

TSCA Reform Update

Association of Corporate Counsel

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TSCA Background

TSCA is the primary federal chemicals law

Adopted in 1976, not updated since then

- Perceived as ineffective
- Some parts work well, others much less so

States have adopted their own restrictions on chemicals in the absence of TSCA restrictions

Many stakeholders have called for legislative change

This Congress will pass TSCA legislation soon

What Works and What Doesn't

Testing required for about 200 chemicals

- Risk findings required before test rule
- Must proceed by rulemaking

New chemicals provision works well

- EPA has reviewed about 20,000 new chemicals and added them to the TSCA Inventory
- Where EPA has concerns, it imposes an order imposing restrictions

New uses of existing chemicals works well

- > 1700 significant new use rules for > 1900 chemicals
- Concern: applying SNURs to chemicals in articles

What Works and What Doesn't

Authority to restrict existing chemicals does not work

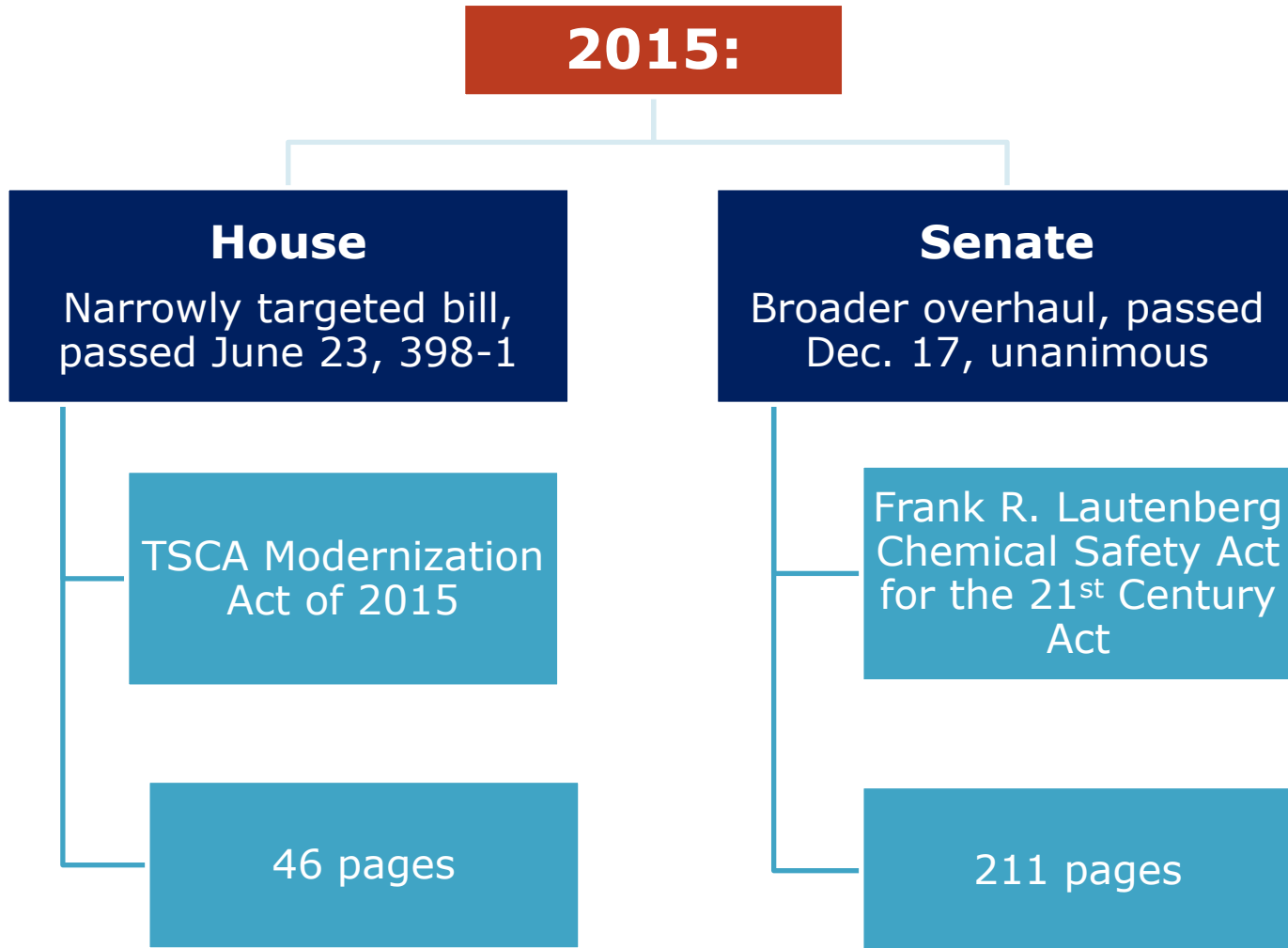
- PCBs + handful of other chemicals restricted
- EPA must impose "least burdensome" restrictions
- Asbestos ban rulemaking invalidated in 1991
- No section 6 rulemaking for next 24 years

