Toxic Substances Control Act (TSCA) Reform: Key Issues and Comments

UPDATED June 21, 2016

Introduction

This document provides an update to "Toxic Substances Control Act (TSCA) Reform: Key Issues and Comments," published online on January 7, 2016.

This updated table provides information on the final compromise bill passed by Congress and sent to President Obama (the Frank R. Lautenberg Chemical Safety for the 21st Century Act, adopted by the House on May 24, 2016 and by the Senate on June 7, 2016).[1] The updated information is shown in the right-hand column of the table. The original table, published January 7, 2016, analyzed the bill adopted by the House on June 23, 2015 (The TSCA Modernization Act of 2015, referred to here as "the House bill") and the bill adopted by the Senate on December 17, 2015 (the Frank R. Lautenberg Chemical Safety for the 21st Century Act, referred to here as "the Senate bill").[2]

The table provides a compilation of selected points that have been of interest to a number of state agencies as well as local authorities. For the sake of brevity, the table makes reference primarily to "states," but similar issues may be relevant both to state and to local authorities.

The original analysis was developed in part through discussions convened by the Northeast Waste Management Officials' Association (NEWMOA). Background research and analysis was provided by the Massachusetts Toxics Use Reduction Institute in collaboration with the Washington Department of Ecology and agencies in other states.

The table makes reference in a few instances to comments from selected Senators as published in the Congressional Record (June 7, 2016, pp. S3511-S3525). The table does not, however, draw on these or other comments in any comprehensive way.

The table does not represent a formal consensus and legislation can be subject to varying interpretations; individual stakeholders and authorities may have differing views on points discussed here. The table also does not represent an exhaustive analysis of the elements of the bills that are of interest to states or local authorities, and may be revised or expanded based on additional discussion among interested parties. The original table was designed as a guide to selected issues of interest, and this table provides selected updates on these and related issues.

This document does not represent a legal position, a formal analysis, or the official position of any entity. Individuals or agencies needing legal information or opinions should consult appropriate experts. Any comments or suggestions are welcomed, and can be sent to ecos@ecos.org which will collect and share input with the document's collaborators.

1. PREEMPTION

	JANUARY 2016 ANALYSIS (FOR REFERENCE ONLY - NOT UPDATED)				**UPDATE: JUNE 2016**
	Summary	***Senate Bill***	***House Bill***	***Comments (January 2016)***	**Final compromise bill**
Preemption: General points	• *Many states feel strongly about retaining the ability to act to protect citizens after federal legislation is enacted. Preemption of state authorities reduces the states' capacity to spur innovation and provide a level of protection that may go beyond federal requirements. The comments below are offered regarding the preemption provisions currently found in the Senate and House bills.*				• Final preemption provisions are discussed in detail below.
Timing of Preemption and of compliance	• *Many states believe the regulatory pause (or pause preemption) in the Senate bill during EPA's Safety Determination creates an unnecessary and counterproductive barrier to state actions to protect people and the environment from high priority chemicals.* • *From the perspective of many states, any preemption of state action should be triggered no earlier than when any EPA final rule is fully implemented.*	• *Permanent federal preemption: For a substance that does not meet the safety standard, preemption is effective as of the effective date of the rule issued by EPA. The rule itself must be complied with within 4 years, with the possibility of an 18 month extension.* • *Pause preemption: New state prohibitions or restrictions are preempted, starting on the date when EPA publishes the scope of a safety assessment and safety determination, and ending when EPA either publishes a determination or reaches the statutory deadline for publication of the safety determination (a maximum of 3 to 4 years). During this time period, states would be prevented from taking action on high priority chemicals, unless they receive a waiver, even though EPA itself would not yet have taken action.*	• *Preemption occurs when EPA takes final action on the chemical in a rule. There is no expressed statutory deadline for industry to comply with a rule.*	• *Eliminating the regulatory pause in the Senate bill would make it possible for states to take action to protect their citizens while EPA analyses are under way. From this perspective, the timing of preemption under the House bill is preferable to the approach taken in the Senate bill.* • *However, setting a deadline for implementation as in the Senate bill is preferable to the approach under the House bill.* • *To ensure no regulatory gaps, many states believe that preferably, any preemption should occur only when compliance with EPA safety requirements takes effect.* • *In summary, from the perspective of states interested in taking prompt action on chemical hazards, it would be preferable to eliminate the pause preemption that appears in the Senate bill, but include an appropriate, limited statutory time frame for compliance.*	• *Permanent federal preemption:* For a substance that is found to present an unreasonable risk, preemption is effective as of the effective date of the rule issued by EPA. For a substance that is found not to present an unreasonable risk, preemption is effective as of the date of the EPA determination. • *Timing of compliance*: The rule must be complied with as soon as practicable but within 5 years for rules that are not bans or phaseouts. For bans or phaseouts, compliance dates must *start* "as soon as practicable, but not later than 5 years" after the rule is promulgated, and be fully implemented as soon as practicable. • *Pause preemption:* New state prohibitions or restrictions are preempted, starting when EPA publishes the scope of a risk evaluation, and ending when EPA either publishes the risk evaluation or reaches the statutory deadline for publication of the risk evaluation. • Chemicals for which EPA grants a manufacturer requested risk evaluation are not subject to pause preemption. • The first ten Workplan

