

118TH CONGRESS <i>1st Session</i>	}	HOUSE OF REPRESENTATIVES	{	REPORT 118-
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ELIMINATION OF FUTURE TECHNOLOGY DELAYS ACT OF
2023

MARCH --, 2023.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and
Commerce, submitted the following

R E P O R T

together with

____ VIEWS

[To accompany H.R. 1158]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1158) to amend the Toxic Substances Control Act with respect to new critical energy resources, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

H.R.1158, ELIMINATION OF FUTURE TECHNOLOGY DELAYS ACT OF
2023

COVER PAGE/AMENDMENT

[Attachment—Insert Cover Page/Amendment]

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Purpose and Summary

To amend the Toxic Substances Control Act (TSCA) with respect to critical energy resources, to prevent delays on the U.S. Environmental Protection Agency (EPA) deciding whether a critical energy resource presents an unreasonable risk, and to prohibit EPA from pre-emptively attempting to suspend reviews of future technology.

BACKGROUND AND NEED FOR LEGISLATION

TSCA is unique among Federal statutes; it gives the Environmental Protection Agency (EPA) sweeping authority to regulate the manufacture, processing, distribution in commerce, use and disposal of “chemical substances”, mixtures of “chemical substances”, and articles containing “chemical substances” before they enter commerce and once, they are in it. A TSCA “chemical

substance” is very broadly defined – with a few exceptions, it is “any organic or inorganic substance of a particular molecular identity”¹

Because of this, TSCA directly impacts American innovation for products that directly improve the standard of living for our families and contribute to our global competitiveness. Disjointed or poor implementation of TSCA will not just affect innovation in this country but discourage investment and lead to fewer products that are cleaner and greener.² To guard against a bad outcome, TSCA Section 2 states two things:

- It is U.S. policy that authority over chemicals should not unduly impede nor create unnecessary economic barriers to technological innovation.
- Congress intends TSCA be implemented in “a reasonable and prudent manner”, and EPA must consider “the environmental, economic, and social impact of any action the Administrator takes or proposes to take”.

As mentioned above, TSCA gives EPA authority to regulate chemicals before they enter the market. TSCA section 5, in a few key areas, has remain unchanged since its 1976 enactment.

First, it requires the manufacturer of a new chemical substance or the manufacturer or processor of a new use of a commercialized chemical substance to notify EPA – at least 90-days in advance – of their intent to commercially manufacture.

Second, upon receiving this notice, EPA has the opportunity to review information about the new chemical or new use and, if necessary, take action to limit or prevent an unreasonable risk to health that EPA sees presented by the commercial introduction of the new chemical substance or new use.

Third, if EPA needs more time to review the notice, EPA can delay the notice’s submitter from commercial production for up to another 90 days (180 in total).³ Moreover, if EPA needs more data to make its determination about an unreasonable risk, EPA can order the company to submit more information – which would stop the statutory clock until the information is given to EPA.⁴

¹ TSCA section 3(2)(A) – 15 U.S.C. 2602(2)(A).

² <https://docs.house.gov/meetings/IF/IF18/20130613/100980/HMTG-113-IF18-Wstate-AuerC-20130613.pdf>

³ TSCA section 5(c) – 15 U.S.C. 2604(c)

⁴ TSCA section 5(b) – 15 U.S.C. 2604(b)

Fourth, there is a regulatory option for a notice submitter to voluntarily withdraw or suspend the clock on their notice if – in talking to EPA – the company learns EPA was leaning towards declaring an unreasonable risk that would limit or prevent their new chemical or new use from going to market.⁵

In May and June of 2016, Congress passed, and the President signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Public Law 114-182), which amended TSCA section 5 provisions related to what happens after the 180-day period expired and EPA had not made a determination on notice concerning a new chemical or new use of an existing chemical.⁶ Prior to the June 2016 amendments, if EPA, within 90 days – but no more than 180 days – made no determination of risk or asked for more information to conduct a review on the notice, the manufacturer was free to produce the new substance or new use. After enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, while the 90 day and 180-day deadlines were maintained to avoid EPA apathy towards American manufacturers who needed predictability from the process, to provide tangible evidence of EPA reviews, no new chemical substance or new use could enter commerce until EPA had determined whether it presented a newly defined “unreasonable risk,” and regulated that risk.⁷ Also, if EPA missed the review deadline, it had to refund the entirety of the user fees paid by the applicant. Despite the deadline mandate and the refund requirement, the frequency of decisions has dramatically dropped, and EPA has not returned any user fees for missing a statutory deadline because all those applicants voluntarily suspended or withdrew their notices.

TSCA is not the only Federal law with an “unreasonable risk” standard, but it is the only one to limit considerations under it. Prior to June 2016 and in other laws, “unreasonable risk” was considered an evaluation of a chemical’s risk to determine if the risk was a reasonable one based upon the utility of the product, or the utility of the aspect of the product that causes the risk, the level of exposure to the risk, the nature and severity of the hazard presented, and the likelihood of resulting serious injury or death. The unreasonable risk analysis also evaluates the state of manufacture, the availability of alternative designs or products, and the feasibility of eliminating the risk or creating greater ones by shifting to those alternatives. For instance, the Federal Insecticide, Fungicide, and

⁵ Section 720.75(b) of title 40, Code of Federal Regulations

⁶ <https://www.congress.gov/bill/114th-congress/house-bill/2576>

⁷ Section 5 of Public Law 114-182.

