

Implications of TSCA Reform for Product Stewardship

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While prospects for amendments to the Toxic Substances Control Act (TSCA) in 2012 remain dim, Chairman Frank Lautenberg (D-NJ) announced at a November 17 hearing of the Senate Environment and Public Works Committee that he intends to move soon for committee action on S. 847, the "Safe Chemicals Act." Several elements of that bill could affect product stewardship activities far beyond the chemical industry. Therefore, any movement of the bill merits attention by all those concerned with product stewardship mandates.

For example, the bill would require the administrator of the Environmental Protection Agency (EPA) to evaluate the safety of individual chemicals and chemical mixtures without regard to economic considerations and authorize the administrator to impose restrictions on the sale and use of "articles" that contain chemicals determined to meet the new safety standard. Under TSCA, "articles" are manufactured items that are "formed to a specific shape or design during manufacture," have "end use function(s) dependent in whole or in part" upon their shape or design and undergo no change in chemical composition except a change that facilitates the commercial purpose of the products. Thus, for example, desktop and notebook computers, tablets, cell phones, batteries, other electronic equipment and many non-electric consumer products are considered "articles."

Among the restrictions authorized are requirements that manufacturers and/or distributors of articles develop – and presumably implement – risk reduction plans. In addition, new enforcement authorities include judicial authority to impose mandatory recalls from purchasers of such articles and product replacement by manufacturers or distributors.

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Another potential concern is stronger statutory authorization of limitations on production volumes of existing chemicals while the multi-year safety evaluation envisioned by the bill is completed. This provision threatens further disruption of product development processes, which already have been affected in several cases by TSCA's existing "significant new use rule" (SNUR) authorization requirements.

S. 847 also includes authorization of a program under which EPA would create market incentives for the development of safer alternatives to existing chemical substances, and for the promotion of "green chemistry." Readers need only review the accompanying story in this newsletter about California's activities in this arena to begin to understand the potential mischief that can arise from such programs.