EPA difficulty in following through on chemicals of interest

- Priorities shift without completing work

TSCA Legislation

Multiple bills introduced since 2005



What Happens Next

Senate passed House bill, as amended to read like Senate bill, **returned to House**

House may amend bill as amended – **goes to Senate for consideration**

House may approve bill as amended – **goes to President**

House and Senate may have a conference committee – **goes to House and Senate, then to President**



Key Issues for Companies

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Articles:

To what extent would the legislation allow EPA to maintain its authority to regulate substances in articles?

Preemption:

To what extent would the legislation preempt:

- current state chemicals legislation?
- authority of states to enact future chemicals legislation?

Confidential business information:

To what extent would the legislation protect CBI?



**Key Points of the House Bill
(as passed by the House in June)**

§ 5 – New Chemicals and SNURs

No changes to existing TSCA language

- EPA generally has the authority to restrict use of chemicals in articles through SNURs, although has done so sparingly

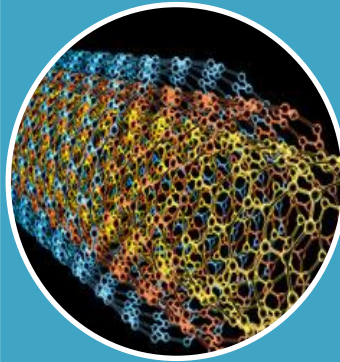
§ 6 – Risk Evaluation



Ten or more risk evaluations must be performed each year



EPA may not consider cost or other factors not directly related to health or the environment when conducting a risk evaluation



Finding that chemical substance does not and will not present an unreasonable risk of injury to health or the environment will be subject to notice and comment prior to publication



Determination of no unreasonable risk is a final agency action subject to judicial review



Determination of unreasonable risk triggers rulemaking requirement

EPA must perform **risk evaluation** to determine whether or not a chemical substance presents or will present an unreasonable risk of injury to health or the environment

§ 6 – Risk Management

Proposed rule must be published within one year of publication of risk evaluation; **final rule** must be published within two years of publication of risk evaluation (extensions are available).

Rules must be cost “cost-effective” – must consider, among other things, benefits of chemical substances for various uses, economic consequences of the rule, and availability of alternatives

Rules must exempt replacement parts designed prior to publication date of rule, unless EPA finds parts contribute significantly to identified risk

§ 6 – Risk Management

Deletes current requirement that rule impose “**least burdensome requirements**” necessary to protect against the risk.

Rule may apply to articles only to extent necessary to protect against the risk EPA has identified

§ 14 - CBI



EPA may disclose CBI to state, locality, tribe, government health official, treating physician



10-year life for CBI claims; can be renewed without limit



Requires EPA to notify company designating information as CBI 60 days prior to making the information public

§ 18 – Preemption

No preemption during risk evaluation

Finding of no unreasonable risk

- Preempts new and existing state requirements for intended conditions of use considered in risk evaluation

Finding of unreasonable risk

- No preemption; await risk management rule

Rulemaking preempts state requirements

§ 18 – Preemption

Exceptions to preemption for:

- Identical state restrictions
- State restrictions that address air, water, waste

Deletes exception for state bans

Savings clause for:

- State restrictions that took effect before August 1, 2015
- Requirements pursuant to a state law in effect on August 31, 2003 (CPSIA – Prop. 65)
- State tort and contract law



**Key Points of the Senate Bill
(as inserted into House bill and
passed on Dec. 17)**

§ 5 – New Chemicals and SNURs

EPA must find that a chemical is likely to meet the safety standard, or else EPA must restrict

Articles

- SNURs apply only if EPA makes affirmative finding that reasonable exposure potential from article warrants notification
- Unclear how much of a roadblock this would be to regulation of chemicals in articles

§ 6 – Safety Assessment, Safety Determination, Risk Management

Similar to House bill

- More details; adds § 4A, prioritization

EPA must publish scope of safety assessment

- Required within 6 months of designation
- Also determines scope of preemption
- Triggers preemption on some new state restrictions

