



Comments to the U.S. Environmental Protection Agency at Stakeholder Meetings on Chemical Risk Evaluation and Prioritization Rulemakings

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August 9-10, 2016

August 9 – Risk Evaluation Rule

Thank you for the opportunity to present today. My name is Katie Tracy. I am a policy analyst with the Center for Progressive Reform. I would just like to share a few brief comments with you today, which will be followed by written comments submitted to the docket.

Scientific Uncertainty and Variability

The first point I'd like to make is that the way EPA treats scientific uncertainty in its risk evaluations is critically important. Chemical risk assessment is inherently uncertain. Individual variations in exposure pathways, durations, physiological responses, and numerous other factors prevent researchers from establishing a precise estimation of chemical risks. Uncertainty also derives from methodological shortcomings and data gaps. Of course, lack of certainty doesn't mean lack of risk. Given the preemptive effect of EPA regulation, uncertainty in EPA's risk assessment should cut in favor of protective regulation, not against it.

Judicial Review

My second point is regarding judicial review. As EPA develops a rule for its risk evaluation process, it should be careful to avoid a highly prescriptive approach. Doing so could open up every risk evaluation EPA conducts to judges second-guessing the agency's scientific experts, who face the difficult job of assessing risks based on limited, variable, and uncertain evidence. Judicial review of EPA scientists on matters of chemical risk assessment would undermine the basic principles of expert rulemaking.

Thus, in writing its risk evaluation rule, EPA should consider ways to protect against excessive judicial review, especially over interpretation of scientific data. EPA should look to any analogous risk evaluation schemes that already exist under other federal laws and assess whether they are written in a way that has led to appropriate judicial review, or alternatively, were written poorly and have led to regulatory breakdown because of alleged procedural errors on the part of the agency.

Potentially Exposed or Susceptible Subpopulations

The next point I'd like to make is on potentially exposed or susceptible subpopulations. As the law defines it, this includes a group of individuals within the general population identified by the [EPA] Administrator who, due to either greater susceptibility or greater exposure, may be at greater risk than the general population of adverse health effects from exposure to a chemical substance or mixture. The law gives examples, including infants, children, pregnant women, workers, or the elderly. But it is important to keep in mind that the list is not exhaustive. For example, another vulnerable population EPA should include in its consideration is fenceline communities.



EPA should also consider factoring economic and social vulnerability into the definition of potentially susceptible subpopulations. For example, if a chemical's critical health effect is a form of cancer that can be treated if detected early, EPA should take into account the greater susceptibility of impoverished households who lack access to regular cancer screenings.

Additionally, the law leaves it to the EPA Administrator to identify potentially exposed or susceptible subpopulations. With regard to identifying whether workers are an exposed or susceptible subpopulation, EPA should consult with the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). EPA should also take into consideration OSHA's capacity to initiate and complete a rulemaking. It can take over a decade for OSHA to develop a rule, meaning there may be certain cases in which EPA should act instead of OSHA. Yet, it is also important for EPA to consider what the two agencies can require in terms of worker protection. OSHA's use of ancillary provisions may have benefits for workers that EPA restrictions under TSCA cannot achieve.

Cost Considerations

My final point is that EPA must be careful not to take costs into consideration as part of a risk evaluation. For instance, EPA needs to be vigilant about the potential for cost considerations to sneak into the risk evaluation process through implicit assumptions about chemical uses.

Conclusion

To conclude, I just want to say thank you again for the opportunity to share my comments with you today.

August 10 – Prioritization Rule

Thank you for the opportunity to present today. My name is Katie Tracy. I am a policy analyst with the Center for Progressive Reform. I would just like to share a few brief comments with you today, which will be followed by written comments submitted to the docket.

Potentially Exposed or Susceptible Subpopulations

First, as part of EPA's prioritization rule, the agency must consider unreasonable risks to potentially exposed or susceptible subpopulations. The definition provided in the law gives examples of such subpopulations, including infants, children, pregnant women, workers, or the elderly. But it is important for EPA to keep in mind that the list is not exhaustive. For example, another vulnerable population EPA should include in its consideration is fenceline communities.

EPA should also consider factoring economic and social vulnerability into the definition of potentially susceptible subpopulations. For example, if a chemical's critical health effect is a form of cancer that can be treated if detected early, EPA should take into account the greater susceptibility of impoverished households who lack access to regular cancer screenings.



Additionally, with regard to identifying whether workers are an exposed or susceptible subpopulation, EPA should consult with the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). EPA should also take into consideration OSHA's capacity to initiate and complete a rulemaking. It can take over a decade for OSHA to develop a rule, meaning there may be certain cases in which EPA should act instead of OSHA. Yet, it is also important for EPA to consider what the two agencies can require in terms of worker protection. OSHA's use of ancillary provisions may have benefits for workers that EPA restrictions under TSCA cannot achieve.

Cost Considerations

The final comment I want to make is that EPA must be careful not to consider costs in its prioritization of chemicals as high-priority or low-priority. For instance, EPA needs to be vigilant about the potential for cost considerations to sneak into the prioritization process through implicit assumptions about chemical uses.

Conclusion

Thank you for the opportunity to comment here today.