1 restrictions on expenditures applicable
2 to the Federal government as a whole.
3 "(C) UNUSED FUNDS.—Amounts in the
4 Fund not currently needed to carry out this
5 subsection shall be—
6 "(i) maintained readily available or on
7 deposit;
8 "(ii) invested in obligations of the
9 United States or guaranteed by the United
10 States; or
11 "(iii) invested in obligations, partici-
12 pations, or other instruments that are law-
13 ful investments for fiduciary, trust, or pub-
14 lic funds.
15 "(D) MINIMUM AMOUNT OF APPROPRIA-
16 TIONS.—Fees may not be assessed for a fiscal
17 year under this section unless the amount of
18 appropriations for salaries, contracts, and ex-
19 penses for the functions (as in existence in fis-
20 cal year 2015) of the Office of Pollution Pre-
21 vention and Toxics of the Environmental Pro-
22 tection Agency for the fiscal year (excluding the
23 amount of any fees appropriated for the fiscal
24 year) are equal to or greater than the amount
25 of appropriations for covered functions for fiscal

1 year 2015 (excluding the amount of any fees
2 appropriated for the fiscal year).
3 "(5) AUDITING.—
4 "(A) FINANCIAL STATEMENTS OF AGEN-
5 CIES.—For the purpose of section 3515(c) of
6 title 31, United States Code, the Fund shall be
7 considered a component of an executive agency.
8 "(B) COMPONENTS.—The annual audit re-
9 quired under sections 3515(b) and 3521 of that
10 title of the financial statements of activities
11 under this subsection shall include an analysis
12 of—
13 "(i) the fees collected under para-
14 graph (1) and disbursed;
15 "(ii) compliance with the deadlines es-
16 tablished in section 6 of this Act;
17 "(iii) the amounts budgeted, appro-
18 priated, collected from fees, and disbursed
19 to meet the requirements of sections 4, 4A,
20 5, 6, 8, and 14, including the allocation of
21 full time equivalent employees to each such
22 section or activity; and
23 "(iv) the reasonableness of the alloca-
24 tion of the overhead associated with the

1 conduct of the activities described in para-
2 graph (2)(A).
3 "(C) INSPECTOR GENERAL.—The Inspec-
4 tor General of the Environmental Protection
5 Agency shall—
6 "(i) conduct the annual audit required
7 under this subsection; and
8 "(ii) report the findings and rec-
9 ommendations of the audit to the Adminis-
10 trator and to the appropriate committees
11 of Congress.
12 "(6) TERMINATION.—The authority provided by
13 this section shall terminate at the conclusion of the
14 fiscal year that is 10 years after the date of enact-
15 ment of the Frank R. Lautenberg Chemical Safety
16 for the 21st Century Act, unless otherwise reauthor-
17 ized or modified by Congress.";
18 (2) in subsection (e), by striking "Health, Edu-
19 cation, and Welfare" each place it appears and in-
20 serting "Health and Human Services"; and
21 (3) adding at the end the following:
22 "(h) PRIOR ACTIONS.—Nothing in this Act elimi-
23 nates, modifies, or withdraws any rule promulgated, order
24 issued, or exemption established pursuant to this Act be-

1 fore the date of enactment of the Frank R. Lautenberg
2 Chemical Safety for the 21st Century Act.''.

3 **SEC. 24. DEVELOPMENT AND EVALUATION OF TEST METH-**
4 **ODS AND SUSTAINABLE CHEMISTRY.**

5 Section 27 of the Toxic Substances Control Act (15
6 U.S.C. 2626) is amended—

7 (1) in subsection (a), in the first sentence by
8 striking ''Health, Education, and Welfare'' and in-
9 serting ''Health and Human Services''; and

10 (2) by adding at the end the following:

11 ''(c) SUSTAINABLE CHEMISTRY PROGRAM.—The
12 President shall establish an interagency Sustainable
13 Chemistry Program to promote and coordinate Federal
14 sustainable chemistry research, development, demonstra-
15 tion, technology transfer, commercialization, education,
16 and training activities.

17 ''(d) PROGRAM ACTIVITIES.—The activities of the
18 Program shall be designed to—

19 ''(1) provide sustained support for sustainable
20 chemistry research, development, demonstration,
21 technology transfer, commercialization, education,
22 and training through—

23 ''(A) coordination of sustainable chemistry
24 research, development, demonstration, and tech-

1 nology transfer conducted at Federal labora-
2 tories and agencies; and
3 "(B) to the extent practicable, encourage-
4 ment of consideration of sustainable chemistry
5 in, as appropriate—
6 "(i) the conduct of Federal and State
7 science and engineering research and de-
8 velopment; and
9 "(ii) the solicitation and evaluation of
10 applicable proposals for science and engi-
11 neering research and development;
12 "(2) examine methods by which the Federal
13 Government can create incentives for consideration
14 and use of sustainable chemistry processes and prod-
15 ucts, including innovative financing mechanisms;
16 "(3) expand the education and training of un-
17 dergraduate and graduate students and professional
18 scientists and engineers, including through partner-
19 ships with industry, in sustainable chemistry science
20 and engineering;
21 "(4) collect and disseminate information on sus-
22 tainable chemistry research, development, and tech-
23 nology transfer including information on—
24 "(A) incentives and impediments to devel-
25 opment, manufacturing, and commercialization;

1 "(B) accomplishments;
2 "(C) best practices; and
3 "(D) costs and benefits;
4 "(5) support (including through technical as-
5 sistance, participation, financial support, or other
6 forms of support) economic, legal, and other appro-
7 priate social science research to identify barriers to
8 commercialization and methods to advance commer-
9 cialization of sustainable chemistry.
10 "(e) INTERAGENCY WORKING GROUP.—
11 "(1) ESTABLISHMENT.—Not later than 180
12 days after the date of enactment of the Frank R.
13 Lautenberg Chemical Safety for the 21st Century
14 Act, the President, in consultation with the Office of
15 Science and Technology Policy, shall establish an
16 Interagency Working Group that shall include rep-
17 resentatives from the National Science Foundation,
18 the National Institute of Standards and Technology,
19 the Department of Energy, the Environmental Pro-
20 tection Agency, the Department of Agriculture, the
21 Department of Defense, the National Institutes of
22 Health, and any other agency that the President
23 may designate to oversee the planning, management,
24 and coordination of the Program.

"(2) GOVERNANCE.—The Director of the National Science Foundation and the Assistant Administrator for Research and Development of the Environmental Protection Agency, or their designees, shall serve as co-chairs of the Interagency Working Group.

"(3) RESPONSIBILITIES.—In overseeing the planning, management, and coordination of the Program, the Interagency Working Group shall—

"(A) establish goals and priorities for the Program, in consultation with the Advisory Council;

"(B) provide for interagency coordination, including budget coordination, of activities under the Program;

"(C) meet not later than 90 days from its establishment and periodically thereafter; and

"(D) establish and consult with an Advisory Council on a regular basis.

"(4) MEMBERSHIP.—The Advisory Council members shall not be employees of the Federal Government and shall include a diverse representation of knowledgeable individuals from the private sector (including small- and medium-sized enterprises from across the value chain), academia, State and tribal

1 governments, and nongovernmental organizations
2 and others who are in a position to provide exper-
3 tise.
4 "(f) AGENCY BUDGET REQUESTS.—
5 "(1) IN GENERAL.—Each Federal agency and
6 department participating in the Program shall, as
7 part of its annual request for appropriations to the
8 Office of Management and Budget, submit a report
9 to the Office of Management and Budget that—
10 "(A) identifies the activities of the agency
11 or department that contribute directly to the
12 Program; and
13 "(B) states the portion of the agency or
14 department's request for appropriations that is
15 allocated to those activities.
16 "(2) ANNUAL BUDGET REQUEST TO CON-
17 GRESS.—The President shall include in the annual
18 budget request to Congress a statement of the por-
19 tion of the annual budget request for each agency or
20 department that will be allocated to activities under-
21 taken pursuant to the Program.
22 "(g) REPORT TO CONGRESS.—
23 "(1) IN GENERAL.—Not later than 2 years
24 after the date of enactment of the Frank R. Lauten-
25 berg Chemical Safety for the 21st Century Act, the

1 Interagency Working Group shall submit a report to
2 the Committee on Science, Space, and Technology
3 and Committee on Energy and Commerce of the
4 House of Representatives and the Committee on En-
5 vironment and Public Works and the Committee on
6 Commerce, Science, and Transportation of the Sen-
7 ate that shall include—
8 "(A) a summary of federally funded sus-
9 tainable chemistry research, development, dem-
10 onstration, technology transfer, commercializa-
11 tion, education, and training activities;
12 "(B) a summary of the financial resources
13 allocated to sustainable chemistry initiatives;
14 "(C) an analysis of the progress made to-
15 ward achieving the goals and priorities of this
16 Act, and recommendations for future program
17 activities;
18 "(D) an assessment of the benefits of ex-
19 panding existing, federally-supported regional
20 innovation and manufacturing hubs to include
21 sustainable chemistry and the value of directing
22 the creation of 1 or more dedicated sustainable
23 chemistry centers of excellence or hubs; and
24 "(E) an evaluation of steps taken and fu-
25 ture strategies to avoid duplication of efforts,

streamline interagency coordination, facilitate information sharing, and spread best practices between participating agencies in the Program.

"(2) SUBMISSION TO GAO.—The Interagency Working Group shall also submit the report described in paragraph (1) to the Government Accountability Office for consideration in future Congressional inquiries.".

SEC. 25. STATE PROGRAMS.

Section 28 of the Toxic Substances Control Act (15 U.S.C. 2627) is amended—

(1) in subsection (b)(1)—

(A) in subparagraphs (A) through (D), by striking the comma at the end of each subparagraph and inserting a semicolon; and

(B) in subparagraph (E), by striking ", and" and inserting "; and"; and

(2) by striking subsections (c) and (d).

SEC. 26. AUTHORIZATION OF APPROPRIATIONS.

Section 29 of the Toxic Substances Control Act (15 U.S.C. 2628) is repealed.

SEC. 27. ANNUAL REPORT.

Section 30 of the Toxic Substances Control Act (15 U.S.C. 2629) is amended by striking paragraph (2) and inserting the following:

"(2)(A) the number of notices received during each year under section 5; and

"(B) the number of the notices described in subparagraph (A) for chemical substances subject to a rule, testing consent agreement, or order under section 4;".

SEC. 28. EFFECTIVE DATE.

Section 31 of the Toxic Substances Control Act (15 U.S.C. 2601 note; Public Law 94–469) is amended—

(1) by striking "Except as provided in section 4(f), this" and inserting the following:

"(a) IN GENERAL.—This"; and

(2) by adding at the end the following:

"(b) RETROACTIVE APPLICABILITY.—Nothing in this Act shall be interpreted to apply retroactively to any State, Federal, or maritime legal action commenced prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.".

Message

From: Jackson, Ryan (EPW) [Ryan_Jackson@epw.senate.gov]
Sent: 3/11/2015 10:35:44 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
CC: Karakitsos, Dimitri (EPW) [Dimitri_Karakitsos@epw.senate.gov]
Subject: RE: Frank Lautenberg bill
Attachments: JimJonesInvite.pdf

Last piece.

Thanks again.

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Wednesday, March 11, 2015 5:44 PM
To: Jackson, Ryan (EPW)
Cc: Karakitsos, Dimitri (EPW)
Subject: Re: Frank Lautenberg bill

Thanks.

Sent from my iPhone

On Mar 11, 2015, at 4:05 PM, Jackson, Ryan (EPW) <Ryan_Jackson@epw.senate.gov> wrote:

> Laura -
>
> I just wanted to ensure you had a copy of the bill as introduced, S. 697 from legislative counsel. Attached is the redline comparing the bill as introduced to the version we provided you March 4 just because there's been 5 really small changes that I think are marginal but wanted full disclosure.
>
> The changes in the attached redline from legislative counsel are the following:
> (1) correcting some section number references on pages 20, 22, 53, 55, 57, 58-59;
> (2) the addition of the word "law" two times in the pending litigation savings clause on page 58 specifically stating law after state and maritime;
> (3) the replacement of the word "injury" with "harm" in the safety standard and throughout the bill;
> (4) on page 63 rephrasing of the language in "(h) Prior Actions," changes ~~requires the Administrator to modify or withdraw~~ to simply state Nothing in the Act eliminates, modifies, or withdraws any rules promulgated.
> (5) on page 25 under (c) Safety Determinations, changes "(i) impose restrictions necessary to ensure that the chemical substance meets the safety standard under the ~~intended or reasonably anticipated~~ conditions of use; or"
>
> I'm also emailing you the formal invite letter for Administrator Jones this afternoon.
>
> Thanks again.
>
> _____
> Ryan Jackson
> Staff Director
> U.S. Senate Committee on Environment & Public Works
> 410 Dirksen Senate Office Building

202-224-6176
202-228-1007 facsimile

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BETTINA POIRIER, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

March 11, 2015

Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Dear Mr. Jones:

On behalf of the Senate Committee on Environment and Public Works, we would like to invite you to testify before the Full Committee on Wednesday, March 18, 2015, beginning at 9:30 a.m. in Room 406 of the Dirksen Senate Office Building. The purpose of the hearing is to examine the "Frank Lautenberg Chemical Safety for the 21st Century Act."

In order to maximize the opportunity to discuss this matter with you and other witnesses, we ask that your oral testimony be limited to five minutes. Your written testimony can be comprehensive and will be included in the printed record in its entirety, together with any other materials you would like to submit.

To comply with Committee rules, please e-mail a copy of your testimony to john_glennon@epw.senate.gov and deliver 100 hard copies (double-sided if possible) 48 hours in advance of the hearing. If one is available, you may include a brief biography as well. If you plan to use or refer to any charts, graphs, diagrams, photos, maps or other exhibits in your testimony, please include an electronic or hard copy in your advance submissions. Exhibits or other materials that are not provided to the Committee by this time cannot be used for the purpose of presenting testimony. Testimony should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about this invitation or the hearing, please feel free to contact Dimitri Karakitsos on the Committee's Majority staff at (202) 224-0146 or Jason Albritton on the Committee's Minority staff at (202) 224-8832.

Sincerely,

Barbara Boxer
Ranking Member

James M. Inhofe
Chairman

PRINTED ON RECYCLED PAPER

Message

From: Jackson, Ryan (Inhofe) [Ryan_Jackson@inhofe.senate.gov]
Sent: 4/6/2015 9:51:43 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
Subject: Jim Jones QFR from EPW
Attachments: Jim Jones.pdf

Hey Laura, happy recess.

We sent QFRs out on our TSCA hearing. Attached are the questions for Administrator Jones.

Thanks.

Ryan Jackson
Chief of Staff
U.S. Senator James M. Inhofe
205 Russell Senate Office Building
202-224-4721
202-228-1007 facsimile

JAMES M. INHOFE, OKLAHOMA, CHAIRMAN

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RYAN JACKSON, MAJORITY STAFF DIRECTOR
BETTINA POIRIER, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

April 6, 2015

Jim Jones
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
Environment Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Dear Mr. Jones:

On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Wednesday, March 18, 2015 to examine the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697). The committee greatly appreciates your attendance and participation in this hearing.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. We ask that you respond to each member's request in a separate typed document. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth_Olsen@epw.senate.gov or deliver one hard copy by April 15, 2015. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Dimitri Karakitsos, Senior Counsel on the Committee's Majority staff at (202) 224-6176, or Jason Albritton, Minority Senior Policy Advisor at (202) 224-1914.

Sincerely,

Barbara Boxer
Ranking Member

James M. Inhofe
Chairman

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RE: QFRs from examining the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697).
DT: April 6, 2015

Senator Inhofe Questions

Questions for Jim Jones

1. During the March 18 hearing, you stated that EPA would interpret the "likely to meet" standard for low priority chemicals as requiring the Agency be very confident of that determination. Please provide additional information on how the Agency would expect to be confident of that determination. In particular, please contrast current law with the approach required under S. 697.

2. Several times during the hearing on March 18, you stated that EPA had "no duty" to regulate chemicals under TSCA today. Yet under Section 5, EPA clearly has a duty to review and possibly regulate new chemicals, and under Section 6 EPA clearly has a duty to regulate chemicals that pose an unreasonable risk to health or the environment. Please clarify your statement that "EPA has no duty to regulate chemicals under TSCA today" ?

3. In response to a question posed at the March 18 hearing, you stated there was "ambiguity" with respect to the preemption of State clean air and clean water regulations.
    a. Does TSCA today preempt state actions under the Clean Air Act or any other federal law?
    b. Is TSCA today "ambiguous" on the preemptive effect of a TSCA action on state clean air and water regulations?
    c. Under TSCA today, if a state regulates a chemical substance under a state clean water standard that EPA finds does not pose an unreasonable risk, and that EPA therefore finds does not warrant regulation under Sections 5 or 6, would EPA's decision preempt the state action?

4. You testified in November 2014 that EPA should have clear authority to assess chemicals against a risk-based standard and to take action on chemicals that do not meet the standard.
    a. Does S. 697 mandate that EPA base its chemical safety decisions solely on considerations of risk to public health and the environment?
    b. Is S. 697 clear that costs and benefits may not factor into a chemical safety evaluation?
    c. Does S. 697 require that all chemicals in commerce, including those "grandfathered" under existing TSCA, be reviewed?

5. You testified in November 2014 that EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on risk and exposure considerations.
    a. Does S. 697 require EPA to establish a risk-based prioritization screening process within a year of enactment?
    b. How does EPA's process under the Work Plan Chemical program compare to the requirements of S. 697 for the prioritization, assessment and possible regulation of priority substances?

RE: QFRs from examining the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697).
DT: April 6, 2015

Senator Vitter Questions

Questions for Jim Jones

1. Can you please explain the impact on an existing state law once a chemical is designated a high priority? The intention is that any and all existing state laws and regulations remain in place after a chemical is designated as a high priority, is that your clear interpretation of the language in the bill?

2. EPA adopted Compliance Monitoring Guidance for TSCA in 2011. Does that guidance anticipate a role for state governments in implementing or enforcing EPA's new and existing chemicals program?

3. Under TSCA's existing preemption provision States can adopt requirements that are "identical" to EPA's decisions without running afoul of TSCA's preemption provision. If a State adopts a requirement identical to TSCA, the State would have a responsibility to enforce its own law, not federal law, correct? In fact, there is no "co-enforcement" of federal law by the States under TSCA today, or under S. 697, correct?

4. In your response to a question posed at the March 18, 2015 hearing on co-enforcement, you said you were not aware that co-enforcement by States that has created any problems. Your response appeared to indicate a view that State co-enforcement required the States to adopt the exact same standard or regulation as EPA.
    a. EPA has issued hundreds of Significant New Use Rules over the years. Under TSCA today, those actions preempt state action. How many state actions to restrict or prohibit chemicals has EPA determined are preempted by SNURs?
    b. How many state actions regarding testing requirements has EPA determined are preempted by test rules or consent agreements under Section 4?
    c. Does EPA regularly assess state restrictions or prohibitions on chemical substances to determine if they adopt the "exact" standard or regulation as EPA?
    d. What criteria does EPA apply to determine if a state action on a chemical substance is identical to the EPA action?
    e. Does EPA believe that state enforcement and penalty provisions associated with a state action on a chemical substance must also be identical to federal law or regulation?
    f. Is it possible that State law might be enforced differently from Federal law, and that significant state-to-state differences in enforcement could result in an inconsistent patchwork of state regulation?

RE: QFRs from examining the Frank R. Lautenberg Chemical Safety for the 21st Century Act (S. 697).
DT: April 6, 2015

Questions from Senator Markey

Questions for Jim Jones

1. New York's Attorney General recently sent a letter describing the ways State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. Do you agree that all of the erosions of State authority described in this letter are enabled by the bill text?

2. Vermont's Attorney General recently sent a letter describing the ways State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. Do you agree that all of the erosions of State authority described in this letter are enabled by the bill text?

3. The Attorneys General of New York, Iowa, Maine, Maryland, Oregon and Washington recently sent a letter describing the ways State authority to set strong chemical safety standards and enforce existing laws is preempted in the Udall-Vitter bill. Do you agree that all of the erosions of State authority described in this letter are enabled by the bill text?

4. The Udall-Vitter bill includes language that allows EPA to grant States permission to set stronger chemical safety standards if EPA determines that there is a State or local need to protect health or the environment from that chemical. Do you agree that it would be extremely difficult for EPA to make that determination, since the chemical would pose the same danger in one State as it would in another State?

5. The Udall-Vitter bill includes provisions that require EPA to give preference to industry requests to pay for EPA designation of a chemical as "high priority" when regulations on that chemical have been imposed by one or more States. Do you agree that this language could be used to facilitate or accelerate the preemption of planned State chemical safety standards?

6. The Udall-Vitter bill contains a requirement that States notify EPA whenever they take action to regulate a chemical that EPA has not yet designated as a "high priority". EPA then has to determine whether it should deem that chemical as "high priority" if the State's regulation would have significant economic impacts or if two or more States have already regulated it. Do you agree that this language could make it more likely that EPA would act to preempt State regulation of a chemical by classifying it as "high priority"?

7. In 1989, EPA tried to ban asbestos under its TSCA authority, but industry successfully overturned the ban in court. The term in the Udall-Vitter bill that is used to define what is meant by "safe" contains the "unreasonable risk" language that was in part the subject of that litigation. Do you believe that the use of this same language that has already been the subject of litigation would increase the likelihood that EPA would be sued using some of the same arguments industry used to overturn the asbestos ban?

8. In 2014, a chemical safety case decided in the DC Circuit of the US Court of Appeals reiterated an earlier finding that "This court has acknowledged the difficulties of applying the **substantial evidence** test "to regulations which are essentially legislative and rooted in inferences from complex scientific and factual data, and which often necessarily involve highly speculative projections of technological development in areas wholly lacking in scientific and economic certainty." The Udall-Vitter bill includes this same "substantial evidence" standard, even though it can be a much harder standard to meet than the one used in other environmental laws. This standard was also part of industry's successful arguments to overturn EPA's asbestos ban. Do you agree that the so-called "substantial evidence" standard is not yet settled law, and that its use in this bill would increase the likelihood that EPA would be sued using some of the same arguments industry used to overturn the asbestos ban?

9. In 1989, EPA tried to ban asbestos under its TSCA authority, but industry successfully overturned the ban in court. Asbestos is already banned in 54 countries, and exposure to it kills 10,000 Americans each year. Would the Udall-Vitter bill allow EPA to immediately propose a ban or restriction on asbestos, or would it have to complete a safety assessment first?

10. Persistent, bio-accumulative and toxic chemicals like mercury and PCBs are known to persist in the environment and accumulate in the body, and can include dangerous chemicals that pass from pregnant women to developing fetuses. Would the Udall-Vitter bill allow EPA to immediately propose a ban or restriction on these known dangers?

11. Flame retardant chemicals are used in everything from couches to clothes. If EPA finds that flame-retardant chemicals are unsafe, is it true that under the Udall-Vitter bill, EPA would have to do a separate analysis for EACH type of consumer product that includes them? It is true that under the bill, EPA might even have to study each type of chair or couch and each type of garment as a condition for regulating each one?

12. Do you agree that if EPA wishes to ban or restrict the use of a chemical in, for example, plastic, that EPA should be able to analyze exposure from that chemical in ALL plastic

products that contain that chemical, instead of having to separately analyze each product that uses that type of plastic?

13. Recently, news reports indicated that floorboards that were imported from China contained high levels of formaldehyde, a known carcinogen. Do you agree that the Udall-Vitter bill makes it harder for EPA to intercept products containing dangerous chemicals that are being imported from countries like China?

14. When EPA designates a chemical as "low priority" that essentially means that EPA thinks it is safe. Do you agree that the Udall-Vitter bill contains no way for a member of the public to challenge the scientific validity of that determination in court?

15. When EPA designates a chemical as "low priority," that essentially means that EPA thinks it is safe. The Udall-Vitter bill includes a limited way for some States to challenge the scientific validity of that determination in court even though it would not be possible for an individual or other organization to do so. If a State did successfully make such a challenge and cause EPA to re-classify the chemical as "high priority" instead, wouldn't that also result in the preemption of the State from doing anything to protect against that chemical itself?

Environment and Public Works Committee Hearing

March 18, 2015

Follow-Up Questions for Written Submission

Senator Barbara Boxer

Questions for Jim Jones, Assistant Administrator, EPA

1. Assistant Administrator Jones, in 1989, EPA tried to ban asbestos under its TSCA authority, but industry successfully overturned the ban in court. The term in the Vitter-Udall bill that is used to define what is meant by "safe" contains the same core language that was the subject of that litigation. Do you believe that the use of this same "unreasonable risk" language that has already been the subject of litigation would increase the likelihood that EPA would be sued using some of the same arguments industry used to overturn the asbestos ban?

2. Mr. Jones, flame retardant chemicals are used in everything from couches to clothes. If EPA finds that flame-retardant chemicals are unsafe, is it true that under the Vitter-Udall bill, EPA would have to do a separate analysis for EACH type of consumer product that includes them? Isn't it true that under the bill, EPA might even have to study each type of chair or couch and each type of garment as a condition for regulating each one?

3. Mr. Jones, recent news reports indicated that floorboards that were imported from China contained high levels of formaldehyde, a known carcinogen. Do you agree that the Vitter-Udall bill makes it harder for EPA to intercept products containing dangerous chemicals that are being imported from countries like China?

Message

From: Olsen, Elizabeth (EPW) [Elizabeth_Olsen@epw.senate.gov]
Sent: 3/26/2015 8:09:49 PM
To: Mccarthy, Gina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=51ee957b10cb49a0b2ff98174ae44a46-Mccarthy, Regina]
CC: Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]; Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
Subject: Senate EPW: Request for Follow Up Questions regarding the March 4, 2015 Hearing
Attachments: ALL QFRs 03.04.15 EPA Budget Hearing McCarthy.pdf; mccarthy qfr letter.pdf

Dear Administrator McCarthy,

On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Wednesday, March 4, 2015. The committee greatly appreciates your attendance and participation in this hearing to examine the Environmental Protection Agency Budget.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. We ask that you respond to each member's request in one typed document. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth_Olsen@epw.senate.gov or deliver one hard copy within 14 days after the date you receive this letter. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Susan Bodine Chief Counsel on the Committee's Majority staff at (202) 224-2829, or Jason Albritton Senior Policy Advisor Minority staff at (202) 224-1914.

Sincerely,

Barbara Boxer
Ranking Member

James M. Inhofe
Chairman

Elizabeth "Lizzy" Olsen, J.D.
Majority Director of Operations
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Questions for the Record
Senate Environment and Public Works Committee Hearing:
"Oversight Hearing: The President's FY 2016 Budget Request for the Environmental Protection Agency." On March 4, 2015
EPA Administrator Gina McCarthy

Chairman Sen. Inhofe:

Ozone:

1. In the proposed rule, you state that EPA will take a series of actions in the next year to implement the new standard. (EPA says it will issue guidance for state designations within 4 months of finalizing the rule, provide guidance for infrastructure SIPs, and propose any needed implementation rules within 1 year.)
   - Approximately how much money, resources, and staff will be required to complete this work in FY 2016?
   - Has EPA requested the resources needed to complete all of this work?
   - Where in the budget are these resources requested?

2. The proposal relies heavily on "unknown technologies" for compliance (Table 4-10 in the draft RIA: 66% of NOx controls in the East are unknown and 70% in the West are unknown). However, only "extreme" nonattainment areas can include unknowns in their SIPs.
   - How do you expect states to comply with a standard when your agency can't even identify ways to make it feasible?
   - Do you expect states to have to choose between extreme sanctions or self-designating themselves as "extreme" nonattainment areas, accepting all the extreme stationary source requirements that go along with that designation?
   - Your RIA already assumes in the "known controls" that the existing source proposal will be complied with fully, so how is it even remotely possible to achieve your proposed standard?

3. How much of future attainment relies on "unknown controls"? How does EPA calculate the cost these future "unknown controls"? Why has EPA lowered the cost of those unknown controls by half since developing the 2011 ozone rule?

4. In 2011, President Obama pulled the plug on this same proposal due to "regulatory burdens and regulatory uncertainty." Our economy was still struggling to recover from the recession, and the $90 billion price tag was something even he was unable to justify.
   - Do you really think that our economy is in better shape now to handle a $3 trillion rule than it was in 2011?
   - What has changed since the President's decision that signals now is an appropriate time to radically revise the standard before the benefits of the last one have been fully implemented?

5. Compared to just four years ago, EPA has lowered cost estimates for the same stringent ozone standards by as much as $51 billion. Have compliance costs for ozone controls really dropped by over 80% since 2010?

6. Over the last four years, EPA has slashed its cost estimates for the same stringent ozone standards.

    - Has the cost of compliance technologies gone down, or did EPA change the assumptions in its cost-benefit analysis?
    - How much of that reduction is due to projected air quality improvements versus changes in EPA's control cost assumptions?

7. In 2010, EPA projected that the same ozone standards that EPA is now proposing could cost as much as $44 billion per year. These are straight-up, added costs to American manufacturing. I'm concerned that, during this slow economic recovery, we are driving manufacturing out of the U.S., to other countries with lax environmental standards. In analyzing these proposed regulations, does EPA consider the effects of driving manufacturing offshore, to countries with little or no environmental controls?

8. High levels of natural background ozone may cause many otherwise clean states, especially in the West, to be unable to meet EPA's stringent ozone proposal even with costly emission controls.

    - EPA says it can deal with these concerns through its "exceptional events" program. Yet, since 2008, Utah has submitted 12 exception event demonstrations, and EPA has yet to approve one. Historically, how many times has the exceptional exceedance policy been used by the states and EPA? How long and what was the cost to taxpayers each time it was used? How many times annually do you expect it to be needed going forward?

    - EPA also says it can deal with these concerns through "Rural Transport Areas." Yet EPA has no track record for Rural Transport Areas under an 8 hour ozone standard like in the proposal. Why should we think the Agency can use Rural Transport Areas to provide regulatory relief to states with high background ozone?

9. Yellowstone national park's current ozone level is 66ppb—

    - Is the Agency considering setting a standard that is below the current ozone levels at Yellowstone National Park?

- I understand EPA has been criticized regarding the way background ozone concentrations are calculated and used. What steps is the agency taking to improve that process?

10. I understand that EPA does not exclude Mexican and Canadian ozone emissions when it determines background levels of ozone. What could a county in my district due to control emissions in a foreign country?

11. High levels of ozone transported from Asia and Mexico may mean that many otherwise clean states, especially in the West, will be unable to meet EPA's stringent ozone proposal even with costly emission controls. EPA says it can deal with these concerns through Clean Air Act provisions on international transport.

    - EPA has been notoriously slow in providing states similar regulatory relief for natural ozone under the Exceptional Events Program. Why should states believe that EPA will be any better in approving regulatory relief for international ozone transport?
    - Will EPA commit to not designate as nonattainment any counties that fail the proposal's ozone standards because of international transport?

12. EPA halted implementation of the 2008 ozone standard from 2010-2012 while it reconsidered that standard. That delay put state implementation of the 2008 ozone standard well behind the normal schedule. States are now committing time and money to catch up on the 2008 ozone standard. In fact, EPA just issued the implementation rules for the 2008 standard on February 13, 2015. Why is EPA proposing new ozone standards when it hasn't given states a chance to implement the current ones?

13. EPA chose to project the costs of its proposed ozone standard to 2025, eight years after counties will be designated as nonattainment areas under the proposal.
    - What consequences will those counties face while designated nonattainment?
    - Does EPA's modeling capture the cost of lost economic activity that counties in nonattainment areas will experience during those eight years?

14. EPA chose to project the costs of its proposed ozone standard to 2025, saying that would be the year in which most counties would have to attain the standards if granted compliance extensions.
    - Since EPA bases its entire economic analysis on these assumed extensions, will the Agency commit to extending compliance deadlines to the maximum extent possible when finalizing the ozone standards?
    - If EPA assumed longer compliance deadlines, shouldn't it write those compliance extensions into the final rule?

15. EPA reassures that counties won't be designated as nonattainment areas under its proposed stringent ozone standards for another three years. But won't those new

standards be immediately effective on PSD permits, making it harder for business to build and expand facilities to create new jobs?

16. EPA has said that most counties won't need to attain its stringent ozone standards until 2025. But counties in nonattainment areas will face severe regulatory consequences in just three years, and the new standards become immediately effective for permits to expand business. EPA seems to want us to think these proposed standards are a "next decade" problem, but aren't they a now problem?

17. EPA can't even point to controls capable of almost half the emissions reductions needed in the east – and all of the reductions required in California – to meet its stringent proposed ozone standard. This sounds like shoot first, ask questions later rulemaking. Should we be imposing this much burden on the American people when EPA doesn't even know how this rule can be accomplished?

18. EPA's modeling for its proposed stringent ozone standards caps costs for emissions reductions required from so-called "unknown controls" based on costs of known controls. This defies the basic economics of increasing marginal costs. Does EPA really believe that the costs of reaching the highest low-hanging fruit are the same as those to get the fruit at the top of the tree?

19. We hear a lot about the need to repair "crumbling roads and bridges." However, stringent ozone standards could make it harder for states to show that proposed highway project "conform" with ozone standards. Has EPA considered the economic and safety impacts that could result if these stringent ozone standards block crucial transportation projects?

20. According to EPA, ozone-forming emissions have been cut in half in the last three decades. This progress will continue under current regulations. Wouldn't you agree that Americans are already enjoying the benefits of cleaner air, and will enjoy even more future benefits, regardless whether the existing standards are adjusted?

21. EPA's modeling indicates that its proposed ozone standards may actually increase mortality in cities like Houston. Can you please explain how this proposal could end up increasing deaths in some areas?

22. Ozone is mainly outdoors. Yet most people spend 90% of their time indoors. Do you think this is why recent published studies found that indoor air quality and poverty were much more strongly linked to asthma than outdoor air quality?

23. Only 1 of the 12 studies considered by EPA show any link between long-term ozone exposure and mortality. And this study did not find any link in California, where ozone

levels are the highest in the country. Shouldn't we be concerned that EPA is cherry-picking science to support its regulatory agenda?

24. I'm concerned that EPA is cherry-picking and contorting science to support its ozone proposal. For instance, one study found no statistically significant difference in lung function in humans exposed to ozone at levels above and below the standards in EPA's ozone proposal. Yet EPA "reanalyzed" that data and decided there was a statistically significant impact after all – leading that study's author to say that EPA "misinterpreted" his data. Shouldn't EPA just go where the science points, rather than trying to shoehorn findings into its regulatory agenda?

25. All of the clinical studies cited by CASAC in support of the 60 ppb standard were created by the EPA. Yet, all of the non-EPA literature on health impacts of 60 ppb ozone cited by CASAC does not support a 60 ppb standard. Is this what EPA meant when it said that "increasing uncertainty in the scientific evidence at lower ozone concentrations" led it to not include a 60 ppb standard in the ozone proposal?

26. EPA has released maps showing only the projected counties in non-attainment in 2025.

    - Under EPA guidance does the agency designate non-attainment area boundaries starts with metropolitan area as the "presumptive" nonattainment area? Why are your maps inconsistent with your guidance?

27. How many counties still do not meet the 1997 ozone standards? How about the 2008 standards? Doesn't it make sense to work on attaining the existing standards, the tightest standards ever, before promulgating new standards?

28. Why does EPA leave California off of its maps and analyses? If California is being give a longer period of time to attain the standards, shouldn't other places in the country be granted that latitude as well? How much ($/ton) are NOx offset reductions selling for in Houston? Los Angeles? Other places?

Climate:

1. The budget request includes a $4 Billion incentive program for states that reduce CO2 emissions beyond the existing source proposal.
    - How do you propose to implement this program?
    - Do you plan to send Congress a legislative proposal?
    - If the proposal is to give states money if they go beyond EPA mandates, will the result be to transfer taxpayer dollars away from states with large emission reduction burdens under your plan to states that have a smaller burden. For example, Vermont has no emissions reduction obligation under your plan because

its power plants are small. So, would you automatically transfer taxpayer money from Southeastern and Southwestern states to Vermont?

2. With respect to the Clean Power Plan, your justification statement says: "In FY 2016, the EPA will encounter a staggering workload to implement these rules and agency resources have been shifted to help meet the demand. Because of the breadth, complexity and precedent-setting nature of work, the agency expects a marked increase in demands for legal counsel in both headquarters and Regional Offices. In addition, each EPA action is expected to be challenged in court, which will require skilled and experienced attorneys specialized in the Clean Air Act to devote significant resources to defense of these actions."
    - In your own budget justification statement you say that these rules will result in a "staggering workload" to implement and defend these two rules. Don't you think those taxpayer dollars would be better spent increasing funding to states to implement existing programs rather than spending it on lawyers?

3. Recent correspondence between your agency and the House Energy and Commerce Committee indicated EPA has not "explicitly modeled the temperature impacts of the Clean Power Plan" and could not state what, if any impact the rule would have on global temperatures or sea rise levels.
    - Why hasn't EPA done the modeling? Is it a matter of budgeting?
    - Why is your agency attempting to impose this extremely complex rule and spend billions of taxpayer dollars to address global warming when you haven't even checked to see if the rule would actually achieve your global warming goals?

4. Your budget would eliminate funding under the Indoor Radon Abatement Act which authorizes grants to states to address radon (-$8 million) even though indoor radon is the second-leading cause of lung cancer and the leading cause of lung cancer for non-smokers and the funding was targeted this funding to support states with the greatest populations at highest risk. According to your Budget in Brief, indoor radon causes an estimated 21,000 lung cancer deaths annually in the U.S. Carbon dioxide causes no deaths.
    - Why would the budget propose spending $279 million to rework the U.S. energy economy (climate regulations) while ignoring real environmental threats?

5. Section 110(c) of the Clean Air Act requires EPA to issue a Federal implementation Plan (FIP) if a state does not submit a State Implementation Plan (SIP), does not submit a satisfactory SIP or does not make a satisfactory SIP revision (42 U.S.C. 7410(c)). Please provide a list of enforcement mechanisms with cites to the relative legal authority the EPA will use to enforce all components of a federal plan on a state that does not does not submit a SIP, does not submit a satisfactory SIP - in whole or in part - or fails to make a satisfactory revision that meets the criteria of the proposed Clean Power Plan.

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6. During the hearing, I asked you if the EPA would consider withholding federal highway funding if a state that does not submit a SIP, does not submit a satisfactory SIP - in whole or in part - or fails to make a satisfactory revision that meets the criteria of the proposed Clean Power Plan. You responded,

   > "Ms. McCarthy. This is not a traditional State SIP under the national ambient air quality standards. There are other processes for us to work with States. Clearly our hope is that States will provide the necessary plans. If not, there will be a federal system in place to allow us to move forward."

   Will you clarify for the record whether EPA would consider withholding federal highway funding to enforce any elements of the proposed Clean Power Plan?

Waters of the United States

1. Please provide me with examples where EPA or the Corps has used a groundwater connection to establish jurisdiction over a body of water that has no surface connection, direct or indirect, to a navigable water. For any such examples, please also provide the distance between the body of water that lacks such a surface connection and the nearest water of the United States. Please exclude any allegations that a groundwater connection establishes the existence of a point source discharge where the body of water with no surface connection was itself determined to be a point source, rather than a water of the United States.

2. Is it currently the national policy of either EPA or the Corps of Engineers to establish jurisdiction over all wetlands in flood plain?

3. Is it currently the national policy of either EPA or the Corps of Engineers to establish jurisdiction over all waters in flood plain?

Hydraulic Fracturing

1. The EPA continues its study into the relationship between drinking water and hydraulic fracturing, which was initiated in 2010. Well over $20 million has been spent on this study and the timeline continues to slip. In fact, the draft assessment report was expected in December 2014 yet today, there is no indication when this will be released.
   What is the current timeline for release of the EPA's drinking water study?
   Will the report undergo interagency review prior to its release? If so, which agencies will be a part of the review? If not, why not?
   After the draft assessment report is released, what is the timeline moving forward?

2. You've said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic

fracturing impacting drinking water. The White House Council on Economic Advisors released a report last week that touted the economic benefits because of the increase in domestic oil and natural gas and clearly linked the production increases to the use of hydraulic fracturing and horizontal drilling. What is your vision for getting the American public to understand that hydraulic fracturing is safe and that fracking has unlocked an American energy revolution that has lowered all Americans's energy prices, created jobs, helping lower GHG emissions and revitalizing such industries as the manufacturing, steel and chemical sectors?

3. In the draft FY 2016 budget proposal, it states that EPA will respond to peer review comments from the Agency's Science Advisory Board (SAB) in order to finalize the study. It further suggests that the report will provide a synthesis of the state of the science, including the results of research focused on whether hydraulic fracturing affects drinking water resources, and if so, will identify the driving factors.

   - Clearly you already have a plan for additional research. Can you share those plans?

   - More importantly, will the Agency actually consider the recommendations of its own Science Advisory Board in this process, particularly if those recommendations do not align with EPA's own research initiatives, which you just addressed?

4. Director McCarthy, the President's new economic report says that 1) "natural gas is already playing a central role in the transition to a clean energy future," 2) that an effective regulatory structure for addressing environmental concerns already "exists primarily at the State and local level," and 3) that unconventional natural gas production technology unleashed in the U.S. "can help the rest of the world reduce its dependence on high-carbon fuels." Given this positive view from the White House, which is supported by a broad scientific consensus, how do you intend to ensure that your agency's proposed regulations on methane will not short-circuit the U.S. energy revolution that is driving so much job creation?
   - Can we assume that the upcoming EPA study on hydraulic fracturing will not conflict with this latest White House report that recognizes the clear advantages of unconventional energy development?

5. In February 2014 the EPA's IG sent a memo to the EPA Office of Water outlining an initiative the IG has underway that will "determine and evaluate what regulatory authority is available to the EPA and states, identify potential threats to water resources from hydraulic fracturing, and evaluate the EPA's and states' responses to them." Do you consider this a duplication of the EPA's efforts as it relates to the multi-year and multi-million dollar hydraulic fracturing and water study currently in process at the EPA

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and if not, then how do these studies differ? Hasn't EPA independently done this type of evaluation (see the letter from EPA to NRDC)?

SRF Program:

1. It is my understanding that since the program's inception in 1988, the Clean Water State Revolving Loan Funds have provided a total of $105 billion in assistance, leveraging federal capitalization grants totaling approximately $36.2 billion. Further, since the program's inception in 1997, Drinking Water State Revolving Loan Funds have provided approximately $33 billion in assistance, leveraging federal capitalization grants totaling approximately $19 billion. This means that for every federal dollar invested in the Clean Water SFR community wastewater systems have received nearly $3 dollars in assistance and for every dollar in the Drinking Water SRF community water systems have received approximately $1.75 dollars in assistance.
    - Do you agree that the SRF program has been among the most successful programs we have in government?
    - It that is so, why does the President's budget perennially underfund these programs?

2. Under the Clean Water Act, EPA is supposed to send a report to Congress on the funding needs for both wastewater and drinking water infrastructure. The last report to Congress on wastewater needs was based on the 2008 Clean Water Needs Survey. The estimate of need in that survey -- $298 billion over 20 years – is woefully out of date. That estimate is based on cities' own capital improvement plans. It does not reflect new mandates like the hugely costly sewer overflow control measures that EPA is imposing on cities in enforcement actions or costly new requirements for nutrient reductions and stormwater controls.

    By failing to provide an updated estimate of needs, EPA is doing a disservice to Congress, to cities, and to itself. We all need reliable information to make good decisions and EPA is required by law to update the needs survey every 4 years.

    - When will EPA provide Congress with the updated the Clean Water Needs Survey?

3. We all know that the needs for both water and wastewater are huge.
    According to the U.S. Conference of Mayors, cities are spending $115 billion a year to provide water and wastewater services and meet federal mandates. So, the proposal to provide a combined $2.3 billion for the Clean Water and Drinking Water State Revolving Funds is a drop in the bucket. Since the federal government does not provide funding to meet those mandates, I think it is important to take a hard look at how we are asking cities to spend their citizen's money.

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- We all support clean and safe water. But, I am told that EPA enforcement officials extract penalties on top of commitments of hundreds of millions of dollars to address sewer overflows. Is that right?
- I also am told that EPA enforcement officials will require complete elimination over sewer overflows if they think a city can pay for it, when a less expensive approach could meet water quality standards. Is that right? Is EPA requiring cities to do more than meet the standards that states have set and EPA has approved that will protect water quality?

4. Given the enormous cost of meeting water and wastewater mandates, affordability is a significant issue. It is my understanding that at EPA Headquarters, you talk about giving cities more time to meet mandates; you talk about adaptive management; and you talk about using green infrastructure alternatives. However, when they bring enforcement actions against cities, EPA regions and Headquarters enforcement officials are not providing these flexibilities.
    - How are you addressing the real affordability concerns of cities?
    - Do you think your enforcement officials should try to extract every last dollar from a city that you claim they can afford even if spending more money will not provide additional water quality benefits?
    - If a city steps up and agrees to spend hundreds of millions or in some cases billions of dollars, do you think it is also appropriate to impose penalties on that city when the penalty will simply go to the U.S. Treasury and will reduce the amount of funding available to help improve the environment?

5. I am very concerned that the way EPA looks at affordability when they decide what mandates to impose on communities means that our poorest citizens will end up paying 10% or more of their income on sewer bills.

   Last Congress, in Title V of the Water Resources Reform and Development Act, we amended the Clean Water Act to give direction on how to identify what communities would experience a significant hardship raising the revenue to finance projects to meet Clean Water Act mandates. One of the criteria that we listed in the statute is whether the area is considered economically distressed under the Public Works and Economic Development Act. Under this Act, a community or area within a larger political boundary is economically distressed when --
    - the per capita income at 80% or less than national average,
    - unemployment is 1% or more greater than national average, or
    - there is an actual or threatened severe unemployment or economic adjustment.

   This information is provided by the community and must be accepted unless the Secretary of Commerce determines it is inaccurate.
    - Will EPA also incorporate this approach into your evaluation of affordability when taking enforcement action?

Technical Assistance to States

1. In EPA's FY2016 Budget Request, the Agency did not request any funds for the EPA technical assistance competitive grant program. As you know, this program provides small and rural communities with the training and technical assistance necessary to improve water quality and provide safe drinking water. Many communities count on this program to assist them in complying with federal regulations when operating drinking and wastewater treatment facilities. These communities believe that is the most effective program to aid in compliance with the requirements of both the Clean Water Act and the Safe Drinking Water Act. In the past Congress has agreed and from FY2013 - FY2015 appropriated $12.7 million for the program. Given its success and importance to so many communities across the country, why is EPA is not requesting any funds to support this grant program in FY 2016?

2. You have requested $46 million and 13 new FTES for an unauthorized program to improve climate resilience for water and wastewater facilities. In contrast, you have requested only $5 million for FY 2016 out of the EPM account to set up the implementing the newly authorized Water Infrastructure Finance and Innovation Authority (WIFIA), but no money out of the STAG account to actually implement it. How can you explain the disparities in these requests? What does this say about your priorities?

New Definition of Flood Plain

On January 30, 2015, the President signed a new Executive Order (EO 13690) that changed the existing flood plain management policy that has been in effect since 1977. With these changes, the policy applies to all agencies and all federal actions and flood plain is now defined as either the 500 year flood plain or a larger area based on climate modeling.

- Will this new definition affect the projects that states can fund using the State Revolving Loan Funds?
- Will this new definition affect the type, size, or location of infrastructure that EPA requires cities to build to treat wastewater or to address sewer overflows under enforcement agreements?
- Will this new definition affect the conditions attached to municipal stormwater permits?
- What was EPA's involvement in developing this Executive Order?
- What outreach efforts were made before signing this Executive Order to state and local governments?

Stormwater

EPA has announced that it has abandoned its plans to develop a national storm water rule making that would have tried to expand your authority to regulate not only pollutants, but also the actual flow of water. That is not surprising given the fact that courts have made it clear that the Clean Water Act does not give EPA any authority to regulate water flows. However, it is my understanding that your agency is continuing to advance this agenda by regulating water flows in individual permits.

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- Will you commit to me that your agency will use Clean Water Act permits to regulate the discharge of pollutants only and not the flow of water?

Attorneys/Workforce

1. Administrator McCarthy, the President's budget request seeks an additional $10 million that would go to hire almost 40 additional attorneys to work at EPA. More than $3.5 million would go to hire 20 new attorneys who would be devoted to supporting the Clean Power Plan alone.

   At a House committee hearing last week, you stated that these attorneys would not be "litigation attorneys" and instead would be used to help with reviewing permits and assisting states to set up their programs.

   However, your own budget justification says these additional attorneys and needed because, "In addition, each EPA action is expected to be challenged in court, which will require skilled and experienced attorneys specialized in the Clean Air Act to devote significant resources to defense of these action."

   - Which is it? Do you stand behind your recent statement to Congress, meaning the budget justification is incorrect? Or do you agree that you need to hire additional attorneys in part to defend these unlawful rules in court?

2. The Budget justification goes on to say that additional legal resources will make EPA more responsive to states, industry, and citizens, and will make EPA's actions more defensible in court. Yet the budget request also says there are no performance measures for the agency's attorneys like there are for other programs.