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					chemicals for which EPA undertakes a risk evaluation are also not subject to pause preemption. • There are also additional pause preemption waiver provisions (see section on waivers, below).
State actions related to monitoring, disclosure, and related activities	• *Many states have reporting, monitoring, disclosure, labeling, options evaluation, assessment, planning, pollution prevention, and technical assistance programs and requirements, as well as other requirements and programs of this kind, and associated fees. It is important to many states that all of these requirements be clearly protected from preemption.*	• *The Senate bill specifies protection from preemption for a "reporting, monitoring, disclosure, or other information obligation."*	• *The House bill does not specify this exemption as clearly as the Senate bill, although there is discussion of the issue in the House committee report.*	• *Retaining the language in the Senate bill is important to make these protections clear.*	• Retains Senate approach.
State actions related to clean air and water and related activities	• *It is important to many states that action taken under other federal laws, as well as actions related to water quality, air quality, or waste management, be clearly protected from preemption. Both bills include some protections of this kind.*	• *The Senate bill specifies that there is no preemption of actions undertaken under the authority of another Federal law, or adopted "pursuant to authority under a law of the State or political subdivision of the State related to water quality, air quality, or waste treatment or disposal, except to the extent that the action (I) imposes a restriction on the manufacture, processing, distribution in commerce, or*	• *The House bill specifies that there is no preemption of actions taken under the authority of another Federal law, or of a requirement that "is adopted to protect air or water quality or is related to waste treatment or disposal," unless the requirement "actually conflicts" with EPA's action.*	• *The wording of each provision should be examined carefully as there are differences between the bills that could have implications for implementation.*	• Retains Senate approach

