lead the world. For example, the European Union’s new chemical requirements saw 3,000 new chemicals introduced while the United States saw six times as many new chemicals introduced over the same period in time.

One out of six of the chemicals currently used in commerce did not exist in 1979. TSCA Section 5 does not merely set out the notification requirements for these chemicals; it provides EPA an opportunity to review and evaluate information about a chemical to determine if its manufacture, processing, commercial use, or disposal should be limited, delayed, or prohibited.

To do this job, Pre-Manufacturing Notices (PMNs) submitted to EPA include information on chemical identity, description of byproducts, anticipated production volumes, molecular formula, intended categories of use, and other available information on the substance. EPA can employ predictive modeling technologies to help it decide if a new chemical raises concern. EPA may also extend the review period of a chemical or new use of a chemical if it needs more than 90 days to consider all the facts before acting. EPA then decides whether entry into commerce is allowed, allowed with restrictions, allowed after submission of additional data, or allowed with certain regulatory or testing actions applied.

As of May of 2013, I’m told that 52 percent of chemicals for which EPA received a Pre-Manufacturing Notice (PMN), actually went to market. According to former EPA chemicals program office director, Charlie Auer, who testified at our June hearing, 90 percent of new chemicals program decisions are made within 90 days and over 15,000 new chemicals – or 30 percent – have received some kind of regulatory action under TSCA section 5.

We want EPA to have information to make good decisions about a chemical. However, we must be careful about disclosure of that detailed information. In a recent paper on trade secret piracy, William Fitzpatrick and two others suggested that approximately 70 percent of the market value of U.S. firms resides in their trade secrets and intellectual properties. This drives innovation.

TSCA section 14 protects information submitted to EPA as a privileged and confidential trade secret. Disclosure by EPA employees is not permitted, except to other federal employees, or when necessary to protect health or the environment.

Beth Bosley, who – with six employees – operates a specialty chemical maker in Pittsburgh, reinforced these points at our last hearing:

1. Disclosure of chemical identity may be all it takes to give away a competitive advantage to an offshore manufacturer, and

2. The majority of Freedom of Information Act requests to EPA on new chemicals come from potential competitors, many of which are overseas, not curious members of the public.

While we cannot have a system that prevents regulators from having access to information that allows them to make important judgments on risk, I think we should not be naïve about the value of this information to non-regulatory interests, their cleverness in trying to obtain and exploit it, and the real damage its leak could cause to American jobs and prosperity.

I thank our distinguished witnesses for joining us today to help us get a better handle on what the law is, how EPA has been implementing it, what it is like being regulated under it, and where witnesses think its successes and shortcomings lie.

I urge members to make every effort at this hearing to learn the fundamentals of these sections of this law.

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