Rodenticide Act (FIFRA) defines “unreasonable adverse effects to the environment” to include an “unreasonable risks to [persons] or the environment taking into account the economic, social, and environmental costs and benefits of the use of any pesticide”.⁸

The 2016 amendments changed the definition of “unreasonable risk” to preclude EPA from considering “costs or other non-risk factors.” While the intent was to eliminate the consideration of compliance and enforcement costs, EPA’s practice, however, has been to misinterpret this language in two significant ways that ignore risk factors: it interprets “unreasonable” as an invisible modifier of “risk” (meaning it is not considering certain risks as reasonable) and EPA’s practice limits the acceptable level of reasonable risk while discounting risk reduction benefits – including the health and environmental benefits that may be provided by the new chemical. In other words, a “safer” chemical is unacceptable, only “safe” chemicals (i.e., ones without any hazards identified by EPA) are permissible without a regulation.

The results of the 2016 law have been striking in another way. EPA’s reviews of applications for new chemicals and new uses of existing chemicals have gotten increasing slower; exacerbating the backlog of innovative technologies that must wait for decisions – only 85 chemicals received a final determination in 2021, down from 663 in 2011.⁹ The average review time for these chemicals since 2016 has also increased to 432 days¹⁰. Since 2016, annual submissions for new chemicals and new uses of existing chemicals fell 65 percent from an average of 270 to 178 in 2020.¹¹ EPA was on pace to only receive 192 new chemical notices in, post-pandemic, 2022.¹² This decline means losses in US-made products, including those to reduce greenhouse gases, reduce water consumption, and make products more durable and biodegradable.

Compounding the meager output of decisions and diminished number of new notices being submitted is a growing backlog of notices. According to EPA’s website, there were 405 pre-manufacturing notices (PMNs) under review at EPA as of February 1, 2023. Of this number, 341 of these PMNs remain at EPA awaiting a decision even though the statutory deadline has expired.^{9[OBI]} Data from the EPA’s website also demonstrates that this backlog has increased by 40 percent in the last 2 years.^{10[OBI]} Most

⁸ FIFRA section 2(bb)(1) – 7 U.S.C. 136(bb)(1).

⁹ Op. Cit.

¹⁰ Op. Cit. Captured March 2, 2023

¹¹ <https://chemicalinnovations.org/>

¹² Ibid.

concerning, 51 percent of the legal determination backlog has been in limbo for more than 1 year – with 60 percent of that group’s wait exceeding 2 years.¹² In addition, the Government Accountability Office recently noted EPA’s been getting worse with time, failing to meet the legal deadline for determination 100 percent of the time last year.¹¹ This occurred while EPA’s overall budget has grown 10 percent over the last few years -- from \$9.24 billion in Fiscal Year 2021¹³ to \$10.14 billion in Fiscal Year 2023¹⁴ -- plus, add in \$1.67 billion in supplemental funding¹⁵, another \$25.27 billion under the Infrastructure Investment and Jobs Act¹⁶, and \$14.46 billion for the Inflation Reduction Act.¹⁷

COMMITTEE ACTION

On February 7, 2023, the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials held a joint hearing entitled, “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains,” on 17 pieces of legislation, including H.R. 1158. The Subcommittees received testimony from:

- The Honorable Mark Menezes, Former United States Deputy Secretary of Energy, Department of Energy.
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission.
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America.
- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association.
- Raul Garcia, Legislative Director for Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

On February 28, 2023, the Subcommittee on Environment, Manufacturing and Critical Materials met in open markup session and forwarded H.R. 1158, without amendment, to the full Committee by a record vote of 13 yeas and 6 nays. On March 9,

¹³ [P.L. 116-260](#)

¹⁴ [P.L. 117-328](#), Division G

¹⁵ [P.L. 117-328](#), Division N

¹⁶ P.L. 117-58

¹⁷ P.L. 117-169

2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1158, without amendment, favorably reported to the House by a record vote of 27 yeas and 21 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

[Attachments—Insert Votes]

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 1158 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to increase American energy production and restore energy leadership by amending the Toxic

COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 31

BILL: H.R. 1158, the Elimination of Future Technology Delays Act

AMENDMENT: An amendment offered by Rep. Clarke, No. 1

DISPOSITION: NOT AGREED TO, by a roll call vote of 22 yeas and 28 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers		X		Rep. Pallone	X		
Rep. Burgess		X		Rep. Eshoo	X		
Rep. Latta		X		Rep. DeGette	X		
Rep. Guthrie		X		Rep. Schakowsky	X		
Rep. Griffith		X		Rep. Matsui	X		
Rep. Bilirakis		X		Rep. Castor	X		
Rep. Johnson		X		Rep. Sarbanes	X		
Rep. Bucshon		X		Rep. Tonko	X		
Rep. Hudson				Rep. Clarke	X		
Rep. Walberg		X		Rep. Cárdenas	X		
Rep. Carter		X		Rep. Ruiz	X		
Rep. Duncan		X		Rep. Peters	X		
Rep. Palmer		X		Rep. Dingell	X		
Rep. Dunn		X		Rep. Veasey	X		
Rep. Curtis		X		Rep. Kuster	X		
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán	X		
Rep. Crenshaw		X		Rep. Blunt Rochester	X		
Rep. Joyce		X		Rep. Soto	X		
Rep. Armstrong		X		Rep. Craig	X		
Rep. Weber		X		Rep. Schrier			
Rep. Allen		X		Rep. Trahan	X		
Rep. Balderson		X		Rep. Fletcher	X		
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte		X					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 32