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		use of a chemical substance; and (II) addresses the same hazards and exposures, with respect to the same conditions of use as are included in the scope of the safety determination … but is inconsistent with the action of the Administrator; or would cause a violation of the applicable action by the Administrator …"			
Wording used to describe state actions	• *Many states are concerned about ensuring clarity about the actions to which preemption applies.*	• *In the Senate bill, the preemption language refers to "a statute or administrative action to require" development of information, or "a statute or administrative action to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of a chemical substance"*	• *In the House bill, preemption applies to "any requirement that applies to such chemical substance..."*	• *Many states believe this language in the House bill is too broad, and consider the wording in the Senate bill to be clearer.*	• For chemicals that EPA has found not to present an unreasonable risk, or that EPA has restricted, preemption applies to "a statute, criminal penalty, or administrative action to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of a chemical substance . . ." Note: The reference to "criminal penalty" is new in this version.
Scope of preemption	• *Issues related to uses & health effects. Many states believe that it is important that preemption be limited to both the uses and the health effects that have been considered by EPA and that states should be able to act on newly emerging science.* • *Some state agencies have pointed out that if new scientific findings or assessment methods emerge*	• *The Senate bill specifies that preemption applies only to "the hazards, exposure, risks, and uses or conditions of use" considered in the safety assessment and determination.* • *Significant new uses. The Senate bill specifies that states are preempted from requiring notification of a use of a chemical that EPA has designated as a significant new use and for which EPA has required notification.*	• *The House bill specifies that preemption applies to "any requirement that applies to such substance or mixture…and is designed to protect against exposure to the chemical substance or mixture either under the intended conditions of use considered by the Administrator in the risk evaluation..."* • *New chemicals or significant new uses. Under the House bill, broad state preemption can result if EPA imposes a requirement related to a new*	• *The language in the Senate bill is clearer than that of the House bill in limiting the scope of preemption for existing chemicals both to the uses and to the health and environmental concerns that have been considered by EPA.* • *New chemicals & significant new uses. The scope of preemption for new chemicals is considerably broader in the House bill than that in the Senate bill. Many states believe the more limited approach in the Senate bill is preferable, based on the principle that the scope of preemption should correspond to the scope of the action taken by EPA.*	• *Issues related to uses & health effects.* Retains Senate approach. Scope of permanent federal preemption is limited to the "hazards, exposures, risks, and uses or conditions of use" included in the scope of the risk evaluation (for pause preemption) or included in the final EPA action (for permanent federal preemption). • *Significant new uses.* Retains Senate approach. EPA significant new use notification requirements preempt similar notification requirements by states, for the same uses. (Note: EPA approval of a new chemical does not trigger preemption. No change from

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	that indicate a new or higher risk than was previously recognized, and EPA has not yet reviewed this new science, it is particularly important that states be able to take action. • *Issues related to new chemicals & significant new uses. Many states believe it is important to preserve the ability to regulate a chemical that EPA has not yet analyzed in detail. This includes chemicals for which a significant new use rule may have been issued.*		*chemical or a significant new use. Thus, under the approach of the House bill, when EPA acts to regulate a new chemical or a significant new use of an existing chemical, state regulations may be preempted without EPA having conducted a full analysis.*		earlier versions.)
"Grand-fathering"	• *Many states urge that all state and local laws, statutes, rules, regulations, orders and other actions and requirements adopted before any revised TSCA takes effect be grandfathered so that the states can continue to implement and enforce them.*	• *The Senate bill specifies that nothing in the Act shall''(A) be construed to preempt or otherwise affect the authority of a State or political subdivision of a State to continue to enforce any action taken before August 1, 2015, under the authority of a law of the State or political subdivision of the State that prohibits or otherwise restricts manufacturing, processing, distribution in commerce, use, or disposal of a chemical substance; or (B) be construed to preempt or otherwise affect any action taken pursuant to a State*	• *The House bill specifies that none of the bill's provisions "shall be construed to preempt or otherwise affect the authority of a State or political subdivision of a State to continue to enforce any action taken or requirement that has taken effect— (A) before August 1, 2015, under the authority of a State law that prohibits or otherwise restricts the manufacturing, processing, distribution in commerce, use, or disposal of a chemical*	• *Many states believe strongly that all existing statutes, rules, regulations and other actions or requirements that are in place at the time of the bill's adoption, including authority to undertake future actions under all existing laws and regulations, should be fully preserved.* • *At a minimum, this goal can be supported by retaining the Senate language on grandfathering, with the addition of the words "or requirement imposed" after the words "action taken" in both places where these words appear.*	• Retains sentence structure from Senate, with some modifications. Wording is updated to include the words "action taken or requirement imposed or requirement enacted…." Date is updated to April 22, 2016 for chemical-specific requirements.