   - Why is that?
   - Does this lack of staffing or accountability explain why, when it issued performance standards for new sources in September 2013, EPA seemed unaware of the Energy Power Act provision that prohibits the use of carbon capture projects receiving certain federal funding from being used to show the technology had been adequately demonstrated?
   - Shouldn't EPA attorneys and staff in the Air office have known about that provision before the rule was proposed?
   - How are you going to ensure that these additional legal resources will be used effectively?
   - Would these be term-limited positions, or permanent hires?
   - Do the agency's attorneys – or any employees for that matter – keep track of their time, like attorneys in the private sector do or workers at a coal mine or factory would?
   - Given the issues EPA has had with time and attendance problems, what is EPA doing to ensure that EPA staff are in fact doing the jobs they are being paid to do?

3. Please describe the process and resources the Agency (both Headquarters and Regional Offices) currently uses to track litigation to which it is a party, as well as deadlines for

regulatory or other EPA action that have been established in litigation settlements or court orders. What efforts are planned in FY 2016 to improve this process and the public transparency of this tracking? What public notice and opportunity for comment and public participation does the Agency give to the public when a deadline established in a settlement or court order is revised or extended?

4. For its FY2015 budget proposal, EPA requested to remove the 50 person ceiling for hiring under Title 42. A March 5, 2015, EPA Inspector General report found that EPA's Office of Research and Development did not always demonstrate the need to use Title 42 to recruit or retain 19 positions reviewed. In four cases reviewed, the IG found that employees were converted to Title 42 to perform the same position, yet paid a total $47,264 more in salary for performing the same job. The EPA OIG recommended that EPA improve transparency and its justification for the use of Title 42 appointments or reappointments, which could result in potential monetary benefits of $3.5 million. EPA did not agree with the OIG's recommendation. The OIG responded that EPA's alternate approach does not address the need to justify the need to use Title 42 authority or the need for more transparency in the decisions to use the Title 42 authority.

    - Why did EPA request to remove the 50 person ceiling under Title 42 for FY2015 and not for FY2016?
    - Why did EPA disagree with the OIG's recommendations?
    - How will the EPA address the need for greater transparency and justification for Title 42 hiring?

Homeland Security

1. Administrator McCarthy, President Obama recently said that terrorism is less of a threat to the American people than climate change. Do you agree?

2. Does the President's thinking explain why EPA's budget request has cut homeland security related funding in several important areas?

For example, the budget would cut more than $1 million from the Science and Technology account for work to treat contamination from chemical and radiological incidents (Page 131). The budget would also cut more than $2.5 million from the Superfund account reducing EPA's ability to detect threats and test and decontaminate sites.

- Why is EPA cutting back its capability to detect and respond to biological or radiological attacks?

3. The budget for emergency preparedness is essentially stagnant (only a slight $200,000 increase due to higher fixed cost for rent and staff salaries).

    - What does this mean in practice – fewer air monitoring flights, slower response times, increased risks to human health and the environment from a terrorist event?

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4. Recent scandals suggest that EPA has a "culture of complacency" among some supervisors and managers when it comes to time and attendance problems, computer usage, and property management.

    - Given these concerns – and ongoing work by the Office of Inspector General – I am troubled to see the low priority that EPA places on screening job applicants and making sure its employees have been vetted and are suitable for their positions of trust.
    - For example, the homeland security budget for conducting background checks for employees and contractors would be cut by $340,000 – even though the John Beale episode has highlighted the need for improved background checks. Do you think this is the time for EPA to be cutting back on its process for doing background checks?

5. The IG has also raised concerns about the Office of Homeland Security and its interference with the IG's law enforcement work. How will this be resolved so it does not become a distraction to the Agency and impede EPA's homeland security mission?

GAO Reports

1. The Government Accountability Office issued a report last year on problems with how EPA analyzes its regulations for economic impact, less burdensome alternatives, and uncertainties. GAO found that EPA's regulatory impact analysis (RIAs) do not clearly identify the costs of EPA's rules and the data EPA used in its analyses were often out of date and irrelevant.

For example, GAO found that for several high-profile clean air and water rules, EPA relied on employment data that was between 20 and 30 years old and from only four industrial sectors. The GAO report states, "Without additional information and improvements in its approach for estimating employment effects, EPA's RIAs may be limited in their usefulness for helping decision makers and the public understand the potential effects of the agency's regulations on employment."

That's a big problem – that EPA is making these incredibly significant regulatory decisions – and the American public, Congress, and even EPA itself do not know what the economic impacts or potential job losses will be.

- Is EPA continuing to rely on the outdated and limited employment data when analyzing the potential job impacts of its rules? If not, what is EPA relying on?
- How much of EPA's budget request will be going toward improving and updating the employment data that EPA uses in its economic analysis documents?

2. The GAO report also found that EPA had cut corners in its economic analysis due to the short time frames it had for issuing rules pursuant to court-ordered deadlines and litigation settlements.
    - What criteria does EPA use when agreeing to a rulemaking deadline in a litigation settlement?

- How does EPA's obligation to conduct a robust analysis of a rule's economic impact factor into these court-ordered deadlines, or does it get short shrift in the discussions?
- Is part of the problem that laws like the Clean Air Act have unreasonable deadlines?
- Would you support attempts to give EPA additional time under the law to issue rules or update standards every 5 or 8 years as currently may be the case?

Facilities

Administrator McCarthy, EPA's budget justification says EPA is continuing to recalculate its facility and rent needs. It says that EPA plans to spend $1 million from the Science and Technology account to study further consolidation (Page 140) and that EPA intends to save $9.5 million from the EPM account from these efforts (Page 427).

- What plans if any does EPA have to close or relocate program, regional or lab offices or spaces across the country in FY 2016? When will affected offices be informed of their closure? Will the affected employees be given the opportunity to relocate or transfer to another duty station?
- How much has EPA spent in FY 2014 and 2015 to relocate employees? How much does it expect to spend on relocation expenses in FY 2016?

Superfund/Hazardous Waste

1. The FY 2016 budget shifts EPA's emphasis from well-established programs approved by Congress to ones that advance the President's Climate Action Plan.
    - For example, the budget would cut almost $1 million and 5 FTEs from its RCRA corrective action program, which will reduce "EPA's technical support to state partners and may reduce the pace of cleanups including site-wide 'RCRA remedy construction' determinations." How will this reduction impact EPA's implementation of recommendations in the Government Accountability Office's 2011 report concerning RCRA corrective actions?
    - How will EPA prioritize its work and support to states in response to the proposed reductions in funding?
    - Will any sites or states that would have received support in order for EPA to meet its corrective action goals in the FY 2014-2018 Strategic Plan, no longer receive support due to the proposed reductions in funding?
    - In another example, the FY 2016 budget request would cut funding for the RCRA waste management program by $1.3 million and more than 9 FTEs, which according to EPA's budget justification "may delay activities such as conducting additional analysis to support non-hazardous secondary materials categorical rulemakings and responding to regulatory backlog petitions." Please identify how many "regulatory backlog petitions" EPA had at the start of FY 2015 and the backlog time for each petition.

- How will this proposed reduction impact EPA's implementation of the final Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals from Electric Utilities rule, signed by EPA on December 19, 2014?

2. Notably, the FY 2016 budget proposed a $2.3 million increase, including an additional 4.2 FTEs, for the Sustainable Materials Management program to implement key aspects of the President's Climate Action Plan.
   - The budget justification states EPA will explore the application of Sustainable Materials Management "approach to other high priority areas." What are these areas?
   - The budget justification also states that EPA plans to hire 5 FTEs to serve as "Community Resource Coordinators for climate adaptation, sustainability, and communities work" who will "work as a cross-agency, multi-media team to facilitate access to EPA's programs and resources." Please explain whether these would be permanent or term-limited positions, the professional qualifiations for these positions, and from what Headquarters or regional office such positions would be based.
   - The budget request proposes the creation of a $1.3 million grant program "to support the EPA's investment in climate mitigation through waste program activities to reduce greenhouse gas emissions." Please describe the statutory authority for this program, the anticipated number of grants that would be funded in FY 2016, and a summary of the criteria EPA would use for grant awards.

3. Concerns remain about the slow pace of Superfund cleanups. In FY 2014, EPA achieved construction completions at only 8 Superfund sites, an all-time low, with an enacted budget for Superfund cleanups at $555 million. In FY 2016, EPA is proposing to achieve construction completions at 13 sites with a budget request of $539 million. How many additional Superfund sites would EPA be able to clean up if the $214 million that the President has requested for greenhouse gas rules were put toward the Superfund program instead?

Keystone

1. Administrator McCarthy, in January of this year you stated that EPA believes current low oil prices are a short-term situation and will not affect how your Agency crafts new regulations.

- Do you still stand by that statement?
- Can you please explain to me why 3 weeks later EPA told the State Department that it should revisit its analysis of the Keystone XL pipeline with a new assumption that the current low oil prices are permanent?

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- As a general rule, you ignore short-term oil prices when evaluating costs and benefits. But, politics appear to determine when you make an exception to that rule. How can you reconcile this inconsistency?

Methane

1. Administrator McCarthy, the Administration has acknowledged the great benefits that we are now enjoying as a result of the natural-gas renaissance in the US. In fact, the US is now the world's largest gas producer. As this was occurring, our nation's producers have been making great strides in reducing methane emissions thanks to investments in technology allowing us to produce more natural gas in a cleaner way. In fact, today, while natural gas production has increased 37% since 1990, methane from production has gone down by 25%. I am concerned as such by your January announcement regarding methane regulation.
   - Why are you targeting such a steep 45% reduction in emissions from an industry that has already reduced its emissions significantly while increasing production? Moreover, the production sector represents only *0.4 - 1.4 percent* of U.S. GHG emissions.

2. In the Administration's January 14th release to reduce methane emissions from this industry, an assumption was given projecting that industry's methane emissions will be increasing by 25% - not decreasing as already shown.

   - Can you explain this assumption and provide the specific data from which you've based these projections?

3. Administrator McCarthy, I'm trying to understand EPA's rationale for pursuing another round of Clean Air Act regulations on natural gas production. This time the agency is directly targeting methane. I think it's important to note the industry's progress in reducing methane. Natural gas producers have reduced methane emissions by 25 percent since 1990, even as production has grown 37 percent.

   A recent report by researchers at the University of Texas and the Environmental Defense Fund (EDF) found that methane emissions from the upstream portion of the supply chain are only 0.38 percent of production. That's about 10 percent lower than what the same research team found in a study released in September 2013. Studies by the National Renewable Energy Laboratory, U.N. IPCC, Massachusetts Institute of Technology, and many others reached similar conclusion: that methane emissions from natural gas production are declining, and quite low compared to other sources.

   Moreover, we can't forget that methane is the main component of natural gas. Producers have every incentive to capture it and prevent leaks. The evidence I just cited shows this is exactly what they are doing.

   The industry is only now implementing new source performance and MACT standards finalized in 2012, which target VOCs and sulfur dioxide, but also will help reduce

methane. So Administrator, my question is: Why is EPA pursuing another round of mandates on the industry? What is the rationale for moving down this path?

4. Administrator, EPA indicated it will develop new source performance standards for new and modified natural gas wells this summer. This action will be taken pursuant to Section 111(b) of the Clean Air Act, which covers new and modified sources. Some legal commentators believe that this action will provide the basis for regulations of existing wells under Section 111(d). What is EPA's legal view on this point? Once you finalize regulations under 111(b), are regulations for existing wells inevitable under 111(d)? Is EPA planning or thinking about regulation existing wells under 111(d)?

Environmental Education

For its FY2015 budget proposal, EPA requested zero funds for its environmental education program; yet its FY2016 budget proposal requests funds—albeit an increase in funds from $8.7 million enacted in FY2015 to $10.969 million.

- Why did EPA, after requesting zero funds for the program over the last couple years, request funds and an increase in funding for the program?
- EPA has recently identified climate change as a priority for environmental education grants under this program. These grants are used to educate elementary and secondary school students, train teachers, purchase textbooks, and develop curricula based on environmental issues EPA identifies as a priority. What performance measures are in place to ensure such curricula is based on the best available science?

Uranium and Thorium Mill Tailings

1. In January, the U.S. Environmental Protection Agency proposed "Health and Environmental Standards for Uranium and Thorium Mill Tailings (80 Fed. Reg. 4156). The agency maintains the rulemaking is necessary to reduce the risk of undetected excursions of pollutants from in situ uranium recovery operations into adjacent aquifers.

   - Does the agency have any evidence that these operations have adversely impacted an adjacent aquifer? If so, please provide such data.
   - Please explain why no such data is included in the rulemaking docket.
   - If EPA has no such data, please explain the basis for proceeding with this rulemaking.

2. In the cost benefit analysis accompanying the rulemaking, the agency focuses almost exclusively on the increased costs that would be imposed by the proposed rule's new monitoring requirements, which could require facilities to conduct more than 30 additional years of groundwater monitoring. EPA fails to assess multiple other costs that would be associated with the rule, including the costs of maintaining licenses, permits, etc. for 30 years; claims maintenance fees owed to the Bureau of Land Management for facilities on public lands; costs to obtain and maintain surety for additional years; costs

related to continuing leases with private surface holders; taxes; insurance; or the cost of maintaining equipment and facilities. Given the additional costs that would be imposed, it is likely that the ultimate cost would be several orders of magnitude higher than EPA calculated in their cost benefit analysis.

- Please explain why EPA chose to ignore these costs in its analysis.
- Does EPA plan to revise its cost benefit analysis to more comprehensively assess the costs of the rulemaking? If not, why not?

Sen. Booker:

1) The BEACH Act authorized the EPA to award grants to eligible states, territories, and tribes to develop and implement beach water quality monitoring and notification programs for coastal recreational waters. As a result, EPA's Beach Grants have made nearly $10 million a year available for the past four years. The program allows for a more standardized approach to the monitoring of water quality and the notification of beachgoers if the water they are swimming in is unsafe for recreation.
    a. What is EPA's justification for zeroing out funding for the BEACH Act grant program?
    b. Given the reduction in EPA's proposed FY16 from $10 million to $0, how does EPA plan to assist state and local public health officials in identifying, notifying the public of, and ultimately reducing the risk of illness and disease to swimmers at our recreational beaches?

Senator Fischer:

National Environmental Policy Act (NEPA) Greenhouse Gas (GHG) Guidance

1) In your budget justification document you say:
"In support of the President's Climate Action Plan, the EPA will work to assist other federal agencies to improve the analysis of climate change issues under NEPA, including estimating greenhouse gas emissions associated with federal actions and consideration of mitigation measures, as well as fostering climate resiliency." Are you already implementing CEQ's draft guidance that would require all federal agencies to address global climate change in NEPA reviews?

2) In your role as a reviewer of Environmental Impact Statements developed by other agencies, do you believe you can require other agencies to adopt measures to mitigate global climate change?

3) Do you think that the draft CEQ guidance would give you the power to second-guess a decision by another federal agency that any effect on global climate change is insignificant and no EIS is needed?

4) Have you done any outreach to stakeholders on the draft CEQ guidance?

5) How will the new guidance affect how EPA complies with NEPA for its own actions, such as issuing Clean Water Act permits or developing regulations?

Renewable Fuels Standard (RFS)

6) In 2007, Congress put the Renewable Fuel Standard in place for 15 years, setting a stable policy environment to drive investment and growth in renewable fuel. This approach has guided billions of dollars from around the world and here at home toward innovation inside the United States. American agriculture has also responded to this investment signal. For example, just this year, 3 cellulosic biofuel refineries opened, each co-located with a corn ethanol facility. Each biorefinery is producing clean, cellulosic biofuel. Using specially designed equipment, all three facilities use corn stover, an agricultural waste material collected from the very same fields that provide corn to ethanol facilities. This didn't happen by accident. Farmers make planting decisions based on the RFS. Equipment manufacturers' invest million in R&D perfecting new equipment that can be available to serve this market. Congress made a promise in 2007, and it is the EPA's responsibility to uphold that promise with a regulatory process that meets our intent. The 2014 RVO proposal would have stranded billions of dollars of investment and ripped the rug out from under those in the private sector who responded to the investment signals of the RFS. Will your new proposal retain the commitment to American agriculture that we made nearly a decade ago?

7) Your staff has recently stated that you anticipate putting out RFS volumes by late June. Do you see that as acceptable? Given that we have biodiesel producers across the country shutting down or idling their plants, why do we need to wait another four months? If we wait until June we've lost another half of a year.

8) Your staff also recently stated that 2014 numbers will be based on actual production. What does that mean exactly? Does that mean the volumes will be set at the levels that were actually produced under the RFS in 2014? And can we assume that we will see growth from there in the biodiesel category in 2015 and 2016?

9) You recently approved an application from Argentinian companies to essentially streamline biodiesel imports from Argentina under the RFS. Why would you do that when the overall RFS hasn't been set for two years and the U.S. industry is in disarray? It almost shows a disregard for the U.S. companies that we know are struggling as a direct result of the delays on the RFS. Can you explain why you would do that at this time? Why not wait until the RFS volumes are set and then make a decision on the Argentina imports?

10) I understand that in setting the annual biodiesel volumes you are required under the law to look at production capacity and other factors. So now that we know this extra production exists and is likely coming to the United States, how will you account for that as you set annual RFS standards for biodiesel? In other words, will you increase volumes

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more aggressively to allow U.S. producers to continue to grow, so that they're not displaced by these Argentinian imports?

EPA Region 7

11) Private Nebraska building contractor entities have shared inquiries and questions regarding EPA Region 7, Kansas City, and the utilization of resources and personnel enforcing lead paint regulations against Nebraska home and building contractors. In particular, private building contractors have expressed concerns involving the manner and rationale of investigations conducted by Region 7 and the protocol for fines pursued for stated violations.

12) In order to address concerns expressed by Nebraska private contractor interests, I request that EPA provide the following information involving Region 7, Kansas City and the regulation of lead paint in private homes and commercial businesses:

13) Please provide a budget breakdown of:

    The amount of Region 7 funds expended for outreach and education to the building contractor community in Nebraska.
    The amount of funds directly tied to educating property owners and building contractors on EPA lead paint rules and regulations.

    What amount of Region 7's Budget is dedicated to investigations and pursuit of fines?

14) Does Region 7 contract with private or commercial entities to investigate reported violations?

15) Does Region 7 offer financial incentives to individuals who

<u>Sen. Wicker:</u>

1) As I hope you know, a one-sided focus on worst-case stories and scenarios is a poor foundation for sound environmental and economic policies. There is an extraordinary amount of uncertainty in climate science mainly because of the complex nature of the climate and climate models. Climate model predictions have wildly varying degrees of accuracy and many have estimates that failed to come to fruition. With so much uncertainty and unknown variables regarding the impacts of carbon dioxide on the world's oceans and environment how can you possibly accurately estimate the costs and benefits of your proposals? Considering you can't provide a quantifiable, measurable direct impact of these regulations on sea level rise and global temperatures, don't you think the other supposed benefits to society are equally uncertain and overstated?

2) With each and every climate regulation put forward by the administration, the supposed benefits of each regulation continue to get smaller and and smaller and more imaginary

while the costs to American taxpayers and the economy continue to grow. A sound environmental and economic policy would place amount of regulation, in this case carbon dioxide emissions, where the marginal benefits are equal to the marginal costs. It seems the opposite is true in the latest EPA budget proposal. While carbon dioxide emissions continue to rise across the globe, at what point will EPA begin to allocate their limited budgetary resources to other programs that have greater benefits to American taxpayers while imposing lower costs on them?

3) In the FY16 budget request, EPA notes it will be finalizing rules for formaldehyde emissions in composite wood products. Why has EPA decided to regulate laminated products when the authorizing legislation gives you authority to exempt those products? The testing costs far exceed any benefit considering that studies submitted to EPA show that the value added process of finishing laminated products can reduce the emission profile of an already compliant platform.

4) With respect to the ongoing rulemaking on formaldehyde emissions in composite wood products, you recently stated that laminates could potentially be a "significant source of emissions." Does EPA have scientific data that validates that statement? Will you share it with the committee? Data submitted to the public record during the rulemaking shows that the value added process of finishing laminated products can reduce the emission profile of an already compliant platform.

5) The academic and scientific communities are actively pursuing research into the magnitude of methane emissions from various sectors of the U.S. economy. With much of this research outstanding, why doesn't EPA wait to understand the major sources of methane emissions before promulgating regulation?

6) EPA's announcement last month on methane regulation indicated that there was no intention to regulate existing sources in the oil and gas industry at this time, instead, the agency would allow for voluntary actions by industry for existing sources. Aren't the control technique guidelines, coupled with your pending ozone regulation essentially a defacto regulation of existing sources in the industry?

JAMES M. INHOFE, OKLAHOMA, CHAIRMAN

DAVID VITTER, LOUISIANA
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RYAN JACKSON, MAJORITY STAFF DIRECTOR
BETTINA POIRIER, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

March 23, 2015

Ms. Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Dear Administrator McCarthy

On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Wednesday, March 4, 2015. The committee greatly appreciates your attendance and participation in this hearing to examine the Environmental Protection Agency Budget.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. We ask that you respond to each member's request in one typed document. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth_Olsen@epw.senate.gov or deliver one hard copy within 14 days after the date you receive this letter. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Susan Bodine Chief Counsel on the Committee's Majority staff at (202) 224-2829, or Jason Albritton Senior Policy Advisor Minority staff at (202) 224-1914.

Sincerely,

Barbara Boxer
Ranking Member

James M. Inhofe
Chairman

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Message

From: Olsen, Elizabeth (EPW) [Elizabeth_Olsen@epw.senate.gov]
Sent: 3/10/2015 5:54:35 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: Senate EPW Committee: Request for follow up responses from the Feb. 11, 2015 hearing
Attachments: ALL QFR 02.11.15.pdf; mccabe qfr.pdf

The Honorable Janet McCabe
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Dear Administrator McCabe:

On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Wednesday, February 11, 2015. The committee greatly appreciates your attendance and participation in this hearing.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. We ask that you respond to each member's request in labeled sections, within one typed document. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth_Olsen@epw.senate.gov or deliver one hard copy within 14 days after the date you receive this letter. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Mandy Gunasekara, Counsel on the Committee's Majority staff at (202) 224-7841, or Joseph Mendelson, Chief Climate Counsel for the Minority staff at (202) 224-6948.

Sincerely,

Barbara Boxer
Ranking Member

James M. Inhofe
Chairman

Elizabeth "Lizzy" Olsen, J.D.
Majority Director of Operations
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Environment and Public Works Committee Hearing
"Oversight Hearing: Examining EPA's proposed carbon dioxide emissions rule from new, modified, and existing power plants."
February 11, 2015
Follow-Up Questions for Written Submission to Administrator Janet McCabe

Chairman Senator Inhofe:

1. In 2013, four nuclear reactors prematurely closed. One of those reactors was the Kewaunee plant in Wisconsin. When EPA set the reduction target for Wisconsin, it did so based on electricity production in 2012, a year in which Kewaunee was still operating.

    a. This means Wisconsin will be forced to meet a more stringent target, correct?

2. There are currently five nuclear reactors under construction, in Georgia, South Carolina and Tennessee. Since they are under construction, they clearly did NOT produce electricity in 2012. However, the Congressional Research Service[1] found that EPA's plan "substantially lowers" the targets in those states to account for their investments in nuclear power, making their targets more stringent and harder to achieve.

    a. Did EPA similarly penalize states with wind projects under construction, assuming *their* existence in setting targets for those states, making those states' targets harder to achieve?

    b. Why does nuclear energy receive such arbitrary treatment?

    c. Shouldn't EPA treat hydropower, nuclear power, and other sources of zero-emission electricity the same?

    d. If states rely upon new reactors in their State Implementation Plans under the proposed rule, will EPA penalize the states if the NRC refuses to allow those reactors to begin operating?

3. Economic modeling of climate legislation by EPA, EIA, and others has consistently shown that dramatic growth in nuclear energy is necessary to reduce carbon emissions and that constrained development of nuclear energy dramatically increases the costs of compliance. In fact, in 2008, EPA determined that 44 new reactors would be needed by 2025 to satisfy the requirements of S. 2191, known as the Lieberman-Warner bill. In 2009, EIA determined that

[1] CRS, STATE CO2 EMISSION RATE GOALS IN EPA'S PROPOSED RULE FOR EXISTING POWER PLANTS, 14 (July 21, 2014).

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96 gigawatts of new nuclear capacity would be needed by 2030 under HR 2454, the Waxman-Markey bill.

a. How many new reactor licenses are actively being reviewed by the NRC?

b. How many new reactors, in addition to those currently under construction, are necessary to enable compliance under EPA's base case for the proposed rule?

c. How does EPA plan to meet its carbon emission reductions *without* increasing the use of nuclear energy or even replacing the units that currently provide the bulk of our carbon-free electricity?

4. For states that do not submit a state implementation plan, what mechanisms of enforcement will the EPA rely to impose a federal plan under the Clean Power Plan proposal? Please provide the statutory cite by which EPA will rely for each enforcement mechanism. Will EPA depend on 3rd party environmental groups to file suits against the states to push enforcement? Would EPA make compliance with the Clean Air Act a requisite for federal permits? If so, what permits?

5. In response to a question from Sen. Wicker about stranded assets, Acting Assistant Administrator McCabe testified that EPA is being careful "not to put plants in a position of stranding assets." Please explain what specific steps EPA has proposed -- or is contemplating -- to avoid stranding assets and investments existing facilities have made to comply with Clean Air Act and other environmental requirements.

6. Acting Assistant Administrator McCabe also testified that EPA is working with state regulators to see whether there is flexibility "to provide a path" for avoiding stranding assets. Please identify which states you are working with on this issue, and describe the "potential paths" being discussed.

7. Please provide a detailed explanation of the flexibility afforded to states by the Clean Air Act and EPA's 111(d) implementing regulations (40 C.F.R. part 60, subpart B) to grant variances to specific facilities allowing for different emission standards and longer compliance periods without increasing the burden on other facilities within the state.

8. Please identify with specificity the factors, other than plant age, location, design, or remaining useful life, that states may consider under 40 C.F.R. 60.24(f)(3) in determining when a less stringent standard or final compliance time is "significantly more reasonable." Would the fact that a plant recently made significant capital expenditures to install pollution controls to comply with Clean Air Act programs qualify for relief under 40 C.F.R. 60.24(f)(3)? If so, under what circumstance? If not, why not?

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9. In the preamble to the proposed Clean Power Plan, EPA states that "the flexibility provided in the state plan development process adequately allows for consideration of the remaining useful life of the affected facilities and other source-specific factors and, therefore, that separate application of the remaining useful life provision by states is unnecessary." In other words, EPA appears to be saying that because EPA has provided flexibility in state plans, states are prohibited from further consideration of remaining useful lives and other factors for facilities within their state. Please explain with specificity EPA's legal authority for limiting state flexibility in this way, including why such a restriction is not inconsistent with Clean Air Act section 111(d)(1), which provides that EPA "regulations . . . *shall permit* the State in applying a standard of performance . . . to take into consideration , among other factors, the remaining useful life of the existing source." (Emphasis added).

10. EPA further provides in the preamble to the proposed rule that, 'to the extent that a performance standard that a state may wish to adopt for affected EGUs raises facility-specific issues, the state is free to make adjustments to a particular facility's requirements on facility-specific grounds, so long as any such adjustments are reflected (along with any necessary compensating emission reductions) as part of the state's CAA section 111(d) plan submission." Please explain with specificity EPA's legal authority for conditioning states' variance authority in this way. Also, please explain how such a restriction is not inconsistent with CAA section 111(d) and would not restrict a state's flexibility to avoid stranding assets.

Senator Booker:

1. Nuclear power plants currently provide 60 percent of the nation's emissions-free power generation, and are especially important in states like New Jersey. Many of these existing power plants are under market pressures that could lead them to be replaced with emitting generation. The Clean Power Plan proposal attempts to address existing nuclear power by factoring six percent of emissions-free nuclear generation into each state's target. In most states, including New Jersey, this provides a negligible incentive to avoid replacing this generation with gas.
    a. What changes are the EPA exploring to ensure the Clean Power Plan strongly encourages states to maintain nuclear generation as a critical resource?

2. After the Clean Power Plan is finalized this year, states will be able to comply with it by designing state-specific plans that are responsive to state and local needs.
    a. As states design their implementation plans, what flexibility will they have to support existing nuclear power beyond any mechanisms or crediting specifically included in the proposed rule?
    b. Will there be ways states can specifically encourage nuclear units to operate beyond their initial licensing periods, to the extent units can do so safely?

3. I have heard concerns about unintended consequences that could arise from the Clean Power Plan as proposed. Specifically, the dramatic early reduction requirements proposed in the rule may render several coal plants uneconomic, and therefore encourage states to turn to the rapid deployment of new natural gas combined cycle generation to satisfy their energy

needs. Large amounts of new natural gas power plants have the potential to disincentivize construction of renewable and other clean energy technology for decades because states can comply with the Plan from the reduced carbon emissions from natural gas power plants. This has the potential to tilt the playing field in the power sector towards new natural gas fired power plant at the expense of renewable energy.

a. Can the EPA avoid the potential prioritization of power from natural gas power plants and encourage states to adopt renewable and clean energy technology?
b. Can you please provide me with an update on some of the modifications EPA is considering to ensure that the final Plan incentivizes the use of renewables to the maximum extent possible?

4. Minority communities, including communities of color, are disproportionately affected by pollution. With President Clinton's 1994 Executive Order 12898, and President Obama's continued support for that executive order, the environmental justice movement has grown in the past couple of decades. The EPA, with the Clean Power Plan, has a unique platform to tackle issues of environmental justice and equity.
   a. Is the EPA contemplating requiring states to consider the environmental justice impacts of their state implementation plans in order to comply with the Clean Power Plan?
   b. If not, why not?
   c. If so, will the EPA offer states guidance on ways to measure compliance for the environmental justice impacts of states' implementation plans?

Senator Fischer:

BUILDING BLOCK 1 (COAL PLANT EFFICIENCY)

- During our discussion at the hearing regarding Building Block 1 and the achievable heat rate improvements at coal-fired plants, you stated that EPA's assumption in going into the proposal "was not that every single source would be able to achieve exactly the amount of reductions [you] identified in each building block…[you] believed that some can do ***more*** in one area and some may choose to do less in other areas." In Nebraska, there are no coal-fired power plants that are capable of achieving a heat rate improvement of 6%. Did EPA receive public comment from any utilities or state departments of environmental quality that identified any plant of being able to achieve this rate improvement? Or a rate that is ***more*** than the target identified by EPA?

- Do you acknowledge that EPA misused the Sargent & Lundy study in setting the heat rate improvement goals for Building Block 1?

- Installation of additional pollution control equipment will degrade a unit's heat rate performance. Given that regulations such as MATS and Regional Haze are driving the installation of more control equipment on coal-fired units, what type of adjustments will be made in the rule to account for such EPA-driven degradations?

BUILDING BLOCK 2 (NATURAL GAS CC UTILIZATION)

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- Nebraska DEQ stated in its public comments that a 70% utilization rate at natural gas plants is neither sustainable, nor achievable. Nebraska does not have adequate natural gas supplies or pipeline infrastructure to sustain a 70% utilization rate of existing natural gas combined-cycle plants, particularly during colder months.[2] FERC memos indicate that last April, FERC's Office of Electric Reliability told EPA that its assumptions in building block 2 overestimated natural gas combined cycle capacity factors and that FERC "had doubts about the ability to expand the pipeline infrastructure as quickly as the emission targets implied."[3] Why didn't EPA go back and fix those assumptions based on FERC's feedback?

BUILDING BLOCK 3 (RENEWABLES)

- The Nebraska Department of Environmental Quality thinks that its "disingenuous" to require states to undertake measures that the EPA itself may not have the authority to implement. What authority does EPA or the Nebraska DEQ have to mandate renewables?

INTERIM TARGETS

- In December, I led a group of 23 Republican Senators in writing to EPA regarding key concerns with the proposed Clean Power Plan. Senator McCaskill led a parallel letter that was sent by a group of Democrat Senators raising the same concerns, including the unrealistic interim targets (known as the "2020 cliff"). The consequences of these front-loaded targets have been echoed by many stakeholders. Will you commit to removing these interim targets?

RFS

1) As you know, renewable fuels like ethanol and biodiesel are an important economic driver in my state. Unfortunately, the EPA has yet to release their yearly volumes for both 2014 and 2015. When do you plan to release this rule? Will it no longer contain methodology that artificially limits the market access of biofuels producers?

Senator Sessions:

1) In your written testimony, you state that if climate change is left unchecked, it will have "devastating impacts on the United States and the planet." You write further that "the costs of inaction are clear. We must act. That's why President Obama laid out a Climate Action Plan."

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[2] Nebraska Department of Environmental Quality Comments on Clean Power Plan, Docket ID: EPA-HQ-OAR-2013-0602, page 4.

[3] Memo from Mike Bardee, FERC, re: Phone call on EPA's draft rule for GHG from existing power plants, made available to Congressman Whitfield as a response to Questions for the Record from FERC Chairman Cheryl LaFleur.

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a. Does the United States Constitution authorize the executive branch to act unilaterally and impose regulatory mandates due to "inaction," or the absence of a valid authorization from Congress?

b. Bjorn Lomborg—who testified before the Clean Air and Nuclear Safety Subcommittee last Congress—wrote in the *Wall Street Journal* earlier this month about studies which have showed that in recent years, there have been fewer droughts, decreased hurricane damage, and a rise in temperatures that is 90% less than what many climate models had predicted. Mr. Lomborg's July 2014 testimony to the Subcommittee also indicated that the cost of climate "inaction" by the end of the century is equivalent to an annual loss of GDP growth on the order of 0.02%.

   Given that recent temperature rises have been significantly less than what many climate models predicted, does it remain EPA's position that climate "inaction" will have "devastating impacts on the United States and the planet"? Does the agency agree or disagree with Mr. Lomborg's testimony regarding the minimal loss of GDP growth due to climate "inaction"? Please provide all information, data, and studies used to support EPA's conclusion.

c. You are advocating dramatic action at great cost to the American people to avert "devastating impacts" of global warming. Before such costs are imposed on the people, it is essential that you lay out in detail the "devastating impacts on the United States" that EPA anticipates due to climate inaction. Please provide in detail these impacts as well as a timeline for when these impacts are expected to occur.

d. If the latest and best available science demonstrates that the climate impacts projected by EPA are not occurring, or are less than anticipated, would the agency be willing to reconsider its climate action policy?

2) EPA's Clean Power Plan is based in part on a "building block" which assumes states will achieve a 1.5% annual increase in demand-side energy efficiency.

   a. Please provide the provisions in the United States Constitution and Clean Air Act which authorize EPA to base its Clean Power Plan on *consumers* increasing their energy efficiency. How does EPA intend to implement this particular "building block"?

   b. Please provide the peer-reviewed or technical studies which EPA used to establish the "building block" for a 1.5% annual increase in demand-side efficiency.

c. To what extent did EPA account for population growth in establishing a "building block" whose purpose is to reduce aggregate demand on power plants?

3) EPA claims that the Clean Power Plan's "timing flexibility" will allow municipally owned utilities and some electric cooperatives to "use both short-term dispatch strategies and longer-term capacity planning strategies to reduce GHG emissions." However, these providers often purchase power from dedicated units, sometimes crossing state lines, on long-term contracts. Long-term contracts in many circumstances yield the most reliable pricing. How does EPA reconcile the interim goals contained in the Clean Power Plan with the need of municipally owned utilities and some electric cooperatives to enter into long-term contracts in order to provide reliable pricing for their customers?

4) During a recent taxpayer-funded trip to the Vatican, Administrator McCarthy indicated that it is important to look after the well-being of persons living in poverty. What has EPA done to evaluate the adverse wage and employment impacts that have fallen on middle-class workers?

5) In recent years, the U.S. Army Corps of Engineers has proposed operational changes that would diminish the amount of hydropower available to communities in Alabama. Please explain how EPA's proposed carbon dioxide emissions rules account for Army Corps decisions which may adversely affect the ability of Alabama communities to rely on hydropower as a low-carbon source of energy.

6) President Obama has stated that "we need to increase our supply of nuclear power," and that we should be "building a new generation of safe, clean nuclear power plants in this country." How many new reactors, in addition to those currently under construction, are necessary to enable compliance under EPA's base case for the proposed rule?

7) In its 2012 decision remanding the Nuclear Regulatory Commission's Waste Confidence rule, the DC Circuit Court observed:

> *"At this time, there is not even a prospective site for a repository, let alone progress toward the actual construction of one ... The lack of progress on a permanent repository has caused considerable uncertainty regarding the environmental effects of temporary [spent nuclear fuel] storage and the reasonableness of continuing to license and relicense nuclear reactors."*

The Administration's actions to shut down the Yucca Mountain program caused a federal court to question the reasonableness of licensing nuclear plants, triggering a two-year licensing moratorium at the NRC. The NRC has since revised its rule, which has once again been challenged by the NRDC, a proponent of the Clean Power Plan.

Given that nuclear energy generates nearly two-thirds of our nation's carbon-free electricity, how does EPA envision achieving carbon reductions if our largest source of carbon-free electricity is threatened based on the Administration's decision to illegally abandon the Yucca Mountain project?

Senator Sullivan:

1) Has the EPA conducted any analysis specific to Alaska that proves the Proposed Rule on existing plants can be reasonably implemented and would not impair electricity reliability in Alaska? Do you have modelling or cost information specific to Alaska? Do you have any analysis specific to Interior Alaska? Please provide all relevant data.

2) How much flexibility is the EPA prepared to provide states if efficiency upgrades to power plants, building new generation sources, new or upgraded transmission lines or new natural gas pipelines are slowed down or stopped because of environmental reviews or litigation?

3) Alaska's grid is quite limited, and most of our utilities are not interconnected. Also, Alaska is islanded, as we are not connected to the North American power grid. Does the Proposed Rule for existing plants contemplate this scenario?

4) Alaska has a single transmission line north and south of Anchorage with limited transference capacity. One of the presumptions of EPAs "building blocks" is the notion that more efficient combined-cycle gas generation can be substituted for coal-fired generation. Will there be exceptions made for states where the grid does not allow the transfer of sufficient quantities of energy to replace local coal-fired generation?

5) Currently, natural gas powered electricity generation is not available in Interior Alaska, and due to geographical challenges,, natural gas may not be an economical option for electricity generation in the near future. How much flexibility is EPA prepared to provide based on geographic challenges such as those faced in Interior Alaska?

6) EPA's Legal Memorandum accompanying the Proposed Rule for existing plants states, "Central to our Best System of Emission Reduction (BSER) determination is the fact that the nation's electricity needs are being met, and have for many decades been met, through a grid formed by a network connecting groups of Electric Generating Units (EGUs) with each other and, ultimately, with the end users of electricity… Through the interconnected grid, fungible products—electricity and electricity services—are produced and delivered by a diverse group of EGUs operating in a coordinated fashion in response to end users' demand for electricity." How does this rationale apply to Alaska? Please explain.

7) What consultation occurred with states during the rulemaking process? Were any State of Alaska officials involved in the drafting of the proposed rules?

8) Do you think the resources that will be spent in Alaska complying with the Proposed Rule on existing plants could be better spent helping our bush communities move away from expensive diesel generation and towards more cleaner and inexpensive options?

9) Fairbanks is reliant on coal fired power. A recent University of Alaska study determined that coal fired technology is the only viable affordable option for Interior Alaska's electric generation. Fairbanks is also in a PM 2.5 nonattainment area. If our Interior coal plants shut down, or the rates increase even higher than they are already, more Fairbanks residents will begin heating their homes with wood stoves and further aggravate the PM 2.5 issue. Have you given any thought to how the EPA will help mitigate the social and economic impacts on communities if these rules are finalized? Has the EPA conducted any analysis on unrelated consequences of this Proposed Rule on existing plants, such as the PM2.5 issue?

Senator Vitter

Focusing on NRDC Relationship with EPA

Under the Clean Air Act §307(d), EPA is required to post all written comments and documentary information received in the docket, including information obtained through emails, phone calls, and meetings with Agency officials. Documents obtained by the Committee pursuant to a request for communications regarding the ESPS and NSPS rules between EPA and NRDC reveal a significant amount of correspondence that EPA did not post to the rulemaking docket. While the requirement does grant the Agency discretion over what information is material to the rule, the fact more than a dozen phone calls and meetings on the rules were excluded from the docket raises questions over EPA's level of transparency in developing the rules.

1. Ms. McCabe, as you are aware, I submitted requests for documents on these rules last Congress. While I understand the Agency is still producing documents to the Committee, a review of those in the Committee's possession reveal a pattern of frequent meetings and phone calls between EPA and NRDC. Not only am I concerned by the increased access NRDC had to EPA officials developing these rules, but there is a real concern over a number of meetings and calls that EPA did not include in the rulemaking docket. Ms. McCabe, are you aware of such correspondence not being posted to the docket? Why do you think some correspondence with NRDC over others was excluded from the docket? Will you commit to correcting the docket?

2. In one of the emails you released last fall as part of your investigation into EPA's relationship with NRDC. One email in particular is important given the fact that many states are just going to refuse to implement a rule they view as illegal and an inappropriate usurpation of power.

ESPS requires states to submit a state implementation plan (SIP) for EPA's approval, which demonstrates how the state will meet emission goals. Under 111(d), EPA has the authority to issue a federal implementation plan (FIP) for states that do not submit a SIP or submit an unsatisfactory SIP. While the EPA has said ESPS encourages state flexibility in developing SIPs, evidence suggests EPA is being disingenuous and is inclined to issue a backstop FIP. An

email obtained by the Committee reveals that the idea of a federal takeover of states through ESPS FIPs may have come from the NRDC. In the email, NRDC attorney Dave Hawkins advises senior EPA air official Joe Goffman how EPA can tamper with state compliance dates and issue backstop FIPs.

3. Ms. McCabe, documents obtained by the Committee suggests that NRDC helped develop the Agency's strategy for issuing a model FIP to circumvent state implementation challenges. [SHOW POSTER] Specifically, in June 2013—before the rule was proposed—NRDC attorney Dave Hawkins advised senior EPA air official Joe Goffman, "as long as the compliance date for the FIP 111(d) emission limits is a few years after the SIP submission deadline, it appears that EPA can promulgate backstop FIP limits even in advance of the June 2016 SIP submission date." Why was NRDC providing such detailed advice to EPA before the rule was even proposed? Prior to the email, had EPA considered issuing a model FIP? Did NRDC's advice have any bearing on the model FIP EPA is currently developing? Is EPA in fact planning to issue its model FIP before the SIP deadline?

4. Ms. McCabe, I think EPA is delusional if the agency believes there isn't going to be a serious problem with a number of states refusing to implement the ESPS and put forward a state implementation plan. Has EPA begun developing a litigation strategy with NRDC to force compliance or otherwise enter into settlement agreements? And has NRDC, which is perhaps America's largest environmental law firm, discussed options for NRDC to help pay for energy price increases. In other words, NRDC is worth hundreds of millions of dollars, if they're so comfortable increasing energy prices on America's poor and elderly have they discussed with you options for using some of their endowment to help the consumers they plan on hurting

Social Cost of Carbon

EPA's regulatory impact analysis for ESPS is primarily based on climate benefits derived from the convoluted 2013 social cost of carbon (SCC) estimates, as well as of course the PM benefits that EPA's now infamous fake CIA agent John Beale worked on. You have made several requests, along with other members of Congress, for information on the Interagency Working Group (IWG) that developed the estimates. None of the Administration's responses have been fully responsive to such requests. There is still zero transparency over who participated and the extent of their participation.

1. Ms. McCabe, you may recall I previously asked whether or not you participated in the Interagency Working Group developing the social cost of carbon (SCC) estimates, and I know at that time your answer was no. I also know that despite Congressional requests for information, the SCC remains stuck in a black box. There is still zero transparency. And since we last spoke on this topic, the EPA proposed the ESPS—one of the most expansive and expensive regulations—which relies on climate benefits from the flawed and secretive SCC. That said, what was your role in developing the cost-benefit analysis for ESPS which relied on the SCC? Have you had any interaction with the SCC Interagency Working Group? Why have you not provided my office with the

names and titles of those officials under your supervision in the Office of Air Radiation that have participated in the Interagency Working Group?

Technical Questions

1. In his Presidential Memorandum directing the Agency to undergo this rulemaking process, President Obama explicitly directs EPA to take "into account other relevant environmental regulations and policies that affect the power sector" and to "tailor regulations and guidelines to reduce costs". In the event that a coal-fired power plant has invested hundreds of millions of dollars to comply with EPA rules such as the Mercury Air Toxics Standard and the Cross State Air Pollution Rule, how does EPA's Clean Power Plan ensure that such an entity will be able to meet its financial obligations due to these investments?

2. Beyond achieving a certain level of efficiency gains, there are no commercially available technologies to reduce CO2 emissions from coal-fired power plants. According to EPA's regulatory impact analysis, the Clean Power Plan will increase electricity rates. For certain coal plants operating in organized electricity markets, this increased cost is likely to reduce plant production to the extent that alternative lower emitting sources of production are less expensive and hence will operate at higher utilization rates. Thus, the financial impact on the generating unit will be a combination of lower revenues associated with lower production and lower earnings associated with higher costs not being offset by higher sales revenues. As CO_2 emission standard compliance costs increase, reductions in production will increase.

   These increased costs will lead to different outcomes for certain coal-dominated entities, including rural electric cooperatives, municipals, and merchant power producers. Higher electricity costs will be either (1) borne directly by ratepayers, in the case of a cooperative or municipal; or (2) result in decreased financial operating margins, in the case of a generator dependent solely on the wholesale market for revenues. Do you agree with these conclusions? If not, please explain why. Please further explain how EPA plans to address these disproportionate impacts, and how a state in a SIP would be allowed to deal with them.

European Disaster Question

1. Fortunately last congress we had some really great witnesses that were able to testify on the state of climate science, and the fact that our climate always has been and always will be changing, as well as to the impacts policies similar to what EPA is trying to implement have had on the citizens and economies of European countries that have adopted similar requirements. Can you provide for me your thoughts on how Germany, Spain, France and the U.K. have benefited from their global warming polices and energy mandates? Specifically, can you walk me through how the changes in energy prices have impacted the poor and elderly as well as the economies and investment in those countries? And of

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Germany, Spain, France and the U.K., which ones do you think stand out as a good model for what EPA wants to do with the ESPS and regulating CO2?

Science Questions

1. Is carbon dioxide critical to the process of photosynthesis and life on earth?

2. As EPA moves forward with regulating carbon dioxide will carbon dioxide be the first gas regulated under the Clean Air Act that humans exhale at a higher rate than they inhale?

3. What percent of CO2 in the atmosphere is emitted by humans?

4. In earth's geologic history is their evidence that CO2 in the atmosphere has been higher than it is today?

5. In 2009 Al Gore predicted "The entire north polar ice cap will be gone in 5 years." Did this prediction come true?

6. Stephen Schneider, who authored The Genesis Strategy, a 1976 book warning that global cooling risks posed a threat to humanity, later changed that view 180 degrees when he served as a lead author for important parts of three sequential IPCC reports. In an article published in Discover, he said: "On the one hand, as scientists we are ethically bound to the scientific method, on the other hand, we are not just scientists, but human beings as well. And like most people, we'd like to see the world a better place, which in this context translates into our working to reduce the risk of potentially disastrous climatic change. To do that, we need to get some broad-based support, to capture the public's imagination. That, of course, entails getting loads of media coverage. So we have to offer up scary scenarios, make simplified, dramatic statements, and make little mention of the doubts we might have. Each of us has to decide what the right balance is between being effective and being honest." Does EPA agree with these statements?

7. Timothy Wirth, former U.S. Senator (D-CO) and former U.S. Undersecretary of State for global issues, at the first UN Earth Climate Summit Rio de Janeiro stated: "We have got to ride the global warming issue. Even if the theory of global warming is wrong, we will be doing the right thing in terms of economic policy and environmental policy." Does EPA agree with these statements?

8. Speaking at the 2000 U.N. Conference on Climate Change in the Hague, former President Jacques Chirac of France explained why the IPCC's climate initiative supported a key Western European Kyoto Protocol objective: "For the first time, humanity is instituting a genuine instrument of global governance, one that should find a place within the World Environmental Organization which France and the European Union would like to see established." Does EPA support reaching a treaty in Paris so that there can be a "global governance" of U.S. economic policy?

9. On November 14, 2010, Ottmar Edenhofer, a U.N. IPCC Official, stated, "First of all, developed countries have basically expropriated the atmosphere of the world community. But one must say clearly that we redistribute de facto the world's wealth by climate policy. Obviously, the owners of coal and oil will not be enthusiastic about this. One has to free oneself from the illusion that international climate policy is environmental policy. This has almost nothing to do with environmental policy anymore..." Does EPA agree with these statements?

10. Attorney David Sitarz, a key editor of the UN's Agenda 21 document, stated at the UN's 1992 Conference on Environment and Development in Brazil, "Effective execution of Agenda 21 will require a profound reorientation of all human society, unlike anything the world has ever experienced—a major shift in the priorities of both governments and individuals and an unprecedented redeployment of human and financial resources. This shift will demand that a concern for the environmental consequences of every human action be integrated into individual and collective decision-making at every level." Does EPA agree with these statements?