BILL: H.R. 1158, the Elimination of Future Technology Delays Act

AMENDMENT: An amendment offered by Rep. Sarbanes, No. 2

DISPOSITION: NOT AGREED TO, by a roll call vote of 21 ayes and 28 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers		X		Rep. Pallone	X		
Rep. Burgess		X		Rep. Eshoo	X		
Rep. Latta		X		Rep. DeGette	X		
Rep. Guthrie		X		Rep. Schakowsky	X		
Rep. Griffith		X		Rep. Matsui	X		
Rep. Bilirakis		X		Rep. Castor	X		
Rep. Johnson		X		Rep. Sarbanes	X		
Rep. Bucshon		X		Rep. Tonko	X		
Rep. Hudson				Rep. Clarke	X		
Rep. Walberg		X		Rep. Cárdenas	X		
Rep. Carter		X		Rep. Ruiz	X		
Rep. Duncan		X		Rep. Peters	X		
Rep. Palmer		X		Rep. Dingell	X		
Rep. Dunn		X		Rep. Veasey	X		
Rep. Curtis		X		Rep. Kuster	X		
Rep. Lesko		X		Rep. Kelly	X		
Rep. Pence		X		Rep. Barragán			
Rep. Crenshaw		X		Rep. Blunt Rochester	X		
Rep. Joyce		X		Rep. Soto	X		
Rep. Armstrong		X		Rep. Craig	X		
Rep. Weber		X		Rep. Schrier			
Rep. Allen		X		Rep. Trahan	X		
Rep. Balderson		X		Rep. Fletcher	X		
Rep. Fulcher		X					
Rep. Pfluger		X					
Rep. Harshbarger		X					
Rep. Miller-Meeks		X					
Rep. Cammack		X					
Rep. Obernolte		X					

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COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 33

BILL: H.R. 1158, the Elimination of Future Technology Delays Act

AMENDMENT: A motion by Mrs. Rodgers to order H.R. 1158 favorably reported to the House, without amendment (Final Passage).

DISPOSITION: **AGREED TO**, by a roll call vote of 27 yeas and 21 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers	X			Rep. Pallone		X	
Rep. Burgess	X			Rep. Eshoo		X	
Rep. Latta	X			Rep. DeGette		X	
Rep. Guthrie	X			Rep. Schakowsky		X	
Rep. Griffith	X			Rep. Matsui		X	
Rep. Bilirakis	X			Rep. Castor		X	
Rep. Johnson	X			Rep. Sarbanes		X	
Rep. Bucshon	X			Rep. Tonko		X	
Rep. Hudson				Rep. Clarke		X	
Rep. Walberg	X			Rep. Cárdenas		X	
Rep. Carter	X			Rep. Ruiz		X	
Rep. Duncan	X			Rep. Peters		X	
Rep. Palmer	X			Rep. Dingell		X	
Rep. Dunn	X			Rep. Veasey		X	
Rep. Curtis	X			Rep. Kuster		X	
Rep. Lesko	X			Rep. Kelly		X	
Rep. Pence	X			Rep. Barragán			
Rep. Crenshaw	X			Rep. Blunt Rochester		X	
Rep. Joyce	X			Rep. Soto		X	
Rep. Armstrong	X			Rep. Craig		X	
Rep. Weber	X			Rep. Schrier			
Rep. Allen	X			Rep. Trahan		X	
Rep. Balderson	X			Rep. Fletcher		X	
Rep. Fulcher	X						
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks							
Rep. Cammack	X						
Rep. Obernolte	X						

03/09/2023

Substances Control Act with respect to critical energy resources, to prevent delays on the Environmental Protection Agency deciding whether a critical energy resource presents an unreasonable risk, and to prohibit EPA from pre-emptively attempting to suspend reviews of future technology.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1158 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII,

(1) the following hearings were used to develop or consider H.R. 1158:

- A January 31, 2023, hearing by the Committee on Energy and Commerce entitled, “American Energy Expansion: Strengthening Economic, Environmental, and National Security.”
- A February 7, 2023, joint hearing by the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials entitled, “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains”.

(2) The following related hearings were held:

- An October 27, 2021, hearing by the Subcommittee on Environment and Climate Change entitled, “TSCA and Public Health: Fulfilling the Promise of the Lautenberg Act.”
- A May 17, 2022, hearing by the Subcommittee on Environment and Climate Change entitled, “The Fiscal Year 2023 EPA Budget.”

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the

Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1158 contains no earmarks, limited tax benefits, or limited tariff benefits.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1

Section 1 provides a short title of “Elimination of Future Technology Delays Act of 2023.”

Section 2

Section 2 creates amendments to the end of TSCA section 5(a) to create a different review regime for critical energy resources.

First, section 2, using the FIFRA standard for “unreasonable adverse effects to the environment,” requires EPA to consider “economic, societal, and environmental costs and benefits” when deciding if an unreasonable risk is present by a new chemical or new use of an existing chemical that is a critical energy resource. These are legitimate risk factors in weighing both whether an “unreasonable risk” is present for deciding whether and, if so how, to regulate a chemical substance.

Second, section 2, recognizing the increasing backlog and the deleterious impact to innovation, returns section 5 to its pre-2016

status and puts a hard trigger on EPA to meet the statutory deadlines – 90 days, but in no case, no more than 180 days -- to decide on the risks presented by a new critical energy resource. The bill does not undercut EPA's ability to request additional information if it is needed to do the evaluation – which allows the clock to be stopped until the information is given to EPA. With millions of dollars in investment on the line and China and others offering the alternative venues for manufacturing, EPA cannot foot-drag and it cannot make excuses. If EPA does not decide in this time – and does not ask for more information to make one – the new critical energy resource can go to commercial manufacture. Importantly, the Committee intends that when EPA does not meet its statutory deadlines that it is not allowed to claw back regulation of chemicals in the marketplace. For this reason, the language requires EPA only undertake efforts to regulate commercially produced chemical substance under TSCA section 6.