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		law that was in effect on August 31, 2003."	*substance; or (B) pursuant to a State law that was in effect on August 31, 2003, unless an action or determination made by the Administrator under this title actually conflicts with the action taken or requirement that has taken effect pursuant to such a State law."*		
Waivers	• *Predictability is a priority for many states. From the perspective of these states, it is important to have the ability to receive a waiver from preemption when needed. The waiver process should be straightforward and predictable.*	• *The Senate bill includes two waiver processes.* • *For discretionary exemptions from permanent federal preemption, EPA is to make decisions based on factors including "compelling conditions" related to health or environment and an EPA evaluation of the state's use of science in decision making. These conditions are more burdensome to meet than those in existing TSCA.* • *For required exemptions from pause preemption, considerations include an EPA determination that the state "has a concern" about the chemical "based in peer-reviewed science." This appears to be more straightforward than the conditions for discretionary exemptions.* • *For both processes, the Senate bill includes a requirement and deadline for EPA to act on a waiver request.*	• *The House bill retains the existing TSCA language regarding waivers from permanent federal preemption.* • *The House bill does not include deadlines for EPA to act on a waiver request.*	• *Many states feel the final language regarding waivers from permanent federal preemption should retain the existing TSCA approach to waivers, and should also include a requirement and deadline for EPA to act on a waiver request.* • *Comments on Senate approach to waivers. In the Senate bill, EPA's evaluation of a state's use of science is more straightforward for required waivers than it is for discretionary waivers. Many states believe the expressed standard for required waivers is the more appropriate standard for states to meet for securing either type of waiver under the statute.*	• Retains Senate approach to *discretionary exemptions* from permanent federal preemption, in which EPA is to make decisions based on factors including "compelling conditions" related to health or environment and an EPA evaluation of the state's use of science in decision making, among other factors. • Retains Senate approach to *required exemptions* from pause preemption, in which considerations include an EPA determination that the state "has a concern" about the chemical "based in peer-reviewed science." • Final bill includes an additional waiver from pause preemption in which EPA must also provide a *required exemption* from pause preemption if a state or political subdivision of a state "has enacted a statute or proposed or finalized an administrative action intended to prohibit or otherwise restrict the manufacture, processing, distribution in commerce, or use

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					of the chemical substance" by a certain date: either (a) 18 months after the date when EPA initiated the prioritization process, OR (b) the date when EPA publishes the scope of the risk evaluation, whichever is sooner. Both processes retain Senate approach of including a requirement and deadline for EPA to act on a waiver request. • For *required exemptions* from pause preemption, if EPA fails to make a waiver determination within the required time period, the waiver is automatically granted, as in the Senate-passed bill. • An EPA decision on a waiver request is considered to be a final agency action and is subject to judicial review, as in the Senate-passed bill.
Savings clause - statutory & common law claims for damages	• *From the perspective of some states, it is important to ensure no preemption of the application of state statutory and common law claims for damages.*	• *The Senate bill states explicitly that nothing in the bill is intended to preempt the application of state statutory or common law claims in any way, including damage suits.*	• *The savings language in the House bill is not as clear in protecting remedies currently available to states, municipalities, and members of the public.*	• *From the perspective of some states, the tort savings language in the Senate bill is preferable.*	• Retains Senate approach.

