How the Chemical Safety Improvement Act of 2013 (S. 1009) addresses key flaws of TSCA, along with key tradeoffs

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The Chemical Safety Improvement Act of 2013 (S. 1009) would amend the core provisions of the Toxic Substances Control Act (TSCA) for the first time since TSCA's passage in 1976. Over the years, key flaws in these core provisions have been identified by many observers. The table below shows how these key flaws in each core area of current TSCA would be addressed by the new legislation. It also identifies some of the trade-offs and remaining concerns raised by the legislation. **Boldfaced entries** are those I consider to be most central to addressing the question of how and to what extent the new legislation fixes the key flaws of TSCA.

This analysis does ***not*** address other critically important aspects of the debate over TSCA reform, including:

- the question of pre-emption of state authority, which has largely been moot under TSCA due to how few actions EPA has undertaken; or
- the absence from the new legislation of provisions – which I and many others support – that would extend the scope of TSCA beyond its core provisions, including those relating to: (1) "hot spots" – areas with disproportionately high chemical exposures; (2) expedited exposure reduction for chemicals of very high concern, such as PBTs; and (3) green chemistry and alternatives assessment.

	Key flaws in TSCA	***Key fixes in CSIA***	***Trade-offs/remaining or new concerns***
Safety standard/ determination ***(Section 6)***	• **Standard requires cost-benefit analysis** • **Imposes "least burdensome" requirement on any regulation** • No definition or specific criteria to identify chemicals of concern	• **Standard is based on health/ environment impacts only** • **Strikes "least burdensome" requirement** • Requires EPA to consider exposures of vulnerable populations • Requires EPA to consider multiple exposures to a chemical • Requires EPA to use "best available science"	• Bans must be based on cost-benefit • No explicit inclusion in standard of protection of vulnerable populations or to assess aggregate exposure • "Best available science" does not reference NAS recommendations

	Key flaws in TSCA	*Key fixes in CSIA*	*Trade-offs/remaining or new concerns*
Existing chemicals ***(Section 6)***	• **No mandate to review existing chemicals for safety** • **Lack of data is presumed to indicate lack of risk** • No criteria for triggering review of an existing chemical	• **Requires a safety review of all chemicals in active commerce** • **Lack of data is basis for high-priority designation** • High hazard or exposure sufficient for high-priority designation • Requires safety determinations for all high-priority chemicals • Requires risk management to be imposed on chemicals found not to meet the safety standard	• Initial review (prioritization) is based only on existing data, and lack of data does not assure high-priority ranking • Pace of review is unspecified, left to EPA and subject to available resources • Prioritization decisions not subject to court challenge (cuts both ways) and can trigger pre-emption of state authority
New chemicals ***(Section 5)***	• **No affirmative safety decision is required before market entry** • **Burden is on EPA to find concern even when safety data are lacking** • Decisions are largely a "black box" because consent orders need not be made public	• **An affirmative decision of "likely safety" required for market entry** • Prohibitions or restrictions can be imposed by order • All new chemical notices and orders and submitted data must be made public (subject to CBI provisions)	• EPA cannot require testing of new chemicals (but can suspend review or impose conditions, as in status quo) • No means provided to ensure compliance for chemicals "likely" to meet safety standard (unless EPA issues a Significant New Use Rule, or SNUR)
Testing ***(Section 4)***	• **EPA must promulgate a regulation to require testing** • **EPA has to show potential risk or high exposure to require testing, a Catch-22** • Testing done by consent orders is non-transparent, not always made public	• **EPA can use orders to require testing (must justify why an order rather than a rule or consent agreement)** • **Testing orders avoid lengthy rulemaking and court challenges** • **EPA does not need to make risk findings to require testing** • Testing agreements and orders and all test data must be made public (subject to CBI provisions)	• Testing can only be required to do safety assessments or determinations, hence limited to chemicals in commerce deemed high priority • No minimum information sets are required; all testing is on the basis of EPA demonstrating specific need • An overly prescriptive tiered testing framework must be followed

Confidential business information ***(Section 14)***	• **Companies can claim any information they submit to be CBI** • **Substantiation of CBI claims is typically not required** • **EPA reviews very few CBI claims and must challenge them case-by-case** • **EPA cannot share CBI with state and local governments** • Health and medical professionals cannot be given access to CBI • CBI claims do not expire	• Information never eligible (as well as eligible) for CBI is delineated • **All other CBI claims must be substantiated at the time asserted** • Resubstantiation can be required for any CBI claim upon designation of a chemical as high-priority • **EPA must review CBI claims (all or representative subset)** • **States and localities have access to CBI, subject to confidentiality agreements** • Health professionals can access CBI under confidentiality agreements • For chemical identity CBI claims: ▪ Redocumentation can be required at any time ▪ Ready capability for reverse engineering disallows such claim ▪ A time period must be specified for each such CBI claim and found by EPA to be reasonable	• Only health and safety data on existing – not new – chemicals is precluded from being claimed CBI • Notifications to submitters prior to release of CBI are generally required • A new appeals process is provided under which claimants can challenge EPA's intention to release CBI • Except as noted for chemical identity and high-priority chemical CBI claims, EPA cannot require documentation or redocumentation of a CBI claim made prior to the date of enactment
Chemical information reporting ***(Section 8)***	• The full range and identity of chemicals in active commerce, and their producers and processors, is not known • **Information on use of chemicals is collected only from chemical manufacturers with limited knowledge of downstream use**	• Companies must notify EPA of all chemicals on the TSCA Inventory they are producing or processing (used to "reset" the Inventory) • Chemicals not notified as active are placed on an inactive list; a company must notify EPA before making them • **Processor reporting is required for the first time for all chemicals in active commerce**	• Chemicals on the confidential portion of the TSCA Inventory can remain so if reasserted (though EPA can require (re)substantiation – see below) • The scope of manufacturer and processor reporting programs is left to EPA to develop through rulemaking