The Committee understands that some critics will be surprised this bill is reversing a few provisions of the 2016 amendments only six years after their enactment. The Committee believes that while the situation appears to be deteriorating, if Congress cannot take action to address critical materials that are vulnerable to disruption, what will it take for Congress to correct this entire matter? The Committee notes that the overall thrust of the 2016 amendments remain intact in this legislation regarding new chemicals and new uses. Particularly, this bill: does not prevent the EPA from deciding on new chemicals and new uses of a chemical, does not force EPA to approve chemicals regardless of their toxicity, does not change the definition of a “potentially exposed or susceptible population”, EPA still maintains very muscular authority to compel new information to assess a chemical, and EPA must still assess for the existence of and adequately control an unreasonable risk to a potentially exposed or susceptible population identified by EPA.

Third, under section 2, a manufacturer of critical energy resource that is a new chemical substance or new use of a chemical substance may only receive a refund of their user fee from EPA if that manufacturer does not begin commercial manufacture of the critical energy resource and continues to wait for a risk determination from EPA. The Committee acknowledges that EPA likely performed some work on a notice even when a decision is not rendered timely and does not believe the Agency should be financially punished for that work nor made to take additional steps to prorate the fee.

Fourth, section 2, in furtherance of the Committee's insistence on adherence to statutory deadlines, prevents EPA from suggesting to or requesting of a notice submitter that they, pursuant to existing regulations, voluntarily suspend or withdraw their pre-manufacturing notice unless EPA has first reviewed the notice, made an initial determination on the notice, and shares that initial determination with the manufacturer. The Committee notes that use of the term "preliminary review" is not intended to create a formal step or process but rather to capture that EPA has paid enough attention to the notice to make an initial, reasonable, and informed assessment of the chemical notice that was submitted and the potential risks that might be present.

Finally, section 2 adds a definition to proposed TSCA section 5(a)(6) for "critical energy resource." It states that a "critical energy resource" is any energy resource that, as determined by the Secretary of Energy, is essential to the energy sector and energy systems of the United States and whose supply chain is vulnerable to disruption. The Committee intends this definition to be interpreted broadly and points to the word "any" as proof of this desire. This designation is not limited to the use of one kind of fuel but instead includes all types of fuels that are important to our nation's energy sector and system and that might be vulnerable to disruption. Moreover, while this designation is purposely the domain of the Secretary of Energy – not the Secretary of Interior or EPA – who has been given statutory responsibility of and care for the energy sector and systems of the United States, the determinations about whether an unreasonable risk exists under TSCA are the domain of EPA. The Committee expects the Secretary of Energy to work cooperatively and expeditiously with EPA to determine whether a notice under TSCA section 5(a) would qualify as a critical energy resource for the purposes of this proposed amendment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

[Attachment—Insert Ramseyer]

MINORITY VIEWS

[Attachment--Views]

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TOXIC SUBSTANCES CONTROL ACT**TITLE I—CONTROL OF TOXIC SUBSTANCES**

* * * * *

SEC. 5. MANUFACTURING AND PROCESSING NOTICES.

(a) IN GENERAL.—(1)(A) Except as provided in subparagraph (B) of this paragraph and subsection (h), no person may—

(i) manufacture a new chemical substance on or after the 30th day after the date on which the Administrator first publishes the list required by section 8(b), or

(ii) manufacture or process any chemical substance for a use which the Administrator has determined, in accordance with paragraph (2), is a significant new use.

(B) A person may take the actions described in subparagraph (A) if—

(i) such person submits to the Administrator, at least 90 days before such manufacture or processing, a notice, in accordance with subsection (d), of such person's intention to manufacture or process such substance and such person complies with any applicable requirement of, or imposed pursuant to, subsection (b), (e), or (f); and

(ii) the Administrator—

(I) conducts a review of the notice; and

(II) makes a determination under subparagraph (A), (B), or (C) of paragraph (3) and takes the actions required in association with that determination under such subparagraph within the applicable review period.

(2) A determination by the Administrator that a use of a chemical substance is a significant new use with respect to which notification is required under paragraph (1) shall be made by a rule promulgated after a consideration of all relevant factors, including—

(A) the projected volume of manufacturing and processing of a chemical substance,

(B) the extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance,

(C) the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance, and

(D) the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

(3) REVIEW AND DETERMINATION.—Within the applicable review period, subject to section 18, the Administrator shall review such notice and determine—

(A) that the relevant chemical substance or significant new use presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, in which case the Administrator shall take the actions required under subsection (f);

(B) that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of the relevant chemical substance or significant new use; or

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator; or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

in which case the Administrator shall take the actions required under subsection (e); or

(C) that the relevant chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, in which case the submitter of the notice may commence manufacture of the chemical substance or manufacture or processing for a significant new use.

(4) FAILURE TO RENDER DETERMINATION.—

(A) FAILURE TO RENDER DETERMINATION.—If the Administrator fails to make a determination on a notice under paragraph (3) by the end of the applicable review period and the notice has not been withdrawn by the submitter, the Administrator shall refund to the submitter all applicable fees charged to the submitter for review of the

notice pursuant to section 26(b), and the Administrator shall not be relieved of any requirement to make such determination.

(B) LIMITATIONS.—(i) A refund of applicable fees under subparagraph (A) shall not be made if the Administrator certifies that the submitter has not provided information required under subsection (b) or has otherwise unduly delayed the process such that the Administrator is unable to render a determination within the applicable review period.

(ii) A failure of the Administrator to render a decision shall not be deemed to constitute a withdrawal of the notice.

(iii) Nothing in this paragraph shall be construed as relieving the Administrator or the submitter of the notice from any requirement of this section.