Other

1. Section 111 of the Clean Air Act provides EPA the authority to regulate new and existing "stationary sources" which it defines under subsection (a) as "any building, structure, facility, or installation which emits or may emit any air pollutant". That seems pretty straight forward, and yet you propose a rule for existing sources that would force states to significantly increase renewable — which do not emit any air pollutants. What percent of the claimed reductions under your proposed rule does EPA anticipate will come from increases in renewable energy? Given the plain meaning of the statute, how can you set a standard that in essence relies on such an increase in renewable power — a non-emitting source of electricity not covered by Section 111?

2. Section 111(d), the authority for the Clean Power Plan, regulates existing sources. However, your proposed rule seeks comment on including new sources in a state's 111(d) plan. What new sources do you think should be included in a state's plan for existing sources. Isn't it true that Section 111 has a separate subsection for the regulation of new sources under subsection (b) --- not (d). Why do you think you have the authority to regulate new sources under section 111(d)?

3. Your proposed rule for NEW units would require CCS for new coal units despite the fact that CCS has not been adequately demonstrated and is not considered to be commercially viable. In fact a recent DOE authorized study just concluded in January that "CCS does not yet meet this best system of emission reduction (BSER) standard, because it has not yet been adequately demonstrated." (pg 103 of http://insideepaclimate.com/sites/insideepaclimate.com/files/documents/jan2015/epa2015_0144.pdf) What will happen to your existing plant rule if your new rule is overturned in Court? Do you believe you have the authority under Section 111 to issue an existing plant rule if your rule for new units is vacated?

4. There are many coal plants out there that have just spent millions of dollars to comply with the MATS rule. And yet, under your proposed rule, these units will likely be allowed to run only at very low capacity levels that make the units uneconomical. Has there ever been a major rule making by EPA where the standard was not based on specific control technologies but rather a limit on how often a unit can be run? Do you believe the CAA allows you to establish regulations that can force the closure of existing coal plants by establishing de-facto limits on how often they can run?

5. If you are forced to issue a federal implementation plan, which entities do you have enforcement authority over in the context of this rule making? Do you believe EPA can enforce renewable energy targets or demand side management programs in a state that fails to submit an implementation plan? Does your authority extend to the states directly or just to the existing stationary sources as defined by the Clean Air Act? If your answer is that you are working through these issues now—how EPA can propose a rule without knowing the limits of its own regulatory authorities?

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JAMES M. INHOFE, OKLAHOMA, CHAIRMAN

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JOHN BARRASSO, WYOMING
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MIKE CRAPO, IDAHO
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RYAN JACKSON, MAJORITY STAFF DIRECTOR
BETTINA POIRIER, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

February 26, 2015

The Honorable Janet McCabe
Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

Dear Administrator McCabe:

On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Wednesday, February 11, 2015. The committee greatly appreciates your attendance and participation in this hearing.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. We ask that you respond to each member's request in a separate typed document. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth_Olsen@epw.senate.gov or deliver one hard copy within 14 days after the date of this letter. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Mandy Gunasekara, Counsel on the Committee's Majority staff at (202) 224-7841, or Joseph Mendelson, Chief Climate Counsel for the Minority staff at (202) 224-6948.

Sincerely,

Barbara Boxer
Ranking Member

James M. Inhofe
Chairman

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Message

From: Olsen, Elizabeth (EPW) [Elizabeth_Olsen@epw.senate.gov]
Sent: 2/24/2015 8:51:32 PM
To: Mccarthy, Gina [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=51ee957b10cb49a0b2ff98174ae44a46-Mccarthy, Regina]
CC: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: Senate Committee for EPW: Request for Follow up Responses for February 4, 2015 Hearing
Attachments: mccarthy formal letter qfr.pdf; ALL QFRs McCarthy 02.04.15 Environment and Public Works WOTUS Hearing.pdf

February 24, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW (1101A)
Washington, D.C. 20460

Dear Administrator McCarthy:

On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Wednesday, February 4, 2015. The committee greatly appreciates your attendance and participation in this hearing.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. We ask that you respond to each member's request in a separate typed document. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth_Olsen@epw.senate.gov or deliver one hard copy within 14 days after the date of this letter. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Laura Atcheson, Counsel on the Committee's Majority staff at (202) 224-7844, or Jason Albritton, Senior Policy Advisor on the Committee's Minority staff at (202) 224-1914.

Sincerely,

Barbara Boxer
Ranking Member

James M. Inhofe
Chairman

Elizabeth "Lizzy" Olsen, J.D.
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Environment and Public Works WOTUS Hearing
"Impacts of the Proposed Water of the United States Rule on State and Local Governments"
February 4, 2015
Follow-Up Questions for Written Submission to EPA Administrator McCarthy

Chairman Senator Inhofe

1. Please provide details on the resources, staffing, and procedures that will be utilized in reviewing the nearly 1 million comments received on the proposed waters of the United States rule. You promised to carefully consider these comments, yet also stated an intention to have the rule finalized in the spring of 2015. Taken with a 2-month interagency review period, this leaves 50-60 working days to review millions of pages of comments. How does EPA plan to complete such an expedited review?

2. When does EPA anticipate having all of the comments posted for public review? Currently only a small percentage of the comments have been posted.

3. You have stated that the rule narrows what is considered jurisdictional. What are you using as a baseline? Keep in mind that using previous rules rather than the 2008 Guidance would be misleading, because important elements of these have been struck down by subsequent court decisions.

4. You pledged to correct/tweak many parts of the rule during the recent Senate Committee on Environment and Public Works hearing on the proposed rule. However, as you stated, these issues are very complicated and difficult to address. Will you commit to subjecting the revised rule to a public notice and comment period?

5. Municipal Separate Storm Sewer Systems ("MS4s") are permitted as "point sources" by EPA and states under the CWA Section 402 National Pollutant Discharge Elimination System ("NPDES") program. That is, MS4 owners and operators must obtain Section 402 permits for pollutant discharges from MS4s into WOTUS. Moreover, EPA regulations provide that the boundaries of MS4 systems – and all of the component ditches, drains, pipes, curbs, gutters, and outfall points that comprise these systems – should be delineated and mapped such as through the use of GIS technologies. Given that MS4 discharges are already subject to exhaustive NPDES permitting requirements shouldn't these mapped and identified storm sewer systems – and all of their component parts – be excluded from WOTUS coverage?

6. EPA and the Army Corps regulations have long held that "waste treatment systems" are excluded from WOTUS coverage. See 40 C.F.R. § 122.2 (exclusions from WOTUS definition at subsection (b)(1)). MS4s treat, store, and recycle municipal and industrial

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pollutants that are present in stormwater flows, before such pollutants are discharged into WOTUS. In EPA's views, are MS4s considered "waste treatment systems"? If so, shouldn't MS4s thus be captured by the "waste treatment system" exemption to WOTUS? Do the agencies consider untreated stormwater that enters into and travels through an MS4 a "waste"?

7. When an industrial activity results in a discharge into an MS4, EPA has "always addressed such discharges as discharges through [MS4s] as opposed to 'discharges to waters of the United States' …." See Preamble to Phase 1 Rule, 55 Fed. Reg. 47,900, 47,997 (Nov. 16, 1990) (emphasis supplied). Therefore, shouldn't Section 402-permitted MS4s and their component parts be exempt from WOTUS coverage?

8. EPA's economic analysis of the proposed rule indicates that the rule will "not have an effect on annual expenditures" associated with development of state water quality standards, monitoring and assessment of water quality, and development of total maximum daily loads. Given that even by EPA's own estimate the rule will expand the current scope of federal jurisdiction, how do you assume that states will be able to expand such costly CWA programs at no expense?

9. EPA's economic analysis of the proposed rule indicated that the rule would "be cost neutral or minimal" with respect to Section 402 discharge permits for industrial operations. Given that by EPA's own estimate the rule will expand the current scope of federal jurisdiction, as well as industry's clearly stated concerns that the rule will bring on-site waters under federal oversight, how will this rule be "cost neutral" for industrial operations?

10. For the first time ever, your rule codifies CWA jurisdiction over on-site water management features such as ditches. The broad language in the rule could also easily be read to encompass other features on industrial sites that are not currently jurisdictional, such as settling ponds and basins. Why did your Agency fail to consider the additional costs added to the regulated public if on-site water management features – designed to ensure any discharges into downstream water meet environmental standards – are now themselves federally protected waterways under the CWA?

11. As you have heard from multiple entities, the broad overlapping definitions in the rule could bring a number of additional waters – including waters at industrial sites – under federal jurisdiction despite the intentions of the Agency. How do you intend to address these legitimate concerns in the final rule?

12. EPA has stated that it does not intend to modify or in any way limit any of the current exclusions from CWA jurisdiction, including the waste treatment system exclusion. Is this true?

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13. If EPA – who is not the permitting authority in the case of Section 404 - can at any time retroactively veto the duly authorized specification of a disposal site, can it really be said that CWA Section 404 permits are *ever* final?

14. In 1972 during deliberations on the Clean Water Act in Congress, Senator Muskie noted that there are three essential elements to the Clean Water Act -- "uniformity, finality, and enforceability." Do you agree that finality is an important consideration for permits? How do the assertions made by EPA regarding the scope of its authority under Section 404 comport with the notion of permit finality?

15. Without any discernible or objective criteria governing EPA's claimed authority under Section 404(c), EPA's retroactive revocation of a lawfully issued Section 404 permit has destroyed the essential element of permit uniformity. What impact do you think EPA's actions will have on investment in U.S. property and natural resource development?

16. EPA's internal documents have stated that preemptive 404 actions, such as those taken with respect to the Pebble Mine in Alaska, could serve as a means of "watershed planning." If EPA is granted the authority to undertake such unilateral watershed planning, what would be the impacts on states?

17. Under the proposed rule, EPA and the Corps are suggesting that the movement of wildlife, including birds between one water and another, or the reliance by such species on a particular water within a watershed for any part of the species' life cycle, can be used to identify when waters are connected for purposes of asserting federal jurisdiction. Can you explain how this is different from the migratory bird rule struck down in SWANCC?

18. The proposed rule will make all perennial, intermittent, and ephemeral tributaries – including most streams and ditches and many dry washes – automatically jurisdictional. In connection with a hearing on the proposed rule by the House Science Committee, EPA released some USGS maps that show 8.1 million miles of intermittent, perennial and ephemeral tributaries, without even counting the ditches and dry washes. By contrast, EPA's latest National Water Quality Inventory Report to Congress says that State 305(b) reports identify only 3.5 million miles of federally jurisdictional "waters of the United States" nationwide under current regulations. Given that the preamble of the proposed rule indicates that USGS maps can be used to help identify jurisdictional waters, can you explain whether the additional 4.6 million stream miles reflected on the USGS maps released to the House Science Committee will not be treated as jurisdictional once the proposed rule is finalized? [Source: U.S. Environmental Protection Agency, Office of Water, National Water Quality Inventory: Report to Congress (January 2009)].

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19. Today electric utilities, other energy facilities, and manufacturing facilities (often located in floodplains and riparian areas) design complex systems to manage and direct/divert water, stormwater, and waste on site so they can use the land and meet environmental requirements under federal and state law. These systems typically include ditches and canals that take water and waste to impoundments and treatment facilities and directly flow around and away from the facility. Only if the facilities end up discharging to a navigable water or adjacent wetland would they need to obtain Clean Water Act permits to meet water quality requirements at the point of discharge. The proposed rule would appear to make many of these ditches and impoundments themselves jurisdictional, requiring companies to meet water quality standards in the ditches and impoundments themselves rather than solely in downstream navigable waters and wetlands. EPA has long recognized that waste treatment systems are exempt from NPDES permit requirements and that water withdrawn for human use is not "waters of the United States." In keeping with these positions, does EPA agree that purpose-built water and waste management, collection, and diversion systems, including their ditches and impoundments, are not federally jurisdictional?

20. EPA, the Corps, and the regulated community rely on nationwide permits under Sections 402 and 404 to authorize discharges to jurisdictional waters without the need for individual permits, which take much longer and cost much more to obtain. This has been an especially important tool for energy infrastructure projects. Today, the use of a nationwide permit is subject to a small acreage limitation affected by "single and complete" projects, which are sections of projects that affect such waters. The proposed rule appears like it will make it more difficult to use nationwide permits by making it harder to qualify for them. How would EPA and the Army Corps ensure that most or all projects that now qualify for NWPs would continue to do so?

<u>Ranking Member Senator Boxer</u>

1) Ms. McCarthy and Ms. Darcy, you have taken important steps to solicit public and stakeholder input as part of the rulemaking process. For example, I understand that the comment period was extended twice and lasted over 200 days, which seems like a long period of time compared to most rulemakings. Is this correct?

    a. I also understand EPA and the Corps have conducted significant outreach beyond the formal comment period. Can you also elaborate on the types of outreach conducted for this rule?
    b. How will EPA and the Corps incorporate the feedback you have received as you work to prepare a final rule?

2) The Clean Water Act broadly protected small streams and isolated wetlands for nearly 25 years until the *SWANCC* case in 2001. Can you tell the Committee whether the proposed

Clean Water rule covers more waters than were protected prior to the SWANCC decision in 2001?

a. Were businesses in this country able to operate prior to 2001 when the Supreme Court narrowed the scope of the Act?

3) Ms. McCarthy, many of my colleagues choose to focus on perceived overreach and exaggerated costs of the proposed rule without discussing the value of providing clean water for our families and businesses.

   Can you elaborate on some of the benefits of the proposed rule?

4) Ms. McCarthy, in administering landmark laws, like the Clean Water Act, it is important that Federal agencies follow the best available science. Can you expand on the science that was used to develop the rule and whether the protections included in the rule are supported by science?

Senator Wicker

1) Under your proposed rule; all waters in a flood plain are regulated, not just wetlands. So, under your rule you could be expanding jurisdiction to reach standing water in farmers' fields.

2) Will you commit to me that the final rule will not apply to "all water" in a flood plain or riparian area or "all water" that might flow over the land or that might move through the ground?

3) Please respond to concerns expressed to me by members of the Council of International Shopping Centers in Mississippi that the proposed rule broadens the scope of the Clean Water Act beyond statutory and constitutional limits established by Congress and affirmed by the Supreme Court. Specifically, uncertainty is created by allowing certain features to be considered jurisdictional based on their relationship to "impoundments" while leaving "impoundment" undefined; and the reliance on the confusing concept of ordinary high water mark as the key identifier for tributaries.

4) Please provide definitions and respond to the concern by the International Council for Shopping Centers that the rule leaves many concepts vague and undefined such as "impoundment," "floodplain," "riparian area" and "shallow subsurface hydrologic connection."

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Senator Sullivan

1) The EPA's economic analysis of the proposed rule says that it would result in a 3% increase in jurisdictional waters nationwide. Does the EPA have an idea of how much of that would be found in Alaska?

2) Will tundra with underlying permafrost be considered jurisdictional under the proposed rule?

3) Is permafrost itself jurisdictional under the proposed rule? If so, what is the significant nexus between permafrost and a navigable water, interstate water, or territorial sea?

4) Are mountaintops that are covered in snow pack, or glaciers jurisdictional under the proposed rule?

5) Are alpine muskeg peat bogs jurisdictional under the proposed rule?

6) Are forested wetlands on steep slopes that do not have a traditional hydrological connection (defined bed, bank or ordinary high water mark) jurisdictional?

7) Businesses need fair and consistent permitting. However, clarity is not necessarily uniformity. Permafrost, tundra, muskegs, boreal forest spruce bogs, glaciers, and massive snowfields are features unique to Alaska and are absent in the vast majority, if not the entirety, of the rest of the U.S. Would you be willing to tailor the rule to take into account regionally specific characteristics?

8) The EPA has stated a number of times, including at the hearing, that ditches are excluded from jurisdiction under the proposed rule. A closer read of the proposal lists a number of criteria a ditch must meet in order to be excluded from jurisdiction. Do you envision that some ditches located on residential and commercial properties will meet these criteria?

9) Do you think that you have adequately complied with Executive Order 13132, which requires consultation with states for rulemakings that have "substantial direct effects on the states?"

10) In your view, will this proposal result in fewer citizen lawsuits?

11) What assurances can you provide the public, state and local governments, tribes, and regulated industry, that this rule will not cause skyrocketing costs of compliance, including mitigation costs?

12) Even if EPA does not intend to regulate waters which may be interpreted as newly jurisdictional, how can small landowners avoid eventual litigation brought against them due to these wide interpretations?

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13) Section 101b of the Clean Water Act clearly states, "It is the policy of Congress to recognize, preserve, and protect the *primary* responsibilities and rights of the states to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this chapter." Why was the State of Alaska treated as nothing more than another contributor to the public comment period?

14) How do you think this proposed rule will impact the ability of state and local governments to exercise their authority with respect to land use management and planning?

15) All activities that will potentially affect newly jurisdictional waters will need to be approved by the Corps, and will be subject to EPA veto. Do you think the rule confers upon the EPA expansive control over land use and economic development decisions traditionally reserved for state and local governments?

16) How will the proposed rule impact the ability to create critical infrastructure that requires 404 permits?

17) The proposed rule is based on the Connectivity Study, which was itself developed without consultation with the states, local or tribal governments, or industry. The report lacks regional examples, including for Alaska. How can EPA rely on such generalized information?

18) By some estimates Alaska has 65% of the country's wetlands and the majority of these are dependent on continuous or discontinuous permafrost. Why didn't the Connectivity report include any maps or illustrations of Alaska?

19) Why did the EPA Science Advisory Board convened to look at the Connectivity Report only include academics and not a single regulatory expert or scientist from a state government?

20) Writing such a broad rule that applies nationally is certainly a difficult task. Wouldn't the EPA have benefitted from additional assistance from state regulatory experts and those with intimate knowledge of specific watersheds and the unique hydrology and geographic features of the different regions of the country?

21) Under the proposed rule, landowners with properties containing newly jurisdictional waters may experience may decrease in property value. Has EPA considered how the rule will affect property values?

22) Since the rulemaking was drafted before completion of the Connectivity Study, upon which it is based, how was there a meaningful opportunity to comment on the proposed rule provided?

ED_002117_00013177-00007

Senator Vitter:

1) In light of EPA's actions with respect to the Bristol Bay and Pebble mines incidents, do you believe that the regulated community has certainty that they can receive due process to have their projects fairly considered?

2) Studies have clearly shown that even a slight increase in uncertainty causes exponential reduction in capital investments. Now that your Agency is expanding its authority over even more waters, how do you intend to instill certainty and reliability in the CWA permitting process?

3) Under current regulations and Corps practice "all water" in a flood plain is **not** jurisdictional. In fact, in a 2004 report, GAO identified only one Corps of Engineers district (Galveston) that used the floodplain alone to establish jurisdiction over a wetland and even in that district, if the wetland was separated by two or more berms, it was not considered a water of the United States.

According to the Rock Island District, the flood plain extends several miles inland from the Mississippi River and they felt that regulating all wetlands in the floodplain (much less all water) would be overreaching their authority.

The proposed rule leaves the scope of the flood plain to the "best professional judgment" of EPA or the Corps, only requiring the presence of land formed by "sediment deposition under present climactic conditions" and inundation when there is high water flow.

There are no limits on the period of time that a so-called flood plain could be free from water, allowing agency officials to use any historic flood to identify the extent of the flood plain. Attached is a picture of the land around Brunswick MO that was inundated during the 1993 Missouri River flood.

Also, below is a graphic that demonstrates the impacts of using the floodplain to identify waters of the U.S. As you can see, almost every facility manages water, if only stormwater, and if the facility is located in a floodplain then that water will be a water of the U.S under your proposed rule.

Last Friday, this situation got even worse. President Obama issued a new Executive Order that changes the definition of floodplain from the area inundated by a 100 year flood to one that is based on either the 500 year flood, 2 or 3 feet above the 100 year flood, or some other area based on climate modeling.

This new flood standard was issued without public participation. The order says you plan to get public input after the fact – but the new flood standard has been set.

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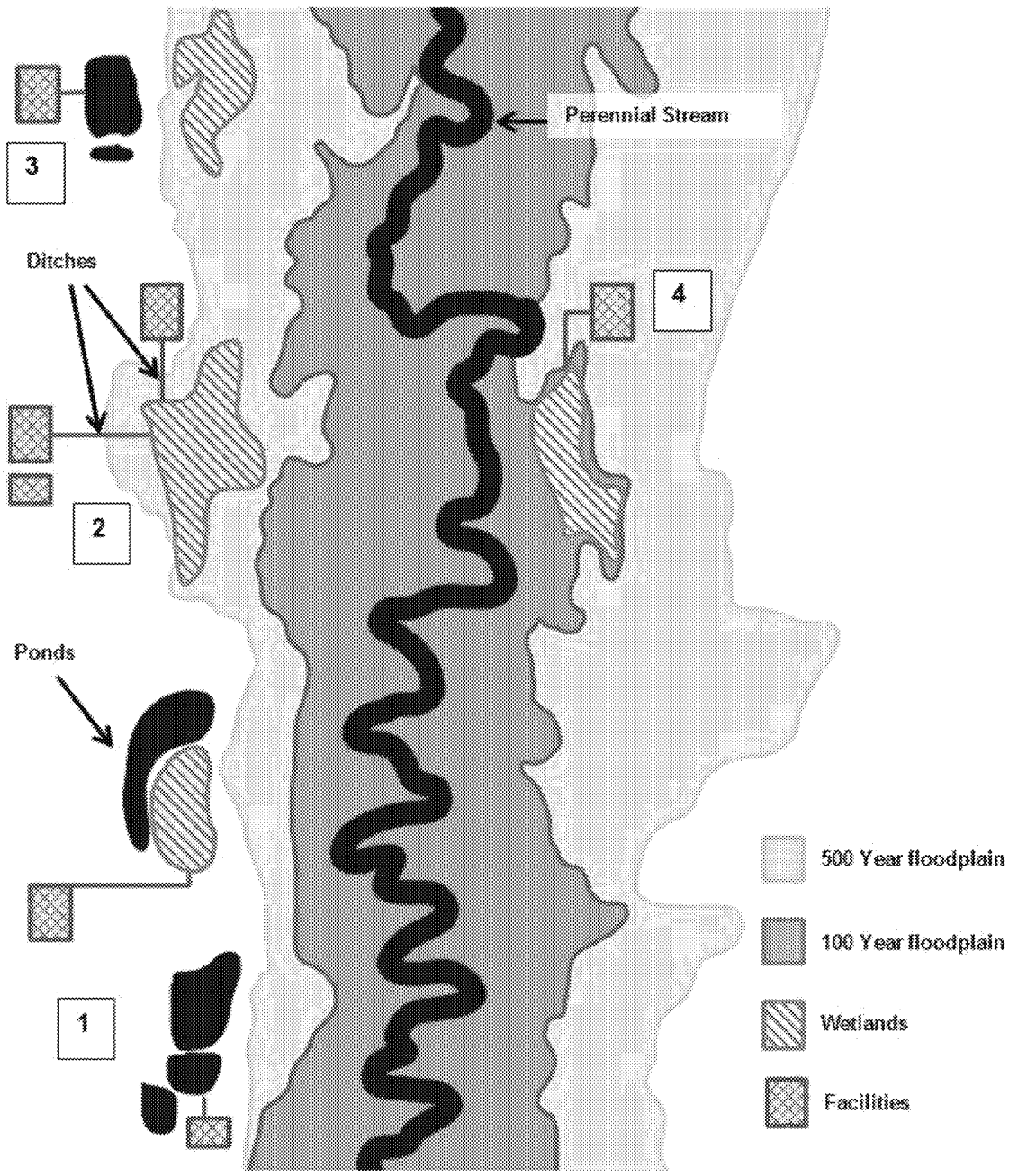
Will you commit to me that you will not try to turn water located at industrial facilities, farms, municipal water and wastewater facilities, and even homes into waters of the U.S. just because they are in a flood plain?

Will you also commit to me that the Executive Order will have no bearing on your waters of the U.S. rule?

Graphics:

1993 Missouri River Flood – Brunswick, MO


Perennial Stream
3
Ditches
4
2
Ponds
1
500 Year floodplain
100 Year floodplain
Wetlands
Facilities

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RYAN JACKSON, MAJORITY STAFF DIRECTOR
BETTINA POIRIER, DEMOCRATIC STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

February 24, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW (1101A)
Washington, D.C. 20460

Dear Administrator McCarthy:

On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Wednesday, February 4, 2015. The committee greatly appreciates your attendance and participation in this hearing.

In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. We ask that you respond to each member's request in a separate typed document. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth_Olsen@epw.senate.gov or deliver one hard copy within 14 days after the date of this letter. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Laura Atcheson, Counsel on the Committee's Majority staff at (202) 224-7844, or Jason Albritton, Senior Policy Advisor on the Committee's Minority staff at (202) 224-1914.

Sincerely,

Barbara Boxer
Ranking Member

James M. Inhofe
Chairman

PRINTED ON RECYCLED PAPER

Message

From: Karakitsos, Dimitri (EPW) [Dimitri_Karakitsos@epw.senate.gov]
Sent: 9/29/2015 7:13:41 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
Subject: RE: Few remaining issues
Attachments: EPA TA - Orion - (7-10-15) - redline w explanation comments - v.2.1.rtf

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From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, September 29, 2015 3:12 PM
To: Karakitsos, Dimitri (EPW)
Subject: Re: Few remaining issues

Are you somewhere alone that you can give me a quick call?

564 0304

Sent from my iPhone

On Sep 29, 2015, at 1:43 PM, Karakitsos, Dimitri (EPW) <Dimitri_Karakitsos@epw.senate.gov> wrote:

> Specifically 3 changes – sending you what I shared with her as my explination so you all are aware of what issues they have raised questions on. I will mention we can call if need be?
>
> So the short answer to all of these is I believe they were all a direct result or stemming from TA. None were meant as major policy or substantive changes, all to clean up, clarify or conform.
>
> Pg 67 Reasonable basis – this was just as I thought, a change made based on TA to conform with the application of the safety standard under the bill. The problem with these petitions is that they can be done under section 6 for example for a chemical substance that has not even been prioritized, allowing a petition to regulate for an unprioritized chemical because there is a "reasonable basis" would mess up the entire system and be a major change.
>
> Pg 47 Chem ID – This is a change to better reflect current practices. EPA TA indicated it was not necessary because the exceptions already apply. EPA said these requirements apply to all CBI so including the language there and not other places could call in to question whether those requirements apply in other places where they should.
>
> Pg 52 CBI 10 year – this was TA to clarify. 10 year limitation still applies, I believe we actually clarified because it was unclear some claims had to be both asserted and substantiated and that wasn't clear before. Additionally there are some CBI that is subject to the 10 years (chem ID) and other that aren't subject to a time limit (information in 14(b) marketing and sales, specific volumes). No change in policy from the bill as introduced, just TA to clarify.
>
> ---
>
> **From:** Vaught, Laura [mailto:Vaught.Laura@epa.gov]
> **Sent:** Tuesday, September 29, 2015 1:28 PM
> **To:** Karakitsos, Dimitri (EPW)
> **Subject:** RE: Few remaining issues

Yes – putting them on standby now (and had them on alert anyway).

Just FYI – after 2:00 we will have lawyers available, but likely not Jim as easily.

From: Karakitsos, Dimitri (EPW) [mailto:Dimitri_Karakitsos@epw.senate.gov]
Sent: Tuesday, September 29, 2015 1:26 PM
To: Vaught, Laura
Subject: Few remaining issues

Boxer office has 3 remaining questions, I think they are a result of TA but want to be sure. Can you have the team on standby in case we need a quick call in the next 20 min or so?

Dimitri J. Karakitsos
Majority Senior Counsel
Senate Committee on
Environment and Public Works
(202) 224-6176

Purpose: In the nature of a substitute.

S. 697

To amend the Toxic Substances Control Act to reauthorize and modernize that Act, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE PROPOSED BY _____

Viz:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Frank R. Lautenberg Chemical Safety for the 21st Century Act".

SEC. 2. FINDINGS, POLICY, AND INTENT.

Section 2(c) of the Toxic Substances Control Act (15 U.S.C. 2601(c)) is amended—

(1) by striking "It is the intent" and inserting the following:

"(1) ADMINISTRATION.—It is the intent";

(2) in paragraph (1) (as so redesignated), by inserting ", as provided under this Act" before the period at the end; and

(3) by adding at the end the following:

"(2) REFORM.—This Act, including reforms in accordance with the amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act—

"(A) shall be administered in a manner that—

"(i) protects the health of children, pregnant women, the elderly, workers, consumers, the general public, and the environment from the risks of harmful exposures to chemical substances and mixtures; and

"(ii) ensures that appropriate information on chemical substances and mixtures is available to public health officials and first responders in the event of an

emergency; and

"(B) shall not displace or supplant common law rights of action or remedies for civil relief.".

SEC. 3. DEFINITIONS.

Section 3 of the Toxic Substances Control Act (15 U.S.C. 2602) is amended—

(1) by redesignating paragraphs (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) as paragraphs (5), (6), (7), (8), (9), (10), (12), (13), (17), (18), and (19), respectively;

(2) by inserting after paragraph (3) the following:

"(4) CONDITIONS OF USE.—The term 'conditions of use' means the intended, known, or reasonably foreseeable circumstances the Administrator determines a chemical substance is manufactured, processed, distributed in commerce, used, or disposed of.";

(3) by inserting after paragraph (10) (as so redesignated) the following:

"(11) POTENTIALLY EXPOSED OR SUSCEPTIBLE POPULATION.—The term 'potentially exposed or susceptible population' means 1 or more groups—

"(A) of individuals within the general population who may be—

"(i) differentially exposed to chemical substances under the conditions of use; or

"(ii) susceptible to greater adverse health consequences from chemical exposures than the general population; and

"(B) that when identified by the Administrator may include such groups as infants, children, pregnant women, workers, and the elderly."; and

(4) by inserting after paragraph (13) (as so redesignated) the following:

"(14) SAFETY ASSESSMENT.—The term 'safety assessment' means an assessment of the risk posed by a chemical substance under the conditions of use, integrating hazard, use, and exposure information regarding the chemical substance.

"(15) SAFETY DETERMINATION.—The term 'safety determination' means a determination by the Administrator as to whether a chemical substance meets the safety standard under the conditions of use.

"(16) SAFETY STANDARD.—The term 'safety standard' means a standard that ensures, without taking into consideration cost or other nonrisk factors, that no unreasonable risk of injury to health or the environment will result from exposure to a chemical substance under the conditions of use, including no unreasonable risk of injury to—

"(A) the general population; or

"(B) any potentially exposed or susceptible population that the Administrator has identified as relevant to the safety assessment and safety determination for a chemical substance.".

SEC. 4. POLICIES, PROCEDURES, AND GUIDANCE.

The Toxic Substances Control Act is amended by inserting after section 3 (15 U.S.C. 2602) the following:

"SEC. 3A. POLICIES, PROCEDURES, AND GUIDANCE.

"(a) Definition of Guidance.—In this section, the term 'guidance' includes any significant written guidance of general applicability prepared by the Administrator.

"(b) Deadline.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall develop, after providing public notice and an opportunity for comment, any policies, procedures, and guidance the Administrator determines to be necessary to carry out sections 4, 4A, 5, and 6, including the policies, procedures, and guidance required by this section.

"(c) Use of Science.—

"(1) IN GENERAL.—The Administrator shall establish policies, procedures, and guidance on the use of science in making decisions under sections 4, 4A, 5, and 6.

"(2) GOAL.—A goal of the policies, procedures, and guidance described in paragraph (1) shall be to make the basis of decisions clear to the public.

"(3) REQUIREMENTS.—The policies, procedures, and guidance issued under this section shall ~~describe the manner in which the Administrator shall ensure that —~~ **ensure that—**

Commented [S1]: To be consistent with language in other subsections and better clarify purpose of the policies, procedures, and guidance.

"(A) decisions made by the Administrator—

"(i) are based on information, procedures, measures, methods, and models employed in a manner consistent with the best available science;

"(ii) take into account the extent to which—

"(I) assumptions and methods are clearly and completely described and documented;

"(II) variability and uncertainty are evaluated and characterized; and

"(III) the information has been subject to independent verification and peer review; and

"(iii) are based on the weight of the scientific evidence, by which the Administrator considers all information in a systematic and integrative framework to consider the relevance of different information;

"(B) to the extent practicable and if appropriate, the use of peer review, standardized test design and methods, consistent data evaluation procedures, and good laboratory practices will be encouraged;

"(C) a clear description of each individual and entity that funded the generation or assessment of information, and the degree of control those individuals and entities had over the generation, assessment, and dissemination of information (including control over the design of the work and the publication of information) is made available; and

"(D) if appropriate, the recommendations in reports of the National Academy of Sciences that provide advice regarding assessing the hazards, exposures, and risks of chemical substances are considered.

"(d) Existing EPA Policies, Procedures, and Guidance.—The policies, procedures, and guidance described in subsection (b) shall incorporate~~, as appropriate, existing relevant hazard, exposure, and risk assessment guidelines and methodologies, data evaluation and quality criteria, testing methodologies, and other relevant guidelines and policies of the Environmental Protection Agency.~~ **existing relevant policies, procedures, and guidance, as appropriate and consistent with this Act.**

Commented [S2]: Per TA, to simplify and avoid needing to provide a comprehensive list of such documents.

"(e) Review.—Not later than 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and not less frequently than once every 5 years thereafter, the Administrator shall—

"(1) review the adequacy of any policies, procedures, and guidance developed under this section, including animal, nonanimal, and epidemiological test methods and procedures for assessing and determining risk under this Act; and

"(2) after providing public notice and an opportunity for comment, revise the policies, procedures, and guidance if necessary to reflect new scientific developments or understandings.

"(f) Sources of Information.—In carrying out sections 4, 4A, 5, and 6, the Administrator shall take into consideration information relating to a chemical substance, including hazard and exposure information, under the conditions of use that is reasonably available to the Administrator, including information that is—

"(1) submitted to the Administrator pursuant to any rule, consent agreement, order, or other requirement of this Act, or on a voluntary basis, including pursuant to any request made under this Act, by—

"(A) manufacturers or processors of a substance;

"(B) the public;

"(C) other Federal departments or agencies; or

"(D) the Governor of a State or a State agency with responsibility for protecting health or the environment;

"(2) submitted to a governmental entity in any jurisdiction pursuant to a governmental requirement relating to the protection of health or the environment; or

"(3) identified through an active search by the Administrator of information sources that are publicly available or otherwise accessible by the Administrator.

"(g) Testing of Chemical Substances and Mixtures.—

"(1) IN GENERAL.—The Administrator shall establish policies ~~and~~**,** procedures**, and guidance** for the testing of chemical substances or mixtures under section 4.

"(2) GOAL.—A goal of the policies ~~and~~**,** procedures**, and guidance** established under paragraph (1) shall be to make the basis of decisions clear to the public.

"(3) CONTENTS.—The policies ~~and~~**,** procedures**, and guidance** established under paragraph (1) shall—

"(A) address how and when the exposure level or exposure potential of a chemical substance would factor into decisions to require new testing, subject to the condition

that the Administrator shall not interpret the lack of exposure information as a lack of exposure or exposure potential; **and**

"(B) describe the manner in which the Administrator will determine that additional information is necessary to carry out this Act, including information relating to potentially exposed or susceptible populations~~;~~.

~~"(C) require the Administrator to~~**"(4) EPIDEMIOLOGICAL STUDIES.—Before prescribing epidemiological studies of employees, the Administrator shall** consult with the Director of the National Institute for Occupational Safety and Health. ~~prior to prescribing epidemiologic studies of employees; and~~

~~"(D) require that prior to making a request or adopting a requirement for testing using vertebrate animals, the Administrator shall take into consideration, as appropriate and to the extent practicable, reasonably available—~~

Commented [S3]: Moved to section 4(c)(1)(A) to integrate with other vertebrate animal testing provisions.

~~"(i) toxicity information;~~

~~"(ii) computational toxicology and bioinformatics;~~

~~* 1 "(iii) high-throughput screening methods and the prediction models of those methods; and~~

~~* 2 "(iv) scientifically reliable and relevant alternatives to tests on animals that would provide equivalent information.~~

"(h) Safety Assessments and Safety Determinations.—

"(1) SCHEDULE.—

"(A) IN GENERAL.—The Administrator shall inform the public regarding the schedule for the completion of each safety assessment and safety determination as soon as practicable after designation as a high-priority substance pursuant to section 4A.

"(B) DIFFERING TIMES.—The Administrator may allot different times for different chemical substances in the schedules under this paragraph, subject to the condition that all schedules shall comply with the deadlines established under section 6.

"(C) ANNUAL PLAN.—At the beginning of each calendar year, the Administrator shall identify the substances subject to safety assessments and safety determinations to be completed that year.

"(2) POLICIES AND PROCEDURES FOR SAFETY ASSESSMENTS AND SAFETY DETERMINATIONS.—

"(A) IN GENERAL.—The Administrator shall establish, by rule, policies and procedures regarding the manner in which the Administrator shall carry out section 6.

"(B) GOAL.—A goal of the policies and procedures under this paragraph shall be to make the basis of decisions of the Administrator clear to the public.

"(C) MINIMUM ~~REQUIREMENTS.—AT A MINIMUM, THE~~ REQUIREMENTS.—**The** policies and procedures under this paragraph ~~shall—~~ **shall, at a minimum—**

"(i) describe—

"(I) the manner in which the Administrator will identify informational needs and seek that information from the public;

"(II) the information (including draft safety assessments) that may be submitted by interested individuals or entities, including States; and

"(III) the criteria by which ~~that~~ information **submitted by interested individuals or entities** will be evaluated;

"(ii) require ~~the Administrator—~~ **that each draft and final safety assessment and safety determination of the Administrator include a description of—**

~~"(I)(aa) to define~~**"(I)(aa)** the scope of the safety assessment and safety determination to be conducted under section 6, including the hazards, exposures, **and** conditions of use **of the chemical substance**, and potentially exposed and susceptible populations that the Administrator ~~expects to consider~~ **has considered** in a safety assessment; **and**

"(bb) ~~to explain~~ the basis for the scope of the safety assessment and safety determination;

~~and~~

~~"(cc) to accept comments regarding the scope of the safety assessment and safety determination; and~~

~~"(II)(aa) to identify the items described in subclause (I) that the Administrator has considered in the final safety assessment; and~~

~~"(bb) to explain the basis for the consideration of those items;~~

~~"(iii) describe~~**"(II)** the manner in which aggregate exposures, or significant subsets of exposures, to a chemical substance under the conditions of use ~~will be~~ **were** considered, and ~~explain~~ the basis for that consideration ~~in the final safety assessment;~~**;**

~~"(iv) require that each safety assessment and safety determination shall include—~~

~~"(I) a description of~~**"(III)** the weight of the scientific evidence of risk; and

~~"(II) a summary of~~**"(IV)** the information regarding the impact on health and the environment of the chemical substance that was used to make the assessment or determination, including, as available, mechanistic, animal toxicity, and epidemiology studies;

~~"(v)~~**"(iii)** establish a timely and transparent process for evaluating whether new information submitted or obtained after the date of a final safety assessment or safety determination warrants reconsideration of the safety assessment or safety determination; and

~~"(vi)~~**"(iv)** when relevant information is provided or otherwise made available to the Administrator, ~~shall~~ **require the Administrator to** consider the extent of Federal regulation under other Federal laws.

Commented [S4]: Per TA, to clarify what information is being referred to.

Commented [S5]: Per TA, changes for clarity and apply requirements to both draft and final safety assessments and safety determinations.

"(D) GUIDANCE.—

"(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall develop guidance to assist interested persons in developing their own draft safety assessments and other information for submission to the Administrator, which may be considered at the discretion of the Administrator.

"(ii) REQUIREMENT.—The guidance shall, at a minimum, address the quality of the information submitted and the process to be followed in developing a draft safety assessment for consideration by the Administrator.

"(i) Publicly Available Information.—Subject to section 14, the Administrator shall—

"(1) make publicly available a nontechnical summary, and the final version, of each safety assessment and safety determination;

"(2) provide public notice and an opportunity for comment on each proposed safety assessment and safety determination; and

"(3) make public in a final safety assessment and safety determination—

"(A) the list of studies considered by the Administrator in carrying out the safety assessment or safety determination; and

"(B) the list of policies, procedures, and guidance that were followed in carrying out the safety assessment or safety determination.

"(j) Consultation With Science Advisory Committee on Chemicals.—

"(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this section, the Administrator shall establish an advisory committee, to be known as the 'Science Advisory Committee on Chemicals' (referred to in this subsection as the 'Committee').

"(2) PURPOSE.—The purpose of the Committee shall be to provide independent advice and expert consultation, on the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of this title.

"(3) COMPOSITION.—The Committee shall be composed of representatives of such science, government, labor, public health, public interest, animal protection, industry, and other groups as the Administrator determines to be advisable, including, at a minimum, representatives that have specific scientific expertise in the relationship of chemical exposures to women, children, and other potentially exposed or susceptible populations.

"(4) SCHEDULE.—The Administrator shall convene the Committee in accordance with such schedule as the Administrator determines to be appropriate, but not less frequently than once every 2 years.

"(5) RELATIONSHIP TO OTHER LAW.—All proceedings and meetings of the Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).".

SEC. 5. TESTING OF CHEMICAL SUBSTANCES OR MIXTURES.

(a) In General.—Section 4 of the Toxic Substances Control Act (15 U.S.C. 2603) is

Commented [S6]: Per TA, these changes replace the Interagency Testing Committee with a general authority for other agencies to request EPA to conduct testing under TSCA to meet their needs. That authority is provided under new paragraph (5) below.

amended—

(1) by striking subsections (a), (b), (c), (d), ~~and (g);~~**(e), and (g);**

~~(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively;~~

~~(3) in subsection (f) (as so redesignated)—~~

~~(A) by striking "rule" each place it appears and inserting "rule, testing consent agreement, or order";~~

~~(B) by striking "under subsection (a)" each place it appears and inserting "under this subsection"; and~~

~~(C) in paragraph (1)—~~

~~(i) in subparagraph (A)(v), by inserting ", without taking into account cost or other nonrisk factors" after "the environment"; and~~

~~(ii) in subparagraph (B), in the last sentence, by striking "rulemaking";~~

~~(4) in subsection (g) (as so redesignated)—~~**(2) in subsection (f)—**

(A) in the first sentence—

(i) by striking "from cancer, gene mutations, or birth defects"; and

(ii) by inserting ", without taking into account cost or other nonrisk factors" before the period at the end; and

(B) by striking the last sentence; and

~~(5)~~**(3)** by inserting before subsection (f) ~~(as so redesignated)~~ the following:

"(a) Development of New Information on Chemical Substances and Mixtures.—

"(1) IN GENERAL.—The Administrator may require the development of new information relating to a chemical substance or mixture in accordance with this section if the Administrator determines that the information is necessary—

"(A) to review a notice under section 5(d) or to perform a safety assessment or safety determination under section 6;

"(B) to implement a requirement imposed in a consent agreement or order issued under section 5(d)(4) or under a rule promulgated under section 6(d)(3);

"(C) pursuant to section 12(a)(4); or

"(D) at the request of the implementing authority under another Federal law, to meet the regulatory testing needs of that authority.

"(2) LIMITED TESTING FOR PRIORITIZATION PURPOSES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Administrator may require the development of new information for the purposes of section 4A.

"(B) PROHIBITION.—Testing required under subparagraph (A) shall not be required for the purpose of establishing or implementing a minimum information requirement.

"(C) LIMITATION.—The Administrator may require the development of new

information pursuant to subparagraph (A) only if the Administrator determines that additional information is necessary to establish the priority of a chemical substance.

"(3) FORM.—The Administrator may require the development of information described in paragraph (1) or (2) by—

"(A) promulgating a rule;

"(B) entering into a testing consent agreement; or

"(C) issuing an order.

"(4) CONTENTS.—

"(A) IN GENERAL.—A rule, testing consent agreement, or order issued under this subsection shall include—

"(i) identification of the chemical substance or mixture for which testing is required;

"(ii) identification of the persons required to conduct the testing;

"(iii) test protocols and methodologies for the development of information for the chemical substance or mixture, including specific reference to any reliable nonanimal test procedures; and

"(iv) specification of the period within which individuals and entities required to conduct the testing shall submit to the Administrator the information developed in accordance with the procedures described in clause (iii).

"(B) CONSIDERATIONS.—In determining the procedures and period to be required under subparagraph (A), the Administrator shall take into consideration—

"(i) the relative costs of the various test protocols and methodologies that may be required; and

"(ii) the reasonably foreseeable availability of facilities and personnel required to perform the testing.

"(5) CONSIDERATION OF FEDERAL AGENCY RECOMMENDATIONS.—The Administrator shall consider the recommendations of other Federal agencies regarding the chemical substances and mixtures to which the Administrator shall give priority consideration under this section.

"(b) Statement of Need.—

"(1) IN GENERAL.—In promulgating a rule, entering into a testing consent agreement, or issuing an order for the development of additional information (including information on exposure or exposure potential) pursuant to this section, the Administrator shall—

"(A) identify the need intended to be met by the rule, agreement, or order;

"(B) explain why information reasonably available to the Administrator at that time is inadequate to meet that need, including a reference, as appropriate, to the information identified in paragraph (2)(B); and

"(C) explain the basis for any decision that requires the use of vertebrate animals.

"(2) EXPLANATION IN CASE OF ORDER.—

"(A) IN GENERAL.—If the Administrator issues an order under this section, the Administrator shall issue a statement providing a justification for why issuance of an order is warranted instead of promulgating a rule or entering into a testing consent agreement.

"(B) CONTENTS.—A statement described in subparagraph (A) shall contain a description of—

"(i) information that is readily accessible to the Administrator, including information submitted under any other provision of law;

"(ii) the extent to which the Administrator has obtained or attempted to obtain the information through voluntary submissions; and

"(iii) any information relied on in safety assessments for other chemical substances relevant to the chemical substances that would be the subject of the order.

"(c) Reduction of Testing on Vertebrates.—

"(1) IN GENERAL.—The Administrator shall minimize, to the extent practicable, the use of vertebrate animals in testing of chemical substances or mixtures, by—

"(A) ~~encouraging and facilitating—~~ **prior to making a request or adopting a requirement for testing using vertebrate animals, taking into consideration, as appropriate and to the extent practicable, reasonably available—**

Commented [S7]: Moved here from section 3A(g) to integrate with other vertebrate animal testing provisions.

"(i) toxicity information;

"(ii) computational toxicology and bioinformatics;

**** 1** "(iii) high-throughput screening methods and the prediction models of those methods; and

**** 2** "(iv) scientifically reliable and relevant alternatives to tests on animals that would provide equivalent information~~.~~**;**

"(B) encouraging and facilitating—

"(i) the use of integrated and tiered testing and assessment strategies;

"(ii) the use of best available science in existence on the date on which the test is conducted;

"(iii) the use of test methods that eliminate or reduce the use of animals while providing information of high scientific quality;

"(iv) the grouping of 2 or more chemical substances into scientifically appropriate categories in cases in which testing of a chemical substance would provide reliable and useful information on other chemical substances in the category;

"(v) the formation of industry consortia to jointly conduct testing to avoid unnecessary duplication of tests; and

"(vi) the submission of information from—

"(I) animal-based studies; and

"(II) emerging methods and models; and

~~"(B)~~**"(C)** funding research and validation studies to reduce, refine, and replace the use of animal tests in accordance with this subsection.

"(2) IMPLEMENTATION OF ALTERNATIVE TESTING METHODS.—To promote the development and timely incorporation of new testing methods that are not based on vertebrate animals, the Administrator shall—

"(A) not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, develop a strategic plan to promote the development and implementation of alternative test methods and testing strategies to generate information under this title that can reduce, refine, or replace the use of vertebrate animals, including toxicity pathway-based risk assessment, in vitro studies, systems biology, computational toxicology, bioinformatics, and high-throughput screening;

"(B) as practicable, ensure that the strategic plan developed under subparagraph (A) is reflected in the development of requirements for testing under this section;

"(C) identify in the strategic plan developed under subparagraph (A) particular alternative test methods or testing strategies that do not require new vertebrate animal testing and are scientifically reliable, relevant, and capable of providing information of equivalent scientific reliability and quality to that which would be obtained from vertebrate animal testing;

"(D) provide an opportunity for public notice and comment on the contents of the plan developed under subparagraph (A), including the criteria for considering scientific reliability, relevance, and equivalent information and the test methods and strategies identified in subparagraph (C);

"(E) beginning on the date that is 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act and every 5 years thereafter, submit to Congress a report that describes the progress made in implementing this subsection and goals for future alternative test methods implementation;

"(F) fund and carry out research, development, performance assessment, and translational studies to accelerate the development of test methods and testing strategies that reduce, refine, or replace the use of vertebrate animals in any testing under this title; and

"(G) identify synergies with the related information requirements of other jurisdictions to minimize the potential for additional or duplicative testing.

"(3) CRITERIA FOR ADAPTING OR WAIVING ANIMAL TESTING REQUIREMENTS.—On request from a manufacturer or processor that is required to conduct testing of a chemical substance or mixture on vertebrate animals under this section, the Administrator may adapt or waive the requirement, if the Administrator determines that—

"(A) there is sufficient evidence from several independent sources of information to

support a conclusion that a chemical substance or mixture has, or does not have, a particular property if the information from each individual source alone is insufficient to support the conclusion;

"(B) as a result of 1 or more physical or chemical properties of the chemical substance or mixture or other toxicokinetic considerations—

"(i) the substance cannot be absorbed; or

"(ii) testing for a specific endpoint is technically not practicable to conduct; or

"(C) a chemical substance or mixture cannot be tested in vertebrate animals at concentrations that do not result in significant pain or distress, because of physical or chemical properties of the chemical substance or mixture, such as a potential to cause severe corrosion or severe irritation to the tissues of the animal.