Articles

- Rules applicable only to extent necessary to address identified risks to determine chemical meets safety standard (similar to House bill)

§ 8 – Information Collection and Reporting

Active chemicals reporting

- Manufacturers and processors must:
 - report all their chemicals in active commerce to EPA
 - Within 18 months of enactment
 - Thereafter, before activating
 - substantiate all their CBI claims for active substances on confidential Inventory

§ 14 - CBI

Generally similar to House version

- More detailed – 30 pages vs. 4 pages
- Confidentiality lasts for 10 years (renewable without limit)

Disclosure limited to state and locality (not tribes), only if confidentiality protected

State agency officials must provide statement of need and confidentiality agreement

EPA to review CBI claims for active substances

§ 18 - Preemption

Similar to House provision, with some differences

“High priority pause” for new state restrictions after publish scope of safety assessment

- “Death zone”

Exemptions from preemption:

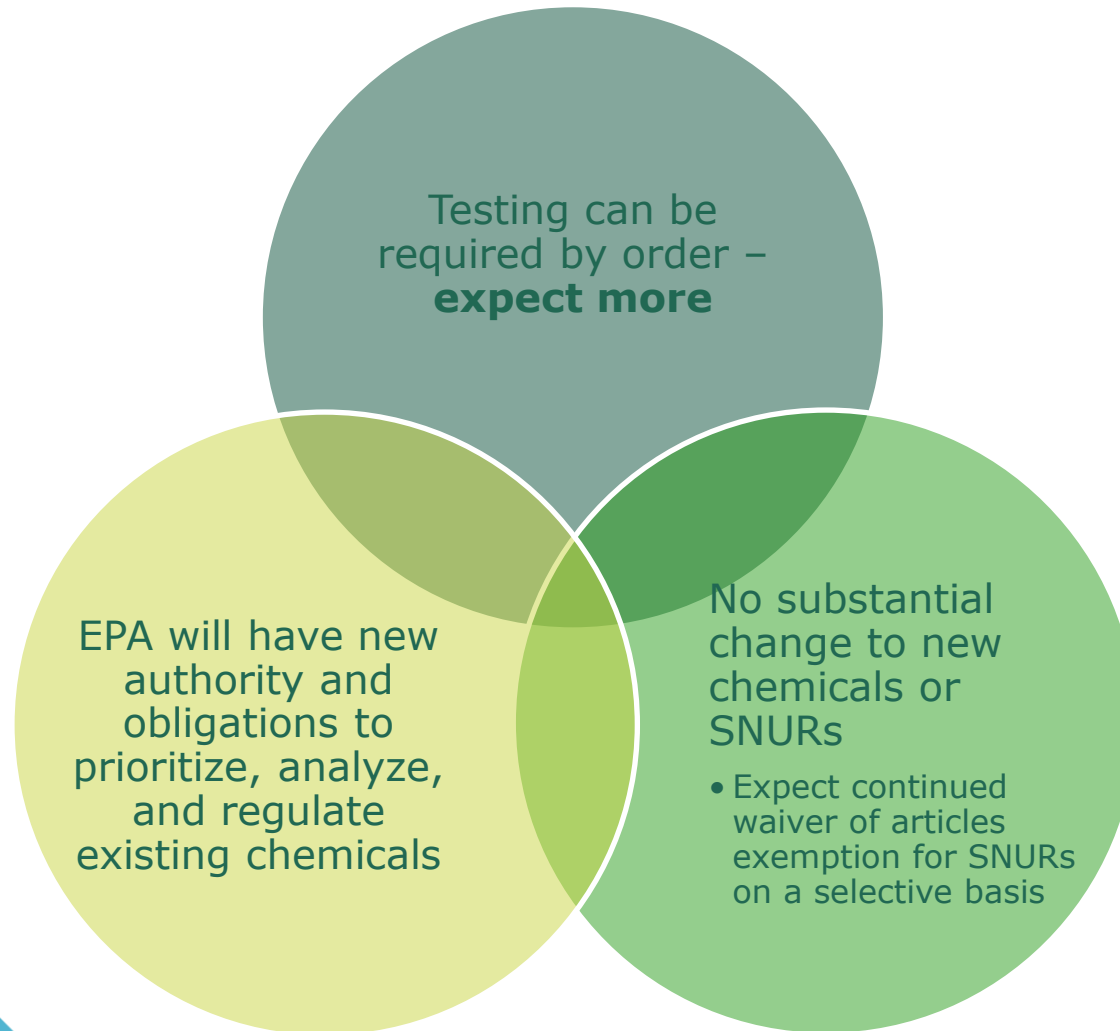
- Implements a reporting, monitoring, disclosure, or other information obligation for a chemical
 - California Safer Consumer Products regulations
- Related to air, water, waste, unless it restricts manufacture, processing, distribution, or use
 - California rules on VOCs in consumer products