(5) ARTICLE CONSIDERATION.—The Administrator may require notification under this section for the import or processing of a chemical substance as part of an article or category of articles under paragraph (1)(A)(ii) if the Administrator makes an affirmative finding in a rule under paragraph (2) that the reasonable potential for exposure to the chemical substance through the article or category of articles subject to the rule justifies notification.

(6) CRITICAL ENERGY RESOURCES.—

(A) STANDARD.—*For purposes of a determination under paragraph (3) with respect to a chemical substance that is a critical energy resource, the Administrator shall take into consideration economic, societal, and environmental costs and benefits, notwithstanding any requirement of this section to not take such factors into consideration.*

(B) FAILURE TO RENDER DETERMINATION.—

(i) ACTIONS AUTHORIZED.—*If, with respect to a chemical substance that is a critical energy resource, the Administrator fails to make a determination on a notice under paragraph (3) by the end of the applicable review period and the notice has not been withdrawn by the submitter, the submitter may take the actions described in paragraph (1)(A) with respect to the chemical substance, and the Administrator shall be relieved of any requirement to make such determination.*

(ii) NON-DUPPLICATION.—*A refund of applicable fees under paragraph (4)(A) shall not be made if a submitter takes an action described in paragraph (1)(A) under this subparagraph.*

(C) PREREQUISITE FOR SUGGESTION OF WITHDRAWAL OR SUSPENSION.—*The Administrator may not suggest to, or request of, a submitter of a notice under this subsection for a chemical substance that is a critical energy resource that such submitter withdraw such notice, or request a suspension of the running of the applicable review period with respect to such notice, unless the Administrator has—*

- (i) conducted a preliminary review of such notice; and*
- (ii) provided to the submitter a draft of a determination under paragraph (3), including any supporting information.*

(D) DEFINITION.—For purposes of this paragraph, the term “critical energy resource” means, as determined by the Secretary of Energy, any energy resource—

- (i) that is essential to the energy sector and energy systems of the United States; and*
- (ii) the supply chain of which is vulnerable to disruption.*

(b) SUBMISSION OF INFORMATION.—(1)(A) If (i) a person is required by subsection (a)(1) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance, and (ii) such person is required to submit information for such substance pursuant to a rule, order, or consent agreement under section 4 before the submission of such notice, such person shall submit to the Administrator such information in accordance with such rule, order, or consent agreement at the time notice is submitted in accordance with subsection (a)(1).

(B) If—

(i) a person is required by subsection (a)(1) to submit a notice to the Administrator, and

(ii) such person has been granted an exemption under section 4(c) from the requirements of a rule or order under section 4 before the submission of such notice,

such person may not, before the expiration of the 90-day period which begins on the date of the submission in accordance with such rule of the information the submission or development of which was the basis for the exemption, manufacture such substance if such person is subject to subsection (a)(1)(A)(i) or manufacture or process such substance for a significant new use if the person is subject to subsection (a)(1)(A)(ii).

(2)(A) If a person—

(i) is required by subsection (a)(1) to submit a notice to the Administrator before beginning the manufacture or processing of a chemical substance listed under paragraph (4), and

(ii) is not required by a rule, order, or consent agreement under section 4 before the submission of such notice to submit information for such substance,

such person may submit to the Administrator information prescribed by subparagraph (B) at the time notice is submitted in accordance with subsection (a)(1).

(B) Information submitted pursuant to subparagraph (A) shall be information which the person submitting the information believes shows that—

(i) in the case of a substance with respect to which notice is required under subsection (a)(1)(A)(i), the manufacture, processing, distribution in commerce, use, and disposal of the chemical substance or any combination of such activities will not present an unreasonable risk of injury to health or the environment, or

(ii) in the case of a chemical substance with respect to which notice is required under subsection (a)(1)(A)(ii), the intended significant new use of the chemical substance will not present an unreasonable risk of injury to health or the environment.

(3) Information submitted under paragraph (1) or (2) of this subsection or under subsection (e) shall be made available, subject to section 14, for examination by interested persons.

(4)(A)(i) The Administrator may, by rule, compile and keep current a list of chemical substances with respect to which the Administrator finds that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities, presents or may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors.

(ii) In making a finding under clause (i) that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or any combination of such activities presents or may present an unreasonable risk of injury to health or the environment, the Administrator shall consider all relevant factors, including—

(I) the effects of the chemical substance on health and the magnitude of human exposure to such substance; and

(II) the effects of the chemical substance on the environment and the magnitude of environmental exposure to such substance.

(B) The Administrator shall, in prescribing a rule under subparagraph (A) which lists any chemical substance, identify those uses, if any, which the Administrator determines, by rule under subsection (a)(2), would constitute a significant new use of such substance.

(C) Any rule under subparagraph (A), and any substantive amendment or repeal of such a rule, shall be promulgated pursuant to the procedures specified in section 553 of title 5, United States Code.

(c) EXTENSION OF REVIEW PERIOD.—The Administrator may for good cause extend for additional periods (not to exceed in the aggregate 90 days) the period, prescribed by subsection (a) or (b). Subject to section 14, such an extension and the reasons therefor shall be published in the Federal Register and shall constitute a final agency action subject to judicial review.

(d) CONTENT OF NOTICE; PUBLICATIONS IN THE FEDERAL REGISTER.—(1) The notice required by subsection (a) shall include—

(A) insofar as known to the person submitting the notice or insofar as reasonably ascertainable, the information described in subparagraphs (A), (B), (C), (D), (F), and (G) of section 8(a)(2), and

(B) in such form and manner as the Administrator may prescribe, any information in the possession or control of the person giving such notice which are related to the effect of any manufacture, processing, distribution in commerce, use, or disposal of such substance or any article containing such sub-

stance, or of any combination of such activities, on health or the environment, and

(C) a description of any other information concerning the environmental and health effects of such substance, insofar as known to the person making the notice or insofar as reasonably ascertainable.