"(4) VOLUNTARY TESTING.—

"(A) IN GENERAL.—Any person developing information for submission under this title on a voluntary basis and not pursuant to any request or requirement by the Administrator shall first attempt to develop the information by means of an alternative or nonanimal test method or testing strategy that the Administrator has determined under paragraph (2)(C) to be scientifically reliable, relevant, and capable of providing equivalent information, before conducting new animal testing.

"(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph—

"(i) requires the Administrator to review the basis on which the person is conducting testing described in subparagraph (A);

"(ii) prohibits the use of other test methods or testing strategies by any person for purposes other than developing information for submission under this title on a voluntary basis; or

"(iii) prohibits the use of other test methods or testing strategies by any person, subsequent to the attempt to develop information using the test methods and testing strategies identified by the Administrator under paragraph (2)(C).

"(d) Testing Requirements.—

Commented [S8]: Per TA, changes in this subsection are made to better track current TSCA and clarify the parties eligible for exemptions and the duration of the reimbursement period.

"(1) IN GENERAL.—The Administrator may require the development of information by—

"(A) manufacturers and processors of the chemical substance or mixture; and

"(B) ~~subject to paragraph (3),~~ persons that begin to manufacture or process the chemical substance or **mixture** ~~mixture—~~

~~"(i)~~ after the effective date of the rule, testing consent agreement, or order.~~; but~~

~~"(ii) before the period ending on the later of—~~

~~"(I) 5 years after the date referred to in clause (i); or~~

~~* 3 "(II) the last day of the period that begins on the date referred to in clause (i) and that is equal to the period that the Administrator determines was necessary to develop the~~

~~information.~~

"(2) DESIGNATION.—The Administrator may permit 2 or more persons identified in subparagraph (A) or (B) of paragraph (1) to designate 1 of the persons or a qualified third party—

"(A) to develop the information; and

"(B) to submit the information on behalf of the persons making the designation.

"(3) EXEMPTIONS.—

"(A) IN GENERAL.—A person otherwise subject to a rule, testing consent agreement, or order under this section may submit to the Administrator an application for an exemption on the basis that ~~the information~~ **submission of information by the applicant on the chemical substance or mixture would be duplicative of—**

"(i) information on the chemical substance or mixture that—

"(I) has been submitted to the Administrator pursuant to a rule, consent agreement, or order under this section; or

"(II) is being developed by a person designated under paragraph (2); or

"(ii) information on an equivalent chemical substance or mixture that—

"(I) has been submitted to the Administrator pursuant to a rule, consent agreement, or order under this section; or

"(II) is being developed by a person designated under paragraph (2).

"(B) FAIR AND EQUITABLE REIMBURSEMENT TO DESIGNEE.—

"(i) IN GENERAL.—If the Administrator accepts an application submitted under subparagraph (A), **before the end of the reimbursement period described in clause (iii),** the Administrator shall direct the applicant to provide to the person designated under paragraph (2) fair and equitable reimbursement, as agreed to between the applicant and the designee.

"(ii) ARBITRATION.—If the applicant and a person designated under paragraph (2) cannot reach agreement on the amount of fair and equitable reimbursement, the amount shall be determined by arbitration.

"(iii) REIMBURSEMENT PERIOD.—For the purposes of this subparagraph, the reimbursement period for any information for a chemical substance or mixture is a period—

"(I) beginning on the date the information is submitted in accordance with a rule, testing consent agreement, or order under this section; and

"(II) ending on the later of—

"(aa) 5 years after the date referred to in subclause (I); or

** **3** ~~"(II)~~**"(bb)** the last day of the period that begins on the date referred to in ~~clause (i)~~ **subclause (I)** and that is equal to the period that

the Administrator determines was necessary to develop the information.

"(C) TERMINATION.—If, after granting an exemption under this paragraph, the Administrator determines that no person designated under paragraph (2) has complied with the rule, testing consent agreement, or order, the Administrator shall—

"(i) by order, terminate the exemption; and

"(ii) notify in writing each person that received an exemption of the requirements with respect to which the exemption was granted.

"(4) TIERED TESTING.—

"(A) IN GENERAL.—Except as provided in subparagraph (D), the Administrator shall employ a tiered screening and testing process, under which the results of screening-level tests or assessments of available information inform the decision as to whether 1 or more additional tests are necessary.

"(B) SCREENING-LEVEL TESTS.—

"(i) IN GENERAL.—The screening-level tests required for a chemical substance or mixture may include tests for hazard (which may include in silico, in vitro, and in vivo tests), environmental and biological fate and transport, and measurements or modeling of exposure or exposure potential, as appropriate.

"(ii) USE.—Screening-level tests shall be used—

"(I) to screen chemical substances or mixtures for potential adverse effects; and

"(II) to inform a decision of the Administrator regarding whether more complex or targeted additional testing is necessary.

"(C) ADDITIONAL TESTING.—If the Administrator determines under subparagraph (B) that additional testing is necessary to provide more definitive information for safety assessments or safety determinations, the Administrator may require more advanced tests for potential health or environmental effects or exposure potential.

"(D) ADVANCED TESTING WITHOUT SCREENING.—The Administrator may require more advanced testing without conducting screening-level testing when other information available to the Administrator justifies the advanced testing, pursuant to guidance developed by the Administrator under this section.

"(e) Transparency.—Subject to section 14, the Administrator shall make available to the public all testing consent agreements and orders and all information submitted under this section.".

(b) Conforming Amendment.—Section 104(i)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(i)(5)(A)) is amended in the third sentence by ~~striking "section 4(e)" and inserting "section 4(f)".~~ **inserting "(as in effect on the day before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act)" after "Toxic Substances Control Act".**

SEC. 6. PRIORITIZATION SCREENING.

The Toxic Substances Control Act is amended by inserting after section 4 (15 U.S.C. 2603) the following:

"SEC. 4A. PRIORITIZATION SCREENING.

"(a) Prioritization Screening Process and List of Substances.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator shall establish, by rule, a risk-based screening process and ~~explicit~~ criteria for identifying existing chemical substances that are—

Commented [S9]: Per TA, so as not to imply that other criteria specified in the bill are not to be explicit.

"(A) a high priority for a safety assessment and safety determination under section 6 (referred to in this Act as 'high-priority substances'); and

"(B) a low priority for a safety assessment and safety determination (referred to in this Act as 'low-priority substances').

"(2) INITIAL LIST OF HIGH- AND LOW-PRIORITY SUBSTANCES.—

"(A) IN GENERAL.—Before the date of promulgation of the rule under paragraph (1) and not later than 180 days after the date of enactment of this section, the **Administrator shall** ~~Administrator—~~

~~"(i) shall take into consideration and~~ publish an initial list of high-priority substances and low-priority substances~~; and~~

~~"(ii) pursuant to section 6(b), may initiate or continue safety assessments and safety determinations for those high-priority substances~~.

Commented [S10]: Per TA, to simplify language and avoid unnecessary redundancy with section 6(b).

"(B) REQUIREMENTS.—

"(i) IN GENERAL.—The initial list of chemical substances shall contain at least 10 high-priority substances, at least 5 of which are drawn from the list of chemical substances identified by the Administrator in the October 2014 TSCA Work Plan and subsequent updates, and at least 10 low-priority substances.

"(ii) SUBSEQUENTLY IDENTIFIED SUBSTANCES.—Insofar as possible, at least 50 percent of all substances subsequently identified by the Administrator as high-priority substances shall be drawn from the list of chemical substances identified by the Administrator in the October 2014 TSCA Work Plan and subsequent updates, until all Work Plan chemicals have been designated under this subsection.

"(iii) PERSISTENCE AND BIOACCUMULATION.—In developing the initial list and in identifying additional high-priority substances, the Administrator shall give preference to chemical substances scored as high for persistence and bioaccumulation in the October 2014 TSCA Work Plan and subsequent updates.

"(C) ADDITIONAL CHEMICAL REVIEWS.—The Administrator shall, as soon as practicable and not later than—

"(i) 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, add additional high-priority substances sufficient to ensure that at least a total of 20 high-priority substances have undergone or are

undergoing the process established in section 6(a), and additional low-priority substances sufficient to ensure that at least a total of 20 low-priority substances have been designated; and

"(ii) 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, add additional high-priority substances sufficient to ensure that at least a total of 25 high-priority substances have undergone or are undergoing the process established in section 6(a), and additional low-priority substances sufficient to ensure that at least a total of 25 low-priority substances have been designated.

"(3) IMPLEMENTATION.—

"(A) CONSIDERATION OF ACTIVE AND INACTIVE SUBSTANCES.—

"(i) ACTIVE SUBSTANCES.—In ~~carrying out~~ **implementing the prioritization screening process established under** paragraph (1), the Administrator shall take into consideration active substances, as determined under section 8, which may include chemical substances on the interim list of active substances established under that section.

Commented [S11]: Per TA, for clarity, here and in next clause.

"(ii) INACTIVE SUBSTANCES.—In ~~carrying out~~ **implementing the prioritization screening process established under** paragraph (1), the Administrator may take into consideration inactive substances, as determined under section 8, that the Administrator determines—

"(I)(aa) have not been subject to a regulatory or other enforceable action by the Administrator to ban or phase out the substances; and

"(bb) have the potential for high hazard and widespread exposure; or

"(II)(aa) have been subject to a regulatory or other enforceable action by the Administrator to ban or phase out the substances; and

"(bb) with respect to which there exists the potential for residual high hazards or widespread exposures not otherwise addressed by the regulatory or other action.

"(iii) REPOPULATION.—

"(I) IN GENERAL.—On the completion of a safety determination under section 6 for a chemical substance, the Administrator shall remove the chemical substance from the list of high-priority substances established under this subsection.

"(II) ADDITIONS.—The Administrator shall add at least 1 chemical substance to the list of high-priority substances for each chemical substance removed from the list of high-priority substances established under this subsection, until a safety assessment and safety determination is completed for all **chemical substances not designated as high-priority.** ~~high-priority substances.~~

Commented [S12]: Per TA, to clarify that all substances other than low-priority substances are to undergo safety assessments and safety determinations, once designated high-priority substances

~~"(III) Low-priority substances.—If a low-priority substance is subsequently designated as a high-priority substance, the Administrator shall~~

Commented [S13]: Per TA, not needed; redundant.

~~remove that substance from the list of low-priority substances.~~

"(B) TIMELY COMPLETION OF PRIORITIZATION SCREENING PROCESS.—

"(i) IN GENERAL.—The Administrator shall—

"(I) except as provided under paragraph (2), not later than 180 days after the effective date of the final rule under paragraph (1), begin the prioritization screening process; and

"(II) make every effort to complete the designation of all active substances as high-priority substances or low-priority substances in a timely manner.

"(ii) DECISIONS ON SUBSTANCES SUBJECT TO TESTING FOR PRIORITIZATION PURPOSES.—Not later than 90 days after the date of receipt of information regarding a chemical substance complying with a rule, testing consent agreement, or order issued under section 4(a)(2), the Administrator shall designate the chemical substance as a high-priority substance or low-priority substance.

"(iii) CONSIDERATION.—

"(I) IN GENERAL.—The Administrator shall screen substances and designate high-priority substances taking into consideration the ability of the Administrator to schedule and complete safety assessments and safety determinations under section 6 in a timely manner.

"(II) ANNUAL GOAL.—The Administrator shall publish an annual goal for the number of chemical substances to be subject to the prioritization screening process.

"(C) SCREENING OF CATEGORIES OF SUBSTANCES.—The Administrator may screen categories of chemical substances to ensure an efficient prioritization screening process to allow for timely and adequate designations of high-priority substances and low-priority substances and safety assessments and safety determinations for high-priority substances.

"(D) PUBLICATION OF LIST OF CHEMICAL SUBSTANCES.—The Administrator shall keep current and publish a list of chemical substances ~~that~~— **that includes and identifies substances—**

Commented [S14]: Per TA, to clarify that all three types of substances are to be included on the list, that prioritization decisions on substances lacking sufficient information are postponed for a finite period and not deferred indefinitely, and that the bases for postponements are to be made available.

~~"(i)~~ **"(i) that** are being considered in the prioritization screening process and the status of the ~~chemical~~ substances in the prioritization process~~, including those chemical substances~~**;**

"(ii) for which prioritization decisions have been ~~deferred; and~~ **postponed pursuant to subsection (b)(5), including the basis for the postponement; and**

~~"(ii)~~**"(iii) that** are designated as high-priority substances or low-priority substances, including the bases for such designations.

"(4) CRITERIA.—The criteria described in paragraph (1) shall account for—

"(A) the recommendation of the Governor of a State or a State agency with responsibility for protecting health or the environment from chemical substances appropriate for prioritization screening;

"(B) the hazard and exposure potential of the chemical substance (or category of substances), including persistence, bioaccumulation, and specific scientific classifications and designations by authoritative governmental entities;

"(C) the conditions of use or significant changes in the conditions of use of the chemical substance;

"(D) evidence and indicators of exposure potential to humans or the environment from the chemical substance, including potentially exposed or susceptible populations;

"(E) the volume of a chemical substance manufactured or processed;

"(F) whether the volume of a chemical substance as reported ~~under~~ **pursuant to** a rule promulgated pursuant to section 8(a) has significantly increased or decreased ~~during the period beginning on the date of a previous report or the date on which a notice has been submitted under section 5(b) for that chemical substance~~;

Commented [S15]: Per TA, to avoid ambiguity and unnecessary complication in specifying how EPA is to determine whether a volume has significantly changed.

"(G) the availability of information regarding potential hazards and exposures required for conducting a safety assessment or safety determination, with limited availability of relevant information to be a sufficient basis for designating a chemical substance as a high-priority substance, subject to the condition that limited availability shall not require designation as a high-priority substance; and

"(H) the extent of Federal or State regulation of the chemical substance or the extent of the impact of State regulation of the chemical substance on the United States, with existing Federal or State regulation of any uses evaluated in the prioritization screening process as a factor in designating a chemical substance to be a high-priority or a low-priority substance.

"(b) Prioritization Screening Process and Decisions.—

"(1) IN ~~GENERAL.—THE~~ GENERAL.—**In implementing the** prioritization screening process developed under subsection (a) ~~shall include a requirement that~~, the Administrator shall—

Commented [S16]: Per TA, for clarity in direction being provided to EPA.

"(A) identify the chemical substances being considered for prioritization;

"(B) request interested persons to supply information regarding the chemical substances being considered;

"(C) apply the criteria identified in subsection (a)(4); and

"(D) subject to paragraph (5) and using the information available to the Administrator at the time of the decision, identify a chemical substance as a high-priority substance or a low-priority substance.

"(2) ~~INTEGRATION OF~~ **REASONABLY AVAILABLE** INFORMATION.—The prioritization screening decision regarding a chemical substance shall ~~integrate~~ **consider** any hazard and exposure information relating to the chemical substance that is **reasonably** available to the Administrator.

Commented [S17]: Per TA, changes to clarify information to be used by EPA.

"(3) IDENTIFICATION OF HIGH-PRIORITY SUBSTANCES.—The Administrator—

"(A) shall identify as a high-priority substance a chemical substance that, relative to other active chemical substances, the Administrator determines has the potential for

significant hazard and significant exposure;

"(B) may identify as a high-priority substance a chemical substance that, relative to other active chemical substances, the Administrator determines has the potential for significant hazard or significant exposure; and

"(C) may identify as a high-priority substance an inactive substance, as determined under subsection (a)(3)(A)(ii) and section 8(b), that the Administrator determines warrants a safety assessment and safety determination under section 6.

"(4) IDENTIFICATION OF LOW-PRIORITY SUBSTANCES.—The Administrator shall identify as a low-priority substance a chemical substance that the Administrator concludes has information sufficient to establish that the chemical substance is likely to meet the safety standard.

"(5) ~~DEFERRING~~ **POSTPONING** A DECISION.—If the Administrator determines that additional information is ~~required~~ **needed** to establish the priority of a chemical substance under this section, the Administrator may ~~defer the~~ **postpone a** prioritization screening decision for a reasonable period—

Commented [S18]: Per TA, for clarity that such decisions are postponed for a finite period and not deferred indefinitely.

"(A) to allow for the submission of additional information by an interested person and for the Administrator to evaluate the additional information; or

"(B) to require the development of information pursuant to a rule, testing consent agreement, or order issued under section 4(a)(2).

"(6) DEADLINES FOR SUBMISSION OF INFORMATION.—If the Administrator requests the development or submission of information under this section, the Administrator shall establish a deadline for submission of the information.

"(7) NOTICE AND COMMENT.—The Administrator shall—

"(A) publish, including in the Federal Register, the proposed decisions made under paragraphs (3), (4), and (5) and the basis for the decisions;

~~and~~**"(B) identify the information and analysis on which the documents are based; and**

~~"(B)~~ **"(C)** provide 90 days for public comment.

"(8) REVISIONS OF PRIOR DESIGNATIONS.—

"(A) IN GENERAL.—At any time, and at the discretion of the Administrator, the Administrator may revise the designation of a chemical substance as a high-priority substance or a low-priority substance based on information available to the Administrator after the date of the determination under paragraph (3) or (4).

"(B) LIMITED AVAILABILITY.—If limited availability of relevant information was a basis in the designation of a chemical substance as a high-priority substance, the Administrator shall reevaluate the prioritization screening of the chemical substance on receiving the relevant information.

"(9) OTHER INFORMATION RELEVANT TO PRIORITIZATION.—

"(A) IN GENERAL.—If, after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, a State proposes an administrative action or

enacts a statute or takes an administrative action to prohibit or otherwise restrict the manufacturing, processing, distribution in commerce, or use of a chemical substance that the Administrator has not designated as a high-priority substance, the Governor or State agency with responsibility for implementing the statute or administrative action shall notify the Administrator.

"(B) REQUESTS FOR INFORMATION.—Following receipt of a notification provided under subparagraph (A), the Administrator may request any available information from the Governor or the State agency with respect to—

"(i) scientific evidence related to the hazards, exposures and risks of the chemical substance under the conditions of use which the statute or administrative action is intended to address;

"(ii) any State or local conditions which warranted the statute or administrative action;

"(iii) the statutory or administrative authority on which the action is based; and

"(iv) any other available information relevant to the prohibition or other restriction, including information on any alternatives considered and their hazards, exposures, and risks.

"(C) PRIORITIZATION SCREENING.—The Administrator shall conduct a prioritization screening under this subsection for all substances that—

"(i) are the subject of notifications received under subparagraph (A); and

"(ii) the Administrator determines—

"(I) are likely to have significant health or environmental impacts;

"(II) are likely to have significant impact on interstate commerce; or

"(III) have been subject to a prohibition or other restriction under a statute or administrative action in 2 or more States.

"(D) AVAILABILITY TO PUBLIC.—Subject to section 14 and any applicable State law regarding the protection of confidential information provided to the State or to the Administrator, the Administrator shall make information received from a Governor or State agency under subparagraph (A) publicly available.

"(E) EFFECT OF PARAGRAPH.—Nothing in this paragraph shall preempt a State statute or administrative action, require approval of a State statute or administrative action, or apply section 15 to a State.

"(10) REVIEW.—Not less frequently than once every 5 years after the date on which the process under this subsection is established, the Administrator shall—

"(A) review the process on the basis of experience and taking into consideration resources available to efficiently and effectively screen and prioritize chemical substances; and

"(B) if necessary, modify the prioritization screening process.

"(11) EFFECT.—Subject to section 18, a designation by the Administrator under this

section with respect to a chemical substance shall not affect—

"(A) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance; or

"(B) the regulation of those activities.

"(c) Additional Priorities for Safety Assessments and Determinations.—

"(1) REQUIREMENTS.—

"(A) IN GENERAL.—The ~~prioritization screening process developed~~ **rule promulgated** under subsection (a) shall—

"(i) include a process by which a manufacturer or processor of an active chemical substance that has not been designated a high-priority substance or is not in the process of a prioritization screening by the Administrator, may request that the Administrator designate the substance as an additional priority for a safety assessment and safety determination, subject to the payment of fees pursuant to section ~~26(b)(3)(E)~~ **26(b)(3)(D)**;

"(ii) specify the information to be provided in such requests; and

"(iii) specify the criteria **(which may include criteria identified in subsection (a)(4)) that** the Administrator shall use to determine whether or not to grant such a request, which shall include whether the substance is subject to restrictions imposed by statutes enacted or administrative actions taken by 1 or more States on the manufacture, processing, distribution in commerce, or use of the substance.

"(B) PREFERENCE.—Subject to paragraph (2), in deciding whether to grant requests under this subsection the Administrator shall give a preference to requests concerning 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.

"(C) EXCEPTIONS.—Chemical substances for which requests have been granted under this subsection shall not be subject to subsection (a)(3)(A)(iii) or section 18(b).

"(2) LIMITATIONS.—In considering whether to grant a request submitted under paragraph (1), the Administrator shall ensure that—

"(A) ~~if a sufficient number of additional priority requests meet the requirements of paragraph (1),~~ **the number of substances designated to undergo safety assessments and safety determinations under the process and criteria pursuant to paragraph (1) is** not less than 25 percent, or more than 30 percent, of the cumulative number of substances designated to undergo safety assessments and safety determinations under subsections (a)(2) and (b)(3) ~~are substances designated under the process and criteria pursuant to paragraph (1);~~**(except that if less than 25 percent are received by the Administrator, the Administrator shall grant each request that meets the requirements of paragraph (1));**

"(B) the resources allocated to conducting safety assessments and safety determinations for additional priorities designated under this subsection are proportionate to the number of such substances relative to the total number of

Commented [S19]: Per TA, to clarify it is the rule that is to include the process in (i), which is a process different from and in addition to the prioritization screening process.

Commented [S20]: Correcting cross-reference based on later relettering of subparagraphs in section 26(b)(3).

Commented [S21]: To clarify that criteria used to prioritize chemicals can also be used here at EPA discretion.

Commented [S22]: Per TA, for clarity as to how percentages are to be calculated.

substances **currently** designated to undergo safety assessments and safety determinations under this section; and

Commented [S23]: Per TA, to clarify that this subparagraph relates to the allocation of resources among chemicals in the pipeline at any given time.

"(C) the number of additional priority requests stipulated under subparagraph (A) is in addition to the total number of high-priority substances identified under subsections (a)(2) and (b)(3).

"(3) ADDITIONAL REVIEW OF WORK PLAN CHEMICALS FOR SAFETY ASSESSMENT AND SAFETY DETERMINATION.—In the case of a request under paragraph (1) with respect to a chemical substance identified by the Administrator in the October 2014 Work Plan—

"(A) the 30-percent cap specified in paragraph (2)(A) shall not apply and the addition of Work Plan chemicals shall be at the discretion of the Administrator; and

"(B) notwithstanding paragraph (1)(C), requests for additional Work Plan chemicals under this subsection shall be considered high-priority chemicals subject to section 18(b) but not subsection (a)(3)(A)(iii).

"(4) REQUIREMENTS.—

"(A) IN GENERAL.—The public shall be provided notice and an opportunity to comment on requests submitted under this subsection.

"(B) DECISION BY ADMINISTRATOR.—Not later than 180 days after the date on which the Administrator receives a request under this subsection, the Administrator shall decide whether or not to grant the request.

"(C) ASSESSMENT AND DETERMINATION.—If the Administrator grants a request under this subsection, the safety assessment and safety determination—

"(i) shall be conducted in accordance with the deadlines and other requirements of sections 3A(i) and 6; and

"(ii) shall not be expedited or otherwise subject to special treatment relative to high-priority substances designated pursuant to subsection (b)(3) that are undergoing safety assessments and safety determinations.".

SEC. 7. NEW CHEMICALS AND SIGNIFICANT NEW USES.

Section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) is amended—

(1) by striking the section designation and heading and inserting the following:

"SEC. 5. NEW CHEMICALS AND SIGNIFICANT NEW USES.";

(2) by striking subsection (b);

(3) by redesignating subsection (a) as subsection (b);

(4) by redesignating subsection (i) as subsection (a) and moving the subsection so as to appear at the beginning of the section;

(5) in subsection (b) (as so redesignated)—

(A) in the subsection heading, by striking "In General" and inserting "Notices";

(B) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "subsection (h)" and inserting "paragraph (3) and subsection (h)"; and

(ii) in the matter following subparagraph (B)—

(I) by striking "subsection (d)" and inserting "subsection (c)"; and

(II) by striking "and such person complies with any applicable requirement of subsection (b)"; and

(C) by adding at the end the following:

"(3) ARTICLE CONSIDERATION.—The Administrator may require ~~the~~ 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)(B) 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 warrants notification.";

Commented [S24]: To clarify the reference to notification is to a section 5 notice, not a section 13 import notification.

(6) by redesignating subsections (c) and (d) as subsections (d) and (c), respectively, and moving subsection (c) (as so redesigned) so as appear after subsection (b) (as redesignated by paragraph (3));

(7) in subsection (c) (as so redesignated)—

(A) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—The notice required by subsection (b) shall include, with respect to a chemical substance—

"(A) the information required by sections 720.45 and 720.50 of title 40, Code of Federal Regulations (or successor regulations); and

"(B) **all known or reasonably ascertainable** information regarding conditions of use and reasonably anticipated exposures.";

Commented [S25]: Per TA, to mirror current TSCA's language.

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A)—

(I) by striking "subsection (a)" and inserting "subsection (b)"; and

(II) by striking "or of data under subsection (b)";

(ii) in subparagraph (A), by adding "and" after the semicolon at the end;

(iii) in subparagraph (B), by striking "; and" and inserting a period; and

(iv) by striking subparagraph (C); and

(C) in paragraph (3), by striking "subsection (a) and for which the notification period prescribed by subsection (a), (b), or (c)" and inserting "subsection (b) and for which the notification period prescribed by subsection (b) or (d)";

(8) by striking subsection (d) (as redesignated by paragraph (6)) and inserting the

following:

"(d) Review of Notice.—

"(1) INITIAL REVIEW.—

"(A) IN GENERAL.—Subject to subparagraph (B), not later than 90 days after the date of receipt of a notice submitted under subsection (b), the Administrator shall—

"(i) conduct an initial review of the notice;

"(ii) as needed, develop a profile of the relevant chemical substance and the potential for exposure to humans and the environment; and

"(iii) make ~~any necessary~~ **a** determination under paragraph (3).

Commented [S26]: Per TA, to be clear that a determination is necessary in each case.

"(B) EXTENSION.—Except as provided in paragraph (5), the Administrator may extend the period described in subparagraph (A) for good cause for 1 or more periods, the total of which shall be not more than 90 days.

"(2) INFORMATION SOURCES.—In evaluating a notice under paragraph (1), the Administrator shall take into consideration—

"(A) any relevant information identified in subsection (c)(1); and

"(B) any other relevant additional information available to the Administrator.

"(3) DETERMINATIONS.—Before the end of the applicable period for review under paragraph (1), based on the information described in paragraph (2), and subject to section 18(g), the Administrator shall determine that—

"(A) the relevant chemical substance or significant new use is not likely to meet the safety standard, in which case the Administrator shall take appropriate action under paragraph (4);

"(B) the relevant chemical substance or significant new use is likely to meet the safety standard, in which case the Administrator shall allow the review period to expire without additional restrictions; or

"(C) additional information is necessary in order to make a determination under subparagraph (A) or (B), in which case the Administrator shall take appropriate action under paragraphs (4) and (5).

"(4) RESTRICTIONS.—

"(A) DETERMINATION BY ADMINISTRATOR.—

"(i) IN GENERAL.—If the Administrator makes a determination under subparagraph (A) or (C) of paragraph (3) with respect to a notice submitted under subsection (b)—

"(I) the Administrator, before the end of the applicable period for review under paragraph (1) and by consent agreement or order, as appropriate, shall prohibit or otherwise restrict the manufacture, processing, use, distribution in commerce, or disposal (as applicable) of the chemical substance, or of the chemical substance for a significant new use, without compliance with the restrictions specified in the consent agreement or order that the

Administrator determines are sufficient to ensure that the chemical substance or significant new use is likely to meet the safety standard; and

"(II) no person may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, except in compliance with the restrictions specified in the consent agreement or order.

"(ii) LIKELY TO MEET STANDARD.—If the Administrator makes a determination under subparagraph (B) of paragraph (3) with respect to a chemical substance or significant new use for which a notice was submitted under subsection (b), at the end of the applicable period for review under paragraph (1), the submitter of the notice may commence manufacture for commercial purposes of the chemical substance or manufacture or processing of the chemical substance for a significant new use.

"(B) REQUIREMENTS.—Not later than 90 days after issuing a consent agreement or order under subparagraph (A), the Administrator shall—

"(i) ~~take into consideration~~ **consider** whether to promulgate a rule pursuant to subsection (b)(2) that identifies as a significant new use any manufacturing, processing, use, distribution in commerce, or disposal of the chemical substance~~, or of the chemical substance for a new use, that is not in compliance with~~ **that does not conform to** the restrictions imposed by the consent agreement or order; and

"(ii)(I) initiate a rulemaking described in clause (i); or

"(II) publish a statement describing the reasons of the Administrator for not initiating a rulemaking.

"(C) INCLUSIONS.—A prohibition or other restriction under subparagraph (A) may include, as appropriate—

"(i) subject to section 18(g), a requirement that a chemical substance shall be marked with, or accompanied by, clear and adequate minimum warnings and instructions with respect to use, distribution in commerce, or disposal, or any combination of those activities, with the form and content of the minimum warnings and instructions to be prescribed by the Administrator

"(ii) a requirement that manufacturers or processors of the chemical substance shall—

"(I) make and retain records of the processes used to manufacture or process, as applicable, the chemical substance; or

"(II) monitor or conduct such additional tests as are reasonably necessary to address potential risks from the manufacture, processing, distribution in commerce, use, or disposal, as applicable, of the chemical substance, subject to section 4;

"(iii) a restriction on the quantity of the chemical substance that may be manufactured, processed, or distributed in commerce—

Commented [S27]: Per TA, identifying a significant new use is already specified in opening phrase and is not needed here.

Commented [S28]: Per TA, consistent with current basis for SNURs under TSCA.

"(I) in general; or

"(II) for a particular use;

"(iv) a prohibition or other restriction of—

"(I) the manufacture, processing, or distribution in commerce of the chemical substance for a significant new use;

"(II) any method of commercial use of the chemical substance; or

"(III) any method of disposal of the chemical substance; or

"(v) a prohibition or other restriction on the manufacture, processing, or distribution in commerce of the chemical substance—

"(I) in general; or

"(II) for a particular use.

"(D) PERSISTENT AND BIOACCUMULATIVE SUBSTANCES.—For a chemical substance the Administrator determines ranks high for persistence and bioaccumulation, the Administrator shall, in selecting among prohibitions and other restrictions that the Administrator determines are sufficient to ensure that the chemical substance is likely to meet the safety standard, reduce potential exposure to the substance to the maximum extent practicable.

"(E) WORKPLACE ~~EXPOSURES.—THE~~ 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 under this subsection to address workplace exposures.

Commented [S29]: Per TA, to provide flexibility to do this where compatible with length of review period.

"(F) DEFINITION OF REQUIREMENT.—For purposes of this Act, the term 'requirement' as used in this section does not displace common law.

"(5) ADDITIONAL INFORMATION.—If the Administrator determines under paragraph (3)(C) that additional information is necessary to conduct a review under this subsection, the Administrator—

"(A) shall provide an opportunity for the submitter of the notice to submit the additional information;

"(B) may, by agreement with the submitter, extend the review period for a reasonable time to allow the development and submission of the additional information;

"(C) may promulgate a rule, enter into a testing consent agreement, or issue an order under section 4 to require the development of the information; and

"(D) on receipt of information the Administrator finds supports the determination under paragraph (3), shall promptly make the determination.";

(9) by striking subsections (e) through (g) and inserting the following:

"(e) Notice of Commencement.—

"(1) IN GENERAL.—Not later than 30 days after the date on which a manufacturer that has

submitted a notice under subsection (b) commences nonexempt commercial manufacture of a chemical substance, the manufacturer shall submit to the Administrator a notice of commencement that identifies—

"(A) the name of the manufacturer; and

"(B) the initial date of nonexempt commercial manufacture.

"(2) WITHDRAWAL.—A manufacturer or processor that has submitted a notice under subsection (b), but that has not commenced nonexempt commercial manufacture or processing of the chemical substance, may withdraw the notice.

"(f) Further Evaluation.—The Administrator may review a chemical substance under section 4A at any time after the Administrator receives—

"(1) a notice of commencement for a chemical substance under subsection (e); or

"(2) new information regarding the chemical substance.

"(g) Transparency.—Subject to section 14, the Administrator shall make available to the public—

"(1) all notices, determinations, consent agreements, rules, and orders ~~of~~ **submitted under this section or made by** the Administrator **under this section**; and

Commented [S30]: Per TA, to clarify this applies both to information submitted to EPA and decisions made by EPA.

"(2) all information submitted or issued under this section."; and

(10) in subsection (h)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "(a) or"; and

(ii) in subparagraph (A), by inserting ", without taking into account cost or other nonrisk factors" after "the environment";

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively;

(D) in paragraph (2) (as so redesignated), in the matter preceding subparagraph (A), by striking "subsections (a) and (b)" and inserting "subsection (b)";

(E) in paragraph (3) (as so redesignated)—

(i) in the first sentence, by striking "will not present an unreasonable risk of injury to health or the environment" and inserting "will meet the safety standard"; and

(ii) by striking the second sentence;

(F) in paragraph (4) (as so redesignated), by striking "subsections (a) and (b)" and inserting "subsection (b)"; and

(G) in paragraph (5) (as so redesignated), in the first sentence, by striking "paragraph (1) or (5)" and inserting "paragraph (1) or (4)".

SEC. 8. SAFETY ASSESSMENTS AND SAFETY DETERMINATIONS.

Section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) is amended—

(1) by striking the section designation and heading and inserting the following:

"SEC. 6. SAFETY ASSESSMENTS AND SAFETY DETERMINATIONS.";

(2) by redesignating subsections (e) and (f) as subsections (g) and (h), respectively;

(3) by striking subsections (a) through (d) and inserting the following:

"(a) In General.—The Administrator—

"(1) shall conduct a safety assessment and make a safety determination of each high-priority substance in accordance with subsections (b) and (c);

"(2) shall, as soon as practicable and not later than 6 months after the date on which a chemical substance is designated as a high-priority substance, define and publish the scope of the safety assessment and safety determination to be conducted pursuant to this section, including the hazards, exposures, conditions of use, and potentially exposed or susceptible populations that the Administrator expects to consider;

"(3) as appropriate based on the results of a safety determination, shall establish restrictions pursuant to subsection (d);

"(4) shall complete **and publish** a safety assessment and safety determination not later than 3 years after the date on which a chemical substance is designated as a high-priority substance;

Commented [S31]: To conform with language elsewhere that ties certain actions to publication of the safety assessment and determination.

"(5) shall promulgate ~~a~~ **any necessary** final rule pursuant to subsection (d) by not later than 2 years after the date on which the safety determination is completed; and

Commented [S32]: Per TA, to avoid implication that a rule is always to be required.

"(6) may extend any deadline under paragraph (4) or (5) for a reasonable period of time after an adequate public justification, subject to the condition that the aggregate length of all extensions of deadlines under this subsection, plus any deferral under subsection (c)(2), does not exceed 2 years.

"(b) Prior Actions and Notice of Existing Information.—

"(1) PRIOR-INITIATED ASSESSMENTS.—

"(A) IN GENERAL.—Nothing in this Act prevents the Administrator from initiating a safety assessment or safety determination regarding a chemical substance, or from continuing or completing such a safety assessment or safety determination ~~that was initiated before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act,~~ prior to the effective date of the policies ~~and~~**,** procedures**, and guidance** required to be established by the Administrator under section 3A or 4A.

Commented [S33]: Per TA, to clarify that an assessment or determination need not have been initiated before enactment, just before the new policies, procedures and guidance are in place.

"(B) INTEGRATION OF PRIOR POLICIES AND PROCEDURES.—As policies and procedures under section 3A and 4A are established, to the maximum extent practicable, the Administrator shall integrate the policies and procedures into ongoing

safety assessments and safety determinations.

"(2) ACTIONS COMPLETED PRIOR TO COMPLETION OF POLICIES AND PROCEDURES.—Nothing in this Act requires the Administrator to revise or withdraw a completed safety assessment, safety determination, or rule solely because the action was completed prior to the completion of a policy or procedure established under section 3A or 4A, and the validity of a completed assessment, determination, or rule shall not be determined based on the content of such a policy or procedure.

"(3) NOTICE OF EXISTING INFORMATION.—

"(A) IN GENERAL.—The Administrator shall, where such information is available, take notice of existing information regarding hazard and exposure published by other Federal agencies and the National Academies and incorporate the information in safety assessments and safety determinations with the objective of increasing the efficiency of the safety assessments and safety determinations.

"(B) INCLUSION OF INFORMATION.—Existing information described in subparagraph (A) should be included to the extent practicable and where the Administrator determines the information is relevant and scientifically reliable.

"(c) Safety Determinations.—

"(1) IN GENERAL.—Based on a review of the information available to the Administrator, including draft safety assessments submitted by interested persons **pursuant to section 3A(h)(2)(D)**, and subject to section 18**(g)**, the Administrator shall ~~determine that—~~ **determine—**

~~"(A)~~ **"(A) by order, that** the relevant chemical substance meets the safety standard;

"(B) **that** the relevant chemical substance does not meet the safety standard, in which case the Administrator shall, by rule under subsection (d)—

"(i) impose restrictions necessary to ensure that the chemical substance meets the safety standard under the conditions of use; or

"(ii) if the safety standard cannot be met with the application of **other** restrictions **under subsection (d)(3)**, ban or phase out the chemical substance, as appropriate; or

"(C) **that** additional information is necessary in order to make a determination under subparagraph (A) or (B), in which case the Administrator shall take appropriate action under paragraph (2).

"(2) ADDITIONAL INFORMATION.—If the Administrator determines that additional information is necessary to make a safety assessment or safety determination for a high-priority substance, the Administrator—

"(A) shall provide an opportunity for interested persons to submit the additional information;

"(B) may promulgate a rule, enter into a testing consent agreement, or issue an order under section 4 to require the development of the information;

"(C) may defer, for a reasonable period consistent with the deadlines described in

Commented [S34]: Per TA, to clarify that such draft assessments are subject to the guidance developed by EPA applicable to such submissions.

Commented [S35]: Specifies the cross-reference is to the savings clauses of section 18.

Commented [S36]: Per TA, specifies such determinations are to be made by order, which, coupled with changes made below to section 19 of TSCA, ensure these determinations are subject to judicial review under that section.

Commented [S37]: To clarify the other restrictions available to EPA in such a case.

subsection (a), a safety assessment and safety determination until after receipt of the information; and

"(D) consistent with the deadlines described in subsection (a), on receipt of information the Administrator finds supports the safety assessment and safety determination, shall make a determination under paragraph (1).

"(3) ESTABLISHMENT OF DEADLINE.—In requesting the development or submission of information under this section, the Administrator shall establish a deadline for the submission of the information.

"(d) Rule.—

"(1) IMPLEMENTATION.—If the Administrator makes a determination under subsection (c)(1)(B) with respect to a chemical substance, the Administrator shall promulgate a rule establishing restrictions necessary to ensure that the chemical substance meets the safety standard.

"(2) SCOPE.—

"(A) IN GENERAL.—The rule promulgated pursuant to this subsection—

"(i) may apply to mixtures containing the chemical substance, as appropriate;

"(ii) shall include dates by which compliance is mandatory, which—

"(I) shall be as soon as practicable;

"(II) in the case of a ban or phase-out of the chemical substance, shall implement the ban or phase-out in as short a period as practicable; and

"(III) as determined by the Administrator, may vary for different affected persons; and

"(iii) shall exempt replacement parts that are manufactured prior to the effective date of the rule for articles that are first manufactured prior to the effective date of the rule unless the Administrator finds the replacement parts contribute significantly to the identified risk; and

"(iv) shall, in selecting among prohibitions and other restrictions, apply such prohibitions or other restrictions to articles containing the chemical substance only to the extent necessary to address the identified risks in order to determine that the chemical substance meets the safety standard.

"(B) PERSISTENT AND BIOACCUMULATIVE SUBSTANCES.—For a chemical substance the Administrator determines ranks high for persistence and bioaccumulation, the Administrator shall, in selecting among prohibitions and other restrictions that the Administrator determines are sufficient to ensure that the chemical substance meets the safety standard, reduce exposure to the substance to the maximum extent practicable.

"(C) WORKPLACE EXPOSURES.—The Administrator shall consult with the Assistant Secretary of Labor for Occupational Safety and Health before adopting any prohibition or other restriction under this subsection to address workplace exposures.

"(D) DEFINITION OF REQUIREMENT.—For the purposes of this Act, the term 'requirement' as used in this section does not displace common law.

"(3) RESTRICTIONS.—A restriction under paragraph (1) may include, as appropriate—

"(A) subject to section 18, a requirement that a chemical substance shall be marked with, or accompanied by, clear and adequate minimum warnings and instructions with respect to use, distribution in commerce, or disposal, or any combination of those activities, with the form and content of the minimum warnings and instructions to be prescribed by the Administrator;

"(B) a requirement that manufacturers or processors of the chemical substance shall—

"(i) make and retain records of the processes used to manufacture or process the chemical substance;

"(ii) describe and apply the relevant quality control procedures followed in the manufacturing or processing of the substance; or

"(iii) monitor or conduct tests that are reasonably necessary to ensure compliance with the requirements of any rule under this subsection;

"(C) a restriction on the quantity of the chemical substance that may be manufactured, processed, or distributed in commerce;

"(D) a requirement to ban or phase out, or ~~any other rule regarding,~~ **otherwise restrict** the manufacture, processing, or distribution in commerce of the chemical substance for—

Commented [S38]: To conform language with usage throughout the rest of the bill.

"(i) a particular use;

"(ii) a particular use at a concentration in excess of a level specified by the Administrator; or

"(iii) all uses;

"(E) a restriction on the quantity of the chemical substance that may be manufactured, processed, or distributed in commerce for—

"(i) a particular use; or

"(ii) a particular use at a concentration in excess of a level specified by the Administrator;

"(F) a requirement to ban, phase out, or otherwise restrict any method of commercial use of the chemical substance;

"(G) a requirement to ban, phase out, or otherwise restrict any method of disposal of the chemical substance or any article containing the chemical substance; and

"(H) a requirement directing manufacturers or processors of the chemical substance to give notice of the Administrator's determination under subsection (c)(1)(B) to distributors in commerce of the chemical substance and, to the extent reasonably ascertainable, to other persons in the chain of commerce in possession of the chemical substance.

"(4) ANALYSIS FOR RULEMAKING.—

"(A) CONSIDERATIONS.—In deciding which restrictions to impose under paragraph

(3) as part of developing a rule under paragraph (1), the Administrator shall take into consideration, to the extent practicable based on reasonably available information, the quantifiable and nonquantifiable costs and benefits of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.

"(B) ALTERNATIVES.—As part of the analysis, the Administrator shall review any 1 or more technically and economically feasible alternatives to the chemical substance that the Administrator determines are relevant to the rulemaking.

"(C) PUBLIC AVAILABILITY.—In proposing a rule under paragraph (1), the Administrator shall make publicly available any analysis conducted under this paragraph.

"(D) STATEMENT REQUIRED.—In making final a rule under paragraph (1), the Administrator shall include a statement describing how the analysis considered under subparagraph (A) was taken into account.

"(5) EXEMPTIONS.—

"(A) IN GENERAL.—The Administrator may ~~exempt 1 or more uses of a chemical substance from any restriction in~~**, as part of** a rule promulgated under paragraph (1) **or in a separate rule, exempt 1 or more uses of a chemical substance from any restriction in a rule promulgated under paragraph (1)** if the Administrator determines that—

"(i) the ~~rule~~ **restriction** cannot be complied with, without—

"(I) harming national security;

"(II) causing significant disruption in the national economy due to the lack of availability of a chemical substance; or

"(III) interfering with a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure; or

"(ii) the use of the chemical substance, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.

"(B) EXEMPTION ANALYSIS.—In proposing a rule under ~~paragraph (1) that includes an exemption under~~ this paragraph, the Administrator shall make publicly available any analysis conducted under this paragraph to assess the need for the exemption.

"(C) STATEMENT REQUIRED.—In making final a rule under ~~paragraph (1) that includes an exemption under~~ this paragraph, the Administrator shall include a statement describing how the analysis considered under subparagraph (B) was taken into account.

"(D) ANALYSIS IN CASE OF BAN OR PHASE-OUT.—In determining whether an exemption should be granted under this paragraph for a chemical substance for which a ban or phase-out is **included in a** proposed **or final rule under paragraph (1)**, the Administrator shall take into consideration, to the extent practicable based on

Commented [S39]: Per TA, this and numerous conforming changes in this paragraph are needed to:
(1) clarify that exemptions, which must be granted via rules, may not always be included in the original risk management rule and may need to be provided later through a separate rule; and
(2) distinguish clearly between the two types of rules under this section: risk management rules issued under paragraph (1) [which may include exemptions, and subsequent exemption rules issued under paragraph (5).

reasonably available information, the quantifiable and nonquantifiable costs and benefits of the 1 or more ~~technically and economically feasible~~ alternatives to the chemical substance **the Administrator determines to be technically and economically feasible and** most likely to be used in place of the chemical substance under the conditions of use ~~if the rule is promulgated~~.

Commented [S40]: To clarify that EPA is to make the determination of technical and economic feasibility.

"(E) CONDITIONS.—As part of a rule promulgated under **this** paragraph~~(1)~~, the Administrator shall include conditions ~~in any exemption established under this paragraph~~, including reasonable recordkeeping, monitoring, and reporting requirements, to the extent that the Administrator determines the conditions are necessary to protect health and the environment while achieving the purposes of the exemption.

"(F) DURATION.—

"(i) IN GENERAL.—The Administrator shall establish, as part of a rule under ~~paragraph (1) that contains an exemption under~~ this paragraph, a time limit on any exemption for a time to be determined by the Administrator as reasonable on a case-by-case basis.

"(ii) AUTHORITY OF ADMINISTRATOR.—The Administrator, by rule, may extend, modify, or eliminate ~~the~~ **an** exemption if the Administrator determines, on the basis of reasonably available information and after adequate public justification, the exemption warrants extension or is no longer necessary.

"(iii) CONSIDERATIONS.—

"(I) IN GENERAL.—Subject to subclause (II), the Administrator shall issue exemptions and establish time periods by considering factors determined by the Administrator to be relevant to the goals of fostering innovation and the development of alternatives that meet the safety standard.

"(II) LIMITATION.—Any renewal of an exemption in the case of a rule **under paragraph (1)** requiring the ban or phase-out of a chemical substance shall not exceed 5 years.

"(e) Immediate Effect.—The Administrator may declare a proposed rule under subsection (d)(1) to be effective on publication of the rule in the Federal Register and until the effective date of final action taken respecting the rule, if—

"(1) the Administrator determines that—

"(A) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to the proposed rule or any combination of those activities is likely to result in a risk of serious or widespread injury to health or the environment before the effective date; and

"(B) making the proposed rule so effective is necessary to protect the public interest; and

"(2) in the case of a proposed rule to prohibit the manufacture, processing, or distribution in commerce of a chemical substance or mixture because of the risk determined under paragraph (1)(A), a court has granted relief in an action under section 7 with respect to that

risk associated with the chemical substance or mixture.

"(f) Final Agency Action.—Under this section and subject to section 18—

"(1) a safety determination, and the associated safety assessment, for a chemical substance that the Administrator determines under subsection (c) meets the safety standard, shall be considered to be a final agency action, effective beginning on the date of issuance of the final safety determination; and

"(2) a final rule promulgated under subsection (d)(1), and the associated safety assessment and safety determination that a chemical substance does not meet the safety standard, shall be considered to be a final agency action, effective beginning on the date of promulgation of the final rule."; and

(4) in subsection (g) (as redesignated by paragraph (2))—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

SEC. 9. IMMINENT HAZARDS.

Section 7 of the Toxic Substances Control Act (15 U.S.C. 2606) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) Civil Actions.—

"(1) IN GENERAL.—The Administrator may commence a civil action in an appropriate United States district court for—

"(A) seizure of an imminently hazardous chemical substance or mixture or any article containing the chemical substance or mixture;

"(B) relief (as authorized by subsection (b)) against any person that manufactures, processes, distributes in commerce, uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing the chemical substance or mixture; or

"(C) both seizure described in subparagraph (A) and relief described in subparagraph (B).

"(2) RULE, ORDER, OR OTHER PROCEEDING.—A civil action may be commenced under this paragraph, notwithstanding—

"(A) the existence of a decision, rule, consent agreement, or order by the Administrator under section 4, 4A, 5, or 6 or title IV or VI; or

"(B) the pendency of any administrative or judicial proceeding under any provision of this Act.";

(2) in subsection (b)(1), by striking "unreasonable";

(3) in subsection (d), by striking "section 6(a)" and inserting "section 6(d)"; and

(4) in subsection (f), in the first sentence, by striking "and unreasonable".

SEC. 10. INFORMATION COLLECTION AND REPORTING.