2. OTHER POINTS RELATED TO STATE-FEDERAL RELATIONSHIP OR OTHERWISE OF INTEREST TO STATES

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Low priority chemicals and effects of state action on chemicals *(Note: This heading has been updated. Original row title was: State action on low priority chemicals.)*		• *If two or more states take action on a chemical that has not been designated as high priority, then the Senate bill requires EPA to conduct a prioritization screening for that chemical.*		• *This provision increases administrative burden for states somewhat.* • *If EPA were to decide to prioritize the chemical for a Safety Assessment, then new state actions could be preempted.* • *From the perspective of some states, it may be preferable to remove this language.*	• In deciding whether to initiate risk evaluations on chemicals requested by manufacturers, EPA is directed to give preference to "chemical substances for which the Administrator determines that restrictions imposed by 1 or more States have the potential to have a significant impact on interstate commerce or health or the environment." (Note: Language specific to low-priority chemicals does not appear in the final version of this provision.) • "The Administrator may revise the designation of a low-priority substance based on information made available to the Administrator."
Confidential business information	• *Both bills include a number of changes related to management of Confidential Business Information (CBI) claims.* • *Please note that this table does NOT cover CBI-related issues exhaustively. Only selected points are discussed here.*	• *The Senate bill requires EPA to share data with the states for use related to development, administration or enforcement of a law under specific circumstances.* • *The Senate bill requires EPA to share data with a government health or environmental professional, or a health care professional, under certain circumstances, subject to that individual signing a confidentiality agreement.* • *The Senate bill requires substantiation of most CBI claims, and provides a time frame for expiration of these claims unless they are*	• *The House bill allows EPA to share data with the states for use related to administration or enforcement of a law.* • *The House bill requires EPA to share data with a government health or environmental professional or health care professional, under certain circumstances, subject to statutory restrictions on that individual's ability to disclose the information to others.* • *The House bill expands upon existing CBI provisions related to*	• *States' ability to address chemical hazards within their borders is enhanced by access to CBI data. Requiring EPA to share CBI data with state environmental and public health authorities, and ensuring funding to do so, supports this state function. Many states believe the approach to data sharing in the Senate bill is preferable to that in the House bill.* • *It could also be useful to authorize EPA to share CBI with interstate organizations, such as the Interstate Chemicals Clearinghouse, in order to avoid inefficient duplication of efforts. Neither bill includes this provision.* • *The Senate and House bills differ with regard to the specific circumstances that trigger a release*	• Largely retains Senate approach. • Results of health and safety studies are generally not subject to CBI protection. • Chemical formulas, including molecular structures, can be subject to CBI protection if that information "discloses processes used in the manufacturing or processing of a chemical substance or mixture, or, in the case of a mixture, the portion of the mixture comprised by any of the chemical substances in the mixture." (Compromise between House and Senate approaches.)

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		resubstantiated. It also requires resubstantiation of all CBI claims filed to date for active chemicals. • *The Senate bill designates specific types of information, including health and safety data, that are not eligible for CBI protection.* • *The Senate bill requires EPA to review and approve, modify or deny CBI claims, with some exceptions.*	*health and safety studies to explicitly protect from disclosure chemical formulas, including molecular structures, used in manufacturing or processing a chemical or mixture.* • *The House bill does not require resubstantiation of past CBI claims filed.*	*of information to a health or environmental professional. These differences should be examined carefully as they are likely to affect the ability of states to respond to public health and environmental issues within their borders. The bills also take different approaches to limiting the ability of these professionals to communicate with others about key information on chemicals. Again, the specifics of these provisions could have important consequences for states' ability to protect their citizens.* • *Resubstantiation of CBI claims, as provided for in the Senate bill, is preferable from the perspective of states that may wish to take action on any of these chemicals, as important information may be unavailable due to CBI claims that have not been fully evaluated for validity.*	• A chemical subject to a ban or phaseout is generally not subject to CBI protection, but there are many possible exceptions, including for uses not subject to the ban, and for chemicals that meet certain criteria and are intended only for export. • Most CBI claims must be substantiated and periodically re-substantiated. • CBI information can be provided to government officials, contractors, or health or environmental professionals under some circumstances, subject to various limitations, including a requirement for a health or environmental professional to sign a confidentiality agreement • CBI sharing with states: "*shall* be disclosed to a state, political subdivision of a state, or tribal government, on written request, for the purpose of *administration* or *enforcement* of a law…." States must have applicable agreements with EPA, ensure measures, and have adequate authority to maintain TSCA protections. • CBI protection expires after 10 years; claimant must apply for an extension, with substantiation. • EPA must review and make a decision on CBI claims. • Reminder: These bullet points are not exhaustive.
Industry requests for	• *Many states are concerned that*	• *The Senate bill specifies that these industry-requested*	• *The House bill does not specify a maximum.*	• *To ensure that EPA staff time is not consumed by responding to industry*	• Retains Senate approach with a modification: the maximum is