Such a notice shall be made available, subject to section 14, for examination by interested persons.

(2) Subject to section 14, not later than five days (excluding Saturdays, Sundays and legal holidays) after the date of the receipt of a notice under subsection (a) or of information under subsection (b), the Administrator shall publish in the Federal Register a notice which—

(A) identifies the chemical substance for which notice or information has been received;

(B) lists the uses of such substance identified in the notice; and

(C) in the case of the receipt of information under subsection (b), describes the nature of the tests performed on such substance and any information which was developed pursuant to subsection (b) or a rule, order, or consent agreement under section 4.

A notice under this paragraph respecting a chemical substance shall identify the chemical substance by generic class unless the Administrator determines that more specific identification is required in the public interest.

(3) At the beginning of each month the Administrator shall publish a list in the Federal Register of (A) each chemical substance for which notice has been received under subsection (a) and for which the applicable review period has not expired, and (B) each chemical substance for which such period has expired since the last publication in the Federal Register of such list.

(e) REGULATION PENDING DEVELOPMENT OF INFORMATION.—

(1)(A) If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a); or

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities, may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed subpopulation identified as relevant by the Administrator under the conditions of use; or

(II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance,

the Administrator shall issue an order, to take effect on the expiration of the applicable review period, to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, and the submitter of the notice may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, including while any required information is being developed, only in compliance with the order.

(B) An order may not be issued under subparagraph (A) respecting a chemical substance (i) later than 45 days before the expiration of the applicable review period, and (ii) unless the Administrator has, on or before the issuance of the order, notified, in writing, each manufacturer or processor, as the case may be, of such substance of the determination which underlies such order.

(f) PROTECTION AGAINST UNREASONABLE RISKS.—(1) If the Administrator determines that a chemical substance or significant new use with respect to which notice is required by subsection (a) presents an unreasonable risk of injury to health or environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed subpopulation identified as relevant by the Administrator under the conditions of use, the Administrator shall, before the expiration of the applicable review period, take the action authorized by paragraph (2) or (3) to the extent necessary to protect against such risk.

(2) The Administrator may issue a proposed rule under section 6(a) to apply to a chemical substance with respect to which a finding was made under paragraph (1)—

(A) a requirement limiting the amount of such substance which may be manufactured, processed, or distributed in commerce,

(B) a requirement described in paragraph (2), (3), (4), (5), (6), or (7) of section 6(a), or

(C) any combination of the requirements referred to in subparagraph (B).

Such a proposed rule shall be effective upon its publication in the Federal Register. Section 6(d)(3)(B) shall apply with respect to such rule.

(3)(A) The Administrator may issue an order to prohibit or limit the manufacture, processing, or distribution in commerce of a substance with respect to which a finding was made under paragraph (1). Such order shall take effect on the expiration of the applicable review period.

(B) The provisions of subparagraph (B) of subsection (e)(1) shall apply with respect to an order issued under subparagraph (A).

(4) TREATMENT OF NONCONFORMING USES.—Not later than 90 days after taking an action under paragraph (2) or (3) or issuing an order under subsection (e) relating to a chemical

substance with respect to which the Administrator has made a determination under subsection (a)(3)(A) or (B), the Administrator shall consider whether to promulgate a rule pursuant to subsection (a)(2) that identifies as a significant new use any manufacturing, processing, use, distribution in commerce, or disposal of the chemical substance that does not conform to the restrictions imposed by the action or order, and, as applicable, initiate such a rulemaking or publish a statement describing the reasons of the Administrator for not initiating such a rulemaking.

(5) WORKPLACE EXPOSURES.—To the extent practicable, the Administrator shall consult with the Assistant Secretary of Labor for Occupational Safety and Health prior to adopting any prohibition or other restriction relating to a chemical substance with respect to which the Administrator has made a determination under subsection (a)(3)(A) or (B) to address workplace exposures.

(g) STATEMENT ON ADMINISTRATOR FINDING.—If the Administrator finds in accordance with subsection (a)(3)(C) that a chemical substance or significant new use is not likely to present an unreasonable risk of injury to health or the environment, then notwithstanding any remaining portion of the applicable review period, the submitter of the notice may commence manufacture of the chemical substance or manufacture or processing for the significant new use, and the Administrator shall make public a statement of the Administrator's finding. Such a statement shall be submitted for publication in the Federal Register as soon as is practicable before the expiration of such period. Publication of such statement in accordance with the preceding sentence is not a prerequisite to the manufacturing or processing of the substance with respect to which the statement is to be published.

(h) EXEMPTIONS.—(1) The Administrator may, upon application, exempt any person from any requirement of subsection (a) or (b) to permit such person to manufacture or process a chemical substance for test marketing purposes—

(A) upon a showing by such person satisfactory to the Administrator that the manufacture, processing, distribution in commerce, use, and disposal of such substance, and that any combination of such activities, for such purposes will not present any unreasonable risk of injury to health or the environment, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator for the specific conditions of use identified in the application, and

(B) under such restrictions as the Administrator considers appropriate.