Section 8 of the Toxic Substances Control Act (15 U.S.C. 2607) is amended—

(1) in subsection (a)—

(A) in paragraph (3)(A)(ii)(I)—

(i) by striking "5(b)(4)" and inserting "5";

(ii) by inserting "section 4 or" after "in effect under"; and

(iii) by striking "5(e)," and inserting "5(d)(4);"; and

(B) by adding at the end the following:

"(4) RULES.—

"(A) DEADLINE.—

"(i) IN GENERAL.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall promulgate rules requiring the maintenance of records and the reporting of **additional** information known or reasonably ascertainable by the person making the report, including rules ~~requiring~~ **applicable to** processors ~~to report information,~~ so that the Administrator has the information necessary to carry out ~~sections 4 and 6~~ **this title**.

Commented [S41]: Per TA, changes in this clause made to further clarify and distinguish this authority from the existing authority under subsection (a)(1).

"(ii) MODIFICATION OF PRIOR RULES.—In carrying out this subparagraph, the Administrator may modify, as appropriate, rules promulgated before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

"(B) CONTENTS.—The rules promulgated pursuant to subparagraph (A)—

"(i) may impose different reporting and recordkeeping requirements on manufacturers and processors; and

"(ii) shall include the level of detail necessary to be reported, including the manner by which use and exposure information may be reported.

"(C) ADMINISTRATION.—In implementing the reporting and recordkeeping requirements under this paragraph, the Administrator shall take measures—

"(i) to limit the potential for duplication in reporting requirements;

"(ii) to minimize the impact of the rules on small manufacturers and processors; and

"(iii) to apply any reporting obligations to those persons likely to have information relevant to the effective implementation of this **title.";** ~~title.~~

~~"(5) Guidance.—The Administrator shall develop guidance relating to the information required to be reported under the rules promulgated under this subsection.";~~

(2) in subsection (b), by adding at the end the following:

"(3) NOMENCLATURE.—

"(A) IN GENERAL.—In carrying out paragraph (1), the Administrator shall—

"(i) maintain the use of Class 2 nomenclature in use on the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act;

"(ii) maintain the use of the Soap and Detergent Association Nomenclature System, published in March 1978 by the Administrator in section 1 of addendum III of the document entitled 'Candidate List of Chemical Substances', and further described in the appendix A of volume I of the 1985 edition of the Toxic Substances Control Act Substances Inventory (EPA Document No. EPA–560/7–85–002a); and

"(iii) treat all components of categories that are considered to be statutory mixtures under this Act as being included on the list published under paragraph (1) under the Chemical Abstracts Service numbers for the respective categories, including, without limitation—

"(I) cement, Portland, chemicals, CAS No. 65997–15–1;

"(II) cement, alumina, chemicals, CAS No. 65997–16–2;

"(III) glass, oxide, chemicals, CAS No. 65997–17–3;

"(IV) frits, chemicals, CAS No. 65997–18–4;

"(V) steel manufacture, chemicals, CAS No. 65997–19–5; and

"(VI) ceramic materials and wares, chemicals, CAS No. 66402–68–4.

"(B) MULTIPLE NOMENCLATURE CONVENTIONS.—

"(i) IN GENERAL.—If an existing guidance allows for multiple nomenclature conventions, the Administrator shall—

"(I) maintain the nomenclature conventions for substances; and

"(II) develop new guidance that—

"(aa) establishes equivalency between the nomenclature conventions for chemical substances on the list published under paragraph (1); and

"(bb) permits persons to rely on the new guidance for purposes of determining whether a chemical substance is on the list published under paragraph (1).

"(ii) MULTIPLE CAS NUMBERS.—For any chemical substance appearing multiple times on the list under different Chemical Abstracts Service numbers, the Administrator shall develop guidance recognizing the multiple listings as a single chemical substance.

"(4) CHEMICAL SUBSTANCES IN COMMERCE.—

"(A) RULES.—

"(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator, by rule, shall require manufacturers and processors to notify the Administrator, by

not later than 180 days after the date of promulgation of the rule, of each chemical substance on the list published under paragraph (1) that the manufacturer or processor, as applicable, has manufactured or processed for a nonexempt commercial purpose during the 10-year period ending on the day before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

"(ii) ACTIVE SUBSTANCES.—The Administrator shall~~, pursuant to paragraph (5)(A),~~ designate chemical substances for which notices are received under clause (i) to be active substances on the list published under paragraph (1).

"(iii) INACTIVE SUBSTANCES.—The Administrator shall designate chemical substances for which no notices are received under clause (i) to be inactive substances on the list published under paragraph (1).

"(B) CONFIDENTIAL CHEMICAL ~~SUBSTANCES.—THE RULE PROMULGATED BY THE ADMINISTRATOR~~ SUBSTANCES.**—In promulgating the rule established** pursuant to subparagraph (A) ~~shall require~~ **, the Administrator shall—**

~~"(i) the Administrator to~~**"(i)** maintain the list under paragraph (1), which shall include a confidential portion and a nonconfidential portion consistent with this section and section 14;

"(ii) **require** a manufacturer or processor that is submitting a notice pursuant to subparagraph (A) for a chemical substance on the confidential portion of the list published under paragraph (1) to indicate in the notice whether the manufacturer or processor seeks to maintain any existing claim for protection against disclosure of the specific identity of the substance as confidential pursuant to section 14; and

"(iii) **require** the substantiation of those claims pursuant to section 14 and in accordance with the review plan described in subparagraph (C).

"(C) REVIEW PLAN.—Not later than 1 year after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A), the Administrator shall promulgate a rule that establishes a plan to review all claims to protect the specific identities of chemical substances on the confidential portion of the list published under paragraph (1) that are ~~notified~~ **asserted** pursuant to subparagraph ~~(A) or identified as active substances under subsection (f)(1).~~**(B).**

"(D) REQUIREMENTS OF REVIEW ~~PLAN. THE~~ PLAN.**—Under the** review plan under subparagraph (C)**, the Administrator** shall—

"(i) require, at the time requested by the Administrator, all manufacturers or processors asserting claims under subparagraph (B) to substantiate the claim unless the manufacturer or processor has substantiated the claim in a submission made to the Administrator during the 5-year period ending on the date of the request by the Administrator;

"(ii) ~~require the Administrator,~~ in accordance with section 14—

"(I) ~~to~~ review each substantiation—

"(aa) submitted pursuant to clause (i) to determine if the claim

Commented [S42]: Per TA, unnecessary cross-reference.

Commented [S43]: Per TA, to clarify how inactive substances are to be identified.

Commented [S44]: Per TA, to clarify that only prior, not future, claims are subject to the review plan.

Commented [S45]: Per TA, for clarity in direction being provided to EPA.

warrants protection from disclosure; and

"(bb) submitted previously by a manufacturer or processor and relied on in lieu of the substantiation required pursuant to clause (i), if the substantiation has not been previously reviewed by the Administrator, to determine if the claim warrants protection from disclosure;

"(II) approve, modify, or deny each claim; and

"(III) except as provided in this section and section 14, protect from disclosure information for which the Administrator approves such a claim for a period of 10 years, unless, prior to the expiration of the period—

"(aa) the person notifies the Administrator that the person is withdrawing the ~~confidentiality~~ claim, in which case the Administrator shall promptly make the information available to the public; or

"(bb) the Administrator otherwise becomes aware that the need for protection from disclosure can no longer be substantiated, in which case the Administrator shall take the actions described in section 14(g)(2); and

"(iii) encourage manufacturers or processors that have previously made claims to protect the specific identities of chemical substances identified as inactive pursuant to subsection (f)(2) to review and either withdraw or substantiate the claims.

"(E) TIMELINE FOR COMPLETION OF REVIEWS.—

"(i) IN GENERAL.—The Administrator shall implement the review plan so as to complete reviews of all claims specified in subparagraph (C) not later than 5 years after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A).

"(ii) CONSIDERATIONS.—

"(I) IN GENERAL.—The Administrator may extend the deadline for completion of the reviews for not more than 2 additional years, after an adequate public justification, if the Administrator determines that the extension is necessary based on the number of ~~applicable~~ claims needing review and the available resources.

"(II) ANNUAL GOAL.—The Administrator shall publish an annual goal for the number of reviews to be completed over the course of implementation of the plan.

"(5) ACTIVE AND INACTIVE SUBSTANCES.—

"(A) IN GENERAL.—The Administrator shall maintain and keep current designations of active substances and inactive substances on the list published under paragraph (1).

"(B) ~~UPDATE.—THE ADMINISTRATOR SHALL UPDATE THE LIST OF CHEMICAL SUBSTANCES DESIGNATED AS ACTIVE SUBSTANCES AS SOON AS PRACTICABLE AFTER THE DATE OF PUBLICATION OF THE MOST RECENT DATA REPORTED UNDER—~~

Commented [S46]: Per TA, the Chemical Data Reporting (CDR) data are not a sufficient basis for updating active or inactive chemicals.

~~"(I) PART 711 OF TITLE 40, CODE OF FEDERAL REGULATIONS (OR SUCCESSOR REGULATIONS); AND~~

~~"(II) THE RULES PROMULGATED PURSUANT TO SUBSECTION (A)(4).~~

~~"(C)~~ CHANGE TO ACTIVE STATUS.—

"(i) IN GENERAL.—Any person that intends to manufacture or process for a nonexempt commercial purpose a chemical substance that is designated as an inactive substance shall notify the Administrator before the date on which the inactive substance is manufactured or processed.

"(ii) CONFIDENTIAL CHEMICAL IDENTITY CLAIMS.—If a person submitting a notice under clause (i) for an inactive substance on the confidential portion of the list published under paragraph (1) seeks to maintain an existing claim for protection against disclosure of the specific identity of the inactive substance as confidential, the person shall—

"(I) in the notice submitted under clause (i), assert the claim; and

"(II) by not later than 30 days after providing the notice under clause (i), substantiate the claim.

"(iii) ACTIVE STATUS.—On receiving a notification under clause (i), the Administrator shall—

"(I) designate the applicable chemical substance as an active substance;

"(II) pursuant to section 14, promptly review any claim and associated substantiation submitted pursuant to clause (ii) for protection against disclosure of the specific identity of the chemical substance and approve, modify, or deny the claim;

"(III) except as provided in this section and section 14, protect from disclosure the specific identity of the chemical substance for which the Administrator approves a claim under subclause (II) for a period of ~~not less than~~ 10 years, unless, prior to the expiration of the period—

Commented [S47]: For consistency throughout bill as to length of term for CBI claims.

"(aa) the person notifies the Administrator that the person is withdrawing the ~~confidentiality~~ claim, in which case the Administrator shall promptly make the information available to the public; or

"(bb) the Administrator otherwise becomes aware that the need for protection from disclosure can no longer be substantiated, in which case the Administrator shall take the actions described in section 14(g)(2); and

"(IV) pursuant to section 4A, review the priority of the chemical substance as the Administrator determines to be necessary.

~~"(D)~~**"(C)** CATEGORY STATUS.—The list of inactive substances shall not be considered to be a category for purposes of section 26(c).

"(6) INTERIM LIST OF ACTIVE SUBSTANCES.—Prior to the promulgation of the rule required under paragraph (4)(A), the Administrator shall designate the chemical substances reported

under part 711 of title 40, Code of Federal Regulations ~~(or successor regulations)~~**(as in effect on the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act)**, during the reporting period that most closely preceded the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, as the interim list of active substances for the purposes of section 4A.

"(7) PUBLIC ~~PARTICIPATION.—SUBJECT~~ INFORMATION.—**Subject** to this subsection, the Administrator shall make available to the public—

"(A) the specific identity of each chemical substance on the nonconfidential portion of the list published under paragraph (1) that the Administrator has designated as—

"(i) an active substance; or

"(ii) an inactive substance;

"(B) the accession number, generic name, and, if applicable, premanufacture notice case number for each chemical substance on the confidential portion of the list published under paragraph (1) for which a claim of confidentiality was received ~~and approved by the Administrator pursuant to section~~ 14; and

"(C) subject to **subsections (f) and (g) of** section 14~~(g)~~, the specific identity of any active substance for which—

"(i) ~~no~~ **a** claim ~~of~~ **for** protection against disclosure of the specific identity of the active ~~substance pursuant to this subsection was received;~~ **chemical substance was not asserted, as required under this subsection or subsection (d) or (f) of section 14;**

"(ii) a claim for protection against disclosure of the specific identity of the active substance has been denied by the Administrator; or

"(iii) the time period for protection against disclosure of the specific identity of the active substance has expired.

"(8) LIMITATION.—No person may assert a new claim under this subsection for protection from disclosure of a specific identity of any active or inactive chemical substance for which a notice is received under paragraph (4)(A)(i) or (5)(C)(i) that is not on the confidential portion of the list published under paragraph (1).

"(9) CERTIFICATION.—Under the rules promulgated under this subsection, manufacturers and processors shall be required—

"(A) to certify that each ~~report~~ **notice or substantiation** the manufacturer or processor submits complies with the requirements of the rule, and that any confidentiality claims are true and correct; and

"(B) to retain a record supporting the certification for a period of 5 years beginning on the last day of the submission period.";

(3) in subsection (e)—

(A) by striking "Any person" and inserting the following:

"(1) IN GENERAL.—Any person"; and

Commented [S48]: Per TA, the interim list is a one-time, not ongoing, designation.

Commented [S49]: Per TA, EPA review and approval requirements already apply to such claims, no need to specify that here (as this is not done elsewhere for other claims.

Commented [S50]: 14(f) also includes requirements for EPA review of claims.

Commented [S51]: Per TA, reworded to address the fact that not all CBI chem. id claims will be received under this subsection; e.g., claims for new chemicals and for renewals of claims will be asserted and received under section 14.

Commented [S52]: Per TA, to specify the actual items to be certified.

(B) by adding at the end the following:

"(2) ~~APPLICABILITY.—ANY~~ **ADDITIONAL INFORMATION.—Any** person may submit to the Administrator information reasonably supporting the conclusion that a chemical substance or mixture presents, will present, or does not present a substantial risk of injury to health and the environment."; and

(4) in subsection (f), by striking "For purposes of this section, the" and inserting the following: "In this section:

"(1) ACTIVE SUBSTANCE.—The term 'active substance' means a chemical substance—

"(A) that has been manufactured or processed for a nonexempt commercial purpose at any point during the 10-year period ending on the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act;

"(B) that is added to the list published under subsection (b)(1) after that date of enactment; or

"(C) for which a notice is received under subsection (b)(5)(C).

"(2) INACTIVE SUBSTANCE.—The term 'inactive substance' means a chemical substance on the list published under subsection (b)(1) that does not meet any of the criteria described in paragraph (1).

"(3) MANUFACTURE; PROCESS.—The".

SEC. 11. RELATIONSHIP TO OTHER FEDERAL LAWS.

Section 9 of the Toxic Substances Control Act (15 U.S.C. 2608) is amended—

(1) in subsection (a)—

(A) in paragraph (1), in the first sentence—

(i) by striking "presents or will present an unreasonable risk to health or the environment" and inserting "does not **or will not** meet the safety standard"; and

(ii) by striking "such risk" the first place it appears and inserting "the risk posed by the substance or mixture";

(B) in paragraph ~~(2),~~**(2)—**

(i) in subparagraph (A), by inserting "within the time period specified by the Administrator in the report" after "issues an order";

(ii) in subparagraph (B), by inserting "responds within the time period specified by the Administrator in the report and" before "initiates, within 90 days"; and

(iii) in the matter following subparagraph (B), by striking "section 6 or 7" and inserting "section 6(d) or section 7";

~~and~~

~~(C) in~~**(C) by redesignating** paragraph (3) **as paragraph (6);**

(D) in paragraph (6) (as so redesignated), by striking "section 6 or 7" and

Commented [S53]: Per TA, more apt header.

Commented [S54]: Changes to this section are intended to ensure EPA is to act if another agency to which it refers a potential risk for action does not act. If the referral occurs before EPA has completed a safety determination for the substance, then if the other agency does not act EPA must complete the safety determination and take the appropriate action based on the outcome. If EPA has completed the safety determination for the substance, then if the other agency does not act EPA must take the appropriate action based on the outcome of the determination. Finally, any aspect of the potential risk of a substance identified by EPA that it does not refer to another agency remains EPA's responsibility.

inserting "section 6(d) or 7"; **and**

(E) by inserting after paragraph (2) the following:

"(3) The Administrator shall take the actions described in paragraph (4) if the Administrator makes a report under paragraph (1) with respect to a chemical substance or mixture and the agency to which the report was made does not—

"(A) issue the order described in paragraph (2)(A) within the time period specified by the Administrator in the report; or

"(B)(i) respond under paragraph (1) within the time frame specified by the Administrator in the report; and

"(ii) initiate action within 90 days of publication in the Federal Register of the response described in clause (i).

"(4) If an agency to which a report under paragraph (1) does not take the actions described in subparagraphs (A) or (B) of paragraph (3), the Administrator shall—

"(A) if a safety assessment and safety determination for the substance under section 6 has not been completed, complete the safety assessment and safety determination;

"(B) if the Administrator has determined or determines that the chemical substance does not meet the safety standard, initiate action under section 6(d) with respect to the risk; or

"(C) take any action authorized or required under section 7, as appropriate.

"(5) This subsection shall not relieve the Administrator of any obligation to complete a safety assessment and safety determination or take any required action under section 6(d) or 7 to address risks from the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of those activities, that are not identified in a report issued by the Administrator under paragraph (1).";

(2) in subsection (d), in the first sentence, by striking "Health, Education, and Welfare" and inserting "Health and Human Services"; and

(3) by adding at the end the following:

"(e) Exposure Information.—If the Administrator obtains information related to exposures or releases of a chemical substance that may be prevented or reduced under another Federal law, including laws not administered by the Administrator, the Administrator shall make such information available to the relevant Federal agency or office of the Environmental Protection Agency.".

SEC. 12. RESEARCH, DEVELOPMENT, COLLECTION, DISSEMINATION, AND UTILIZATION OF DATA.

Section 10 of the Toxic Substances Control Act (15 U.S.C. 2609) is amended by striking "Health, Education, and Welfare" each place it appears and inserting "Health and Human Services".

SEC. 13. EXPORTS.

Section 12 of the Toxic Substances Control Act (15 U.S.C. 2611) is amended—

(1) in subsection (a), by striking paragraph (2) and inserting the following:

"(2) EXCEPTION.—Paragraph (1) shall not apply ~~to~~ **to—**

"(A) any **new** chemical substance that the Administrator ~~determines—~~ **determines is likely to present an unreasonable risk of injury to health within the United States or to the environment of the United States, without taking into account cost or other non-risk factors;**

~~"(A) under section 5 is not likely to meet the safety standard; or~~**"(B) any chemical substance that the Administrator determines presents or will present an unreasonable risk of injury to health within the United States or to the environment of the United States, without taking into account cost or other non-risk factors; or**

~~"(B) under section 6 does not meet the safety standard.~~**"(C) any chemical substance that—**

~~"(3) Waivers.—For~~**"(i) the Administrator determines is likely to present an unreasonable risk of injury to health within the United States or to the environment of the United States, without taking into account cost or other non-risk factors; and**

"(ii) is subject to restriction under section 5(d)(4).

"(3) WAIVERS FOR CERTAIN MIXTURES AND ARTICLES.—For a mixture or article containing a chemical substance described in paragraph (2), the Administrator may—

"(A) determine that paragraph (1) shall not apply to the mixture or article; or

"(B) establish a threshold concentration in a mixture or article at which paragraph (1) shall not apply.

"(4) TESTING.—The Administrator may require testing under section 4 of any chemical substance or mixture exempted from this Act under paragraph (1) for the purpose of determining whether the chemical substance ~~or mixture~~ meets the safety standard within the United States.";

(2) by striking subsection (b) and inserting the following:

"(b) Notice.—

"(1) IN GENERAL.—A person shall notify the Administrator that the person is exporting or intends to export to a foreign country—

"(A) a chemical substance or a mixture containing a chemical substance that the Administrator has determined under section 5 is not likely to meet the safety standard and for which a prohibition or other restriction has been proposed or established under that section;

"(B) a chemical substance or a mixture containing a chemical substance that the Administrator has determined under section 6 does not meet the safety standard and for

Commented [S55]: Per TA, to clarify that, while the safety standard applies to the chemical substance as a whole, the issue under section 12(a) of TSCA is whether the *exported portion* of a chemical is likely to, or does or will, present a risk in the US and should therefore not be exempted from TSCA pursuant to paragraph (1).

Commented [S56]: Per TA, more apt header.

Commented [S57]: Per TA, mixtures are not subject to the safety standard.

which a prohibition or other restriction has been proposed or established under that section;

"(C) a chemical substance for which the United States is obligated by treaty to provide export notification;

"(D) a chemical substance or mixture **containing a chemical substance** subject to a **proposed or promulgated** significant new use rule, or a prohibition or other restriction pursuant to a rule, order, or consent agreement in effect under this Act; ~~or~~

"(E) a chemical substance or mixture for which the submission of information is required under section 4**; or**

"(F) a chemical substance or mixture for which an action is pending or for which relief has been granted under section 7.~~.~~

Commented [S58]: To track current TSCA.

Commented [S59]: To track current TSCA.

"(2) RULES.—

"(A) IN GENERAL.—The Administrator shall promulgate rules to carry out paragraph (1).

"(B) CONTENTS.—The rules promulgated pursuant to subparagraph (A) shall—

"(i) include such exemptions as the Administrator determines to be appropriate, which may include exemptions identified under section 5(h); and

"(ii) indicate whether, or to what extent, the rules apply to articles containing a chemical substance or mixture described in paragraph (1).

"(3) NOTIFICATION.—The Administrator shall submit to the government of each country to which a chemical substance or mixture is exported—

"(A) for a chemical substance or mixture described in subparagraph (A), (B), ~~or~~(D)**, or (F)** of paragraph (1), a notice of the determination, rule, order, consent agreement**, action, relief, or** requirement~~, or designation~~;

Commented [S60]: Conforming changes to incorporate above addition of subparagraph (F).

"(B) for a chemical substance described in paragraph (1)(C), a notice that satisfies the obligation of the United States under the applicable treaty; and

"(C) for a chemical substance or mixture described in paragraph (1)(E), a notice of availability of the information on the chemical substance or mixture submitted to the Administrator."; and

(3) in subsection (c)—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4) through (6) as paragraphs (3) through (5), respectively.

SEC. 14. CONFIDENTIAL INFORMATION.

Section 14 of the Toxic Substances Control Act (15 U.S.C. 2613) is amended to read as follows:

"SEC. 14. CONFIDENTIAL INFORMATION.

"(a) In General.—Except as otherwise provided in this section, the Administrator shall not disclose information that is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, under subsection (b)(4) of that section—

"(1) that is reported to, or otherwise obtained by, the Administrator under this Act; and

"(2) for which the requirements of subsection (d) are met.

"(b) Information Generally Protected From Disclosure.—The following information specific to, and submitted by, a manufacturer, processor, or distributor that meets the requirements of subsections (a) and (d) shall be presumed to be protected from disclosure, subject to the condition that nothing in this Act prohibits the disclosure of any such information, or information that is the subject of subsection (g)(3), through discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law:

"(1) Specific information describing the processes used in manufacture or processing of a chemical substance, mixture, or article.

"(2) Marketing and sales information.

"(3) Information identifying a supplier or customer.

"(4) Details of the full composition of a mixture and the respective percentages of constituents.

"(5) Specific information regarding the use, function, or application of a chemical substance or mixture in a process, mixture, or product.

"(6) Specific production or import volumes of the manufacturer ~~and specific~~.

"(7) Specific aggregated volumes across manufacturers, if the Administrator determines that disclosure of the specific aggregated volumes would reveal confidential information.

~~"(7)~~**"(8)** Except as otherwise provided in this section, the specific identity of a chemical substance prior to the date on which the chemical substance is first offered for commercial distribution, including the chemical name, molecular formula, Chemical Abstracts Service number, and other information that would identify a specific chemical substance, **if** ~~if—~~

~~"(A)~~ the specific identity was claimed as confidential information at the time it was submitted in a notice under section 5~~; and~~

~~"(B) the claim—~~

~~"(i) is not subject to an exception under subsection (e); or~~

~~"(ii) has not subsequently been withdrawn or found by the Administrator not to warrant protection as confidential information under subsection (f)(2) or (g)~~.

"(c) Information Not Protected From ~~Disclosure.—Notwithstanding~~ **Disclosure.—**

"(1) IN GENERAL.—Notwithstanding subsections (a) and (b), the following information shall not be protected from disclosure:

~~"(1)~~**"(A)** INFORMATION FROM HEALTH AND SAFETY STUDIES.—

Commented [S61]: Per TA, deleted because these requirements apply to all CBI claims, not just chemical identity claims, and stating under section 6(a)(4)ished bdivision of a State adding here ons.formation.ection 113paragraphbsection (a) here could call that into question.

Commented [S62]: Reformatting and clean-up in this paragraph for clarity.

~~"(A)~~**"(i)** IN GENERAL.—Subject to ~~subparagraph (B), subsection (a) does not prohibit the disclosure of~~ **clause (ii)**—

Commented [S63]: Unnecessary, already in paragraph (1) lead-in.

~~"(i)~~**"(I)** any health and safety study that is submitted under this Act with respect to—

~~"(I)~~**"(aa)** any chemical substance or mixture that, on the date on which the study is to be disclosed, has been offered for commercial distribution; or

~~"(II)~~**"(bb)** any chemical substance or mixture for which—

~~"(aa)~~**"(AA)** testing is required under section 4; or

~~"(bb)~~**"(BB)** a notification is required under section 5; or

~~"(ii)~~**"(II)** any information reported to, or otherwise obtained by, the Administrator from a health and safety study relating to a chemical substance or mixture described in ~~subclause (I) or (II) of clause (i).~~ **item (aa) or (bb) of subclause (I).**

~~"(B)~~**"(ii)** EFFECT OF ~~PARAGRAPH.—NOTHING~~ **SUBPARAGRAPH.—Nothing** in this ~~paragraph~~ **subparagraph** authorizes the release of any information that discloses—

~~"(i)~~**"(I)** a process used in the manufacturing or processing of a chemical substance or mixture; or

~~"(ii)~~**"(II)** in the case of a mixture, the portion of the mixture comprised by any chemical substance in the mixture.

~~* 4 "(2) Certain requests.—If a request is made to the Administrator under section 552(a) of title 5, United States Code, for information that is described in paragraph (1) that is not described in paragraph (1)(B), the Administrator may not deny the request on the basis of section 552(b)(4) of title 5, United States Code.~~

Commented [S64]: Per TA, moved to become paragraph (4) below and apply to this subsection.

~~"(3)~~**"(B)** OTHER INFORMATION NOT PROTECTED FROM ~~DISCLOSURE.—THE FOLLOWING INFORMATION IS NOT PROTECTED FROM DISCLOSURE UNDER THIS SECTION:~~ **DISCLOSURE.—**

Commented [S65]: Unnecessary, already in paragraph (1) lead-in.

~~"(A)~~**"(i)** For information submitted after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the specific identity of a chemical substance as of the date on which the chemical substance is first offered for commercial distribution, if the person submitting the information does not meet the requirements of subsection (d).

~~"(B)~~**"(ii)** A safety assessment developed, or a safety determination made, under section 6.

~~"(C)~~**"(iii)** Any general information describing the manufacturing volumes, expressed as specific aggregated volumes or, if the Administrator determines that disclosure of specific aggregated volumes would reveal confidential information, expressed in ranges.

~~"(D)~~**"(iv)** A general description of a process used in the manufacture or processing and industrial, commercial, or consumer functions and uses of a chemical substance, mixture, or article containing a chemical substance or mixture, including information specific to an industry or industry sector that customarily would be shared with the general public or within an industry or industry sector.

~~"(4)~~**"(2)** MIXED CONFIDENTIAL AND NONCONFIDENTIAL INFORMATION .—Any information that is ~~otherwise~~ eligible for protection under this section and ~~contained in a submission of~~ **is submitted with** information described in this subsection shall be protected from disclosure, if the submitter complies with subsection (d), subject to the condition that information in the submission that is not eligible for protection against disclosure shall be disclosed.

~~"(5)~~**"(3)** BAN OR PHASE-OUT.—If the Administrator promulgates a rule pursuant to section 6(d) that establishes a ban or phase-out of the manufacture, processing, or distribution in commerce of a chemical substance, subject to paragraphs (2), (3), and (4) of subsection (g), any protection from disclosure provided under this section with respect to the specific identity of the chemical substance and other information relating to the chemical substance shall no longer apply.

** **4** ~~"(2)~~**"(4)** CERTAIN REQUESTS.—If a request is made to the Administrator under section 552(a) of title 5, United States Code, for information that is ~~described in paragraph (1) that is not described in paragraph (1)(B)~~ **subject to disclosure under this subsection**, the Administrator may not deny the request on the basis of section 552(b)(4) of title 5, United States Code.

"(d) Requirements for Confidentiality Claims.—

"(1) ASSERTION OF CLAIMS.—

"(A) IN GENERAL.—A person seeking to protect any information submitted under this Act from disclosure (including information described in subsection (b)) shall assert to the Administrator a claim for protection concurrent with submission of the information, in accordance with such rules regarding a claim for protection from disclosure as the Administrator has promulgated or may promulgate pursuant to this title.

"(B) INCLUSION.—An assertion of a claim under subparagraph (A) shall include a statement that the person has—

"(i) taken reasonable measures to protect the confidentiality of the information;

"(ii) determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;

"(iii) a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person; and

"(iv) a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

"(C) SPECIFIC CHEMICAL IDENTITY.—In the case of a claim under subparagraph (A)

for protection against disclosure of a specific chemical identity, the claim shall include a structurally descriptive generic name for the chemical substance that the Administrator may disclose to the public, subject to the condition that the generic name shall—

"(i) ~~conform~~ **be consistent** with guidance ~~prescribed~~ **issued** by the Administrator under paragraph (3)(A); and

"(ii) describe the chemical structure of the substance as specifically as practicable while protecting those features of the chemical structure—

"(I) that are considered to be confidential; and

"(II) the disclosure of which would be likely to **cause substantial** harm **to** the competitive position of the person.

"(D) PUBLIC INFORMATION.—No person may assert a claim under this section for protection from disclosure of information that is already publicly available.

"(2) ADDITIONAL REQUIREMENTS FOR CONFIDENTIALITY CLAIMS.—Except for information described in ~~paragraphs (1) through (7) of~~ subsection (b), a person asserting a claim to protect information from disclosure under this Act shall substantiate the claim, in accordance with the rules promulgated and **consistent with the** guidance issued by the Administrator.

"(3) GUIDANCE.—The Administrator shall develop guidance regarding—

"(A) the determination of structurally descriptive generic names, in the case of claims for the protection against disclosure of specific chemical identity; and

"(B) the content and form of the statements of need and agreements required under paragraphs (4), (5), and (6) of subsection (e).

"(4) CERTIFICATION.—An authorized official of a person described in paragraph (1)(A) shall certify that the ~~information that has been submitted is~~ **statement required to assert a claim submitted pursuant to paragraph (1)(B) and any information required to substantiate a claim submitted pursuant to paragraph (2) are** true and correct.

"(e) Exceptions to Protection From Disclosure.—Information described in subsection (a)—

"(1) shall be disclosed if the information is to be disclosed to an officer or employee of the United States in connection with the official duties of the officer or employee—

"(A) under any law for the protection of health or the environment; or

"(B) for a specific law enforcement purpose;

"(2) shall be disclosed if the information is to be disclosed to a contractor of the United States and employees of that contractor—

"(A) if, in the opinion of the Administrator, the disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States for the performance of work in connection with this Act; and

"(B) subject to such conditions as the Administrator may specify;

"(3) shall be disclosed if the Administrator determines that disclosure is necessary to

Commented [S66]: Per TA, to better reflect role of guidance.

Commented [S67]: Per TA, to reflect FOIA requirement at 5 USC 552(b)(4).

Commented [S68]: Per TA, to better specify preecisely what is subject to certification.

protect health or the environment;

"(4) shall be disclosed if the information is to be disclosed to a State or political subdivision of a State, on written request, for the purpose of development, administration, or enforcement of a law, **if** ~~if—~~

~~"(A)~~ 1 or more applicable agreements with the Administrator that ~~conform~~ **are consistent** with the guidance issued under subsection (d)(3)(B) ensure that the recipient will take appropriate measures, and has adequate authority, to maintain the confidentiality of the information in accordance with procedures comparable to the procedures used by the Administrator to safeguard the information; ~~and~~

~~"(B) the Administrator notifies the person that submitted the information that the information has been disclosed to the State or political subdivision of a State;~~

Commented [S69]: All notification requirements are now consolidated in subsection (g)(2).

"(5) shall be disclosed if a health or environmental professional employed by a Federal or State agency or a treating physician or nurse in a nonemergency situation provides a written statement of need and agrees to sign a written confidentiality agreement with the Administrator, subject to the conditions that—

"(A) the statement of need and confidentiality agreement ~~shall conform~~ **are consistent** with the guidance issued under subsection (d)(3)(B);

"(B) the written statement of need shall be a statement that the person has a reasonable basis to suspect that—

"(i) the information is necessary for, or will assist in—

"(I) the diagnosis or treatment of 1 or more individuals; or

"(II) responding to an environmental release or exposure; and

"(ii) 1 or more individuals being diagnosed or treated have been exposed to the chemical substance concerned, or an environmental release or exposure has occurred; and

"(C) the confidentiality agreement shall provide that the person will not use the information for any purpose other than the health or environmental needs asserted in the statement of need, except as otherwise may be authorized by the terms of the agreement or by the person submitting the information to the Administrator, except that nothing in this Act prohibits the disclosure of any such information through discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law;

"(6) shall be disclosed if in the event of an emergency, a treating physician, nurse, agent of a poison control center, public health or environmental official of a State or political subdivision of a State, or first responder (including any individual duly authorized by a Federal agency, State, or political subdivision of a State who is trained in urgent medical care or other emergency procedures, including a police officer, firefighter, or emergency medical technician) requests the information, subject to the conditions that—

"(A) the treating physician, nurse, agent, public health or environmental official of a State or a political subdivision of a State, or first responder shall have a reasonable basis to suspect that—

"(i) a medical or public health or environmental emergency exists;

"(ii) the information is necessary for, or will assist in, emergency or first-aid diagnosis or treatment; or

"(iii) 1 or more individuals being diagnosed or treated have likely been exposed to the chemical substance concerned, or a serious environmental release of or exposure to the chemical substance concerned has occurred;

"(B) if requested by the person submitting the information to the Administrator, the treating physician, nurse, agent, public health or environmental official of a State or a political subdivision of a State, or first responder shall, as described in paragraph (5)—

"(i) provide a written statement of need; and

"(ii) agree to sign a confidentiality agreement; and

"(C) the written confidentiality agreement or statement of need shall be submitted as soon as practicable, but not necessarily before the information is disclosed;

"(7) may be disclosed if the Administrator determines that disclosure is relevant in a proceeding under this Act, subject to the condition that the disclosure shall be made in such a manner as to preserve confidentiality to the maximum extent practicable without impairing the proceeding;

"(8) shall be disclosed if the information is to be disclosed, on written request of any duly authorized congressional committee, to that committee; or

"(9) shall be disclosed if the information is required to be disclosed or otherwise made public under any other provision of Federal law.

"(f) Duration of Protection From Disclosure.—

"(1) IN GENERAL.—

"(A) INFORMATION ~~PROTECTED~~ **NOT SUBJECT TO TIME LIMIT FOR PROTECTION** FROM DISCLOSURE.—Subject to paragraph (2), the Administrator shall protect from disclosure information **described in subsection (b)** that meets the requirements of ~~subsection (d) for a period of 10 years, unless, prior to the expiration of the period—~~ **subsections (a) and (d), unless—**

Commented [S70]: For clarity by distinguishing between information subject and not subject to time limits.

~~"(i) an affected person~~ **"(i) the person that asserted the claim** notifies the Administrator that the person is withdrawing the ~~confidentiality~~ claim, in which case the Administrator shall promptly make the information available to the public; or

"(ii) the Administrator otherwise becomes aware that the ~~need for protection from disclosure can no longer be substantiated~~ **information does not qualify or no longer qualifies for protection against disclosure under subsection (a)**, in which case the Administrator shall take ~~the~~ **any** actions ~~described in~~ **required under** subsection (g)(2).

"(B) **INFORMATION SUBJECT TO TIME LIMIT FOR PROTECTION FROM DISCLOSURE.—Subject to paragraph (2), the Administrator shall protect from disclosure information, other than information described in subsection (b), that**

meets the requirements of subsections (a) and (d) for a period of 10 years, unless, prior to the expiration of the period—

"(i) the person that asserted the claim notifies the Administrator that the person is withdrawing the claim, in which case the Administrator shall promptly make the information available to the public; or

"(ii) the Administrator otherwise becomes aware that the information does not qualify or no longer qualifies for protection against disclosure under subsection (a), in which case the Administrator shall take any actions required under subsection (g)(2).

"(C) EXTENSIONS.—

"(i) IN GENERAL.—Not later than the date that is 60 days before the expiration of the period described in subparagraph ~~(A)~~**(B)**, the Administrator shall provide to the person that asserted the claim a notice of the impending expiration of the period.

"(ii) STATEMENT.—

"(I) IN GENERAL.—Not later than the date that is 30 days before the expiration of the period described in subparagraph ~~(A)~~**(B)**, a person reasserting the relevant claim shall submit to the Administrator a ~~statement~~ **request for extension** substantiating, in accordance with subsection (d)(2), the need to extend the period.

"(II) ACTION BY ADMINISTRATOR.—Not later than the date ~~that is 30 days after the date of receipt of a statement under subclause (I), the Administrator shall—~~ **of expiration of the period described in subparagraph (B), the Administrator shall, in accordance with subsection (g)(1)(C)—**

"(aa) review the request **submitted under subclause (I)**;

"(bb) make a determination regarding whether the ~~information~~ **claim** for which the request ~~is made~~ **was submitted** continues to meet the relevant criteria established under this section; and

"(~~cc~~)(AA) grant an extension of ~~not more than~~ 10 years; or

"(BB) deny the ~~claim.~~ **request.**

~~"(C)~~**"(D)** NO LIMIT ON NUMBER OF EXTENSIONS.—There shall be no limit on the number of extensions granted under subparagraph ~~(B)~~**(C)**, if the Administrator determines that the relevant ~~statement~~ **request** under subparagraph ~~(B)(ii)(I)~~ **(C)(ii)(I)—**

"(i) establishes the need to extend the period; and

"(ii) meets the requirements established by the Administrator.

"(2) REVIEW AND RESUBSTANTIATION.—

"(A) DISCRETION OF ADMINISTRATOR.—The Administrator may review, at any time, a claim for protection **of information** against disclosure under subsection (a) ~~for information submitted to the Administrator regarding a chemical substance~~ and require

Commented [S71]: To ensure that FOIA trade secret provisions apply to protected claims.

Commented [S72]: Throughout the remainder of this subsection, the term "request" is used to refer to these requests for extensions.

Commented [S73]: For consistency as to length of period of protection throughout the section.

any person that has claimed protection for that information, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to withdraw or reassert and substantiate or resubstantiate the claim in accordance with this section—

"(i) after the chemical substance is identified as a high-priority substance under section 4A;

"(ii) for any chemical substance for which the Administrator has made a determination under section 6(c)(1)(C);

"(iii) for any inactive chemical substance identified under section 8(b)(5); or

"(iv) in limited circumstances, if the Administrator determines that disclosure of certain information currently protected from disclosure would assist the Administrator in conducting safety assessments and safety determinations under subsections (b) and (c) of section 6 or promulgating rules pursuant to section 6(d)~~, subject to the condition that the information shall not be disclosed unless the claimant withdraws the claim or the Administrator determines that the information does not meet the requirements of subsection (d)~~.

Commented [S74]: Per TA, redundant with paragraph (1) above.

"(B) REVIEW REQUIRED.—The Administrator shall review a claim for protection ~~from~~ **of information against** disclosure under subsection (a) ~~for information submitted to the Administrator regarding a chemical substance~~ and require any person that has claimed protection for that information, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to withdraw or reassert and substantiate or resubstantiate the claim in accordance with this section—

"(i) as necessary to ~~comply~~ **determine whether the information qualifies for an exemption from disclosure in connection** with a request for information received by the Administrator under section 552 of title 5, United States Code;

Commented [S75]: Per TA, here and in (ii), to more clearly specify the action to be taken or finding to be made by EPA pursuant to such a request.

"(ii) if ~~information available to the Administrator provides a basis that the requirements of section 552(b)(4) of title 5, United States Code, are no longer met~~ **the Administrator has a reasonable basis to believe that the information does not qualify for protection against disclosure under subsection (a)**; or

"(iii) for any substance for which the Administrator has made a determination under section 6(c)(1)(B).

"(C) ACTION BY RECIPIENT.—If the Administrator makes a request under subparagraph (A) or (B), the recipient of the request shall—

"(i) reassert and substantiate or resubstantiate the claim; or

"(ii) withdraw the claim.

"(D) PERIOD OF PROTECTION.—Protection from disclosure of information subject to a claim that is reviewed and approved by the Administrator under this paragraph shall be extended for a period of 10 years from the date of approval, subject to any subsequent request by the Administrator under this paragraph.

"(3) UNIQUE IDENTIFIER.—The Administrator shall—

"(A)(i) develop a system to assign a unique identifier to each specific chemical identity for which the Administrator approves a request for protection from disclosure, other than a specific chemical identity or structurally descriptive generic term; and

"(ii) apply that identifier consistently to all information relevant to the applicable chemical substance;

"(B) annually publish and update a list of chemical substances, referred to by unique identifier, for which claims to protect the specific chemical identity from disclosure have been approved, including the expiration date for each such claim;

"(C) ensure that any nonconfidential information received by the Administrator with respect to such a chemical substance during the period of protection from disclosure—

"(i) is made public; and

"(ii) identifies the chemical substance using the unique identifier; and

"(D) for each claim for protection of specific chemical identity that has been denied by the Administrator ~~on expiration of the period for appeal under subsection (g)(4), that has~~ **or** expired, or that has been withdrawn by the submitter, provide public access to the specific chemical identity clearly linked to all nonconfidential information received by the Administrator with respect to the chemical substance.

Commented [S76]: Per TA, as this proviso is not included in other release provisions, and subsection (g)(3) serves this function already.

"(g) Duties of Administrator.—

"(1) DETERMINATION.—

"(A) IN GENERAL.—Except as provided in subsection (b), the Administrator shall, subject to subparagraph (C), not later than 90 days after the receipt of a claim under subsection (d), and not later than 30 days after the receipt of a request for extension of a claim under subsection (f), review and approve, modify, or deny the claim or request.

"(B) **REASONS FOR DENIAL OR MODIFICATION.—If Administrator denies or modifies a claim or request under subparagraph (A)** ~~Denial or modification.—~~

~~"(i) In general.—Except as provided in subsections (c) and (f)~~, the Administrator shall **provide to the person that submitted the claim or request** ~~deny a claim to protect a chemical identity from disclosure only if the person that has submitted the claim fails to meet the requirements of subsections (a) and (d).~~

Commented [S77]: Per TA, this clause is unnecessary; it's already the case that EPA must approve a claim if it meet the requirements of (a) and (d).

~~"(ii) Reasons for denial or modification.—The Administrator shall provide to a person that has submitted a claim described in clause (i)~~ a written statement of the reasons for the denial or modification of the claim **or request**.

"(C) SUBSETS.—The Administrator shall—

"(i) except for claims described in subsection ~~(b)(7)~~**(b)(8)**, review all claims **or requests** under this section for the protection against disclosure of the specific identity of a chemical substance; and

"(ii) review a representative subset, comprising at least 25 percent, of all other claims **or requests** for protection against disclosure.

"(D) EFFECT OF FAILURE TO ACT.—The failure of the Administrator to make a decision regarding a claim **or request** for protection against disclosure or extension

under this section shall not be the basis for denial or elimination of a claim **or request** for protection against disclosure.

"(2) NOTIFICATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and subsections (c), (e), and (f), if the Administrator denies or modifies a claim **or request** under paragraph (1), **intends to release information pursuant to subsection (e),** or promulgates a rule under section 6(d) establishing a ban or phase-out of a chemical substance, the Administrator shall notify, in writing and by certified mail, the person that submitted the claim of the intent of the Administrator to release the information.

Commented [S78]: Per TA, to be consistent and clear that, as under current TSCA, exceptions may still be subject to notification, per this paragraph.

"(B) RELEASE OF INFORMATION.—**Except** ~~information.—~~

~~"(i) In general.—Except~~ as provided in ~~clause (ii)~~ **subparagraph (C)**, the Administrator shall not release information under this subsection until the date that is 30 days after the date on which the person that submitted the request receives notification under subparagraph (A).

~~"(ii)~~**"(C)** EXCEPTIONS.—

Commented [S79]: Consolidates all exceptions to notification in one subparagraph.

~~"(I)~~**"(i)** IN GENERAL.—For information under paragraph (3) or (8) of subsection (e), the Administrator shall not release that information until the date that is 15 days after the date on which the person that submitted the claim **or request** receives a notification, unless the Administrator determines that release of the information is necessary to protect against an imminent and substantial harm to health or the environment, in which case no prior notification shall be necessary.

"(ii) NOTIFICATION AS SOON AS PRACTICABLE.—For information under paragraphs (4) and (6) of subsection (e), the Administrator shall notify the person that submitted the information that the information has been disclosed as soon as practicable after disclosure of the information.

"(iii) NO NOTIFICATION REQUIRED.—Notification shall not be required—

"(I) for the disclosure of ~~"(II) No notification.—For~~ information under paragraph (1), (2), ~~(6),~~(7), or (9) of subsection (e)~~, no prior notification shall be necessary.~~**; or**

"(II) for the disclosure of information for which—

"(aa) a notice under subsection (f)(1)(C)(i) was received; and

"(bb) no request was received by the Administrator on or before the date of expiration of the period for which protection from disclosure applies.

"(3) REBUTTABLE PRESUMPTION.—

"(A) IN GENERAL.—With respect to notifications provided by the Administrator **under paragraph (2) with respect to information pertaining to a chemical substance subject to a rule as described in** pursuant to subsection ~~(c)(5)~~**(c)(3)**, there shall be a rebuttable presumption that the public interest in disclosing confidential information related to a chemical substance subject to a rule promulgated under section

Commented [S80]: To clarify which notice pertaining to which chemical this provision applies to.

6(d) that establishes a ban or phase-out of the manufacture, processing, or distribution in commerce of the substance outweighs the proprietary interest in maintaining the protection from disclosure of that information.

"(B) REQUEST FOR NONDISCLOSURE.—A person that receives a notification under paragraph (2) with respect to the information described in subparagraph (A) may submit to the Administrator, before the date on which the information is to be released **pursuant to paragraph (2)(B)**, a request with supporting documentation describing why the person believes some or all of that information should not be disclosed.

Commented [S81]: Per TA, to specify the date referred to.

"(C) DETERMINATION BY ADMINISTRATOR.—

"(i) IN GENERAL.—Not later than 30 days after the Administrator receives a request under subparagraph (B), the Administrator shall determine, at the discretion of the Administrator, whether the documentation provided by the person making the request rebuts or does not rebut the presumption described in subparagraph (A), for all or a portion of the information that the person has requested not be disclosed.

"(ii) OBJECTIVE.—The Administrator shall make the determination with the objective of ensuring that information relevant to protection of health and the environment is disclosed to the maximum extent practicable.

"(D) TIMING.—Not later than 30 days after making the determination described in subparagraph (C), the Administrator shall make public the information the Administrator has determined is not to be protected from disclosure.

"(E) NO TIMELY REQUEST RECEIVED.—If the Administrator does not receive, before the date on which the information described in subparagraph (A) is to be released **pursuant to paragraph (2)(B)**, a request pursuant to subparagraph (B), the Administrator shall promptly make public all of the information.

Commented [S82]: Per TA, to specify the date referred to.

"(4) APPEALS.—

"(A) IN GENERAL.—If a person receives a notification under paragraph (2) and believes disclosure of the information is prohibited under subsection (a), before the date on which the information is to be released **pursuant to paragraph (2)(B)**, the person may bring an action to restrain disclosure of the information in—

Commented [S83]: Per TA, to specify the date referred to.

"(i) the United States district court of the district in which the complainant resides or has the principal place of business; or

"(ii) the United States District Court for the District of Columbia.

"(B) NO DISCLOSURE.—The Administrator shall not disclose any information that is the subject of an appeal under this section before the date on which the applicable court rules on an action under subparagraph (A).

~~"(5) Administration.—In carrying out this subsection, the Administrator shall use the procedures described in part 2 of title 40, Code of Federal Regulations (or successor regulations).~~

Commented [S84]: Per TA, this provision has no effect, since it just says that EPA will follow whatever rules it has in place; and it does not specify all relevant regulations.

"(h) Criminal Penalty for Wrongful Disclosure.—

"(1) OFFICERS AND EMPLOYEES OF UNITED STATES.—

"(A) IN GENERAL.—Subject to paragraph (2), a current or former officer or employee of the United States described in subparagraph (B) shall be guilty of a misdemeanor and fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.

