



SENATE PASSES TSCA REFORM

The legislation, which amends the Toxic Substance Control Act (TSCA), will now be sent to President Obama who is expected to sign the bill || JUNE 16, 2016

- Congress has passed the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the first meaningful reforms to the Toxic Substances Control Act ("TSCA") since its original enactment in 1976.
- These reforms remove some of the former obstacles to regulation included in the original TSCA and generally give EPA more flexibility to regulate new and existing chemicals.
- Although EPA is given more authority to regulate chemicals under these reforms, revisions include compromises won by the regulated community including more specific preemption of competing state and local laws and restrictions on regulation of finished goods (articles).

WASHINGTON, DC – Last week, Barnes & Thornburg LLP and AF&PA reported that the Senate approved by voice vote a sweeping bipartisan amendment to the federal law regulating chemical manufacturing and use, the Toxic Substances Control Act of 1976 (TSCA). The Frank R. Lautenberg Chemical Safety for the 21st Century Act (H.R. 2576), also called the Lautenberg Act, passed the U.S. House of Representatives with broad bipartisan majorities before the Memorial Day congressional recess. President Obama is expected to sign the legislation into law in the coming days. This marks the first significant revision to TSCA since its original passage in 1976, and in part seeks to reconcile U.S. practices with similar international programs, like REACH.

Provisions in the Lautenberg Act have been lauded as making long-necessary updates to TSCA, including: changing evaluation of new and existing chemicals in terms of risk evaluation and risk management; testing of new and existing chemicals; pre-emption of state and local regulations; the treatment of "Confidential Business Information;" and restrictions on the regulation of finished manufactured goods (or articles), among other changes. Final provisions of the legislation represent a compromise between environmental public interest groups seeking stricter oversight of chemicals and industry groups representing regulated manufacturers and importers. Below is a summary of the more significant changes to TSCA presented in the Lautenberg Act.

Evaluation of New and Existing Chemicals

The Lautenberg Act changes the way new and existing chemicals are regulated under TSCA. With regard to new chemicals, revisions to Section 5 of TSCA will provide EPA more flexibility in evaluating the safety of new chemicals in commerce.

With regard to the regulation of existing chemicals, the Lautenberg Act removes from TSCA Section 6 the problematic language specifying that existing chemicals be regulated by the "least burdensome requirement" and, instead, splits consideration of risk into two steps: 1. risk evaluation in which costs are not considered; and 2. risk management in which cost and benefits are considered. Under the existing language in TSCA, cost could be considered in the initial risk evaluation.

Preemption of State and Local Regulations

The Lautenberg Act includes a number of key differences from TSCA's prior approach, including preemption of state laws, which was very controversial due in large part to California's "Proposition 65" program. Specifically, the

CONTACT: Amanda Sumerix, Director of Communications
PHONE: 517.853.8880 || **CELL:** 989.657.4217 || **EMAIL:** asumerix@michiganforest.com



MICHIGAN
**FOREST
PRODUCTS**
COUNCIL

amendments prohibit states from implementing restrictions on the use of: (i) chemicals EPA has determined do not pose an unreasonable risk of injury to health or the environment, or (ii) existing chemicals for which EPA has issued a SNUR. Simply put, if EPA determines a chemical neither presents an unreasonable risk nor requires regulatory action, that decision preempts state laws that would contradict that determination (subject to some exclusions). The preemption is chemical specific and applies only when and to the extent EPA acts on a specific chemical.

All state TSCA provisions taken before April 22, 2016, are preserved (excluded from preemption), as are past and future actions taken under laws in effect on August 31, 2003. This carve out protects California's Proposition 65 and Massachusetts' Toxics Use Reduction Act.

These new TSCA provisions preempt both past state action - unless grandfathered - and future state action, unless the state action is:

- identical to the federal requirement;
- adopted under a federal law; or
- adopted under a state air or water quality or waste treatment or disposal law.

The Lautenberg Act thus expands substantially EPA's preemption of state chemical safety laws by introducing a High Priority Pause to the review of chemical safety, during which time states cannot regulate a chemical already under EPA's consideration. Previously, TSCA preempted state laws only after EPA adopted a final rule or regulated the same chemical. Changes to TSCA's preemption provisions were thought to be an important piece of compromise between industry and environmental public interest groups as industry sought to avoid conflicting regulation at state and local levels.

Restrictions on the Regulations of Finished Goods (Articles)

In another reform touted by the regulated community, the Lautenberg Act also tightens requirements for EPA's use of SNURs to trigger notifications for importing or processing chemicals in articles (finished goods). Under the Act, EPA must find a reasonable potential for exposure through the article justifies a Significant New Use Notice (SNUN). Additionally, the legislation provides exemptions for certain critical articles, if restriction of a chemical used in the article would disrupt the economy, national security or critical infrastructure, or where the chemical provides a substantial benefit to health, safety, or the environment.

###

CONTACT: Amanda Sumerix, Director of Communications
PHONE: 517.853.8880 || **CELL:** 989.657.4217 || **EMAIL:** asumerix@michiganforest.com