(2)(A) The Administrator may, upon application, exempt any person from the requirement of subsection (b)(2) to submit information for a chemical substance. If, upon receipt of an application under the preceding sentence, the Administrator determines that—

(i) the chemical substance with respect to which such application was submitted is equivalent to a chemical substance

for which information has been submitted to the Administrator as required by subsection (b)(2), and

(ii) submission of information by the applicant on such substance would be duplicative of information which has been submitted to the Administrator in accordance with such subsection,

the Administrator shall exempt the applicant from the requirement to submit such information on such substance. No exemption which is granted under this subparagraph with respect to the submission of information for a chemical substance may take effect before the beginning of the reimbursement period applicable to such information.

(B) If the Administrator exempts any person, under subparagraph (A), from submitting information required under subsection (b)(2) for a chemical substance because of the existence of previously submitted information and if such exemption is granted during the reimbursement period for such information, then (unless such person and the persons referred to in clauses (i) and (ii) agree on the amount and method of reimbursement) the Administrator shall order the person granted the exemption to provide fair and equitable reimbursement (in an amount determined under rules of the Administrator)—

(i) to the person who previously submitted the information on which the exemption was based, for a portion of the costs incurred by such person in complying with the requirement under subsection (b)(2) to submit such information, and

(ii) to any other person who has been required under this subparagraph to contribute with respect to such costs, for a portion of the amount such person was required to contribute.

In promulgating rules for the determination of fair and equitable reimbursement to the persons described in clauses (i) and (ii) for costs incurred with respect to a chemical substance, the Administrator shall, after consultation with the Attorney General and the Federal Trade Commission, consider all relevant factors, including the effect on the competitive position of the person required to provide reimbursement in relation to the persons to be reimbursed and the share of the market for such substance of the person required to provide reimbursement in relation to the share of such market of the persons to be reimbursed. For purposes of judicial review, an order under this subparagraph shall be considered final agency action.

(C) For purposes of this paragraph, the reimbursement period for any previously submitted information for a chemical substance is a period—

(i) beginning on the date of the termination of the prohibition, imposed under this section, on the manufacture or processing of such substance by the person who submitted such information to the Administrator, and

(ii) ending—

(I) five years after the date referred to in clause (i), or

(II) at the expiration of a period which begins on the date referred to in clause (i) and is equal to the period

which the Administrator determines was necessary to develop such information, whichever is later.

(3) The requirements of subsections (a) and (b) do not apply with respect to the manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for purposes of—

(A) scientific experimentation or analysis, or

(B) chemical research on, or analysis of such substance or another substance, including such research or analysis for the development of a product,

if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer, processor, or the Administrator has reason to believe may be associated with such chemical substance.

(4) The Administrator may, upon application and by rule, exempt the manufacturer of any new chemical substance from all or part of the requirements of this section if the Administrator determines that the manufacture, processing, distribution in commerce, use, or disposal of such chemical substance, or that any combination of such activities, will not present an unreasonable risk of injury to health or the environment, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator under the conditions of use.

(5) The Administrator may, upon application, make the requirements of subsections (a) and (b) inapplicable with respect to the manufacturing or processing of any chemical substance (A) which exists temporarily as a result of a chemical reaction in the manufacturing or processing of a mixture or another chemical substance, and (B) to which there is no, and will not be, human or environmental exposure.

(6) Immediately upon receipt of an application under paragraph (1) or (5) the Administrator shall publish in the Federal Register notice of the receipt of such application. The Administrator shall give interested persons an opportunity to comment upon any such application and shall, within 45 days of its receipt, either approve or deny the application. The Administrator shall publish in the Federal Register notice of the approval or denial of such an application.

(i) DEFINITIONS.—(1) For purposes of this section, the terms “manufacture” and “process” mean manufacturing or processing for commercial purposes.

(2) For purposes of this Act, the term “requirement” as used in this section shall not displace any statutory or common law.

(3) For purposes of this section, the term “applicable review period” means the period starting on the date the Administrator receives a notice under subsection (a)(1) and ending 90 days after that date, or on such date as is provided for in subsection (b)(1) or (c).

* * * * *

Committee on Energy and Commerce

MINORITY VIEWS

H.R. 1158, the Elimination of Future Technology Delays Act

H.R. 1158, the “Elimination of Future Technology Delays Act,” amends Section 5 of the Toxic Substances Control Act (TSCA) related to new chemical reviews – changes that would put human health and the environment at risk. The legislation would reverse and eliminate fundamental safety protections enacted in the bipartisan TSCA reform law, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act),¹ in an attempt to expedite review of chemicals classified as “critical energy resources.” The majority report mischaracterizes the need for this legislation and its effects.

BACKGROUND

TSCA, which originally passed in 1976, is the nation’s chemical safety law.² Under TSCA, the Environmental Protection Agency (EPA) is responsible for identifying, testing, and regulating chemical substances in U.S. commerce whose manufacture, processing, distribution in commerce, use, and disposal present or will present an unreasonable risk of injury to health or the environment. The original 1976 law failed to protect public health, allowing a majority of chemicals to enter commerce without complete review or consideration of safety, exposing workers and families to toxic chemicals.

In 2016, President Obama signed into law the Lautenberg Act, bipartisan legislation that amended Title I of TSCA. Among the amendments, the Lautenberg Act overhauled Section 5 by adding protections that require EPA to identify and manage risks associated with each new chemical before it is manufactured or used.

SUMMARY OF H.R. 1158

H.R. 1158 amends Section 5(a) of TSCA to create a new regulatory pathway for chemicals designated as “critical energy resources”, circumventing key public health protections. The new Section 5(a)(6)(A), as proposed in H.R. 1158, would require EPA to consider costs and other non-risk factors when making a determination for any chemical deemed a “critical energy resource.” Currently, TSCA explicitly prohibits EPA from considering costs and other non-risk factors when evaluating whether the chemical substance poses an unreasonable risk. EPA may only consider such factors when deciding how to manage any risks it identifies.