"(B) DESCRIPTION.—A current or former officer or employee of the United States referred to in subparagraph (A) is a current or former officer or employee of the United States who—

"(i) by virtue of that employment or official position has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (a); and

"(ii) knowing that disclosure of that material is prohibited by subsection (a), willfully discloses the material in any manner to any person not entitled to receive that material.

"(2) OTHER LAWS.—Section 1905 of title 18, United States Code, shall not apply with respect to the publishing, divulging, disclosure, making known of, or making available, information reported or otherwise obtained under this Act.

"(3) CONTRACTORS.—For purposes of this subsection, any contractor of the United States that is provided information in accordance with subsection (e)(2), including any employee of that contractor, shall be considered to be an employee of the United States.

"(i) Applicability.—

"(1) IN GENERAL.—Except as otherwise provided in this section, section 8, or any other applicable Federal law, the Administrator shall have no authority—

"(A) to require the substantiation or resubstantiation of a claim for the protection from disclosure of information ~~submitted to~~ **reported to or otherwise obtained by** the Administrator under this Act before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act; or

"(B) to impose substantiation or resubstantiation requirements under this Act that are more extensive than those required under this section.

"(2) ~~PRIOR ACTIONS.—NOTHING~~ **ACTIONS PRIOR TO PROMULGATION OF RULES.—Nothing** in this Act prevents the Administrator from reviewing, requiring substantiation or resubstantiation for, or approving, modifying or denying any claim for the protection from disclosure of information before the effective date of such rules applicable to those claims as the Administrator may promulgate after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.".

Commented [S85]: Clearer header.

SEC. 15. PROHIBITED ACTS.

Section 15 of the Toxic Substances Control Act (15 U.S.C. 2614) is amended by striking paragraph (1) and inserting the following:

"(1) fail or refuse to comply with—

"(A) any rule promulgated, consent agreement entered into, or order issued under section 4;

"(B) any requirement under section 5 or 6;

"(C) any rule promulgated, consent agreement entered into, or order issued under section 5 or 6; or

"(D) any requirement of, or any rule promulgated or order issued pursuant to title II;".

SEC. 16. PENALTIES.

Section 16 of the Toxic Substances Control Act (15 U.S.C. 2615) is amended—

(1) in subsection (a)(1)—

(A) in the first **sentence,** ~~sentence—~~

~~(i) by inserting "this Act or a rule or order promulgated or issued pursuant to this Act, including" after "a provision of"; and~~

~~(ii)~~ by striking "$25,000" and inserting "$37,500"; and

(B) in the second sentence, by striking" violation of section 15 or 409" and inserting "violation of this Act"; and

(2) in subsection (b)—

(A) by striking "Any person who" and inserting the following:

"(1) IN GENERAL.—Any person that";

~~(B) by striking "section 15 or 409" and inserting "this Act";~~

~~(C)~~ by striking "$25,000" and inserting "$50,000"; and

~~(D)~~**(C)** by adding at the end the following:

"(2) IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.—

"(A) IN GENERAL.—Any person that knowingly or willfully violates any provision of ~~this Act~~ **section 15 or 409**, and that knows at the time of the violation that the violation places an individual in imminent danger of death or serious bodily injury, shall be subject on conviction to a fine of not more than $250,000, or imprisonment for not more than 15 years, or both.

"(B) ORGANIZATIONS.—An organization that commits a violation described in subparagraph (A) shall be subject on conviction to a fine of not more than $1,000,000 for each violation.

~~"(3) Knowledge of imminent danger or injury.—For purposes of determining whether a defendant knew that the violation placed another individual in imminent danger of death or serious bodily injury—~~

~~"(A) the defendant shall be responsible only for actual awareness or actual belief possessed; and~~

~~"(B) knowledge possessed by an individual may not be attributed to the defendant.".~~**"(C) INCORPORATION OF CORRESPONDING PROVISIONS.—Subparagraphs (B) through (F) of section 113(c)(5) of the Clean**

Commented [S86]: Per TA, already covered in section 15.

Commented [S87]: Per TA, already covered in section 15.

Air Act (42 U.S.C. 7413(c)(5)) shall apply to the prosecution of a violation under this paragraph.".

Commented [S88]: Reference is to provisions of the Clean Air Act addressing knowledge of imminent danger or injury, affirmative defense, and defenses.

SEC. 17. STATE-FEDERAL RELATIONSHIP.

Section 18 of the Toxic Substances Control Act (15 U.S.C. 2617) is amended by striking subsections (a) and (b) and inserting the following:

"(a) In General.—

"(1) ESTABLISHMENT OR ENFORCEMENT.—Except as provided in subsections (c), (d), (e), (f), and (g), and subject to paragraph (2), no State or political subdivision of a State may establish or continue to enforce any of the following:

"(A) ~~TESTING AND INFORMATION COLLECTION.—~~A **TESTING.—A** statute or administrative action to require the development of information on a chemical substance or category of substances that is reasonably likely to produce the same information required under section 4, 5, or 6 in—

Commented [S89]: Reference to "information collection" was incorrect as this provision deals with development of new information.

"(i) a rule promulgated by the Administrator;

"(ii) a testing consent agreement entered into by the Administrator; or

"(iii) an order issued by the Administrator.

"(B) CHEMICAL SUBSTANCES FOUND TO MEET THE SAFETY STANDARD OR RESTRICTED.—A statute or administrative action to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of a chemical substance—

"(i) found to meet the safety standard and consistent with the scope of the determination made under section 6; or

"(ii) found not to meet the safety standard, after the effective date of the rule issued under section 6(d) for the substance, consistent with the scope of the determination made by the Administrator.

"(C) SIGNIFICANT NEW USE.—A statute or administrative action requiring the notification of a use of a chemical substance that the Administrator has specified as a significant new use and for which the Administrator has required notification pursuant to a rule promulgated under section 5.

"(2) EFFECTIVE DATE OF PREEMPTION.—Under this subsection, Federal preemption of ~~State~~ statutes and administrative actions applicable to specific substances shall not occur until the effective date of the applicable action described in paragraph (1) taken by the Administrator.

"(b) New Statutes or Administrative Actions Creating Prohibitions or Other Restrictions.—

"(1) IN GENERAL.—Except as provided in subsections (c), (d), ~~and~~(e), **(f), and (g),** beginning on the date on which the Administrator defines **and publishes** the scope of a safety assessment and safety determination under section 6(a)(2) and ending on the date on which the Administrator publishes the safety determination **under section 6(a)(4)**, no State or political subdivision of a State may establish a statute or administrative action prohibiting or restricting the manufacture, processing, distribution in commerce or use of a chemical

Commented [S90]: Additional exceptional cases are identified in these subsections.

substance that is a high-priority substance designated under section 4A.

"(2) EFFECT OF SUBSECTION.—

"(A) IN GENERAL.—This subsection does not restrict the authority of a State or political subdivision of a State to continue to enforce any ~~State~~ statute enacted, or administrative action taken, prior to the date on which the Administrator defines **and publishes** the scope of a safety assessment and safety determination under section 6(a)(2).

Commented [S91]: Throughout, either deleted "state" or added "or political subdivision of a state" to clarify the provisions apply to both.

"(B) LIMITATION.—Subparagraph (A) does not allow a State or political subdivision of a State to enforce any new prohibition or restriction under a ~~State~~ statute or administrative action described in that subparagraph, if the prohibition or restriction is established after the date described in that subparagraph.

"(c) Scope of Preemption.—Federal preemption under subsections (a) and (b) of ~~State~~ statutes and administrative actions applicable to specific substances shall apply only to—

"(1) the chemical substances or category of substances subject to a rule, order, or consent agreement under section 4;

"(2) the uses or conditions of use of such substances that are identified by the Administrator as subject to review in a safety assessment and included in the scope of the safety determination made by the Administrator for the substance, or of any rule the Administrator promulgates pursuant to section 6(d); or

"(3) the uses of such substances that the Administrator has specified as significant new uses and for which the Administrator has required notification pursuant to a rule promulgated under section 5.

"(d) Exceptions.—

"(1) NO PREEMPTION OF ~~STATE~~ STATUTES AND ADMINISTRATIVE ACTIONS.—

"(A) IN GENERAL.—Nothing in this Act, nor any amendment made by this Act, nor any rule, standard of performance, safety determination, or scientific assessment implemented pursuant to this Act, shall affect the right of a State or a political subdivision of a State to adopt or enforce any rule, standard of performance, safety determination, scientific assessment, or any protection for public health or the environment that—

"(i) is adopted or authorized under the authority of any other Federal law or adopted to satisfy or obtain authorization or approval under any other Federal law;

"(ii) implements a reporting, monitoring, disclosure, or other information obligation for the chemical substance not otherwise required by the Administrator under this Act or required under any other Federal law;

"(iii) is 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 use of a chemical substance; and

"(II)(aa) addresses the same hazards and exposures, with respect to the same conditions of use as are included in the scope of the safety determination pursuant to section 6, but is inconsistent with the action of the Administrator; or

"(bb) would cause a violation of the applicable action by the Administrator under section 5 or 6; or

"(iv) subject to subparagraph (B), is identical to a requirement prescribed by the Administrator.

"(B) IDENTICAL REQUIREMENTS.—

"(i) IN GENERAL.—The penalties and other sanctions applicable under ~~State law~~ **a law of a State or political subdivision of a State** in the event of noncompliance with the identical requirement shall be no more stringent than the penalties and other sanctions available to the Administrator under section 16 of this Act.

"(ii) PENALTIES.—In the case of an identical requirement, no **State or political subdivision of a** State may assess a penalty for a specific violation for which the Administrator has already assessed a penalty under section 16, and the Administrator may not assess a penalty under section 16 for a specific violation for which **a State or political subdivision of** a State has already assessed a penalty.

"(2) APPLICABILITY TO CERTAIN RULES OR ORDERS.—Notwithstanding subsection (e)—

"(A) nothing in this section shall be construed as modifying the effect under this section, as in effect on the day before the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, of any rule or order promulgated or issued under this Act prior to that effective date; and

"(B) with respect to a chemical substance or mixture for which any rule or order was promulgated or issued under section 6 prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act with regards to manufacturing, processing, distribution in commerce, use, or disposal of a chemical substance, this section (as in effect on the day before the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act) shall govern the preemptive effect of any rule or order that is promulgated or issued respecting such chemical substance or mixture under section 6 of this Act after that effective date, unless the latter rule or order is with respect to a chemical substance or mixture containing a chemical substance and follows a designation of that chemical substance as a high-priority substance under **subsection (b) or (c) of** section 4A~~(b)~~ or as an additional priority for safety assessment and safety determination under section 4A(c).

"(e) Preservation of Certain ~~State Law.—~~ **Laws.—**

"(1) IN GENERAL.—Nothing in this Act, subject to subsection (g) of this section, 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 ~~State law~~ **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 law that was in effect on August 31, 2003.

"(2) EFFECT OF SUBSECTION.—This subsection does not affect, modify, or alter the relationship between ~~State and Federal law~~ **Federal law and laws of a State or political subdivision of a State** pursuant to any other Federal law.

"(f) ~~State~~ Waivers.—

"(1) DISCRETIONARY EXEMPTIONS.—Upon application of a State or political subdivision of a State, the Administrator may by rule, exempt from subsection (a), under such conditions as may be prescribed in the rule, a statute or administrative action of that State or political subdivision of the State that relates to the effects of, or exposure to, a chemical substance under the conditions of use if the Administrator determines that—

"(A) compelling State or local conditions warrant granting the waiver to protect health or the environment;

"(B) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

"(C) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

"(D) based on the judgment of the Administrator, the proposed requirement of the State or political subdivision of the State is consistent with sound objective scientific practices, the weight of the evidence, and the best available science.

"(2) REQUIRED EXEMPTIONS.—Upon application of a State or political subdivision of a State, the Administrator shall exempt from subsection (b) a statute or administrative action of a State or political subdivision of a State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that—

"(A) compliance with the proposed requirement of the State ~~will~~ **or political subdivision of the State would** not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

Commented [S92]: For consistency with (1)(B) above.

"(B) compliance with the proposed requirement **of the State or political subdivision of the State** would not cause a violation of any applicable Federal law, rule, or order; and

"(C) the State or political subdivision of ~~a~~ **the** State has a concern about the chemical substance or use of the chemical substance based in peer-reviewed science.

"(3) DETERMINATION OF A ~~STATE~~ WAIVER REQUEST.—The duty of the Administrator to grant or deny a waiver application shall be nondelegable and shall be exercised—

"(A) not later than 180 days after the date on which an application under paragraph (1) is submitted; and

"(B) not later than ~~90~~ **110** days after the date on which an application under paragraph (2) is submitted.

"(4) FAILURE TO MAKE DETERMINATION.—If the Administrator fails to make a determination under paragraph (3)(B) during the ~~90~~ **110**-day period beginning on the date on which an application under paragraph (2) is submitted, the ~~State~~ statute or administrative action **of the State or political subdivision of the State** that was the subject of the application shall not be considered to be an existing statute or administrative action for purposes of subsection (b) by reason of the failure of the Administrator to make a determination.

"(5) NOTICE AND COMMENT.—Except in the case of an application approved under paragraph (9), the application of a State or political subdivision of ~~the~~ **a** State shall be subject to public notice and comment.

"(6) FINAL AGENCY ACTION.—The decision of the Administrator on the application of a State or political subdivision of ~~the~~ **a** State shall be—

"(A) considered to be a final agency action; and

"(B) subject to judicial review.

"(7) DURATION OF **WAIVERS.—A** ~~waivers.—~~

~~"(A) In general.—Except as provided in subparagraph (B),~~ a waiver granted under paragraph (2) or approved under paragraph (9) shall remain in **effect** ~~effect—~~

~~"(i)~~ until such time as the ~~safety assessment and safety determination is completed; or~~ **Administrator publishes the safety determination under section 6(a)(4).**

~~"(ii) subject to subparagraph (B), until judicial review of the failure of the Administrator to make a determination under paragraph (3) is sought under paragraph (8).~~

~~"(B) Reinstatement of waiver.—A waiver described in subparagraph (A)(ii) shall again take effect upon the earlier of—~~

~~"(i) the date of approval by the Administrator of the waiver application;~~

~~"(ii) the effective date of a court order directing the Administrator to approve the waiver application; or~~

~~"(iii) 90~~**"(8) JUDICIAL REVIEW OF WAIVERS.—Not later than 60** days after the date on which ~~judicial review under paragraph (8) is sought.~~

~~"(8) Judicial review of waivers.—Not later than 60 days after the date on which~~ the Administrator makes a determination on an application of a State or political subdivision of ~~the~~ **a** State under paragraph (1) or (2), ~~or not later than 60 days after the date on which the Administrator fails to make a determination under paragraph (3),~~ any person may file a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit, which shall have exclusive jurisdiction over the determination.

"(9) APPROVAL.—

"(A) ~~IN GENERAL.—IF~~ **AUTOMATIC APPROVAL.—**

"(i) If the Administrator fails to meet the deadline **established** under section

Commented [S93]: Modified time period to provide a 10-day window to file a civil action for EPA's failure to fulfill a mandatory duty pursuant to TSCA section 20. See accompanying change in paragraph (9)(A)(ii) below.

Commented [S94]: Same as preceding comment.

Commented [S95]: Changes made to eliminate on-again, off-again waiver applicability.

6(a)(4) (including an extension granted under section 6(a)(6)), ~~or the deadline established under paragraph (3)(B),~~ the application of a State or political subdivision of a State under paragraph (2) shall be automatically approved.

"(ii) If the Administrator fails to meet the deadline established under paragraph (3)(B), the application of a State or political subdivision of a State under paragraph (2) shall be automatically approved, effective on the date that is 10 days after the deadline.

"(B) REQUIREMENTS.—Notwithstanding paragraph (6), approval of a waiver application under subparagraph (A) for failure to meet the deadlines under section 6(a)(4) (including an extension granted under section 6(a)(6)) **or paragraph (3)(B)** shall not be considered final agency action or be subject to judicial review or public notice and comment.

~~"(10) Judicial review of low-priority decisions.—~~

~~"(A) In general.—Not later than 60 days after the publication of a designation under section 4A(b)(4), any person may commence a civil action to challenge the designation.~~

~~* 5 "(B) Jurisdiction.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over a civil action filed under this paragraph.~~

"(g) Savings.—

"(1) NO PREEMPTION OF COMMON LAW OR STATUTORY CAUSES OF ACTION FOR CIVIL RELIEF OR CRIMINAL CONDUCT.—

"(A) IN GENERAL.—Nothing in this Act, nor any amendment made by this Act, nor any safety standard, rule, requirement, standard of performance, safety determination, or scientific assessment implemented pursuant to this Act, shall be construed to preempt, displace, or supplant any state or Federal common law rights or any state or Federal statute creating a remedy for civil relief, including those for civil damage, or a penalty for a criminal conduct.

"(B) CLARIFICATION OF NO PREEMPTION.—Notwithstanding any other provision of this Act, nothing in this Act, nor any amendments made by this Act, shall preempt or preclude any cause of action for personal injury, wrongful death, property damage, or other injury based on negligence, strict liability, products liability, failure to warn, or any other legal theory of liability under any State law, maritime law, or Federal common law or statutory theory.

"(2) NO EFFECT ON PRIVATE REMEDIES.—

"(A) IN GENERAL.—Nothing in this Act, nor any amendments made by this Act, nor any rules, regulations, requirements, safety assessments, safety determinations, scientific assessments, or orders issued pursuant to this Act shall be interpreted as, in either the plaintiff's or defendant's favor, dispositive in any civil action.

"(B) AUTHORITY OF COURTS.—This Act does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State or Federal law with respect to the admission into evidence or any other use of this Act or rules,

Commented [S96]: Broke out the missed (3)(B) waiver deadline into its own clause in order to apply a 10-day lag between the deadline and the automatic approval to provide a window for anyone seeking to file a civil action for EPA's failure to fulfill a mandatory duty pursuant to TSCA section 20. See accompanying change in paragraph (3)(B) above.

Commented [S97]: See addition to section 20(b)(2) to waive the 60-day advance notice requirement to bring a civil action to compel an EPA decision on a waiver request for which the deadline has passed.

Commented [S98]: Moved to section on Judicial Review, section 19(a)(3).

regulations, requirements, standards of performance, safety assessments, scientific assessments, or orders issued pursuant to this Act.".

SEC. 18. JUDICIAL REVIEW.

Section 19 of the Toxic Substances Control Act (15 U.S.C. 2618) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in subparagraph ~~(A),~~**(A)—**

(I) in the first sentence—

(aa) by striking "Not" and inserting "Except as otherwise provided in this title, not";

(bb) by striking "section 4(a), 5(a)(2), 5(b)(4), 6(a), 6(e), or 8, or under title II or IV" and inserting ~~"section 4(a), 5(d), 6(c), 6(d), 6(g), or 8, or title II or IV"; and~~**"this title or title II or IV, or an order under section 6(c)(1)(A)"; and**

~~(ii) in subparagraph (B),~~**(cc) by striking "judicial review of such rule" and inserting "judicial review of such rule or order"; and**

(II) in the second sentence, by striking "such a rule" and inserting "such a rule or order"; and

(ii) in subparagraph (B)—

(I) by striking "Courts" and inserting "Except as otherwise provided in this title, courts"; and

(II) by striking "an order issued under subparagraph (A) or (B) of section 6(b)(1)" and inserting "an order issued under this title"; ~~and~~

(B) in paragraph (2), in the ~~first~~ **second** sentence, by striking ~~"paragraph (1)(A)" and inserting "paragraph (1)"~~**"the filing of the rulemaking record of proceedings on which the Administrator based the rule being reviewed" and inserting "the filing of the record of proceedings on which the Administrator based the rule or order being reviewed"**; and

(C) by striking paragraph (3) ~~; and~~ **and inserting the following:**

"(3) JUDICIAL REVIEW OF LOW-PRIORITY DECISIONS.—

"(A) IN GENERAL.—Not later than 60 days after the publication of a designation under section 4A(b)(4), or a designation under section 4A(b)(8) of a chemical substance as a low-priority substance, any person may commence a civil action to challenge the designation.

**** 5** "(B) JURISDICTION.—The United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction over a civil action filed under this ~~paragraph.~~ **paragraph."; and**

(2) in subsection (c)(1)(B)—

Commented [S99]: Per TA, changes below are to simplify language and incorporate all relevant cross-references.

Commented [S100]: To ensure positive safety determinations are subject to judicial review under this section. Other changes here and in (B) are conforming.

Commented [S101]: Moved here from section 18(f)(10) because the provision deals with judicial review, not federal-state relationship.

(A) in clause (i)—

(i) by striking "section 4(a), 5(b)(4), 6(a), or 6(e)" and inserting "section 4(a), ~~5(d), 6(d), or 6(g)"~~ **6(d), or 6(g), or an order under section 6(c)(1)(A)**"; and

(ii) by striking "evidence in the rulemaking record (as defined in subsection (a)(3)) taken as a whole;" and inserting "evidence (including any matter) in the rulemaking record, taken as a whole; and"; and

(B) by striking clauses (ii) and (iii) and the matter following clause (iii) and inserting the following:

"(ii) the court may not review the contents and adequacy of any statement of basis and purpose required by section 553(c) of title 5, United States Code, to be incorporated in the rule, except as part of the rulemaking record, taken as a whole.".

Commented [S102]: To ensure positive safety determinations are subject to the substantial evidence standard of judicial review under this subsection.

SEC. 19. CITIZENS' CIVIL ACTIONS.

Section 20 of the Toxic Substances Control Act (15 U.S.C. 2619) is amended—

(1) in subsection (a)(1), by striking "or order issued under section 5" and inserting "or order issued under section 4 or 5"; and

(2) in subsection (b)—

(A) in paragraph (1)(B), by striking "or" at the end;

(B) in paragraph (2), by striking the period at the end and inserting ", except that no prior notification shall be required in the case of a civil action brought to compel a decision by the Administrator pursuant to section 18(f)(3)(B); or"; and

(C) by adding at the end the following:

"(3) in the case of a civil action brought to compel a decision by the Administrator pursuant to section 18(f)(3)(B), after the date that is 60 days after the deadline specified in section 18(f)(3)(B).".

Commented [S103]: To ensure test orders are subject to this section.

Commented [S104]: Change needed to ensure timely ability to compel an EPA decision on a preemption waiver request from a state.

Commented [S105]: Limits the waiving of the advance notification requirement to civil actions for missed interim waiver decision deadlines

Commented [S106]: Adds a requirement that any civil action to compel a decision on an interim waiver application after EPA misses the deadline must be filed within 60 days of the deadline.

SEC. 20. CITIZENS' PETITIONS.

Section 21 of the Toxic Substances Control Act (15 U.S.C. 2620) is amended—

(1) in subsection (a), by striking "an order under section 5(e) or 6(b)(2)" and inserting "an order under section 4 or 5(d)"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "an order under section 5(e), 6(b)(1)(A), or 6(b)(1)(B)" and inserting "an order under section 4 or 5(d)"; and

(B) in paragraph (4), by striking subparagraph (B) and inserting the following:

"(B) DE NOVO PROCEEDING.—

"(i) IN GENERAL.—In an action under subparagraph (A) to initiate a proceeding to ~~promulgate~~ **issue** a rule pursuant to section 4, 5, 6, or 8 or issue an order under section 4 or 5(d), the petitioner shall be provided an opportunity to have the

Commented [S107]: Per TA, to track current TSCA.

petition considered by the court in a de novo proceeding.

"(ii) DEMONSTRATION.—

"(I) IN GENERAL.—The court in a de novo proceeding under this subparagraph shall order the Administrator to initiate the action requested by the petitioner if the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that—

"(aa) in the case of a petition to initiate a proceeding for the issuance of a rule or order under section 4, the information ~~available to the Administrator is insufficient for the Administrator to perform an action described in section 4, 4A, 5, or 6(d);~~ **is needed for a purpose identified in section 4(a);**

"(bb) in the case of a petition to issue an order under section 5(d), ~~there is a reasonable basis to conclude that~~ the chemical substance is not likely to meet the safety standard;

"(cc) in the case of a petition to initiate a proceeding for the issuance of a rule under section 6(d), ~~there is a reasonable basis to conclude that~~ the chemical substance ~~will~~ **does** not meet the safety standard; or

"(dd) in the case of a petition to initiate a proceeding for the issuance of a rule under section 8, there is a reasonable basis to conclude that the rule is necessary to protect health or the environment or ensure that the chemical substance meets the safety standard.

"(II) DEFERMENT.—The court in a de novo proceeding under this subparagraph may permit the Administrator to defer initiating the action requested by the petitioner until such time as the court prescribes, if the court finds that—

"(aa) the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this Act; and

"(bb) there are insufficient resources available to the Administrator to take the action requested by the petitioner.".

Commented [S108]: Per TA, references the range of purpose for which testing can be required under section 4.

Commented [S109]: Per TA, to conform with the application of the safety standard under section 5 as revised by the bill.

Commented [S110]: Per TA, to conform with the application of the safety standard under section 6 as revised by the bill.

SEC. ~~20~~ **21**. EMPLOYMENT EFFECTS.

Section 24(b)(2)(B)(ii) of the Toxic Substances Control Act (15 U.S.C. 2623(b)(2)(B)(ii)) is amended by striking "section 6(c)(3)," and inserting "the applicable requirements of this Act;".

SEC. ~~21.~~ **22.** STUDIES.

Section 25 of the Toxic Substances Control Act (15 U.S.C. 2624) is repealed.

SEC. ~~22.~~ **23.** ADMINISTRATION.

Section 26 of the Toxic Substances Control Act (15 U.S.C. 2625) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) Fees.—

"(1) IN GENERAL.—The Administrator shall establish, not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, by rule—

"(A) the payment of 1 or more reasonable fees as a condition of submitting a notice or requesting an exemption under section 5; **and**

"(B) the payment of 1 or more reasonable fees by a manufacturer or processor that—

"(i) is required to submit a notice pursuant to the rule promulgated under section 8(b)(4)(A)(i) identifying a chemical substance as active;

"(ii) is required to submit a notice pursuant to section 8(b)(5)(B)(i) changing the status of a chemical substance from inactive to active;

"(iii) is required to report information pursuant to the rules promulgated under **paragraph (1) or (4) of** section 8(a)~~(4); and~~**; or**

"(iv) manufactures or processes a chemical substance subject to a safety assessment and safety determination pursuant to section 6.

Commented [S111]: Per TA, to incorporate persons subject to reporting under section 8(a)(1).

Commented [S112]: To clarify these are independent clauses any one of which applies.

"(2) UTILIZATION AND COLLECTION OF FEES.—The Administrator shall—

"(A) utilize the fees collected under paragraph (1) only to defray costs associated with the actions of the Administrator—

"(i) to collect, process, review, provide access to, and protect from disclosure (where appropriate) information on chemical substances under this Act;

"(ii) to review notices and make determinations for chemical substances under paragraphs (1) and (3) of section 5(d) and impose any necessary restrictions under section 5(d)(4);

"(iii) to make prioritization decisions under section 4A;

"(iv) to conduct and complete safety assessments and determinations under section 6; and

"(v) to conduct any necessary rulemaking pursuant to section 6(d);

"(B) insofar as possible, collect the fees described in paragraph (1) in advance of conducting any fee-supported activity;

"(C) deposit the fees in the Fund established by paragraph (4)(A); and

"(D) **insofar as possible,** not collect excess fees or retain a significant amount of unused fees.

"(3) AMOUNT AND ADJUSTMENT OF FEES; REFUNDS.—In setting fees under this section, the Administrator shall—

~~"(A) take into account the cost to the Administrator of conducting the activities described in paragraph (2);~~

Commented [S113]: Per TA, redundant.

"~~(B)~~ prescribe lower fees for small business concerns, after consultation with the Administrator of the Small Business Administration;

"~~(C)~~**"(B)** set the fees established under paragraph (1) at levels such that the fees will, in aggregate, provide a sustainable source of funds to defray approximately 25 percent of the costs of conducting the activities identified in paragraph (2)(A), not to exceed $18,000,000~~, not including fees under subparagraph (E) of this paragraph;~~;

Commented [S114]: Per TA, deletion here and addition in (D) below are to make clear that fees for additional priorities do not count toward the cap.

"~~(D)~~**"(C)** reflect an appropriate balance in the assessment of fees between manufacturers and processors, and allow the payment of fees by consortia of manufacturers or processors;

"~~(E)~~**"(D) notwithstanding subparagraph (B) and paragraph (4)(D),** for substances designated as additional priorities pursuant to section 4A(c), establish the fee at a level sufficient to defray the full costs to the Administrator of conducting the safety assessment and safety determination under section 6, except that for substances subject to section 4A(c)(3), the Administrator shall establish the fee at a level sufficient to defray 50 percent of those costs;

"~~(F)~~**"(E)** prior to the establishment or amendment of any fees under paragraph (1), consult and meet with parties potentially subject to the fees or their representatives, subject to the condition that no obligation under the Federal Advisory Committee Act (5 U.S.C. App.) or subchapter III of chapter 5 of title 5, United States Code, is applicable with respect to such meetings;

"~~(G)~~**"(F)** beginning with the fiscal year that is 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and every 3 years thereafter, after consultation with parties potentially subject to the fees and their representatives **pursuant to subparagraph (E)**, increase or decrease the fees established under paragraph (1) as necessary—

"(i) to ensure that funds deposited in the Fund are sufficient to conduct the activities identified in paragraph (2)(A) and **defray** the full **costs and the** 50-percent portion of the costs of safety assessments and safety determinations ~~pursuant to~~ **specified in** subparagraph ~~(E);~~**(D);** and

"(ii) to account for inflation;

"~~(H)~~**"(G)** adjust fees established under paragraph (1) as necessary to vary on account of differing circumstances, including reduced fees or waivers in appropriate circumstances, to reduce the burden on manufacturing or processing, remove barriers to innovation, or where the costs to the Administrator of collecting the fees exceed the fee revenue anticipated to be collected; and

"~~(I)~~**"(H)** if a notice submitted under section 5 is refused or subsequently withdrawn, refund the fee or a portion of the fee if no substantial work was performed on the notice.

"(4) TSCA IMPLEMENTATION FUND.—

"(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund, to be known as the 'TSCA Implementation Fund' (referred to in this subsection as the 'Fund'), consisting of—

"(i) such amounts as are deposited in the Fund under paragraph (2)(C); and

"(ii) any interest earned on the investment of amounts in the Fund; and

"(iii) any proceeds from the sale or redemption of investments held in the Fund.

"(B) CREDITING AND AVAILABILITY OF FEES.—

"(i) IN GENERAL.—Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts, and shall be available without fiscal year limitation.

"(ii) REQUIREMENTS.—Fees collected under this section shall not—

"(I) be made available or obligated for any purpose other than to defray the costs of conducting the activities identified in paragraph (2)(A);

"(II) otherwise be available for any purpose other than implementation of this Act; and

"(III) so long as amounts in the Fund remain available, be subject to restrictions on expenditures applicable to the Federal government as a whole.

"(C) UNUSED FUNDS.—Amounts in the Fund not currently needed to carry out this subsection shall be—

"(i) maintained readily available or on deposit;

"(ii) invested in obligations of the United States or guaranteed by the United States; or

"(iii) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

"(D) MINIMUM AMOUNT OF APPROPRIATIONS.—Fees may not be assessed for a fiscal year under this section unless the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2015) of the Office of Pollution Prevention and Toxics of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for covered functions for fiscal year 2015 (excluding the amount of any fees appropriated for the fiscal year).

"(5) AUDITING.—

"(A) FINANCIAL STATEMENTS OF AGENCIES.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an executive agency.

"(B) COMPONENTS.—The annual audit required under sections 3515(b) and 3521 of that title of the financial statements of activities under this subsection shall include an analysis of—

"(i) the fees collected under paragraph (1) and disbursed;

"(ii) compliance with the deadlines established in section 6 of this Act;

"(iii) the amounts budgeted, appropriated, collected from fees, and disbursed to

meet the requirements of sections 4, 4A, 5, 6, 8, and 14, including the allocation of full time equivalent employees to each such section or activity; and

"(iv) the reasonableness of the allocation of the overhead associated with the conduct of the activities described in paragraph (2)(A).

"(C) INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall—

"(i) conduct the annual audit required under this subsection; and

"(ii) report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.

"(6) TERMINATION.—The authority provided by this section shall terminate at the conclusion of the fiscal year that is 10 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, unless otherwise reauthorized or modified by Congress.";

(2) in subsection (e), by striking "Health, Education, and Welfare" each place it appears and inserting "Health and Human Services"; and

(3) adding at the end the following:

"(h) Prior Actions.—Nothing in this Act eliminates, modifies, or withdraws any rule promulgated, order issued, or exemption established pursuant to this Act before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.".

SEC. ~~23~~ **24**. DEVELOPMENT AND EVALUATION OF TEST METHODS AND SUSTAINABLE CHEMISTRY.

Section 27 of the Toxic Substances Control Act (15 U.S.C. 2626) is amended—

(1) in subsection (a), in the first sentence by striking "Health, Education, and Welfare" and inserting "Health and Human Services"; and

(2) by adding at the end the following:

"(c) Sustainable Chemistry Program.—The President shall establish an interagency Sustainable Chemistry Program to promote and coordinate Federal sustainable chemistry research, development, demonstration, technology transfer, commercialization, education, and training activities.

"(d) Program Activities.—The activities of the Program shall be designed to—

"(1) provide sustained support for sustainable chemistry research, development, demonstration, technology transfer, commercialization, education, and training through—

"(A) coordination of sustainable chemistry research, development, demonstration, and technology transfer conducted at Federal laboratories and agencies; and

"(B) to the extent practicable, encouragement of consideration of sustainable chemistry in, as appropriate—

"(i) the conduct of Federal and State science and engineering research and development; and

"(ii) the solicitation and evaluation of applicable proposals for science and engineering research and development;

"(2) examine methods by which the Federal Government can create incentives for consideration and use of sustainable chemistry processes and products, including innovative financing mechanisms;

"(3) expand the education and training of undergraduate and graduate students and professional scientists and engineers, including through partnerships with industry, in sustainable chemistry science and engineering;

"(4) collect and disseminate information on sustainable chemistry research, development, and technology transfer including information on—

"(A) incentives and impediments to development, manufacturing, and commercialization;

"(B) accomplishments;

"(C) best practices; and

"(D) costs and benefits;

"(5) support (including through technical assistance, participation, financial support, or other forms of support) economic, legal, and other appropriate social science research to identify barriers to commercialization and methods to advance commercialization of sustainable chemistry.

"(e) Interagency Working Group.—

"(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the President, in consultation with the Office of Science and Technology Policy, shall establish an Interagency Working Group that shall include representatives from the National Science Foundation, the National Institute of Standards and Technology, the Department of Energy, the Environmental Protection Agency, the Department of Agriculture, the Department of Defense, the National Institutes of Health, and any other agency that the President may designate to oversee the planning, management, and coordination of the Program.

"(2) GOVERNANCE.—The Director of the National Science Foundation and the Assistant Administrator for Research and Development of the Environmental Protection Agency, or their designees, shall serve as co-chairs of the Interagency Working Group.

"(3) RESPONSIBILITIES.—In overseeing the planning, management, and coordination of the Program, the Interagency Working Group shall—

"(A) establish goals and priorities for the Program, in consultation with the Advisory Council;

"(B) provide for interagency coordination, including budget coordination, of activities under the Program;

"(C) meet not later than 90 days from its establishment and periodically thereafter; and

"(D) establish and consult with an Advisory Council on a regular basis.

"(4) MEMBERSHIP.—The Advisory Council members shall not be employees of the Federal Government and shall include a diverse representation of knowledgeable individuals from the private sector (including small- and medium-sized enterprises from across the value chain), academia, State and tribal governments, and nongovernmental organizations and others who are in a position to provide expertise.

"(f) Agency Budget Requests.—

"(1) IN GENERAL.—Each Federal agency and department participating in the Program shall, as part of its annual request for appropriations to the Office of Management and Budget, submit a report to the Office of Management and Budget that—

"(A) identifies the activities of the agency or department that contribute directly to the Program; and

"(B) states the portion of the agency or department's request for appropriations that is allocated to those activities.

"(2) ANNUAL BUDGET REQUEST TO CONGRESS.—The President shall include in the annual budget request to Congress a statement of the portion of the annual budget request for each agency or department that will be allocated to activities undertaken pursuant to the Program.

"(g) Report to Congress.—

"(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Interagency Working Group shall submit a report to the Committee on Science, Space, and Technology and Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate that shall include—

"(A) a summary of federally funded sustainable chemistry research, development, demonstration, technology transfer, commercialization, education, and training activities;

"(B) a summary of the financial resources allocated to sustainable chemistry initiatives;

"(C) an analysis of the progress made toward achieving the goals and priorities of the program established pursuant to subsection (c), and recommendations for future program activities;

"(D) an assessment of the benefits of expanding existing, federally-supported regional innovation and manufacturing hubs to include sustainable chemistry and the value of directing the creation of 1 or more dedicated sustainable chemistry centers of excellence or hubs; and

"(E) an evaluation of steps taken and future strategies to avoid duplication of efforts, streamline interagency coordination, facilitate information sharing, and spread best practices between participating agencies in the Program.

"(2) SUBMISSION TO GAO.—The Interagency Working Group shall also submit the report described in paragraph (1) to the Government Accountability Office for consideration in future Congressional inquiries.".

SEC. ~~24~~ **25**. STATE PROGRAMS.

Section 28 of the Toxic Substances Control Act (15 U.S.C. 2627) is amended—

(1) in subsection (b)(1)—

(A) in subparagraphs (A) through (D), by striking the comma at the end of each subparagraph and inserting a semicolon; and

(B) in subparagraph (E), by striking ", and" and inserting "; and"; and

(2) by striking subsections (c) and (d).

SEC. ~~25~~ **26**. AUTHORIZATION OF APPROPRIATIONS.

Section 29 of the Toxic Substances Control Act (15 U.S.C. 2628) is repealed.

SEC. ~~26~~ **27**. ANNUAL REPORT.

Section 30 of the Toxic Substances Control Act (15 U.S.C. 2629) is amended by striking paragraph (2) and inserting the following:

"(2)(A) the number of notices received during each year under section 5; and

"(B) the number of the notices described in subparagraph (A) for chemical substances subject to a rule, testing consent agreement, or order under section 4;".

SEC. ~~27~~ **28**. EFFECTIVE DATE.

Section 31 of the Toxic Substances Control Act (15 U.S.C. 2601 note; Public Law 94–469) is amended—

(1) by striking "Except as provided in section 4(f), this" and inserting the following:

"(a) In General.—This"; and

(2) by adding at the end the following:

"(b) Retroactive Applicability.—Nothing in this Act shall be interpreted to apply retroactively to any State, Federal, or maritime legal action commenced prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.".

Message

From: Zipkin, Adam (Booker) [Adam_Zipkin@booker.senate.gov]
Sent: 3/25/2015 3:05:21 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
Subject: RE: TSCA reform principles doc
Attachments: Udall Vitter March 2015 draft REDLINE.doc

Hi Laura. Attached is a draft red-line of the current Udall-Vitter bill that I am working on for my boss and other EPW Dems to present to Sens Udall/Vitter as containing the changes needed in order for these Senators to support the bill. Please treat as confidential. Things are moving quickly, is there any chance Mr. Jones and/or any other EPA staff could review and do a TA call with me this afternoon? The amount of changes are limited, and can be summarized as follows:

1. Preemption
   - Consistent with existing law, timing of preemption for High Priority Chemicals is amended to occur at the implementation date of EPA action on a chemical (current bill has high priority preemption starting as soon as EPA starts reviewing a high priority chemical, rather than when EPA finishes).

2. Co-enforcement
   - Consistent with existing law, bill is amended to allow states to enact and co-enforce identical laws (current bill does not allow).

3. Judicial Review
   - Bill is amended to allow full judicial review of chemicals that EPA designates as low priority (current bill only allows states to challenge).

4. Articles (i.e. consumer products)
   - Bill is amended to delete out this newly inserted section which Mr. Jones testified is inconsistent with statement of administration priorities.

5. Animal Testing
   - Language is added to minimize animal testing where EPA Administrator determines scientifically reliable alternatives exist that would generate equivalent information.

6. Pre-emption of State Clean Air/Clean Water Laws
   - Language is tweaked to try to make clear that this pre-emption should not occur.

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, March 24, 2015 11:13 AM
To: Zipkin, Adam (Booker)
Subject: RE: TSCA reform principles doc

My morning is a little crazy -- anything this afternoon that works?

From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Monday, March 23, 2015 8:47 PM
To: Vaught, Laura
Subject: RE: TSCA reform principles doc

Thanks Laura -- I could do 10am or 11:30 if either of those work for you tmrw.

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Monday, March 23, 2015 5:24 PM
To: Zipkin, Adam (Booker)
Subject: RE: TSCA reform principles doc

Thanks Adam -- and sorry today got away from me, and now I have to run out for something, but let's connect tomorrow?

From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Friday, March 20, 2015 5:21 PM
To: Vaught, Laura
Subject: RE: TSCA reform principles doc

Hi Laura FYI Jim Jones did great at the hearing. Do you have a few minutes Monday am to talk follow up?

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, March 17, 2015 3:47 PM
To: Zipkin, Adam (Booker)
Subject: Re: TSCA reform principles doc

Give me 2 minutes to get back to my desk and then yes.

Sent from my iPhone

On Mar 17, 2015, at 3:45 PM, Zipkin, Adam (Booker) <Adam_Zipkin@booker.senate.gov> wrote:

> Laura any chance you could talk now? Otherwise I have a 4pm meeting and then open 4:30-5:30.
>
> ---
>
> **From:** Vaught, Laura [mailto:Vaught.Laura@epa.gov]
> **Sent:** Tuesday, March 17, 2015 2:59 PM
> **To:** Zipkin, Adam (Booker)
> **Subject:** RE: TSCA reform principles doc
>
> Sure.
>
> ---
>
> **From:** Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
> **Sent:** Tuesday, March 17, 2015 2:58 PM
> **To:** Vaught, Laura
> **Subject:** Re: TSCA reform principles doc
>
> Can u call my cell after your 3pm mtg 973.204.7917?
>
> ---
>
> **From**: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
> **Sent**: Tuesday, March 17, 2015 02:48 PM
> **To**: Zipkin, Adam (Booker)
> **Subject**: RE: TSCA reform principles doc
>
> Sounds good. I'm around until a little after 3 when I have to go to a meeting, but I don't think will take long.

From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Tuesday, March 17, 2015 2:38 PM
To: Vaught, Laura
Subject: Re: TSCA reform principles doc

I will try u in 5 min

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, March 17, 2015 12:27 PM
To: Zipkin, Adam (Booker)
Subject: RE: TSCA reform principles doc

Hi Adam – happy to connect on these when you're free. My direct is 564-0304

From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Tuesday, March 17, 2015 9:20 AM
To: Vaught, Laura
Subject: RE: TSCA reform principles doc

Laura good morning -- attached are draft questions. Could we do a call to discuss once you have a chance to review on your end? Thanks! Adam

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From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Monday, March 16, 2015 11:17 AM
To: Zipkin, Adam (Booker)
Subject: FW: TSCA reform principles doc

Hi Adam – here are the Administration's TSCA principles that were announced in 2009.

Title: To amend the Toxic Substances Control Act to reauthorize and modernize that Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Frank R. Lautenberg Chemical Safety for the 21st Century Act".

SEC. 2. FINDINGS, POLICY, AND INTENT.

Section 2(c) of the Toxic Substances Control Act (15 U.S.C. 2601(c)) is amended—

(1) by striking "It is the intent" and inserting the following:

"(1) ADMINISTRATION.—It is the intent";

(2) in paragraph (1) (as so redesignated), by inserting ", as provided under this Act" before the period at the end; and

(3) by adding at the following:

"(2) REFORM.—It is the intent of Congress that reform of this Act in accordance with the amendments made by the Frank R. Lautenberg Chemical Safety for the 21st Century Act—

"(A) shall be administered in a manner that—

"(i) protects the health of children, pregnant women, the elderly, workers, consumers, the general public, and the environment from the risks of harmful exposures to chemical substances and mixtures; and

"(ii) ensures that appropriate information on chemical substances and mixtures is available to public health officials and first responders in the event of an emergency; and

"(B) shall not displace or supplant common law rights of action or remedies for civil relief.".

SEC. 3. DEFINITIONS.

Section 3 of the Toxic Substances Control Act (15 U.S.C. 2602) is amended—

(1) by redesignating paragraphs (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) as paragraphs (5), (6), (7), (8), (9), (10), (12), (13), (17), (18), and (19), respectively;

(2) by inserting after paragraph (3) the following:

"(4) CONDITIONS OF USE.—The term 'conditions of use' means the intended, known, or reasonably foreseeable circumstances the Administrator determines a chemical substance is manufactured, processed, distributed in commerce, used, or disposed of.";

(3) by inserting after paragraph (10) (as so redesignated) the following:

"(11) POTENTIALLY EXPOSED OR SUSCEPTIBLE POPULATION.—The term 'potentially

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exposed or susceptible population' means 1 or more groups—

"(A) of individuals within the general population who may be—

"(i) differentially exposed to chemical substances under the conditions of use; or

"(ii) susceptible to greater adverse health consequences from chemical exposures than the general population; and

"(B) that when identified by the Administrator may include such groups as infants, children, pregnant women, workers, and the elderly."; and

(4) by inserting after paragraph (13) (as so redesignated) the following:

"(14) SAFETY ASSESSMENT.—The term 'safety assessment' means an assessment of the risk posed by a chemical substance under the conditions of use, integrating hazard, use, and exposure information regarding the chemical substance.

"(15) SAFETY DETERMINATION.—The term 'safety determination' means a determination by the Administrator as to whether a chemical substance meets the safety standard under the conditions of use.

"(16) SAFETY STANDARD.—The term 'safety standard' means a standard that ensures, without taking into consideration cost or other nonrisk factors, that no unreasonable risk of harm to health or the environment will result from exposure to a chemical substance under the conditions of use, including no unreasonable risk of harm to—

"(A) the general population; or

"(B) any potentially exposed or susceptible population that the Administrator has identified as relevant to the safety assessment and safety determination for a chemical substance.".

SEC. 4. POLICIES, PROCEDURES, AND GUIDANCE.

The Toxic Substances Control Act is amended by inserting after section 3 (15 U.S.C. 2602) the following:

"SEC. 3A. POLICIES, PROCEDURES, AND GUIDANCE.

"(a) Definition of Guidance.—In this section, the term 'guidance' includes any significant written guidance of general applicability prepared by the Administrator.

"(b) Deadline.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall develop, after providing public notice and an opportunity for comment, any policies, procedures, and guidance the Administrator determines to be necessary to carry out sections 4, 4A, 5, and 6, including the policies, procedures, and guidance required by this section.

"(c) Use of Science.—

"(1) IN GENERAL.—The Administrator shall establish policies, procedures, and guidance on the use of science in making decisions under sections 4, 4A, 5, and 6.

"(2) GOAL.—A goal of the policies and procedures described in paragraph (1) shall be to

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make the basis of decisions clear to the public.

"(3) REQUIREMENTS.—The policies, procedures, and guidance issued under this section shall describe the manner in which the Administrator shall ensure that —

"(A) decisions made by the Administrator—

"(i) are based on information, procedures, measures, methods, and models employed in a manner consistent with the best available science;

"(ii) take into account the extent to which—

"(I) assumptions and methods are clearly and completely described and documented;

"(II) variability and uncertainty are evaluated and characterized; and

"(III) the information has been subject to independent verification and peer review; and

"(iii) are based on the weight of the scientific evidence, by which the Administrator considers all information in a systematic and integrative framework to consider the relevance of different information;

"(B) to the extent practicable and if appropriate, the use of peer review, standardized test design and methods, consistent data evaluation procedures, and good laboratory practices will be encouraged;

"(C) a clear description of each individual and entity that funded the generation or assessment of information, and the degree of control those individuals and entities had over the generation, assessment, and dissemination of information (including control over the design of the work and the publication of information) is made available; and

"(D) if appropriate, the recommendations in reports of the National Academy of Sciences that provide advice regarding assessing the hazards, exposures, and risks of chemical substances are considered.

"(d) Existing EPA Policies, Procedures, and Guidance.—The policies, procedures, and guidance described in subsection (b) shall incorporate, as appropriate, existing relevant hazard, exposure, and risk assessment guidelines and methodologies, data evaluation and quality criteria, testing methodologies, and other relevant guidelines and policies of the Environmental Protection Agency.

"(e) Review.—Not later than 5 years after the date of enactment of this section, and not less frequently than once every 5 years thereafter, the Administrator shall—

"(1) review the adequacy of any policies, procedures, and guidance developed under this section, including animal, nonanimal, and epidemiological test methods and procedures for assessing and determining risk under this Act; and

"(2) after providing public notice and an opportunity for comment, revise the policies, procedures, and guidance if necessary to reflect new scientific developments or understandings.

"(f) Sources of Information.—In making any decision with respect to a chemical substance under section 4, 4A, 5, or 6, the Administrator shall take into consideration information relating

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to the hazards and exposures of a chemical substance under the conditions of use that is reasonably available to the Administrator, including information that is—

"(1) submitted to the Administrator pursuant to any rule, consent agreement, order, or other requirement of this Act, or on a voluntary basis, including pursuant to any request made under this Act, by—

"(A) manufacturers or processors of a substance;

"(B) the public;

"(C) other Federal departments or agencies; or

"(D) the Governor of a State or a State agency with responsibility for protecting health or the environment;

"(2) submitted to a governmental entity in any jurisdiction pursuant to a governmental requirement relating to the protection of health or the environment; or

"(3) identified through an active search by the Administrator of information sources that are publicly available or otherwise accessible by the Administrator.