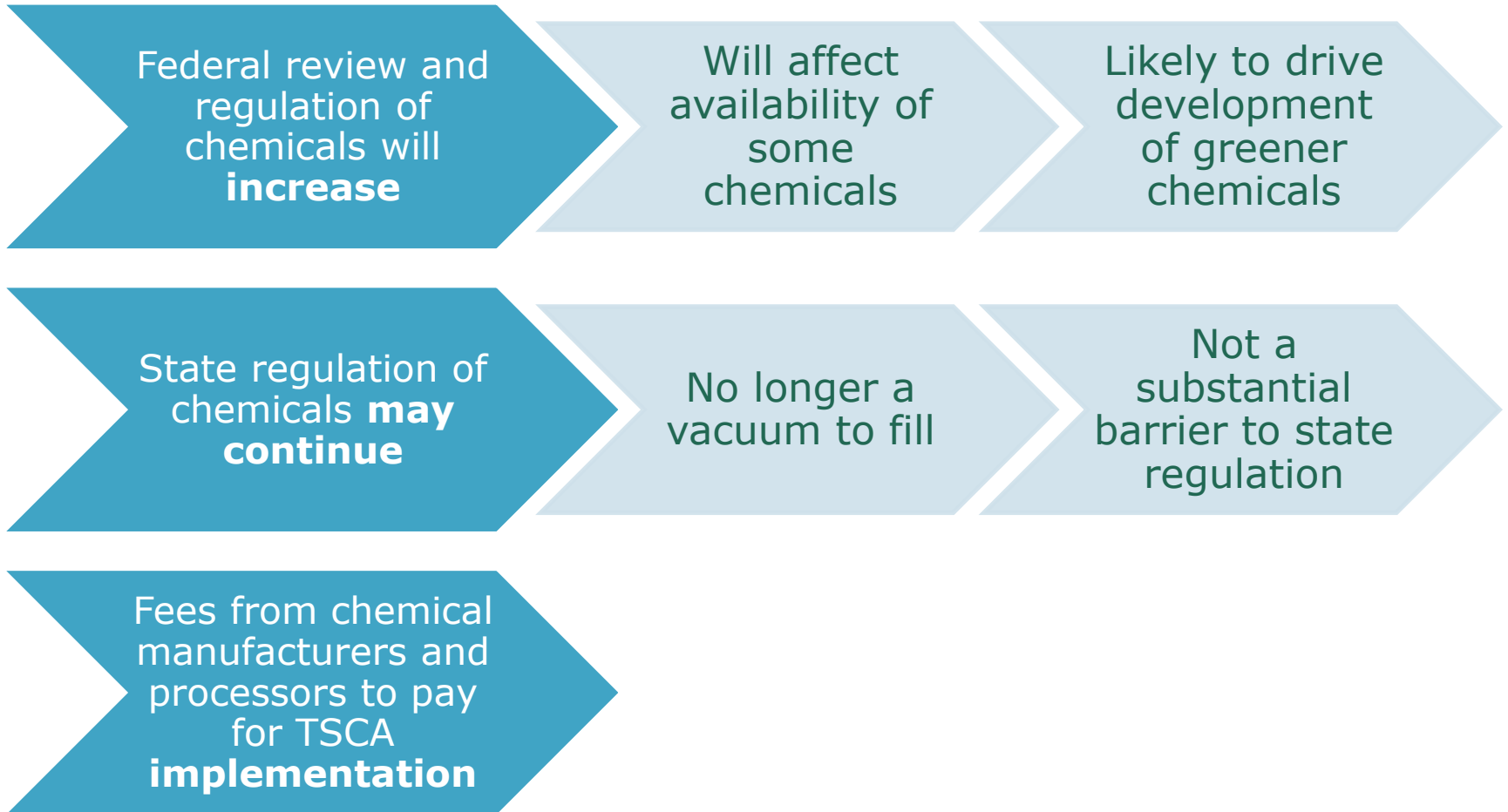
Key Messages

TSCA Reform Is Coming

- Before election season, probably soon
- Will include common elements to House and Senate bills



What Does This Mean?



Questions?

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