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safety determinations	*significant amounts of EPA staff time could be consumed by responding to industry requests for safety determinations, rather than focusing on EPA-identified critical priorities to protect public health and the environment.*	*safety determinations are to account for a minimum of 25% and a maximum of 30% of the substances assessed by EPA.*	• *The House bill provides a time frame of 2 years for EPA to complete an assessment of a manufacturer-requested substance, and a time frame of 3 years for a chemical that EPA has selected as a priority.*	*requests, it would be preferable to many states if the provision allowing industry requests for safety determinations were removed.* • *If the provision is retained, retaining the maximum specified in the Senate bill would help to limit potential negative effects from this provision.* • *The different time frames for manufacturer-requested and EPA-prioritized substances under the House bill could exacerbate resource constraint problems, making it difficult for EPA to act promptly on high priority chemicals.*	raised to 50%. Chemicals drawn from the 2014 update of the TSCA Work Plan do not count toward this maximum.
State Grants	• *Federal support for state activities would help build and strengthen a federal – state partnership on TSCA issues such as co-enforcement, outreach to stakeholders, and other areas.*			• *Some states have suggested that it may be useful to direct EPA to use a portion of the fees collected from industry to provide chemical safety grants for the states and their representatives. These funds could be used for compliance and enforcement, technical assistance, pollution prevention programs, and sector and public education.*	• Not addressed.
Safer Choice		• *In its commentary on S. 697, the Senate committee questioned whether EPA's Safer Choice program should be maintained.*		• *EPA's Safer Choice program has been a useful program. Retaining the program without changes, including the alternatives assessment program, would enable on-going work to recognize the safest products on the market, helping businesses and consumers to differentiate among products and fostering continuous improvement.*	• Not addressed in bill text.
Testing processes & plans		*[Not covered in original table.]*			• Provides for formation of industry consortia for chemical testing. • Requires EPA to develop a strategic plan for "development and implementation of alternative test methods and

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					strategies to reduce, refine, or replace vertebrate animal testing and provide information of equivalent or better scientific quality….."

3. POINTS RELATED TO EPA AUTHORITIES

Selected additional points include the following. Please note this is not a comprehensive review.

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Safety standard & determin-ation of "unreason-able risk"	• *To the extent that state actions on chemicals will be preempted, it is particularly important to many states that EPA apply a safety standard that is adequate to protect public health.*	• *The Senate bill explicitly states within the definition of the safety standard that cost is not to be considered, and also clarifies that cost is not to be considered in all instances where the phrase "unreasonable risk" is used.*	• *The House bill states that the risk evaluation is to be conducted without consideration of cost, but does not make conforming changes to the entire underlying TSCA statute.*	• *For the use of the unreasonable risk standard, many states believe that a comprehensive approach to clarifying every regulatory provision in the TSCA statute should be adopted, making clear that cost is not taken into account in this process. This is done in the Senate bill.* • *The experience of many states has shown that in making decisions about chemicals it is important to use a standard that is protective of the most sensitive and vulnerable populations, and to employ an adequate margin of safety.* • *A standard of "reasonable certainty of no harm" would be more protective of public health than a standard of "unreasonable risk."*	• Clearly specifies that cost is not to be considered in making a risk determination. Retains Senate approach of maintaining this policy throughout TSCA. • The term "safety standard" has been eliminated, but the concepts from the definition are retained.
Role of cost analysis in decision making about regulations	• *Many states feel that EPA's ability to regulate chemicals and articles should not be subject to limitations related to analysis of costs.*	• *The Senate bill directs EPA, in making decisions about restrictions, to "take into consideration" information on costs and benefits of regulatory actions.*	• *The House bill directs EPA to impose requirements that are "cost-effective, except where the Administrator determines that additional or different requirements … are*	• *Based on the experience of many states, it would be preferable not to require EPA to justify its regulatory decisions with extensive economic analyses. The approach of the Senate bill noted here is preferable to the House bill's requirement noted*	• Largely retains Senate approach. • EPA must consider and publish a statement on "the reasonably ascertainable economic consequences of the rule," including the costs, benefits, and cost effectiveness of "the proposed and final regulatory action and of