"(g) Testing of Chemical Substances and Mixtures.—

"(1) IN GENERAL.—The Administrator shall establish policies and procedures for the testing of chemical substances or mixtures under section 4.

"(2) GOAL.—A goal of the policies and procedures established under paragraph (1) shall be to make the basis of decisions clear to the public.

"(3) CONTENTS.—The policies and procedures established under paragraph (1) shall—

"(A) address how and when the exposure level or exposure potential of a chemical substance would factor into decisions to require new testing, subject to the condition that the Administrator shall not interpret the lack of exposure information as a lack of exposure or exposure potential;

"(B) describe the manner in which the Administrator will determine that additional information is necessary to carry out this Act, including information relating to potentially exposed or susceptible populations;

"(C) require the Administrator to consult with the Director of the National Institute for Occupational Safety and Health prior to prescribing epidemiologic studies of employees; and

"(D) prior to making a request or adopting a requirement for testing using vertebrate animals, require the Administrator to take into consideration, as appropriate and to the extent practicable, reasonably available—

"(i) toxicity information;

"(ii) computational toxicology and bioinformatics;

"(iii) high-throughput screening methods and the prediction models of those methods; and

"(iv) scientifically reliable and relevant alternatives to tests on animals that

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would provide equivalent information.

"(E) require persons generating information for submission under this title on a voluntary basis and not pursuant to any request or requirement by the Administrator to use all other methods and strategies determined by the Administrator to be scientifically reliable, relevant and capable of providing equivalent information before conducting new vertebrate animal testing.

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"(4) TIERED TESTING.—

"(A) IN GENERAL.—Except as provided in subparagraph (D), the Administrator shall employ a tiered screening and testing process, under which the results of screening-level tests or assessments of available information inform the decision as to whether 1 or more additional tests are necessary.

"(B) SCREENING-LEVEL TESTS.—

"(i) IN GENERAL.—The screening-level tests required for a chemical substance or mixture may include tests for hazard (which may include in silico, in vitro, and in vivo tests), environmental and biological fate and transport, and measurements or modeling of exposure or exposure potential, as appropriate.

"(ii) USE.—Screening-level tests shall be used—

"(I) to screen chemical substances or mixtures for potential adverse effects; and

"(II) to inform a decision of the Administrator regarding whether more complex or targeted additional testing is necessary.

"(C) ADDITIONAL TESTING.—If the Administrator determines under subparagraph (B) that additional testing is necessary to provide more definitive information for safety assessments or safety determinations, the Administrator may require more advanced tests for potential health or environmental effects or exposure potential.

"(D) ADVANCED TESTING WITHOUT SCREENING.—The Administrator may require more advanced testing without conducting screening-level testing when other information available to the Administrator justifies the advanced testing, pursuant to guidance developed by the Administrator under this section.

"(h) Safety Assessments and Safety Determinations.—

"(1) SCHEDULE.—

"(A) IN GENERAL.—The Administrator shall inform the public regarding the schedule for the completion of each safety assessment and safety determination as soon as practicable after designation as a high-priority substance pursuant to section 4A.

"(B) DIFFERING TIMES.—The Administrator may allot different times for different chemical substances in the schedules under this paragraph, subject to the condition that all schedules shall comply with the deadlines established under section 6.

"(C) ANNUAL PLAN.—At the beginning of each calendar year, the Administrator shall identify the substances subject to safety assessments and safety determinations to

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be completed that year.

"(2) POLICIES AND PROCEDURES FOR SAFETY ASSESSMENTS AND SAFETY DETERMINATIONS.—

"(A) IN GENERAL.—The Administrator shall establish, by rule, policies and procedures regarding the manner in which the Administrator shall carry out section 6.

"(B) GOAL.—A goal of the policies and procedures under this paragraph shall be to make the basis of decisions of the Administrator clear to the public.

"(C) MINIMUM REQUIREMENTS.—At a minimum, the policies and procedures under this paragraph shall—

"(i) describe—

"(I) the manner in which the Administrator will identify informational needs and seek that information from the public;

"(II) the information (including draft safety assessments) that may be submitted by interested individuals or entities, including States; and

"(III) the criteria by which that information will be evaluated;

"(ii) require the Administrator—

"(I)(aa) to define the scope of the safety assessment and safety determination to be conducted under section 6, including the hazards, exposures, conditions of use, and potentially exposed and susceptible populations that the Administrator expects to consider in a safety assessment;

"(bb) to explain the basis for the scope of the safety assessment and safety determination; and

"(cc) to accept comments regarding the scope of the safety assessment and safety determination; and

"(II)(aa) to identify the items described in subclause (I) that the Administrator has considered in the final safety assessment; and

"(bb) to explain the basis for the consideration of those items;

"(iii) describe the manner in which aggregate exposures, or significant subsets of exposures, to a chemical substance under the conditions of use will be considered, and explain the basis for that consideration in the final safety assessment;

"(iv) require that each safety assessment and safety determination shall include—

"(I) a description of the weight of the scientific evidence of risk; and

"(II) a summary of the information regarding the impact on health and the environment of the chemical substance that was used to make the assessment or determination, including, as available, mechanistic, animal toxicity, and epidemiology studies;

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"(v) establish a timely and transparent process for evaluating whether new information submitted or obtained after the date of a final safety assessment or safety determination warrants reconsideration of the safety assessment or safety determination; ~~and~~

"(vi) when relevant information is provided or otherwise made available to the Administrator, shall consider the extent of Federal regulation under other Federal laws~~.~~; and

"(vii) the consideration of exposure potential as a factor in decisions to require new testing, subject to the condition that the Administrator shall not interpret the lack of exposure information as a lack of exposure or exposure potential;

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"(D) GUIDANCE.—

"(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall develop guidance to assist interested persons in developing draft safety assessments and other information for submission to the Administrator, which may be considered at the discretion of the Administrator.

"(ii) REQUIREMENT.—The guidance shall, at a minimum, address the quality of the information submitted and the process to be followed in developing a draft assessment for consideration by the Administrator.

~~"(3) ARTICLES.—If the Administrator intends to prohibit or otherwise restrict an article on the basis of a chemical substance contained in that article, the Administrator shall have evidence of significant exposure to the chemical substance from such article.~~

"(i) Publicly Available Information.—Subject to section 14, the Administrator shall—

"(1) make publicly available a nontechnical summary, and the final version, of each safety assessment and safety determination;

"(2) provide public notice and an opportunity for comment on each proposed safety assessment and safety determination; and

"(3) make public in a final safety assessment and safety determination—

"(A) the list of studies considered by the Administrator in carrying out the safety assessment or safety determination; and

"(B) the list of policies, procedures, and guidance that were followed in carrying out the safety assessment or safety determination.

"(j) Consultation With Science Advisory Committee on Chemicals.—

"(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this section, the Administrator shall establish an advisory committee, to be known as the 'Science Advisory Committee on Chemicals' (referred to in this subsection as the 'Committee').

"(2) PURPOSE.—The purpose of the Committee shall be to provide independent advice and expert consultation, on the request of the Administrator, with respect to the scientific and technical aspects of issues relating to the implementation of this title.

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"(3) COMPOSITION.—The Committee shall be composed of representatives of such science, government, labor, public health, public interest, animal protection, industry, and other groups as the Administrator determines to be advisable, including, at a minimum, representatives that have specific scientific expertise in the relationship of chemical exposures to women, children, and other potentially exposed or susceptible populations.

"(4) SCHEDULE.—The Administrator shall convene the Committee in accordance with such schedule as the Administrator determines to be appropriate, but not less frequently than once every 2 years.

"(5) RELATIONSHIP TO OTHER LAW.—All proceedings and meetings of the Committee shall be subject to the Federal Advisory Committee Act (5 U.S.C. App.).".

SEC. 5. TESTING OF CHEMICAL SUBSTANCES OR MIXTURES.

(a) In General.—Section 4 of the Toxic Substances Control Act (15 U.S.C. 2603) is amended—

(1) by striking subsections (a), (b), (c), (d), and (g);

(2) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively;

(3) in subsection (f) (as so redesignated)—

(A) by striking "rule" each place it appears and inserting "rule, testing consent agreement, or order";

(B) by striking "under subsection (a)" each place it appears and inserting "under this subsection"; and

(C) in paragraph (1)(B), in the last sentence, by striking "rulemaking";

(4) in subsection (g) (as so redesignated)—

(A) in the first sentence, by striking "from cancer, gene mutations, or birth defects"; and

(B) by striking the last sentence; and

(5) by inserting before subsection (f) (as so redesignated) the following:

"(a) Development of New Information on Chemical Substances and Mixtures.—

"(1) IN GENERAL.—The Administrator may require the development of new information relating to a chemical substance or mixture in accordance with this section if the Administrator determines that the information is necessary—

"(A) to review a notice under section 5(d) or to perform a safety assessment or safety determination under section 6;

"(B) to implement a requirement imposed in a consent agreement or order issued under section 5(d)(4) or under a rule promulgated under section 6(d)(3);

"(C) pursuant to section 12(a)(4); or

"(D) at the request of the implementing authority under another Federal law, to meet

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the regulatory testing needs of that authority.

"(2) LIMITED TESTING FOR PRIORITIZATION PURPOSES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the Administrator may require the development of new information for the purposes of section 4A.

"(B) PROHIBITION.—Testing required under subparagraph (A) shall not be required for the purpose of establishing or implementing a minimum information requirement.

"(C) LIMITATION.—The Administrator may require the development of new information pursuant to subparagraph (A) only if the Administrator determines that additional information is necessary to establish the priority of a chemical substance.

"(3) FORM.—Subject to section 3A(h), the Administrator may require the development of information described in paragraph (1) or (2) by—

"(A) promulgating a rule;

"(B) entering into a testing consent agreement; or

"(C) issuing an order.

"(4) CONTENTS.—

"(A) IN GENERAL.—A rule, testing consent agreement, or order issued under this subsection shall include—

"(i) identification of the chemical substance or mixture for which testing is required;

"(ii) identification of the persons required to conduct the testing;

"(iii) test protocols and methodologies for the development of test data and information for the chemical substance or mixture, including specific reference to reliable nonanimal test procedures; and

"(iv) specification of the period within which individuals and entities required to conduct the testing shall submit to the Administrator the information developed in accordance with the procedures described in clause (iii).

"(B) CONSIDERATIONS.—In determining the procedures and period to be required under subparagraph (A), the Administrator shall take into consideration—

"(i) the relative costs of the various test protocols and methodologies that may be required; and

"(ii) the reasonably foreseeable availability of facilities and personnel required to perform the testing.

"(b) Statement of Need.—

"(1) IN GENERAL.—In promulgating a rule, entering into a testing consent agreement, or issuing an order for the development of additional information (including information on exposure or exposure potential) pursuant to this section, the Administrator shall—

"(A) identify the need intended to be met by the rule, agreement, or order;

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"(B) explain why information reasonably available to the Administrator at that time is inadequate to meet that need, including a reference, as appropriate, to the information identified in paragraph (2)(B); and

"(C) explain the basis for any decision that requires the use of vertebrate animals.

"(2) EXPLANATION IN CASE OF ORDER.—

"(A) IN GENERAL.—If the Administrator issues an order under this section, the Administrator shall issue a statement providing a justification for why issuance of an order is warranted instead of promulgating a rule or entering into a testing consent agreement.

"(B) CONTENTS.—A statement described in subparagraph (A) shall contain a description of—

"(i) information that is readily accessible to the Administrator, including information submitted under any other provision of law;

"(ii) the extent to which the Administrator has obtained or attempted to obtain the information through voluntary submissions; and

"(iii) any information relied on in safety assessments for other chemical substances relevant to the chemical substances that would be the subject of the order.

"(c) Reduction of Testing on Vertebrates.—

"(1) IN GENERAL.—The Administrator shall minimize, to the extent practicable, the use of vertebrate animals in testing of chemical substances or mixtures, by—

"(A) encouraging and facilitating—

"(i) the use of integrated and tiered testing and assessment strategies;

"(ii) the use of best available science in existence on the date on which the test is conducted;

"(iii) the use of test methods that eliminate or reduce the use of animals while providing information of high scientific quality;

"(iv) the grouping of 2 or more chemical substances into scientifically appropriate categories in cases in which testing of a chemical substance would provide reliable and useful information on other chemical substances in the category;

"(v) the formation of industry consortia to jointly conduct testing to avoid unnecessary duplication of tests; and

"(vi) the submission of information from—

"(I) animal-based studies; and

"(II) emerging methods and models; and

"(B) funding research and validation studies to reduce, refine, and replace the use of animal tests in accordance with this subsection.

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"(2) IMPLEMENTATION OF ALTERNATIVE TESTING METHODS.—To promote the development and timely incorporation of new testing methods that are not based on vertebrate animals, the Administrator shall—

"(A) after providing an opportunity for public comment, develop a strategic plan to promote the development and implementation of alternative test methods and testing strategies to generate information under this title that can reduce, refine, or replace the use of vertebrate animals, including toxicity pathway-based risk assessment, in vitro studies, systems biology, computational toxicology, bioinformatics, and high-throughput screening;

"(B) as practicable, ensure that the strategic plan developed under subparagraph (A) is reflected in the development of requirements for testing under this section;

"(C) beginning on the date that is 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act and every 5 years thereafter, submit to Congress a report that describes the progress made in implementing this subsection and goals for future alternative test methods implementation; and

"(D) fund and carry out research, development, performance assessment, and translational studies to accelerate the development of test methods and testing strategies that reduce, refine, or replace the use of vertebrate animals in any testing under this title.

"(3) CRITERIA FOR ADAPTING OR WAIVING ANIMAL TESTING REQUIREMENTS.—On request from a manufacturer or processor that is required to conduct testing of a chemical substance or mixture on vertebrate animals under this section, the Administrator may adapt or waive the requirement, if the Administrator determines that—

"(A) there is sufficient evidence from several independent sources of information to support a conclusion that a chemical substance or mixture has, or does not have, a particular property if the information from each individual source alone is insufficient to support the conclusion;

"(B) as a result of 1 or more physical or chemical properties of the chemical substance or mixture or other toxicokinetic considerations—

"(i) the substance cannot be absorbed; or

"(ii) testing for a specific endpoint is technically not practicable to conduct; or

"(C) a chemical substance or mixture cannot be tested in vertebrate animals at concentrations that do not result in significant pain or distress, because of physical or chemical properties of the chemical substance or mixture, such as a potential to cause severe corrosion or severe irritation to the tissues of the animal.

"(d) Testing Requirements.—

"(1) IN GENERAL.—The Administrator may require the development of information by—

"(A) manufacturers and processors of the chemical substance or mixture; and

"(B) persons that begin to manufacture or process the chemical substance or mixture—

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"(i) after the effective date of the rule, testing consent agreement, or order; but

"(ii) subject to paragraph (3), before the period ending on the date that is 180 days after the end of the period described in this section.

"(2) DESIGNATION.—The Administrator may permit 2 or more persons identified in subparagraph (A) or (B) of paragraph (1) to designate 1 of the persons or a qualified third party—

"(A) to develop the information; and

"(B) to submit the information on behalf of the persons making the designation.

"(3) EXEMPTIONS.—

"(A) IN GENERAL.—A person otherwise subject to a rule, testing consent agreement, or order under this section may submit to the Administrator an application for an exemption on the basis that the information is being developed by a person designated under paragraph (2).

"(B) FAIR AND EQUITABLE REIMBURSEMENT TO DESIGNEE.—

"(i) IN GENERAL.—If the Administrator accepts an application submitted under subparagraph (A), the Administrator shall direct the applicant to provide to the person designated under paragraph (2) fair and equitable reimbursement, as agreed to between the applicant and the designee.

"(ii) ARBITRATION.—If the applicant and a person designated under paragraph (2) cannot reach agreement on the amount of fair and equitable reimbursement, the amount shall be determined by arbitration.

"(C) TERMINATION.—If, after granting an exemption under this paragraph, the Administrator determines that a person covered by the exemption has failed to comply with the rule, testing consent agreement, or order, the Administrator shall—

"(i) by order, terminate the exemption; and

"(ii) notify in writing each person that received an exemption of the requirements with respect to which the exemption was granted.

"(e) Transparency.—Subject to section 14, the Administrator shall make available to the public all testing consent agreements and orders and all information submitted under this section.".

(b) Conforming Amendment.—Section 104(i)(5)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604(i)(5)(A)) is amended in the third sentence by striking "section 4(e)" and inserting "section 4(f)".

SEC. 6. PRIORITIZATION SCREENING.

The Toxic Substances Control Act is amended by inserting after section 4 (15 U.S.C. 2603) the following:

"SEC. 4A. PRIORITIZATION SCREENING.

"(a) Establishment and List of Substances.—

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"(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Administrator shall establish, by rule, a risk-based screening process and explicit criteria for identifying existing chemical substances that are—

"(A) a high priority for a safety assessment and safety determination under section 6 (referred to in this Act as 'high-priority substances'); and

"(B) a low priority for a safety assessment and safety determination (referred to in this Act as 'low-priority substances').

"(2) INITIAL LIST OF HIGH- AND LOW-PRIORITY SUBSTANCES.—

"(A) IN GENERAL.—Before the date of promulgation of the rule under paragraph (1) and not later than 180 days after the date of enactment of this section, the Administrator—

"(i) shall take into consideration and publish an initial list of high-priority substances and low-priority substances; and

"(ii) pursuant to section 6(b), may initiate or continue safety assessments and safety determinations for those high-priority substances.

"(B) REQUIREMENTS.—

"(i) IN GENERAL.—The initial list of chemical substances shall contain at least 10 high-priority substances, at least 5 of which are drawn from the list of chemical substances identified by the Administrator in the October, 2014 TSCA Work Plan and subsequent updates, and at least 10 low-priority substances.

"(ii) SUBSEQUENTLY IDENTIFIED SUBSTANCES.—Insofar as possible, at least 50 percent of all substances subsequently identified by the Administrator as high-priority substances shall be drawn from the list of chemical substances identified by the Administrator in the October, 2014 TSCA Work Plan and subsequent updates, until all Work Plan chemicals have been designated under this subsection.

"(C) ADDITIONAL CHEMICAL REVIEWS.—The Administrator shall—

"(i) 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, add additional high-priority substances sufficient to ensure that at least a total of 20 high-priority substances have undergone or are undergoing the process established in section 6(a), and additional low-priority substances sufficient to ensure that at least a total of 20 low-priority substances have been designated; and

"(ii) as soon as practicable and not later than 5 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, add additional high-priority substances sufficient to ensure that at least a total of 25 high-priority substances have undergone or are undergoing the process established in section 6(a), and additional low-priority substances sufficient to ensure that at least a total of 25 low-priority substances have been designated.

"(3) IMPLEMENTATION.—

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"(A) CONSIDERATION OF ACTIVE AND INACTIVE SUBSTANCES.—

"(i) ACTIVE SUBSTANCES.—In carrying out paragraph (1), the Administrator shall take into consideration active substances, as determined under section 8, which may include chemical substances on the interim list of active substances established under that section.

"(ii) INACTIVE SUBSTANCES.—In carrying out paragraph (1), the Administrator may take into consideration inactive substances, as determined under section 8, that the Administrator determines—

"(I)(aa) have not been subject to a regulatory or other enforceable action by the Administrator to ban or phase out the substances; and

"(bb) have the potential for high hazard and widespread exposure; or

"(II)(aa) have been subject to a regulatory or other enforceable action by the Administrator to ban or phase out the substances; and

"(bb) with respect to which there exists the potential for residual high hazards or widespread exposures not otherwise addressed by the regulatory or other action.

"(iii) REPOPULATION.—

"(I) IN GENERAL.—On the completion of a safety determination under section 6 for a chemical substance, the Administrator shall remove the chemical substance from the list of high-priority substances established under this subsection.

"(II) ADDITIONS.—The Administrator shall add at least 1 chemical substance to the list of high-priority substances for each chemical substance removed from the list of high-priority substances established under this subsection, until a safety assessment and safety determination is completed for all high-priority substances.

"(III) LOW-PRIORITY SUBSTANCES.—If a low-priority substance is subsequently designated as a high-priority substance, the Administrator shall remove that substance from the list of low-priority substances.

"(B) TIMELY COMPLETION OF PRIORITIZATION SCREENING PROCESS.—

"(i) IN GENERAL.—The Administrator shall—

"(I) not later than 180 days after the effective date of the final rule under paragraph (1), begin the prioritization screening process; and

"(II) make every effort to complete the designation of all active substances as high-priority substances or low-priority substances in a timely manner.

"(ii) DECISIONS ON SUBSTANCES SUBJECT TO TESTING FOR PRIORITIZATION PURPOSES.—Not later than 90 days after the date of receipt of information regarding a chemical substance complying with a rule, testing consent agreement, or order issued under section 4(a)(2), the Administrator shall designate the chemical substance as a high-priority substance or low-priority substance.

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"(iii) CONSIDERATION.—

"(I) IN GENERAL.—The Administrator shall screen substances and designate high-priority substances taking into consideration the ability of the Administrator to schedule and complete safety assessments and safety determinations under section 6 in a timely manner.

"(II) ANNUAL GOAL.—The Administrator shall publish an annual goal for the number of chemical substances to be subject to the prioritization screening process.

"(C) SCREENING OF CATEGORIES OF SUBSTANCES.—The Administrator may screen categories of chemical substances to ensure an efficient prioritization screening process to allow for timely and adequate designations of high-priority substances and low-priority substances and safety assessments and safety determinations for high-priority substances.

"(D) PUBLICATION OF LIST OF CHEMICAL SUBSTANCES.—Not less frequently than once each year, the Administrator shall publish a list of chemical substances that—

"(i) are being considered in the prioritization screening process and the status of the chemical substances in the prioritization process, including those chemical substances for which prioritization decisions have been deferred; and

"(ii) are designated as high-priority substances or low-priority substances, including the bases for such designations.

"(4) CRITERIA.—The criteria described in paragraph (1) shall account for—

"(A) the recommendation of the Governor of a State or a State agency with responsibility for protecting health or the environment from chemical substances appropriate for prioritization screening;

"(B) the hazard and exposure potential of the chemical substance (or category of substances), including specific scientific classifications and designations by authoritative governmental entities;

"(C) the conditions of use or significant changes in the conditions of use of the chemical substance;

"(D) evidence and indicators of exposure potential to humans or the environment from the chemical substance, including potentially exposed or susceptible populations;

"(E) the volume of a chemical substance manufactured or processed;

"(F) whether the volume of a chemical substance as reported under a rule promulgated pursuant to section 8(a) has significantly increased or decreased during the period beginning on the date of a previous report or the date on which a notice has been submitted under section 5(b) for that chemical substance;

"(G) the availability of information regarding potential hazards and exposures required for conducting a safety assessment or safety determination, with limited availability of relevant information to be a sufficient basis for designating a chemical substance as a high-priority substance, subject to the condition that limited availability

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shall not require designation as a high-priority substance; and

"(H) the extent of Federal or State regulation of the chemical substance or the extent of the impact of State regulation of the chemical substance on the United States, with existing Federal or State regulation of any uses evaluated in the prioritization screening process as a factor in designating a chemical substance to be a low-priority substance.

"(b) Prioritization Screening Process and Decisions.—

"(1) IN GENERAL.—The prioritization screening process developed under subsection (a) shall include a requirement that the Administrator shall—

"(A) identify the chemical substances being considered for prioritization;

"(B) request interested persons to supply information regarding the chemical substances being considered;

"(C) apply the criteria identified in subsection (a)(4); and

"(D) subject to paragraph (5) and using the information available to the Administrator at the time of the decision, identify a chemical substance as a high-priority substance or a low-priority substance.

"(2) INTEGRATION OF INFORMATION.—The prioritization screening decision regarding a chemical substance shall integrate any hazard and exposure information relating to the chemical substance that is available to the Administrator.

"(3) IDENTIFICATION OF HIGH-PRIORITY SUBSTANCES.—The Administrator—

"(A) shall identify as a high-priority substance a chemical substance that, relative to other chemical substances, the Administrator determines has the potential for high hazard and widespread exposure;

"(B) may identify as a high-priority substance a chemical substance that, relative to other chemical substances, the Administrator determines has the potential for high hazard or widespread exposure; and

"(C) may identify as a high-priority substance an inactive substance, as determined under subsection (a)(3)(A)(ii) and section 8(b), that the Administrator determines warrants a safety assessment and safety determination under section 6.

"(4) IDENTIFICATION OF LOW-PRIORITY SUBSTANCES.—The Administrator shall identify as a low-priority substance a chemical substance that the Administrator concludes has information sufficient to establish that the chemical substance is likely to meet the applicable safety standard.

"(5) DEFERRING A DECISION.—If the Administrator determines that additional information is required to establish the priority of a chemical substance under this section, the Administrator may defer the prioritization screening decision for a reasonable period—

"(A) to allow for the submission of additional information by an interested person and for the Administrator to evaluate the additional information; or

"(B) to require the development of information pursuant to a rule, testing consent agreement, or order issued under section 4(a)(2).

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"(6) DEADLINES FOR SUBMISSION OF INFORMATION.—If the Administrator requests the development or submission of information under this section, the Administrator shall establish a deadline for submission of the information.

"(7) NOTICE AND COMMENT.—The Administrator shall—

"(A) publish the proposed decisions made under paragraphs (3), (4), and (5) and the basis for the decisions; and

"(B) provide an opportunity for public comment.

"(8) REVISIONS OF PRIOR DESIGNATIONS.—

"(A) IN GENERAL.—At any time, and at the discretion of the Administrator, the Administrator may revise the designation of a chemical substance as a high-priority substance or a low-priority substance based on information available to the Administrator after the date of the determination under paragraph (3) or (4).

"(B) LIMITED AVAILABILITY.—If limited availability of relevant information was a basis in the designation of a chemical substance as a high-priority substance, the Administrator shall reevaluate the prioritization screening of the chemical substance on receiving the relevant information.

"(9) OTHER INFORMATION RELEVANT TO PRIORITIZATION.—

"(A) IN GENERAL.—If, after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, a State proposes an administrative action or enacts a statute or takes an administrative action to prohibit or otherwise restrict the manufacturing, processing, distribution in commerce, or use of a chemical substance that the Administrator has not as designated a high-priority substance, the Governor or State agency with responsibility for implementing the statute or administrative action shall notify the Administrator.

"(B) REQUESTS FOR INFORMATION.—Following receipt of a notification provided under subparagraph (A), the Administrator may request any available information from the Governor or the State agency with respect to—

"(i) scientific evidence related to the hazards, exposures and risks of the chemical substance under the conditions of use which the statute or administrative action is intended to address;

"(ii) any State or local conditions which warranted the statute or administrative action;

"(iii) the statutory or administrative authority on which the action is based; and

"(iv) any other available information relevant to the prohibition or other restriction, including information on any alternatives considered and their hazards, exposures, and risks.

"(C) PRIORITIZATION SCREENING.—The Administrator shall conduct a prioritization screening under this subsection for all substances that—

"(i) are the subject of notifications received under subparagraph (A); and

"(ii) the Administrator determines—

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"(I) are likely to have significant health or environmental impacts;

"(II) are likely to have significant impact on interstate commerce; or

"(III) have been subject to a prohibition or other restriction under a statute or administrative action in 2 or more States.

"(D) AVAILABILITY TO PUBLIC.—Subject to section 14 and any applicable State law regarding the protection of confidential information provided to the State or to the Administrator, the Administrator shall make information received from a Governor or State agency under subparagraph (A) publicly available.

"(E) EFFECT OF PARAGRAPH.—Nothing in this paragraph shall preempt a State statute or administrative action, require approval of a State statute or administrative action, or apply section 15 to a State.

"(10) REVIEW.—Not less frequently than once every 5 years after the date on which the process under this subsection is established, the Administrator shall—

"(A) review the process on the basis of experience and taking into consideration resources available to efficiently and effectively screen and prioritize chemical substances; and

"(B) if necessary, modify the prioritization screening process.

"(11) EFFECT.—Subject to section 18, a designation by the Administrator under this section with respect to a chemical substance shall not affect—

"(A) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance; or

"(B) the regulation of those activities.

"(c) Additional Priorities for Safety Assessments and Determinations.—

"(1) IN GENERAL.—The prioritization screening process developed under subsection (a) shall—

"(A) include a process by which a manufacturer or processor of an active chemical substance that has not been designated a high-priority substance, or that has not been subject to or is not in the process of a prioritization screening by the Administrator, may request that the Administrator designate the substance for a safety assessment and safety determination, subject to the payment of fees pursuant to section 26(b)(3)(E); and

"(B) provide guidance to submitters on the information to be provided in such requests, and specify the criteria the Administrator shall use to determine whether or not to grant such a request, which shall include whether the substance is subject to restrictions imposed by statutes enacted or administrative actions taken by 1 or more States on the manufacture, processing, distribution in commerce, or use of the substance.

"(2) PREFERENCE.—Subject to paragraph (3), in deciding whether to grant requests under this subsection the Administrator shall give a preference to requests concerning substances for which the Administrator determines that restrictions imposed by 1 or more States have

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the potential to have a significant impact on interstate commerce or health or the environment.

"(3) LIMITATIONS.—In considering whether to grant a request submitted under paragraph (1), the Administrator shall ensure that—

"(A) not more than 15 percent of the total number of substances designated to undergo safety assessments and safety determinations under this section are substances designated under the process and criteria pursuant to paragraph (1); and

"(B) the resources allocated to conducting safety assessments and safety determinations for additional priorities designated under this subsection are proportionate to the number of such substances relative to the total number of substances designated to undergo safety assessments and safety determinations under this section.

"(4) REQUIREMENTS.—

"(A) IN GENERAL.—The public shall be provided notice and an opportunity to comment on requests submitted under this subsection.

"(B) DECISION BY ADMINISTRATOR.—Not later than 180 days after the date on which the Administrator receives a request under this subsection, the Administrator shall decide whether or not to grant the request.

"(C) ASSESSMENT AND DETERMINATION.—If the Administrator grants a request under this subsection, the safety assessment and safety determination—

"(i) shall be conducted in accordance with the deadlines and other requirements of sections 3A(i) and 6; and

"(ii) shall not be expedited or otherwise subject to special treatment relative to high-priority substances designated pursuant to subsection (b)(3) that are undergoing safety assessments and safety determinations.

"(5) EXCEPTIONS.—Requests granted under this subsection shall not be subject to subsection (a)(3)(A)(iii) or section 18(b).".

"(d) Treatment.— Except for the designation of a chemical substance as low-priority under paragraph (b)(4), no action by the Administrator under this section shall be—

"(1) considered to be a final agency action; or

"(2) subject to judicial review.".

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SEC. 7. NEW CHEMICALS AND SIGNIFICANT NEW USES.

Section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) is amended—

(1) by striking the section designation and heading and inserting the following:

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USES.";

(2) by striking subsection (b);

(3) by redesignating subsection (a) as subsection (b);

(4) by redesignating subsection (i) as subsection (a) and moving the subsection so as to appear at the beginning of the section;

(5) in subsection (b) (as so redesignated)—

(A) in the subsection heading, by striking "In General" and inserting "Notices"; and

(B) in paragraph (1), in the matter following subparagraph (B)—

(i) by striking "subsection (d)" and inserting "subsection (b)"; and

(ii) by striking "and such person complies with any applicable requirement of subsection (b)";

(6) by redesignating subsections (c) and (d) as subsection (d) and (c), respectively, and moving subsection (c) (as so redesigned) so as appear after subsection (b) (as redesignated by paragraph (3));

(7) in subsection (c) (as so redesignated)—

(A) by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—The notice required by subsection (a) shall include, with respect to a chemical substance—

"(A) the information required by sections 720.45 and 720.50 of title 40, Code of Federal Regulations (or successor regulations); and

"(B) information regarding conditions of use and reasonably anticipated exposures.";

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking "or of data under subsection (b)";

(ii) in subparagraph (A), by adding "and" after the semicolon at the end;

(iii) in subparagraph (B), by striking "; and" and inserting a period; and

(iv) by striking subparagraph (C); and

(C) in paragraph (3), by striking "subsection (a) and for which the notification period prescribed by subsection (a), (b), or (c)" and inserting "subsection (b) and for which the notification period prescribed by subsection (b) or (d)";

(8) by striking subsection (d) (as redesignated by paragraph (6)) and inserting the following:

"(d) Review of Notice.—

"(1) INITIAL REVIEW.—

"(A) IN GENERAL.—Subject to subparagraph (B), not later than 90 days after the date

of receipt of a notice submitted under subsection (b), the Administrator shall—

"(i) conduct an initial review of the notice;

"(ii) as needed, develop a profile of the relevant chemical substance and the potential for exposure to humans and the environment; and

"(iii) make any necessary determination under paragraph (3).

"(B) EXTENSION.—Except as provided in paragraph (5), the Administrator may extend the period described in subparagraph (A) for good cause for 1 or more periods, the total of which shall be not more than 90 days.

"(2) INFORMATION SOURCES.—In evaluating a notice under paragraph (1), the Administrator shall take into consideration—

"(A) any relevant information identified in subsection (c)(1); and

"(B) any other relevant additional information available to the Administrator.

"(3) DETERMINATIONS.—Before the end of the applicable period for review under paragraph (1), based on the information described in paragraph (2), and subject to section 18(g), the Administrator shall determine that—

"(A) the relevant chemical substance or significant new use is not likely to meet the safety standard, in which case the Administrator shall take appropriate action under paragraph (4);

"(B) the relevant chemical substance or significant new use is likely to meet the safety standard, in which case the Administrator shall allow the review period to expire without additional restrictions; or

"(C) additional information is necessary in order to make a determination under subparagraph (A) or (B), in which case the Administrator shall take appropriate action under paragraph (5).

"(4) RESTRICTIONS.—

"(A) DETERMINATION BY ADMINISTRATOR.—

"(i) IN GENERAL.—If the Administrator makes a determination under subparagraph (A) or (C) of paragraph (3) with respect to a notice submitted under subsection (b)—

"(I) the Administrator, before the end of the applicable period for review under paragraph (1) and by consent agreement or order, as appropriate, shall prohibit or otherwise restrict the manufacture, processing, use, distribution in commerce, or disposal (as applicable) of the chemical substance, or of the chemical substance for a significant new use, without compliance with the restrictions specified in the consent agreement or order that the Administrator determines are sufficient to ensure that the chemical substance or significant new use is likely to meet the safety standard; and

"(II) no person may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, except in compliance with the restrictions specified in the consent

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agreement or order.

"(ii) LIKELY TO MEET STANDARD.—If the Administrator makes a determination under subparagraph (B) of paragraph (3) with respect to a chemical substance or significant new use for which a notice was submitted under subsection (b), at the end of the applicable period for review under paragraph (1), the submitter of the notice may commence manufacture for commercial purposes of the chemical substance or manufacture or processing of the chemical substance for a significant new use.

"(B) REQUIREMENTS.—Not later than 90 days after issuing a consent agreement or order under subparagraph (A), the Administrator shall—

"(i) take into consideration whether to promulgate a rule pursuant to subsection (b)(2) that identifies as a significant new use any manufacturing, processing, use, distribution in commerce, or disposal of the chemical substance, or of the chemical substance for a new use, that is not in compliance with the restrictions imposed by the consent agreement or order; and

"(ii)(I) initiate a rulemaking described in clause (i); or

"(II) publish a statement describing the reasons of the Administrator for not initiating a rulemaking.

"(C) INCLUSIONS.—A prohibition or other restriction under subparagraph (A) may include, as appropriate—

"(i) subject to section 18(g), a requirement that a chemical substance shall be marked with, or accompanied by, clear and adequate minimum warnings and instructions with respect to use, distribution in commerce, or disposal, or any combination of those activities, with the form and content of the minimum warnings and instructions to be prescribed by the Administrator

"(ii) a requirement that manufacturers or processors of the chemical substance shall—

"(I) make and retain records of the processes used to manufacture or process, as applicable, the chemical substance; or

"(II) monitor or conduct such additional tests as are reasonably necessary to address potential risks from the manufacture, processing, distribution in commerce, use, or disposal, as applicable, of the chemical substance, subject to section 4;

"(iii) a restriction on the quantity of the chemical substance that may be manufactured, processed, or distributed in commerce—

"(I) in general; or

"(II) for a particular use;

"(iv) a prohibition or other restriction of—

"(I) the manufacture, processing, or distribution in commerce of the chemical substance for a significant new use;

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"(II) any method of commercial use of the chemical substance; or

"(III) any method of disposal of the chemical substance; or

"(v) a prohibition or other restriction on the manufacture, processing, or distribution in commerce of the chemical substance—

"(I) in general; or

"(II) for a particular use.

"(D) WORKPLACE EXPOSURES.—The Administrator shall consult with the Assistant Secretary of Labor for Occupational Safety and Health prior to adopting any prohibition or other restriction under this subsection to address workplace exposures.

"(E) DEFINITION OF REQUIREMENT.—For purposes of this Act, the term 'requirement' as used in this section does not displace common law.

"(5) ADDITIONAL INFORMATION.—If the Administrator determines under paragraph (3)(C) that additional information is necessary to conduct a review under this subsection, the Administrator—

"(A) shall provide an opportunity for the submitter of the notice to submit the additional information;

"(B) may, by agreement with the submitter, extend the review period for a reasonable time to allow the development and submission of the additional information;

"(C) may promulgate a rule, enter into a testing consent agreement, or issue an order under section 4 to require the development of the information; and

"(D) on receipt of information the Administrator finds supports the determination under paragraph (3), shall promptly make the determination.";

(9) by striking subsections (e) through (g) and inserting the following:

"(e) Notice of Commencement.—

"(1) IN GENERAL.—Not later than 30 days after the date on which a manufacturer that has submitted a notice under subsection (b) commences nonexempt commercial manufacture of a chemical substance, the manufacturer shall submit to the Administrator a notice of commencement that identifies—

"(A) the name of the manufacturer; and

"(B) the initial date of nonexempt commercial manufacture.

"(2) WITHDRAWAL.—A manufacturer or processor that has submitted a notice under subsection (b), but that has not commenced nonexempt commercial manufacture or processing of the chemical substance, may withdraw the notice.

"(f) Further Evaluation.—The Administrator may review a chemical substance under section 4A at any time after the Administrator receives—

"(1) a notice of commencement for a chemical substance under subsection (c); or

"(2) new information regarding the chemical substance.

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"(g) Transparency.—Subject to section 14, the Administrator shall make available to the public—

"(1) all notices, determinations, consent agreements, rules, and orders of the Administrator; and

"(2) all information submitted or issued under this section."; and

(10) in subsection (h)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking "(a) or";

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) through (6) as paragraphs (2) through (5), respectively;

(D) in paragraph (2) (as so redesignated), in the matter preceding subparagraph (A), by striking "subsections (a) and (b)" and inserting "subsection (b)";

(E) in paragraph (3) (as so redesignated)—

(i) in the first sentence, by striking "will not present an unreasonable risk of injury to health or the environment" and inserting "will meet the safety standard"; and

(ii) by striking the second sentence;

(F) in paragraph (4) (as so redesignated), by striking "subsections (a) and (b)" and inserting "subsection (b)"; and

(G) in paragraph (5) (as so redesignated), in the first sentence, by striking "paragraph (1) or (5)" and inserting "paragraph (1) or (4)".

SEC. 8. SAFETY ASSESSMENTS AND SAFETY DETERMINATIONS.

Section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) is amended—

(1) by striking the section designation and heading and inserting the following:

"SEC. 6. SAFETY ASSESSMENTS AND SAFETY DETERMINATIONS.";

(2) by redesignating subsections (e) and (f) as subsections (g) and (h), respectively;

(3) by striking subsections (a) through (d) and inserting the following:

"(a) In General.—The Administrator—

"(1) shall conduct a safety assessment and make a safety determination of each high-priority substance in accordance with subsections (b) and (c);

"(2) shall, as soon as practicable and not later than 6 months after the date on which a chemical substance is designated as a high-priority substance, define the scope of the safety assessment and safety determination to be conducted pursuant to this section, including the

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hazards, exposures, conditions of use, and potentially exposed or susceptible populations that the Administrator expects to consider;

"(3) as appropriate based on the results of a safety determination, shall establish restrictions pursuant to subsection (d);

"(4) shall complete a safety assessment and safety determination not later than 3 years after the date on which a chemical substance is designated as a high-priority substance;

"(5) shall promulgate a final rule pursuant to subsection (d) by not later than 2 years after the date on which the safety determination is completed; and

"(6) may extend any deadline under this subsection for a reasonable period of time after an adequate public justification, subject to the condition that the aggregate length of all extensions of deadlines under paragraphs (4) and (5) and any deferral under subsection (c)(2) does not exceed 2 years.

"(b) Prior Actions.—

"(1) PRIOR-INITIATED ASSESSMENTS.—

"(A) IN GENERAL.—Nothing in this Act prevents the Administrator from initiating a safety assessment or safety determination regarding a chemical substance, or from continuing or completing such a safety assessment or safety determination that was initiated before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, prior to the effective date of the policies and procedures required to be established by the Administrator under section 3A or 4A.

"(B) INTEGRATION OF PRIOR POLICIES AND PROCEDURES.—As policies and procedures under section 3A and 4A are established, to the maximum extent practicable, the Administrator shall integrate the policies and procedures into ongoing safety assessments and safety determinations.

"(2) ACTIONS COMPLETED PRIOR TO COMPLETION OF POLICIES AND PROCEDURES.—Nothing in this Act requires the Administrator to revise or withdraw a completed safety assessment, safety determination, or rule solely because the action was completed prior to the completion of a policy or procedure established under section 3A or 4A, and the validity of a completed assessment, determination, or rule shall not be determined based on the content of such a policy or procedure.

"(c) Safety Determinations.—

"(1) IN GENERAL.—Based on a review of the information available to the Administrator, including draft safety assessments submitted by interested persons, and subject to section 18, the Administrator shall determine that—

"(A) the relevant chemical substance meets the safety standard;

"(B) the relevant chemical substance does not meet the safety standard, in which case the Administrator shall, by rule under subsection (d)—

"(i) impose restrictions necessary to ensure that the chemical substance meets the safety standard under the conditions of use; or

"(ii) if the safety standard cannot be met with the application of restrictions,

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ban or phase out the chemical substance, as appropriate; or

"(C) additional information is necessary in order to make a determination under subparagraph (A) or (B), in which case the Administrator shall take appropriate action under paragraph (2).

"(2) ADDITIONAL INFORMATION.—If the Administrator determines that additional information is necessary to make a safety assessment or safety determination for a high-priority substance, the Administrator—

"(A) shall provide an opportunity for interested persons to submit the additional information;

"(B) may promulgate a rule, enter into a testing consent agreement, or issue an order under section 4 to require the development of the information;

"(C) may defer, for a reasonable period consistent with the deadlines described in subsection (a), a safety assessment and safety determination until after receipt of the information; and

"(D) consistent with the deadlines described in subsection (a), on receipt of information the Administrator finds supports the safety assessment and safety determination, shall make a determination under paragraph (1).

"(3) ESTABLISHMENT OF DEADLINE.—In requesting the development or submission of information under this section, the Administrator shall establish a deadline for the submission of the information.

"(d) Rule.—

"(1) IMPLEMENTATION.—If the Administrator makes a determination under subsection (c)(1)(B) with respect to a chemical substance, the Administrator shall promulgate a rule establishing restrictions necessary to ensure that the chemical substance meets the safety standard.

"(2) SCOPE.—The rule promulgated pursuant to this subsection—

"(A) may—

"(i) apply to mixtures containing the chemical substance, as appropriate; and

"(ii) exempt replacement parts for articles manufactured prior to the applicable compliance deadline; and

"(B) shall include dates by which compliance is mandatory, which—

"(i) shall be as soon as practicable; and

"(ii) as determined by the Administrator, may vary for different affected persons.

"(C) WORKPLACE EXPOSURES.—The Administrator shall consult with the Assistant Secretary of Labor for Occupational Safety and Health before adopting any prohibition or other restriction under this subsection to address workplace exposures.

"(D) DEFINITION OF REQUIREMENT.—For the purposes of this Act, the term 'requirement' as used in this section does not displace common law.

"(3) RESTRICTIONS.—A restriction under paragraph (1) may include, as appropriate—

"(A) subject to section 18, a requirement that a chemical substance shall be marked with, or accompanied by, clear and adequate minimum warnings and instructions with respect to use, distribution in commerce, or disposal, or any combination of those activities, with the form and content of the minimum warnings and instructions to be prescribed by the Administrator;

"(B) a requirement that manufacturers or processors of the chemical substance shall—

"(i) make and retain records of the processes used to manufacture or process the chemical substance;

"(ii) describe and apply the relevant quality control procedures followed in the manufacturing or processing of the substance; or

"(iii) monitor or conduct tests that are reasonably necessary to ensure compliance with the requirements of any rule under this subsection;

"(C) a restriction on the quantity of the chemical substance that may be manufactured, processed, or distributed in commerce;

"(D) a requirement to ban or phase out, or any other rule regarding, the manufacture, processing, or distribution in commerce of the chemical substance for—

"(i) a particular use;

"(ii) a particular use at a concentration in excess of a level specified by the Administrator; or

"(iii) all uses;

"(E) a restriction on the quantity of the chemical substance that may be manufactured, processed, or distributed in commerce for—

"(i) a particular use; or

"(ii) a particular use at a concentration in excess of a level specified by the Administrator;

"(F) a requirement to ban, phase out, or otherwise restrict any method of commercial use of the chemical substance;

"(G) a requirement to ban, phase out, or otherwise restrict any method of disposal of the chemical substance or any article containing the chemical substance; and

"(H) a requirement directing manufacturers or processors of the chemical substance to give notice of the Administrator's determination under subsection (c)(1)(B) to distributors in commerce of the chemical substance and, to the extent reasonably ascertainable, to other persons in the chain of commerce in possession of the chemical substance.

"(4) ANALYSIS FOR RULEMAKING.—

"(A) CONSIDERATIONS.—In deciding which restrictions to impose under paragraph (3) as part of developing a rule under paragraph (1), the Administrator shall take into

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consideration, to the extent practicable based on reasonably available information, the quantifiable and nonquantifiable costs and benefits of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.

"(B) ALTERNATIVES.—As part of the analysis, the Administrator shall review any 1 or more technically and economically feasible alternatives to the chemical substance that the Administrator determines are relevant to the rulemaking.

"(C) PUBLIC AVAILABILITY.—In proposing a rule under paragraph (1), the Administrator shall make publicly available any analysis conducted under this paragraph.

"(D) STATEMENT REQUIRED.—In making final a rule under paragraph (1), the Administrator shall include a statement describing how the analysis considered under subparagraph (A) was taken into account.

"(5) EXEMPTIONS.—

"(A) IN GENERAL.—The Administrator may exempt 1 or more uses of a chemical substance from any restriction in a rule promulgated under paragraph (1) if the Administrator determines that—

"(i) the rule cannot be complied with, without—

"(I) harming national security;

"(II) causing significant disruption in the national economy due to the lack of availability of a chemical substance; or

"(III) interfering with a critical or essential use for which no technically and economically feasible safer alternative is available, taking into consideration hazard and exposure; or

"(ii) the use of the chemical substance, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety.

"(B) EXEMPTION ANALYSIS.—In proposing a rule under paragraph (1) that includes an exemption under this paragraph, the Administrator shall make publicly available any analysis conducted under this paragraph to assess the need for the exemption.

"(C) STATEMENT REQUIRED.—In making final a rule under paragraph (1) that includes an exemption under this paragraph, the Administrator shall include a statement describing how the analysis considered under subparagraph (B) was taken into account.

"(D) ANALYSIS IN CASE OF BAN OR PHASE-OUT.—In determining whether an exemption should be granted under this paragraph for a chemical substance for which a ban or phase-out is proposed, the Administrator shall take into consideration, to the extent practicable based on reasonably available information, the quantifiable and nonquantifiable costs and benefits of the 1 or more technically and economically feasible alternatives to the chemical substance most likely to be used in place of the chemical substance under the conditions of use if the rule is promulgated.

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"(E) CONDITIONS.—As part of a rule promulgated under paragraph (1), the Administrator shall include conditions in any exemption established under this paragraph, including reasonable recordkeeping, monitoring, and reporting requirements, to the extent that the Administrator determines the conditions are necessary to protect health and the environment while achieving the purposes of the exemption.

"(F) DURATION.—

"(i) IN GENERAL.—The Administrator shall establish, as part of a rule under paragraph (1) that contains an exemption under this paragraph, a time limit on any exemption for a time to be determined by the Administrator as reasonable on a case-by-case basis.

"(ii) AUTHORITY OF ADMINISTRATOR.—The Administrator, by rule, may extend, modify, or eliminate the exemption if the Administrator determines, on the basis of reasonably available information and after adequate public justification, the exemption warrants extension or is no longer necessary.

"(iii) CONSIDERATIONS.—

"(I) IN GENERAL.—Subject to subclause (II), the Administrator shall issue exemptions and establish time periods by considering factors determined by the Administrator to be relevant to the goals of fostering innovation and the development of alternatives that meet the safety standard.

