

## **Compliance Advisor: New bills target chemicals**

*Chemical Processing, July 2008*

By Lynn L. Bergeson

### **Congress considers kid-safe chemicals legislation**

As an influx of Democrats is expected in the new Congress, it surprises no one that Sen. Frank Lautenberg (D-N.J.) recently introduced a bill that would amend the Toxic Substances Control Act (TSCA) by adding a new Title V to reduce the exposure of children, workers, and consumers to “toxic chemical substances.” U.S. Rep. Hilda Solis (D-Calif.) introduced the same legislation, H.R. 6100, in the House of Representatives. The legislation has been referred to the Senate Committee on Environment and Public Works and the House Committee on Energy and Commerce. The bills would establish a national goal of by 2020 eliminating the exposure of all children, workers, consumers and sensitive subgroups to harmful chemicals distributed in commerce. If enacted, the bills could dramatically impact chemical manufacturing and processing.

### **Setting a safety standard**

Under Section 501, a safety standard would be established that “provides a reasonable certainty that no harm” will be caused by aggregate exposure of a fetus, infant, child, worker or member of other sensitive subgroup to a chemical. In the case of a fetus, infant or child, the standard would account for their potential vulnerability by applying an additional 10-fold safety factor.

Section 502 would require manufacturers of any chemical substance distributed in commerce to certify that the substance meets the safety standard or that insufficient data exist to determine whether the chemical meets the standard; and submit to the U.S. Environmental Protection Agency (EPA) all reasonably available information on the substance’s physical, chemical and toxicological properties that hasn’t previously been submitted to EPA. Manufacturers would have an ongoing obligation to update the information.

Section 503 would direct EPA to establish a priority list of at least 300 chemicals, which would be the first chemicals for which safety determinations would be made by EPA. Criteria for identifying priority substances are set forth under the draft bill.

Under Section 504, EPA would have three years after a substance’s inclusion on the priority list to determine whether each manufacturer has established that the substance meets the safety standard. If EPA fails to meet the three-year deadline, manufacturers would be required to issue to EPA, the public and “each known customer” a written notice that a safety determination is pending. Within 15 years of enactment, and every 15 years thereafter, EPA would have to assess/reassess whether the manufacturer of each chemical distributed in commerce has shown that the substance meets the safety standard. For new chemical substances, distribution in commerce couldn’t take place unless EPA has determined that the manufacturer has established that the substance meets the safety standard.

Under Section 505, for any substance on the priority list because it's a known or suspected reproductive, neurological, or immunological toxicant, carcinogen, mutagen or endocrine disruptor or because it's persistent or bioaccumulative, a rebuttable presumption that it fails to meet the safety standard would apply if the substance is found by the Centers for Disease Control and Prevention's (CDC) National Center for Environmental Health (NCEH) to be present in human cord blood.

Upon EPA request, Section 506 would mandate that manufacturers submit certain scientific and production/use/exposure information on a chemical.

The bills would prohibit a person from manufacturing, importing or distributing in commerce a chemical that doesn't meet the safety standard or which EPA determines the person failed to meet certain obligations under the Act. For chemicals failing to meet the safety standard, EPA could grant use-specific exemptions that would be effective for a maximum of five years. EPA would be authorized to prohibit a specified use of a chemical substance in "consumer products" if EPA determines that the product's use in the home results in human exposure that doesn't meet the safety standard.

### **A long shot**

While this legislation is unlikely to pass, it's an important template of the kinds of provisions expected to be reintroduced next year. Those with chemical interests should monitor any measure seeking to amend TSCA as such revisions, if enacted, could have a dramatic impact on the availability of chemicals now supplying a wide range of manufacturing sectors.

*Lynn Bergeson is managing director of Bergeson & Campbell, P.C., a Washington, D.C.-based law firm that concentrates on chemical industry issues. The views expressed herein are solely those of the author. This column is not intended to provide, nor should be construed as, legal advice.*