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			necessary to protect against the identified risk"	*here related to cost effectiveness.*	the 1 or more primary alternative regulatory actions" considered by EPA. When deciding how to regulate the chemical, EPA must "factor in, to the extent practicable," these and other considerations, including availability of technically and economically feasible alternatives. Note: Additional views printed in the Congressional Record at the time of the Senate vote provide further clarification on this point.
Breadth of EPA authority	• *Many states feel that it is important that EPA have broad authority to take action on chemicals that do not meet the safety standard.*	• *For chemicals that do not meet the safety standard, the Senate bill provides EPA with the authority to "impose restrictions necessary to ensure that the chemical substance meets the safety standard under the conditions of use…" or to ban or phase out the chemical if the safety standard cannot be met.*	• *The House bill directs EPA to adopt a rule "so that the chemical substance or mixture no longer presents or will present an unreasonable risk, including an identified unreasonable risk to a potentially exposed subpopulation''*	• *To the extent that EPA actions will preempt those of states, it is important to provide EPA with broad authority to regulate chemicals that do not meet the safety standard, with an adequate safety margin, including consideration of potential future uses of the chemical.*	• EPA is directed to take action "so that the chemical substance or mixture no longer presents such risk." (Comments in Congressional Record note equivalence between "presents" and "presents or will present.") • Includes authority to ban or phase out chemicals.
Articles	• *A key goal for many states has been improved regulation of articles containing chemicals. Combined with the preemption of state authorities, both bills could potentially have the effect of limiting regulation of articles nationwide.*	• *The Senate bill provides that EPA may restrict articles "only to the extent necessary to address the identified risks in order to determine that the chemical substance meets the safety standard."* • *The Senate bill provides an exemption for replacement parts that were manufactured prior to the effective date of a restriction.*	• *The House bill provides for EPA to restrict articles "only to the extent necessary to protect against the identified risk."* • *The House bill exempts replacement parts that were designed prior to the publication date of a rule.*	• *Many states believe it is important to provide EPA with broad authority to regulate articles with an adequate safety margin. EPA should not be limited in the range of options available to it in regulating articles that contain chemicals found not to meet the safety standard or pose other risks to health or the environment.* • *It is important to note that an article may contain multiple chemicals, and may pose a threat to health or the environment based on the cumulative effects of those chemicals.* • *Regarding replacement parts,*	• Retains Senate and House language on EPA authority to restrict articles. • Exempts "replacement parts for complex durable goods and complex consumer goods that are designed prior to the date of publication" of the rule, subject to some limitations related to risk. • In order to require notification of a chemical in an article, EPA must make an affirmative finding that the "reasonable potential for exposure" justifies notification. (Retains Senate approach. This point was not covered in the January version of this table.)

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				any automatic exemption should apply to parts manufactured, not designed, prior to the date in question.	
Fees	• *From the perspective of many states, it is essential to fund EPA's work on chemicals adequately.*	• *The Senate bill requires EPA to establish certain fees.* • *These include fees related to manufacturer-requested safety assessments.* • *The remaining fees are to be set at levels that will meet the lower of: 25% of specified implementation costs, or $25 million.* • *EPA's ability to assess fees is contingent upon a specified amount of funding being appropriated to EPA for the relevant fiscal year.*	• *The House bill retains the approach of current TSCA, which allows, but does not require, EPA to establish fees to defray costs of administering the act. It does not specify a percentage or a dollar amount to be raised through the fees.*	• *Neither bill provides a mechanism for fully funding the new activities envisioned in the bills.* • *The approach in the Senate bill is preferable from the perspective of increasing the likelihood that EPA's work will be adequately funded.*	• Retains Senate approach. Establishes a TSCA Service Fee Fund. Fee authority would need to be renewed after ten years.
Administra-tion		*[Not covered in original table.]*			Selected points of interest not included in earlier version of table: • Directs EPA to develop guidance within 1 year "to assist interested persons in developing and submitting draft risk evaluations which shall be considered by the Administrator." • Directs EPA to create a new Science Advisory Committee on Chemicals to provide advice and consultation.

[1] The enrolled bill can be viewed at: https://www.congress.gov/bill/114th-congress/house-bill/2576/text?q=%7B%22search%22%3A%5B%22hr2576%22%5D%7D&resultIndex=1

[2] Note: As a procedural matter, the Senate substituted the content of S. 697 into the House bill, so that the Senate bill was technically adopted as an amendment to H.R. 2576. This affected only the nomenclature, not the content, of the two bills.