

**Opening Statement of the Honorable John Shimkus**  
**Subcommittee on Environment and the Economy**  
**Hearing on “Regulation of Existing Chemicals and the Role of Pre-Emption under**  
**Sections 6 and 18 of the Toxic Substances Control Act”**  
**September 18, 2013**

*(As Prepared for Delivery)*

Today’s hearing continues the subcommittee’s examination of the Toxic Substances Control Act, including statutory provisions, regulatory implementation, and practical outcomes. On June 13, our subcommittee held a hearing on the history and impact of Title I of TSCA. On July 11, the subcommittee explored regulation of chemicals before they enter commerce, under TSCA section 5, and protection of sensitive business information, under TSCA section 14. I believe these hearings have helped us understand a law as complex as it is broad.

Our focus now is on regulation of chemicals once they are in commerce, under TSCA section 6, and the role of federal pre-emption, under TSCA section 18.

These two sections of TSCA have been subject to a great deal of discussion. Notwithstanding the testimony of three of our witnesses at the July 11 hearing that TSCA section 5 is doing a fine job reviewing and, if necessary, limiting the use of new chemicals, some argue that TSCA is broken because TSCA section 6 has not produced more bans or other limits on chemicals. Others, including some on our panel today, suggest that concern is overstated.

EPA has been more active issuing regulations on TSCA section 5 new chemicals than it has been on TSCA section 6 ones—but it has issued regulations under section 6. Charlie Auer, who testified in our June 13, hearing stated that TSCA section 6 “had surprising early success in efforts between 1978 and 1980.” The question is: what has changed?

Today we explore just what TSCA section 6 asks of EPA, including what “unreasonable risk” is and whether this is a novel concept in federal law. We will also examine requirements in the law regarding the application of “least burdensome” regulations. We will study the role of risk assessment and cost-benefit analysis, how and whether it is done, and what role it plays in any final rulemaking decision.

Understanding section 6 and its link to the pre-emption provisions in TSCA section 18 is also important. If EPA has taken action to test a chemical or regulate a new or existing chemical in commerce, TSCA forecloses state action unless the state or locality meets one of four criteria.

In many areas the states should handle local pollution issues, because they have a wealth of experience and capability to do so. But chemical regulation is not an area where states have traditionally taken a lead role because of the impacts on interstate commerce.

In our June TSCA hearing, witness Beth Bosley said TSCA is a law about products -- not pollution. TSCA vests EPA with authority to regulate risks to humans and the environment from chemicals that are not otherwise covered by some more targeted statute. TSCA is about making interstate commerce in chemicals work for all of us. I thank all our witnesses for appearing today, and look forward to their insights about the appropriate roles of the parties and the uniqueness of TSCA in this respect. I urge members to take today’s opportunity to learn the fundamentals of these sections of this law.

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