By injecting non-risk factors into safety determinations based solely on risks to health or the environment, the majority is prioritizing economic considerations of chemical companies over public health. Also, adding non-risk factors would require EPA to conduct economic

¹ Pub. L. No. 114-182 (2016).

² 15 U.S.C. § 2601 et seq. (1976).

analyses and assessments of indirect benefits, which would add to the review time and thereby defeat one of the stated purposes of the legislation.

Section 5(a)(6)(B) allows a company to commence the manufacture or use of a new chemical designated a “critical energy resource” within 90 days in the absence of a determination by EPA. This reverses one of the core reforms in the Lautenberg Act. Previously, EPA issued risk determinations for approximately 20 percent of new chemical submissions, allowing 80 percent of chemicals to go to market without further review. The original 1976 law failed to protect families and communities from exposure to toxic chemicals in everything from household goods to releases from nearby factories. Congress addressed this fundamental flaw in 2016 by requiring EPA to review each new chemical, make a final determination, and take any needed regulatory action prior to and as a condition of a company’s commencement of manufacture or use of that chemical. With H.R. 1158, the majority is effectively reversing course and providing a pathway for potentially toxic chemicals to enter the market undetected. This policy is ill-conceived and dangerous, needlessly exposing children, families, and fenceline communities to harm.

Section 5(a)(6)(C) would create an intermediary step of conducting a “preliminary review” of the new chemical substance and sharing it with the submitter. Adding these additional steps would lead to multiple iterations of assessment work by EPA and increase the amount of time it takes for EPA to complete its review and risk management.

Section 5(a)(6)(D) broadly defines “critical energy resources” as a chemical, determined by the Secretary of Energy, to be essential to the energy sector and vulnerable to supply chain disruption. This definition could apply to virtually any chemical that plays a role in the production, refining, distribution, and use of energy and is designated as “critical” by the Department of Energy (DOE). Once a substance has been fast tracked through the premanufacture notice (PMN) process, the substance could be used for non-energy applications that could pose unreasonable risks to health and the environment.

It is unclear how the Secretary would deem a new chemical, that has not yet entered commerce, to be “essential” to an existing energy sector or system, given that those systems would presumably continue operating in the absence of the availability of the new chemical. Also, the supply chain vulnerabilities of a new chemical would presumably be unclear since again the chemical has yet to enter the market. Additionally, there are significant logistical concerns regarding these provisions— including how EPA and DOE would share confidential business information and whether DOE’s determination of “critical energy resources” would occur during or before the 90-day review period – all of which undermine Committee Republican’s argument that this legislation would expedite reviews.

During the Full Committee markup of H.R. 1158, Democratic Members offered amendments intended to address the problems in the bill, and concerns voiced by the bill’s proponents. Every Republican Committee member voted against an amendment excluding perfluoroalkyl and polyfluoroalkyl substances (also known as PFAS chemicals) from as the definition of a “critical energy resource”. PFAS chemicals are known as “forever chemicals” because of their persistence in the environment and the body. These chemicals have been linked to

serious health problems at low doses, including cancer, hormone disruption, liver and thyroid problems, interference with vaccine uptake, reproductive harm, and abnormal fetal development. EPA should thoroughly review any new PFAS chemicals to ensure they are manufactured and used in a way that does not pose unreasonable risk. Safety determinations should be conducted based on science, not economic considerations, and, considering the persistent nature of these chemicals, EPA should make an affirmative determination before they enter commerce and potentially expose families, workers, and other susceptible subpopulations.

Every Republican Committee member also voted against an amendment requiring the U.S. Government Accountability Office (GAO) to certify that EPA has completed a strategic workforce plan to support chemical reviews.³ While Committee Republicans have expressed concern about the delays in chemical reviews, GAO reported that EPA's Office of Chemical Safety and Pollution Prevention has been under resourced and understaffed while conducting increased workload at the direction of Congress. The Biden Administration has requested additional resources for the Office.⁴ Additionally, EPA has proposed an updated user fee rule to support chemical reviews and is using its authority to hire staff with relevant expertise. Congress should fully fund the TSCA program to provide staff and resources necessary to safely, transparently, and quickly review new chemicals proposed for entry into the market.

CONCLUSION

H.R. 1158 undermines the protections found in TSCA, as updated by the Lautenberg Act, and puts human health and the environment at risk. Proponents assert that H.R. 1158 is needed to expedite chemical reviews essential to the energy sector. But the majority is positing a false choice. There is no evidence the public needs to sacrifice health protections from toxic chemicals in exchange for a clean energy future. The public needs and wants more, not less, protection from toxic chemicals.⁵ Undermining the protections in TSCA is not the answer to fostering innovation. Furthermore, H.R. 1158's rejection of a future that is clean and health-protective, sells American innovation short. H.R. 1158 puts workers and families at risk by rolling back critical public health protections and weakening a core environmental law.

³ Government Accountability Office, *EPA Chemical Reviews: Workforce Planning Gaps Contributed to Missed Deadlines* (Feb. 17, 2023) (GAO-23-105728).

⁴ Environmental Protection Agency, Office of the Chief Financial Officer, *FY 2023 EPA Budget in Brief* (Mar. 2023) (EPA-190-R-23-002).

⁵ University of California San Francisco Program on Reproductive Health and the Environment, *Public Opinion on Chemicals* (prhe.ucsf.edu/public-opinion-chemicals) (accessed Mar. 16, 2023).

For the reasons stated above, we dissent from the views contained in the Committee's report.

A handwritten signature in blue ink that reads "Frank Pallone, Jr." in a cursive style.

Frank Pallone, Jr.

Ranking Member

Committee on Energy and Commerce