"(II) LIMITATION.—Any renewal of an exemption in the case of a rule requiring the ban or phase-out of a chemical substance shall not exceed 5 years.

"(e) Immediate Effect.—The Administrator may declare a proposed rule under subsection (d) to be effective on publication of the rule in the Federal Register and until the effective date of final action taken respecting the rule, if—

"(1) the Administrator determines that—

"(A) the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance or mixture subject to the proposed rule or any combination of those activities is likely to result in an unreasonable risk of serious or widespread harm to health or the environment before the effective date; and

"(B) making the proposed rule so effective is necessary to protect the public interest; and

"(2) in the case of a proposed rule to prohibit the manufacture, processing, or distribution of a chemical substance or mixture because of the risk determined under paragraph (1)(A), a court has granted relief in an action under section 7 with respect to that risk associated with the chemical substance or mixture.

"(f) Final Agency Action.—Under this section and subject to section 18—

"(1) a safety determination, and the associated safety assessment, for a chemical substance that the Administrator determines under subsection (c) meets the safety standard, shall be considered to be a final agency action, effective beginning on the date of issuance

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of the final safety determination; and

"(2) a final rule promulgated under subsection (d), and the associated safety assessment and safety determination that a chemical substance does not meet the safety standard, shall be considered to be a final agency action, effective beginning on the date of promulgation of the final rule."; and

(4) in subsection (g) (as redesignated by paragraph (2))—

(A) by striking paragraph (4); and

(B) by redesignating paragraph (5) as paragraph (4).

SEC. 9. IMMINENT HAZARDS.

Section 7 of the Toxic Substances Control Act (15 U.S.C. 2606) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) Civil Actions.—

"(1) IN GENERAL.—The Administrator may commence a civil action in an appropriate United States district court for—

"(A) seizure of an imminently hazardous chemical substance or mixture or any article containing the chemical substance or mixture;

"(B) relief (as authorized by subsection (b)) against any person that manufactures, processes, distributes in commerce, uses, or disposes of, an imminently hazardous chemical substance or mixture or any article containing the chemical substance or mixture; or

"(C) both seizure described in subparagraph (A) and relief described in subparagraph (B).

"(2) RULE, ORDER, OR OTHER PROCEEDING.—A civil action may be commenced under this paragraph, notwithstanding—

"(A) the existence of—

"(i) a decision by the Administrator under section 4A, 5(d)(3), or 6(c)(1); or

"(ii) a rule, testing consent agreement, or order under section 4, 5(d)(4), 6(d), or 6(h); or

"(B) the pendency of any administrative or judicial proceeding under any provision of this Act.";

(2) in subsection (d), by striking "section 6(a)" and inserting "section 6(c)"; and

(3) in subsection (f), in the first sentence, by striking "and unreasonable".

SEC. 10. INFORMATION COLLECTION AND REPORTING.

Section 8 of the Toxic Substances Control Act (15 U.S.C. 2607) is amended—

(1) in subsection (a)—

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(A) in paragraph (3)(A)(ii)(I)—

(i) by striking "5(b)(4)" and inserting "5";

(ii) by inserting "section 4 or" after "in effect under"; and

(iii) by striking "5(e)," and inserting "5(d)(4);"; and

(B) by adding at the end the following:

"(4) RULES.—

"(A) DEADLINE.—

"(i) IN GENERAL.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator shall promulgate rules requiring the maintenance of records and the reporting of information known or reasonably ascertainable by the person making the report, including rules requiring processors to report information, so that the Administrator has the information necessary to carry out sections 4 and 6.

"(ii) MODIFICATION OF PRIOR RULES.—In carrying out this subparagraph, the Administrator may modify, as appropriate, rules promulgated before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

"(B) CONTENTS.—The rules promulgated pursuant to subparagraph (A)—

"(i) may impose different reporting and recordkeeping requirements on manufacturers and processors; and

"(ii) shall include the level of detail necessary to be reported, including the manner by which use and exposure information may be reported.

"(C) ADMINISTRATION.—In implementing the reporting and recordkeeping requirements under this paragraph, the Administrator shall take measures—

"(i) to limit the potential for duplication in reporting requirements;

"(ii) to minimize the impact of the rules on small manufacturers and processors; and

"(iii) to apply any reporting obligations to those persons likely to have information relevant to the effective implementation of this title.

"(5) GUIDANCE.—The Administrator shall develop guidance relating to the information required to be reported under the rules promulgated under this subsection.";

(2) in subsection (b), by adding at the end the following:

"(3) NOMENCLATURE.—

"(A) IN GENERAL.—In carrying out paragraph (1), the Administrator shall—

"(i) maintain the use of Class 2 nomenclature in use on the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act;

"(ii) maintain the use of the Soap and Detergent Association Nomenclature System, published in March 1978 by the Administrator in section 1 of addendum

III of the document entitled 'Candidate List of Chemical Substances', and further described in the appendix A of volume I of the 1985 edition of the Toxic Substances Control Act Substances Inventory (EPA Document No. EPA–560/7–85–002a); and

"(iii) treat all components of categories that are considered to be statutory mixtures under this Act as being included on the list published under paragraph (1) under the Chemical Abstracts Service numbers for the respective categories, including, without limitation—

"(I) cement, Portland, chemicals, CAS No. 65997–15–1;

"(II) cement, alumina, chemicals, CAS No. 65997–16–2;

"(III) glass, oxide, chemicals, CAS No. 65997–17–3;

"(IV) frits, chemicals, CAS No. 65997–18–4;

"(V) steel manufacture, chemicals, CAS No. 65997–19–5; and

"(VI) ceramic materials and wares, chemicals, CAS No. 66402–68–4.

"(B) MULTIPLE NOMENCLATURE CONVENTIONS.—

"(i) IN GENERAL.—If an existing guidance allows for multiple nomenclature conventions, the Administrator shall—

"(I) maintain the nomenclature conventions for substances; and

"(II) develop new guidance that—

"(aa) establishes equivalency between the nomenclature conventions for chemical substances on the list published under paragraph (1); and

"(bb) permits persons to rely on the new guidance for purposes of determining whether a chemical substance is on the list published under paragraph (1).

"(ii) MULTIPLE CAS NUMBERS.—For any chemical substance appearing multiple times on the list under different Chemical Abstracts Service numbers, the Administrator shall develop guidance recognizing the multiple listings as a single chemical substance.

"(4) CHEMICAL SUBSTANCES IN COMMERCE.—

"(A) RULES.—

"(i) IN GENERAL.—Not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator, by rule, shall require manufacturers and processors to notify the Administrator, by not later than 180 days after the date of promulgation of the rule, of each chemical substance on the list published under paragraph (1) that the manufacturer or processor, as applicable, has manufactured or processed for a nonexempt commercial purpose during the 10-year period ending on the day before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

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"(ii) ACTIVE SUBSTANCES.—The Administrator shall, pursuant to paragraph (5)(A), designate chemical substances for which notices are received under clause (i) to be active substances on the list published under paragraph (1).

"(B) CONFIDENTIAL CHEMICAL SUBSTANCES.—The rule promulgated by the Administrator pursuant to subparagraph (A) shall require—

"(i) the Administrator to maintain the list under paragraph (1), which shall include a confidential portion and a nonconfidential portion consistent with this section and section 14;

"(ii) a manufacturer or processor that is submitting a notice pursuant to subparagraph (A) for a chemical substance on the confidential portion of the list published under paragraph (1) to indicate in the notice whether the manufacturer or processor seeks to maintain any existing claim for protection against disclosure of the specific identity of the substance as confidential pursuant to section 14; and

"(iii) the substantiation of those claims pursuant to section 14 and in accordance with the review plan described in subparagraph (C).

"(C) REVIEW PLAN.—Not later than 1 year after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A), the Administrator shall promulgate a rule that establishes a plan to review all claims to protect the specific identities of chemical substances on the confidential portion of the list published under paragraph (1) that are notified pursuant to subparagraph (A) or identified as active substances under subsection (f)(1).

"(D) REQUIREMENTS OF REVIEW PLAN.—The review plan under subparagraph (C) shall—

"(i) require, at the time requested by the Administrator, all manufacturers or processors asserting claims under subparagraph (B) to substantiate the claim unless the manufacturer or processor has substantiated the claim in a submission made to the Administrator during the 5-year period ending on the date of the request by the Administrator;

"(ii) require the Administrator, in accordance with section 14—

"(I) to review each substantiation—

"(aa) submitted pursuant to clause (i) to determine if the claim warrants protection from disclosure; and

"(bb) submitted previously by a manufacturer or processor and relied on in lieu of the substantiation required pursuant to clause (i), if the substantiation has not been previously reviewed by the Administrator, to determine if the claim warrants protection from disclosure;

"(II) approve, modify, or deny each claim; and

"(III) except as provided in this section and section 14, protect from disclosure information for which the Administrator approves such a claim for a period of 10 years, unless, prior to the expiration of the period—

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"(aa) the person notifies the Administrator that the person is withdrawing the confidentiality claim, in which case the Administrator shall promptly make the information available to the public; or

"(bb) the Administrator otherwise becomes aware that the need for protection from disclosure can no longer be substantiated, in which case the Administrator shall take the actions described in section 14(g)(2); and

"(iii) encourage manufacturers or processors that have previously made claims to protect the specific identities of chemical substances identified as inactive pursuant to subsection (f)(2) to review and either withdraw or substantiate the claims.

"(E) TIMELINE FOR COMPLETION OF REVIEWS.—

"(i) IN GENERAL.—The Administrator shall implement the review plan so as to complete reviews of all claims specified in subparagraph (C) not later than 5 years after the date on which the Administrator compiles the initial list of active substances pursuant to subparagraph (A).

"(ii) CONSIDERATIONS.—

"(I) IN GENERAL.—The Administrator may extend the deadline for completion of the reviews for not more than 2 additional years, after an adequate public justification, if the Administrator determines that the extension is necessary based on the number of applicable claims needing review and the available resources.

"(II) ANNUAL GOAL.—The Administrator shall publish an annual goal for the number of reviews to be completed over the course of implementation of the plan.

"(5) ACTIVE AND INACTIVE SUBSTANCES.—

"(A) IN GENERAL.—The Administrator shall maintain and keep current designations of active substances and inactive substances on the list published under paragraph (1).

"(B) UPDATE.—The Administrator shall update the list of chemical substances designated as active substances as soon as practicable after the date of publication of the most recent data reported under—

"(i) part 711 of title 40, Code of Federal Regulations (or successor regulations); and

"(ii) the rules promulgated pursuant to subsection (a)(4).

"(C) CHANGE TO ACTIVE STATUS.—

"(i) IN GENERAL.—Any person that intends to manufacture or process for a nonexempt commercial purpose a chemical substance that is designated as an inactive substance shall notify the Administrator before the date on which the inactive substance is manufactured or processed.

"(ii) CONFIDENTIAL CHEMICAL IDENTITY CLAIMS.—If a person submitting a

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notice under clause (i) for an inactive substance on the confidential portion of the list published under paragraph (1) seeks to maintain an existing claim for protection against disclosure of the specific identity of the inactive substance as confidential, the person shall—

"(I) in the notice submitted under clause (i), assert the claim; and

"(II) by not later than 30 days after providing the notice under clause (i), substantiate the claim.

"(iii) ACTIVE STATUS.—On receiving a notification under clause (i), the Administrator shall—

"(I) designate the applicable chemical substance as an active substance;

"(II) pursuant to section 14, promptly review any claim and associated substantiation submitted pursuant to clause (ii) for protection against disclosure of the specific identity of the chemical substance and approve, modify, or deny the claim;

"(III) except as provided in this section and section 14, protect from disclosure the specific identity of the chemical substance for which the Administrator approves a claim under subclause (II) for a period of not less than 10 years, unless, prior to the expiration of the period—

"(aa) the person notifies the Administrator that the person is withdrawing the confidentiality claim, in which case the Administrator shall promptly make the information available to the public; or

"(bb) the Administrator otherwise becomes aware that the need for protection from disclosure can no longer be substantiated, in which case the Administrator shall take the actions described in section 14(g)(2); and

"(IV) pursuant to section 4A, review the priority of the chemical substance as the Administrator determines to be necessary.

"(D) CATEGORY STATUS.—The list of inactive substances shall not be considered to be a category for purposes of section 26(c).

"(6) INTERIM LIST OF ACTIVE SUBSTANCES.—Prior to the promulgation of the rule required under this subsection, the Administrator shall designate the chemical substances reported under part 711 of title 40, Code of Federal Regulations (or successor regulations), during the reporting period that most closely preceded the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, as the interim list of active substances for the purposes of section 4A.

"(7) PUBLIC PARTICIPATION.—Subject to this subsection, the Administrator shall make available to the public—

"(A) the specific identity of each chemical substance on the nonconfidential portion of the list published under paragraph (1) that the Administrator has designated as—

"(i) an active substance; or

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"(ii) an inactive substance;

"(B) the accession number, generic name, and, if applicable, premanufacture notice case number for each chemical substance on the confidential portion of the list published under paragraph (1) for which a claim of confidentiality was received and approved by the Administrator pursuant to section 14; and

"(C) subject to section 14(g), the specific identity of any active substance for which—

"(i) no claim of protection against disclosure of the specific identity of the active substance pursuant to this subsection was received;

"(ii) a claim for protection against disclosure of the specific identity of the active substance has been denied by the Administrator; or

"(iii) the time period for protection against disclosure of the specific identity of the active substance has expired.

"(8) LIMITATION.—No person may assert a new claim under this subsection for protection from disclosure of a specific identity of any active or inactive chemical substance for which a notice is received under paragraph (4)(A)(i) or (5)(C)(i) that is not on the confidential portion of the list published under paragraph (1).

"(9) CERTIFICATION.—Under the rule promulgated under this subsection, manufacturers and processors shall be required—

"(A) to certify that each report the manufacturer or processor submits complies with the requirements of the rule, and that any confidentiality claims are true and correct; and

"(B) to retain a record supporting the certification for a period of 5 years beginning on the last day of the submission period.";

(3) in subsection (e)—

(A) by striking "Any person" and inserting the following:

"(1) IN GENERAL.—Any person"; and

(B) by adding at the end the following:

"(2) APPLICABILITY.—Any person may submit to the Administrator information reasonably supporting the conclusion that a chemical substance or mixture presents, will present, or does not present a substantial risk of harm to health and the environment."; and

(4) in subsection (f), by striking "For purposes of this section, the" and inserting the following: "In this section:

"(1) ACTIVE SUBSTANCE.—The term 'active substance' means a chemical substance—

"(A) that has been manufactured or processed for a nonexempt commercial purpose at any point during the 10-year period ending on the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act;

"(B) that is added to the list published under subsection (b)(1) after that date of enactment; or

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"(C) for which a notice is received under subsection (b)(5)(C).

"(2) INACTIVE SUBSTANCE.—The term 'inactive substance' means a chemical substance on the list published under subsection (b)(1) that does not meet any of the criteria described in paragraph (1).

"(3) MANUFACTURE; PROCESS.—The".

SEC. 11. RELATIONSHIP TO OTHER FEDERAL LAWS.

Section 9 of the Toxic Substances Control Act (15 U.S.C. 2608) is amended—

(1) in subsection (a)—

(A) in paragraph (1), in the first sentence—

(i) by striking "presents or will present an unreasonable risk to health or the environment" and inserting "does not meet the safety standard"; and

(ii) by striking "such risk" the first place it appears and inserting "the risk posed by the substance or mixture";

(B) in paragraph (2), in the matter following subparagraph (B), by striking "section 6 or 7" and inserting "section 6(d) or section 7"; and

(C) in paragraph (3), by striking "section 6 or 7" and inserting "section 6(d) or 7";

(2) in subsection (d), in the first sentence, by striking "Health, Education, and Welfare" and inserting "Health and Human Services"; and

(3) by adding at the end the following:

"(e) Exposure Information.—If the Administrator obtains information related to exposures or releases of a chemical substance that may be prevented or reduced under another Federal law, including laws not administered by the Administrator, the Administrator shall make such information available to the relevant Federal agency or office of the Environmental Protection Agency.".

SEC. 12. RESEARCH, DEVELOPMENT, COLLECTION, DISSEMINATION, AND UTILIZATION OF DATA.

Section 10 of the Toxic Substances Control Act (15 U.S.C. 2609) is amended by striking "Health, Education, and Welfare" each place it appears and inserting "Health and Human Services".

SEC. 13. EXPORTS.

Section 12 of the Toxic Substances Control Act (15 U.S.C. 2611) is amended—

(1) in subsection (a), by striking paragraph (2) and inserting the following:

"(2) EXCEPTION.—Paragraph (1) shall not apply to any chemical substance that the Administrator determines—

"(A) under section 5 is not likely to meet the safety standard; or

"(B) under section 6 does not meet the safety standard.

"(3) WAIVERS.—For a mixture or article containing a chemical substance described in paragraph (2), the Administrator may—

"(A) determine that paragraph (1) shall not apply to the mixture or article; or

"(B) establish a threshold concentration in a mixture or article at which paragraph (1) shall not apply.

"(4) TESTING.—The Administrator may require testing under section 4 of any chemical substance or mixture exempted from this Act under paragraph (1) for the purpose of determining whether the chemical substance or mixture meets the safety standard within the United States.";

(2) by striking subsection (b) and inserting the following:

"(b) Notice.—

"(1) IN GENERAL.—A person shall notify the Administrator that the person is exporting or intends to export to a foreign country—

"(A) a chemical substance or a mixture containing a chemical substance that the Administrator has determined under section 5 is not likely to meet the safety standard and for which a prohibition or other restriction has been proposed or established under that section;

"(B) a chemical substance or a mixture containing a chemical substance that the Administrator has determined under section 6 does not meet the safety standard and for which a prohibition or other restriction has been proposed or established under that section;

"(C) a chemical substance for which the United States is obligated by treaty to provide export notification;

"(D) a chemical substance or mixture subject to a prohibition or other restriction pursuant to a rule, order, or consent agreement in effect under this Act; or

"(E) a chemical substance or mixture for which the submission of information is required under section 4.

"(2) RULES.—

"(A) IN GENERAL.—The Administrator shall promulgate rules to carry out paragraph (1).

"(B) CONTENTS.—The rules promulgated pursuant to subparagraph (A) shall—

"(i) include such exemptions as the Administrator determines to be appropriate, which may include exemptions identified under section 5(h); and

"(ii) indicate whether, or to what extent, the rules apply to articles containing a chemical substance or mixture described in paragraph (1).

"(3) NOTIFICATION.—The Administrator shall submit to the government of each country to which a chemical substance or mixture is exported—

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"(A) for a chemical substance or mixture described in subparagraph (A), (B), or (D) of paragraph (1), a notice of the determination, rule, order, consent agreement, requirement, or designation;

"(B) for a chemical substance described in paragraph (1)(C), a notice that satisfies the obligation of the United States under the applicable treaty; and

"(C) for a chemical substance or mixture described in paragraph (1)(E), a notice of availability of the information on the chemical substance or mixture submitted to the Administrator."; and

(3) in subsection (c)—

(A) by striking paragraph (3); and

(B) by redesignating paragraphs (4) through (6) as paragraphs (3) through (5), respectively.

SEC. 14. IMPORTS.

Section 13 of the Toxic Substances Control Act (15 U.S.C. 2612) is amended to read as follows:

"SEC. 13. IMPORTS.

"(a) Refusal of Entry.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall refuse entry into the customs territory of the United States (as defined in general note 2 to the Harmonized Tariff Schedule of the United States) any chemical substance, mixture, or article containing a chemical substance or mixture offered for such entry, if—

"(A) the Administrator—

"(i) has determined under section 6(c) that the chemical substance or mixture does not meet the safety standard; and

"(ii) has promulgated a rule pursuant to section 6(d) banning the chemical substance or mixture, as of the effective date of the rule;

"(B) the chemical substance—

"(i) is not included on the list under section 8(b)(1); and

"(ii) is not exempt from any requirement to be included on that list by this title or a rule promulgated by the Administrator pursuant to this title; or

"(C) the chemical substance, mixture, or any article containing the chemical substance or mixture is offered for entry in violation of—

"(i) a rule, consent agreement, or order in effect under this Act; or

"(ii) an order issued in a civil action brought under section 7 or title IV.

"(2) PROCEDURE.—

"(A) IN GENERAL.—Subject to subparagraph (B), if a chemical substance, mixture,

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or article containing a chemical substance or mixture is refused entry under paragraph (1), the Secretary of Homeland Security—

"(i) shall notify the consignee of the entry of the refusal;

"(ii) shall not release the chemical substance or mixture to the consignee; and

"(iii) shall cause the disposal or storage of the chemical substance or mixture under such rules as the Secretary may prescribe, if the chemical substance or mixture has not been exported by the consignee during the 90-day period beginning on the date of receipt of the notice of the refused entry.

"(B) EXCEPTION.—

"(i) IN GENERAL.—The Secretary of Homeland Security, pending a review by the Administrator, may release to the consignee the chemical substance or mixture if the consignee—

"(I) executes a bond for the amount of the full invoice of the chemical substance or mixture (as set forth in the customs entry); and

"(II) pays a duty on the chemical substance or mixture.

"(ii) ADMINISTRATION.—If a consignee fails to return a chemical substance or mixture released to that consignee under clause (i) for any cause to the custody of the Secretary of Homeland Security on demand, the consignee shall be liable to the United States for liquidated damages equal to the full amount of the bond executed under clause (i)(I).

"(C) STORAGE.—All charges for storage, cartage, and labor on or for the disposal of a chemical substance or mixture that is refused entry or released under this subsection shall be paid by the owner or consignee, and a default on that payment shall constitute a lien against any future entry made by the owner or consignee.

"(b) Certification.—

"(1) IN GENERAL.—A person offering a chemical substance or mixture subject to this Act for entry into the customs territory of the United States shall certify to the Secretary of Homeland Security that—

"(A) after reasonable inquiry and to the best knowledge and belief of the person, the chemical substance or mixture is in compliance with any applicable rule, consent agreement, or order under section 5 or 6; and

"(B) the chemical substance—

"(i) is included on the list under section 8(b)(1); or

"(ii) is exempt from any requirement to be included on that list by this title or a rule promulgated by the Administrator pursuant to this title.

"(2) ARTICLES.—

"(A) IN GENERAL.—The Administrator, by rule, may require certification under paragraph (1) for an article containing a chemical substance or mixture that is subject to rule under section 5 or 6.

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"(B) REQUIREMENT.—The rule under subparagraph (A) shall identify, with reasonable specificity, the types of articles, including parts or components of articles, that will be subject to the certification requirement.

"(C) FACTORS FOR CONSIDERATION.—In determining the need for and content of a certification rule under this paragraph, the Administrator shall take into consideration—

"(i) the utility of the certification to enforcement of the applicable rule, consent agreement, or order under section 5 or 6;

"(ii) the contribution of imported articles to the potential risk presented by exposure to the chemical substance or mixture subject to rule under section 5 or 6;

"(iii) the impact on commerce and potential for the certification to impede or disrupt import of articles;

"(iv) the frequency or duration of the certification requirement; and

"(v) specification of the concentration of a chemical substance in an article that would subject the article to the certification requirement.

"(3) REASONABLE INQUIRY.—

"(A) IN GENERAL.—For purposes of a certification under paragraph (1), reasonable inquiry shall include good faith reliance by an importer on—

"(i) a safety data sheet or similar declaration provided by a supplier that documents the specific identity of the chemical substance or the specific identities of all chemical substances in a mixture; or

"(ii) for chemical substances or mixtures claimed by the supplier as confidential, or not otherwise disclosed by the supplier, a certification by the supplier that the imported chemical substance or mixture satisfies the applicable certification requirements under paragraph (1).

"(B) ARTICLES.—For purposes of a certification under paragraph (2), reasonable inquiry shall include good faith reliance by an importer on a certification by the supplier that the imported article satisfies the applicable certification requirements in a rule promulgated pursuant to paragraph (2).

"(4) INFORMATION REGARDING IDENTITY.—For purposes of this subsection, the Administrator shall provide publicly accessible information regarding the identity of a chemical substance or mixture subject to rule under this Act that would be readily understood in import transactions.

"(c) Notice.—A person offering a chemical substance for entry into the customs territory of the United States shall notify the Secretary of Homeland Security if—

"(1) the chemical substance or chemical substance in a mixture is a high-priority substance;

"(2) the chemical substance or chemical substance in a mixture is 1 for which the United States is obligated to provide export notification by treaty; or

"(3) the chemical substance or chemical substance in a mixture—

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"(A) is the subject of a safety assessment and safety determination conducted pursuant to section 6; and

"(B) has been found not to meet the safety standard.

"(d) Rules.—

"(1) IN GENERAL.—The Secretary of Homeland Security, after consultation with the Administrator, shall promulgate rules to carry out this section.

"(2) APPLICATION.—The rules under paragraph (1) may modify the application of any requirement of this section, as appropriate for the efficient and effective implementation of this Act.".

SEC. 15. CONFIDENTIAL INFORMATION.

Section 14 of the Toxic Substances Control Act (15 U.S.C. 2613) is amended to read as follows:

"SEC. 14. CONFIDENTIAL INFORMATION.

"(a) In General.—Except as otherwise provided in this section, the Administrator shall not disclose information that is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, United States Code, under subsection (b)(4) of that section—

"(1) that is reported to, or otherwise obtained by, the Administrator under this Act; and

"(2) for which the requirements of subsection (d) are met.

"(b) Information Generally Protected From Disclosure.—The following information specific to, and submitted by, a manufacturer, processor, or distributor that meets the requirements of subsections (a) and (d) shall be presumed to be protected from disclosure, subject to the condition that nothing in this Act prohibits the disclosure of any such information through discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law:

"(1) Specific information describing the processes used in manufacture or processing of a chemical substance, mixture, or article.

"(2) Marketing and sales information.

"(3) Information identifying a supplier or customer.

"(4) Details of the full composition of a mixture and the respective percentages of constituents.

"(5) Specific information regarding the use, function, or application of a chemical substance or mixture in a process, mixture, or product.

"(6) Specific production or import volumes of the manufacturer and specific aggregated volumes across manufacturers, if the Administrator determines that disclosure of the specific aggregated volumes would reveal confidential information.

"(7) Except as otherwise provided in this section, the specific identity of a chemical substance prior to the date on which the chemical substance is first offered for commercial distribution, including the chemical name, molecular formula, Chemical Abstracts Service

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number, and other information that would identify a specific chemical substance, if—

"(A) the specific identity was claimed as confidential information at the time it was submitted in a notice under section 5; and

"(B) the claim—

"(i) is not subject to an exception under subsection (e); or

"(ii) has not subsequently been withdrawn or found by the Administrator not to warrant protection as confidential information under subsection (f)(2) or (g).

"(c) Information Not Protected From Disclosure.—Notwithstanding subsections (a) and (b), the following information shall not be protected from disclosure:

"(1) INFORMATION FROM HEALTH AND SAFETY STUDIES.—

"(A) IN GENERAL.—Subject to subparagraph (B), subsection (a) does not prohibit the disclosure of—

"(i) any health and safety study that is submitted under this Act with respect to—

"(I) any chemical substance or mixture that, on the date on which the study is to be disclosed, has been offered for commercial distribution; or

"(II) any chemical substance or mixture for which—

"(aa) testing is required under section 4; or

"(bb) a notification is required under section 5; or

"(ii) any information reported to, or otherwise obtained by, the Administrator from a health and safety study relating to a chemical substance or mixture described in subclause (I) or (II) of clause (i).

"(B) EFFECT OF PARAGRAPH.—Nothing in this paragraph authorizes the release of any information that discloses—

"(i) a process used in the manufacturing or processing of a chemical substance or mixture; or

"(ii) in the case of a mixture, the portion of the mixture comprised by any chemical substance in the mixture.

"(2) CERTAIN REQUESTS.—If a request is made to the Administrator under section 552(a) of title 5, United States Code, for information that is described in paragraph (1) that is not described in paragraph (1)(B), the Administrator may not deny the request on the basis of section 552(b)(4) of title 5, United States Code.

"(3) OTHER INFORMATION NOT PROTECTED FROM DISCLOSURE.—The following information is not protected from disclosure under this section:

"(A) For information submitted after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the specific identity of a chemical substance as of the date on which the chemical substance is first offered for commercial distribution, if the person submitting the information does not meet the

requirements of subsection (d).

"(B) A safety assessment developed, or a safety determination made, under section 6.

"(C) Any general information describing the manufacturing volumes, expressed as specific aggregated volumes or, if the Administrator determines that disclosure of specific aggregated volumes would reveal confidential information, expressed in ranges.

"(D) A general description of a process used in the manufacture or processing and industrial, commercial, or consumer functions and uses of a chemical substance, mixture, or article containing a chemical substance or mixture, including information specific to an industry or industry sector that customarily would be shared with the general public or within an industry or industry sector.

"(4) MIXED CONFIDENTIAL AND NONCONFIDENTIAL INFORMATION .—Any information that is otherwise eligible for protection under this section and contained in a submission of information described in this subsection shall be protected from disclosure, if the submitter complies with subsection (d), subject to the condition that information in the submission that is not eligible for protection against disclosure shall be disclosed.

"(5) BAN OR PHASE-OUT.—If the Administrator promulgates a rule pursuant to section 6(d) that establishes a ban or phase-out of the manufacture, processing, or distribution in commerce of a chemical substance—

"(A) any protection from disclosure provided under this section with respect to information relating to the chemical substance shall no longer apply; and

"(B) the Administrator promptly shall make the information public.

"(d) Requirements for Confidentiality Claims.—

"(1) ASSERTION OF CLAIMS.—

"(A) IN GENERAL.—A person seeking to protect any information submitted under this Act from disclosure (including information described in subsection (b)) shall assert to the Administrator a claim for protection concurrent with submission of the information, in accordance with such rules regarding a claim for protection from disclosure as the Administrator has promulgated or may promulgate pursuant to this title.

"(B) INCLUSION.—An assertion of a claim under subparagraph (A) shall include a statement that the person has—

"(i) taken reasonable measures to protect the confidentiality of the information;

"(ii) determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law;

"(iii) a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person; and

"(iv) a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

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"(C) SPECIFIC CHEMICAL IDENTITY.—In the case of a claim under subparagraph (A) for protection against disclosure of a specific chemical identity, the claim shall include a structurally descriptive generic name for the chemical substance that the Administrator may disclose to the public, subject to the condition that the generic name shall—

"(i) conform with guidance prescribed by the Administrator under paragraph (3)(A); and

"(ii) describe the chemical structure of the substance as specifically as practicable while protecting those features of the chemical structure—

"(I) that are considered to be confidential; and

"(II) the disclosure of which would be likely to harm the competitive position of the person.

"(D) PUBLIC INFORMATION.—No person may assert a claim under this section for protection from disclosure of information that is already publicly available.

"(2) ADDITIONAL REQUIREMENTS FOR CONFIDENTIALITY CLAIMS.—Except for information described in paragraphs (1) through (7) of subsection (b), a person asserting a claim to protect information from disclosure under this Act shall substantiate the claim, in accordance with the rules promulgated and guidance issued by the Administrator.

"(3) GUIDANCE.—The Administrator shall develop guidance regarding—

"(A) the determination of structurally descriptive generic names, in the case of claims for the protection against disclosure of specific chemical identity; and

"(B) the content and form of the statements of need and agreements required under paragraphs (4), (5), and (6) of subsection (e).

"(4) CERTIFICATION.—An authorized official of a person described in paragraph (1)(A) shall certify that the information that has been submitted is true and correct.

"(e) Exceptions to Protection From Disclosure.—Information described in subsection (a) shall be disclosed if—

"(1) the information is to be disclosed to an officer or employee of the United States in connection with the official duties of the officer or employee—

"(A) under any law for the protection of health or the environment; or

"(B) for a specific law enforcement purpose;

"(2) the information is to be disclosed to a contractor of the United States and employees of that contractor—

"(A) if, in the opinion of the Administrator, the disclosure is necessary for the satisfactory performance by the contractor of a contract with the United States for the performance of work in connection with this Act; and

"(B) subject to such conditions as the Administrator may specify;

"(3) the Administrator determines that disclosure is necessary to protect health or the environment;

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"(4) the information is to be disclosed to a State or political subdivision of a State, on written request, for the purpose of development, administration, or enforcement of a law, if—

"(A) 1 or more applicable agreements with the Administrator that conform with the guidance issued under subsection (d)(3)(B) ensure that the recipient will take appropriate measures, and has adequate authority, to maintain the confidentiality of the information in accordance with procedures comparable to the procedures used by the Administrator to safeguard the information; and

"(B) the Administrator notifies the person that submitted the information that the information has been disclosed to the State or political subdivision of a State;

"(5) a health or environmental professional employed by a Federal or State agency or a treating physician or nurse in a nonemergency situation provides a written statement of need and agrees to sign a written confidentiality agreement with the Administrator, subject to the conditions that—

"(A) the statement of need and confidentiality agreement shall conform with the guidance issued under subsection (d)(3)(B);

"(B) the written statement of need shall be a statement that the person has a reasonable basis to suspect that—

"(i) the information is necessary for, or will assist in—

"(I) the diagnosis or treatment of 1 or more individuals; or

"(II) responding to an environmental release or exposure; and

"(ii) 1 or more individuals being diagnosed or treated have been exposed to the chemical substance concerned, or an environmental release or exposure has occurred; and

"(C) the confidentiality agreement shall provide that the person will not use the information for any purpose other than the health or environmental needs asserted in the statement of need, except as otherwise may be authorized by the terms of the agreement or by the person submitting the information to the Administrator, except that nothing in this Act prohibits the disclosure of any such information through discovery, subpoena, other court order, or any other judicial process otherwise allowed under applicable Federal or State law;

"(6) in the event of an emergency, a treating physician, nurse, agent of a poison control center, public health or environmental official of a State or political subdivision of a State, or first responder (including any individual duly authorized by a Federal agency, State, or political subdivision of a State who is trained in urgent medical care or other emergency procedures, including a police officer, firefighter, or emergency medical technician) requests the information, subject to the conditions that—

"(A) the treating physician, nurse, agent, public health or environmental official of a State or a political subdivision of a State, or first responder shall have a reasonable basis to suspect that—

"(i) a medical or public health or environmental emergency exists;

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"(ii) the information is necessary for, or will assist in, emergency or first-aid diagnosis or treatment; or

"(iii) 1 or more individuals being diagnosed or treated have likely been exposed to the chemical substance concerned, or a serious environmental release of or exposure to the chemical substance concerned has occurred;

"(B) if requested by the person submitting the information to the Administrator, the treating physician, nurse, agent, public health or environmental official of a State or a political subdivision of a State, or first responder shall, as described in paragraph (5)—

"(i) provide a written statement of need; and

"(ii) agree to sign a confidentiality agreement; and

"(C) the written confidentiality agreement or statement of need shall be submitted as soon as practicable, but not necessarily before the information is disclosed;

"(7) the Administrator determines that disclosure is relevant in a proceeding under this Act, subject to the condition that the disclosure shall be made in such a manner as to preserve confidentiality to the maximum extent practicable without impairing the proceeding;

"(8) the information is to be disclosed, on written request of any duly authorized congressional committee, to that committee; or

"(9) the information is required to be disclosed or otherwise made public under any other provision of Federal law.

"(f) Duration of Protection From Disclosure.—

"(1) IN GENERAL.—

"(A) INFORMATION PROTECTED FROM DISCLOSURE.—Subject to paragraph (2), the Administrator shall protect from disclosure information that meets the requirements of subsection (d) for a period of 10 years, unless, prior to the expiration of the period—

"(i) an affected person notifies the Administrator that the person is withdrawing the confidentiality claim, in which case the Administrator shall promptly make the information available to the public; or

"(ii) the Administrator otherwise becomes aware that the need for protection from disclosure can no longer be substantiated, in which case the Administrator shall take the actions described in subsection (g)(2).

"(B) EXTENSIONS.—

"(i) IN GENERAL.—Not later than the date that is 60 days before the expiration of the period described in subparagraph (A), the Administrator shall provide to the person that asserted the claim a notice of the impending expiration of the period.

"(ii) STATEMENT.—

"(I) IN GENERAL.—Not later than the date that is 30 days before the expiration of the period described in subparagraph (A), a person reasserting

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the relevant claim shall submit to the Administrator a statement substantiating, in accordance with subsection (d)(2), the need to extend the period.

"(II) ACTION BY ADMINISTRATOR.—Not later than the date that is 30 days after the date of receipt of a statement under subclause (I), the Administrator shall—

"(aa) review the request;

"(bb) make a determination regarding whether the information for which the request is made continues to meet the relevant criteria established under this section; and

"(cc)(AA) grant an extension of not more than 10 years; or

"(BB) deny the claim.

"(C) NO LIMIT ON NUMBER OF EXTENSIONS.—There shall be no limit on the number of extensions granted under subparagraph (B), if the Administrator determines that the relevant statement under subparagraph (B)(ii)(I)—

"(i) establishes the need to extend the period; and

"(ii) meets the requirements established by the Administrator.

"(2) REVIEW AND RESUBSTANTIATION.—

"(A) DISCRETION OF ADMINISTRATOR.—The Administrator may review, at any time, a claim for protection against disclosure under subsection (a) for information submitted to the Administrator regarding a chemical substance and require any person that has claimed protection for that information, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to withdraw or reassert and substantiate or resubstantiate the claim in accordance with this section—

"(i) after the chemical substance is identified as a high-priority substance under section 4A;

"(ii) for any chemical substance for which the Administrator has made a determination under section 6(c)(1)(C);

"(iii) for any inactive chemical substance identified under section 8(b)(5); or

"(iv) in limited circumstances, if the Administrator determines that disclosure of certain information currently protected from disclosure would assist the Administrator in conducting safety assessments and safety determinations under subsections (b) and (c) of section 6 or promulgating rules pursuant to section 6(d), subject to the condition that the information shall not be disclosed unless the claimant withdraws the claim or the Administrator determines that the information does not meet the requirements of subsection (d).

"(B) REVIEW REQUIRED.—The Administrator shall review a claim for protection from disclosure under subsection (a) for information submitted to the Administrator regarding a chemical substance and require any person that has claimed protection for

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that information, whether before, on, or after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to withdraw or reassert and substantiate or resubstantiate the claim in accordance with this section—

"(i) as necessary to comply with a request for information received by the Administrator under section 552 of title 5, United States Code;

"(ii) if information available to the Administrator provides a basis that the requirements of section 552(b)(4) of title 5, United States Code, are no longer met; or

"(iii) for any substance for which the Administrator has made a determination under section 6(c)(1)(B).

"(C) ACTION BY RECIPIENT.—If the Administrator makes a request under subparagraph (A) or (B), the recipient of the request shall—

"(i) reassert and substantiate or resubstantiate the claim; or

"(ii) withdraw the claim.

"(D) PERIOD OF PROTECTION.—Protection from disclosure of information subject to a claim that is reviewed and approved by the Administrator under this paragraph shall be extended for a period of 10 years from the date of approval, subject to any subsequent request by the Administrator under this paragraph.

"(3) UNIQUE IDENTIFIER.—The Administrator shall—

"(A)(i) develop a system to assign a unique identifier to each specific chemical identity for which the Administrator approves a request for protection from disclosure, other than a specific chemical identity or structurally descriptive generic term; and

"(ii) apply that identifier consistently to all information relevant to the applicable chemical substance;

"(B) annually publish and update a list of chemical substances, referred to by unique identifier, for which claims to protect the specific chemical identity from disclosure have been approved, including the expiration date for each such claim;

"(C) ensure that any nonconfidential information received by the Administrator with respect to such a chemical substance during the period of protection from disclosure—

"(i) is made public; and

"(ii) identifies the chemical substance using the unique identifier; and

"(D) for each claim for protection of specific chemical identity that has been denied by the Administrator on expiration of the period for appeal under subsection (g)(3), that has expired, or that has been withdrawn by the submitter, provide public access to the specific chemical identity clearly linked to all nonconfidential information received by the Administrator with respect to the chemical substance.

"(g) Duties of Administrator.—

"(1) DETERMINATION.—

"(A) IN GENERAL.—Except as provided in subsection (b), the Administrator shall,

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subject to subparagraph (C), not later than 90 days after the receipt of a claim under subsection (d), and not later than 30 days after the receipt of a request for extension of a claim under subsection (f), review and approve, modify, or deny the claim or request.

"(B) DENIAL OR MODIFICATION.—

"(i) IN GENERAL.—Except as provided in subsections (c) and (f), the Administrator shall deny a claim to protect a chemical identity from disclosure only if the person that has submitted the claim fails to meet the requirements of subsections (a) and (d).

"(ii) REASONS FOR DENIAL OR MODIFICATION.—The Administrator shall provide to a person that has submitted a claim described in clause (i) a written statement of the reasons for the denial or modification of the claim.

"(C) SUBSETS.—The Administrator shall—

"(i) except for claims described in subsection (b)(7), review all claims under this section for the protection against disclosure of the specific identity of a chemical substance; and

"(ii) review a representative subset, comprising at least 25 percent, of all other claims for protection against disclosure.

"(D) EFFECT OF FAILURE TO ACT.—The failure of the Administrator to make a decision regarding a claim for protection against disclosure or extension under this section shall not be the basis for denial or elimination of a claim for protection against disclosure.

"(2) NOTIFICATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and subsections (c), (e), and (f), if the Administrator denies or modifies a claim under paragraph (1), the Administrator shall notify, in writing and by certified mail, the person that submitted the claim of the intent of the Administrator to release the information.

"(B) RELEASE OF INFORMATION.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Administrator shall not release information under this subsection until the date that is 30 days after the date on which the person that submitted the request receives notification under subparagraph (A).

"(ii) EXCEPTIONS.—

"(I) IN GENERAL.—For information under paragraph (3) or (8) of subsection (e), the Administrator shall not release that information until the date that is 15 days after the date on which the person that submitted the claim receives a notification, unless the Administrator determines that release of the information is necessary to protect against an imminent and substantial harm to health or the environment, in which case no prior notification shall be necessary.

"(II) NO NOTIFICATION.—For information under paragraph (1), (2), (6),

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(7), or (9) of subsection (e), no prior notification shall be necessary.

"(3) APPEALS.—

"(A) IN GENERAL.—If a person receives a notification under paragraph (2) and believes disclosure of the information is prohibited under subsection (a), before the date on which the information is to be released, the person may bring an action to restrain disclosure of the information in—

"(i) the United States district court of the district in which the complainant resides or has the principal place of business; or

"(ii) the United States District Court for the District of Columbia.

"(B) NO DISCLOSURE.—The Administrator shall not disclose any information that is the subject of an appeal under this section before the date on which the applicable court rules on an action under subparagraph (A).

"(4) ADMINISTRATION.—In carrying out this subsection, the Administrator shall use the procedures described in part 2 of title 40, Code of Federal Regulations (or successor regulations).

"(h) Criminal Penalty for Wrongful Disclosure.—

"(1) OFFICERS AND EMPLOYEES OF UNITED STATES.—

"(A) IN GENERAL.—Subject to paragraph (2), a current or former officer or employee of the United States described in subparagraph (B) shall be guilty of a misdemeanor and fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.

"(B) DESCRIPTION.—A current or former officer or employee of the United States referred to in subparagraph (A) is a current or former officer or employee of the United States who—

"(i) by virtue of that employment or official position has obtained possession of, or has access to, material the disclosure of which is prohibited by subsection (a); and

"(ii) knowing that disclosure of that material is prohibited by subsection (a), willfully discloses the material in any manner to any person not entitled to receive that material.

"(2) OTHER LAWS.—Section 1905 of title 18, United States Code, shall not apply with respect to the publishing, divulging, disclosure, making known of, or making available, information reported or otherwise obtained under this Act.

"(3) CONTRACTORS.—For purposes of this subsection, any contractor of the United States that is provided information in accordance with subsection (e)(2), including any employee of that contractor, shall be considered to be an employee of the United States.

"(i) Applicability.—

"(1) IN GENERAL.—Except as otherwise provided in this section, section 8, or any other applicable Federal law, the Administrator shall have no authority—

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"(A) to require the substantiation or resubstantiation of a claim for the protection from disclosure of information submitted to the Administrator under this Act before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act; or

"(B) to impose substantiation or resubstantiation requirements under this Act that are more extensive than those required under this section.

"(2) PRIOR ACTIONS.—Nothing in this Act prevents the Administrator from reviewing, requiring substantiation or resubstantiation for, or approving, modifying or denying any claim for the protection from disclosure of information before the effective date of such rules applicable to those claims as the Administrator may promulgate after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.".

SEC. 16. PROHIBITED ACTS.

Section 15 of the Toxic Substances Control Act (15 U.S.C. 2614) is amended by striking paragraph (1) and inserting the following:

"(1) fail or refuse to comply with—

"(A) any rule promulgated, consent agreement entered into, or order issued under section 4;

"(B) any requirement under section 5 or 6;

"(C) any rule promulgated, consent agreement entered into, or order issued under section 5 or 6; or

"(D) any requirement of, or any rule promulgated or order issued pursuant to title II;".

SEC. 17. PENALTIES.

Section 16 of the Toxic Substances Control Act (15 U.S.C. 2615) is amended—

(1) in subsection (a)(1)—

(A) in the first sentence—

(i) by inserting "this Act or a rule or order promulgated or issued pursuant to this Act, including" after "a provision of"; and

(ii) by striking "$25,000" and inserting "$37,500"; and

(B) in the second sentence, by striking" violation of section 15 or 409" and inserting "violation of this Act"; and

(2) in subsection (b)—

(A) by striking "Any person who" and inserting the following:

"(1) IN GENERAL.—Any person that";

(B) by striking "section 15 or 409" and inserting "this Act";

(C) by striking "$25,000" and inserting "$50,000"; and

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(D) by adding at the end the following:

"(2) IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.—

"(A) IN GENERAL.—Any person that knowingly or willfully violates any provision of this Act, and that knows at the time of the violation that the violation places an individual in imminent danger of death or serious bodily injury, shall be subject on conviction to a fine of not more than $250,000, or imprisonment for not more than 15 years, or both.

"(B) ORGANIZATIONS.—An organization that commits a violation described in subparagraph (A) shall be subject on conviction to a fine of not more than $1,000,000 for each violation.

"(3) KNOWLEDGE OF IMMINENT DANGER OR INJURY.—For purposes of determining whether a defendant knew that the violation placed another individual in imminent danger of death or serious bodily injury—

"(A) the defendant shall be responsible only for actual awareness or actual belief possessed; and

"(B) knowledge possessed by an individual may not be attributed to the defendant.".

SEC. 18. STATE-FEDERAL RELATIONSHIP.

Section 18 of the Toxic Substances Control Act (15 U.S.C. 2617) is amended by striking subsections (a) and (b) and inserting the following:

"(a) In General.—

"(1) ESTABLISHMENT OR ENFORCEMENT.—Except as provided in subsections (b), (c), (d), (e), and (f), ~~and (g)~~, and subject to paragraph (2), no State or political subdivision of a State may establish or continue to enforce any of the following:

"(A) TESTING AND INFORMATION COLLECTION.—A statute or administrative action to require the development of information on a chemical substance or category of substances that is reasonably likely to produce the same information required under section 4, 5, or 6 in—

"(i) a rule promulgated by the Administrator;

"(ii) a testing consent agreement entered into by the Administrator; or

"(iii) an order issued by the Administrator.

"(B) CHEMICAL SUBSTANCES FOUND TO MEET THE SAFETY STANDARD OR RESTRICTED.—A statute or administrative action to prohibit or otherwise restrict the manufacture, processing, or distribution in commerce or use of a chemical substance—

"(i) found to meet the safety standard and consistent with the scope of the determination made under section 6; or

"(ii) found not to meet the safety standard, after the effective date of the rule issued under section 6(d) for the substance, consistent with the scope of the determination made by the Administrator.

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"(C) SIGNIFICANT NEW USE.—A statute or administrative action requiring the notification of a use of a chemical substance that the Administrator has specified as a significant new use and for which the Administrator has required notification pursuant to a rule promulgated under section 5.

"(2) EFFECTIVE DATE OF PREEMPTION.—Under this subsection, Federal preemption of State statutes and administrative actions applicable to specific substances shall not occur until the effective date of the applicable action described in paragraph (1) taken by the Administrator.

~~"(b) New Statutes or Administrative Actions Creating Prohibitions or Other Restrictions.—Except as provided in subsections (c), (d), and (e), no State or political subdivision of a State may establish (after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act) a statute or administrative action prohibiting or restricting the manufacture, processing, distribution in commerce or use of a chemical substance that is a high-priority substance designated under section 4A, as of the date on which the Administrator commences a safety assessment under section 6.~~

"(~~c~~b) Scope of Preemption.—Federal preemption under subsections (a) ~~and (b)~~ of State statutes and administrative actions applicable to specific substances shall apply only to—

"(1) the chemical substances or category of substances subject to a rule, order, or consent agreement under section 4;

"(2) the uses or conditions of use of such substances that are identified by the Administrator as subject to review in a safety assessment and included in the scope of the safety determination made by the Administrator for the substance, or of any rule the Administrator promulgates pursuant to section 6(d); or

"(3) the uses of such substances that the Administrator has specified as significant new uses and for which the Administrator has required notification pursuant to a rule promulgated under section 5.

"(~~d~~c) Exceptions.—

"(1) IN GENERAL.—Subsections (a) ~~and (b)~~ shall not apply to a statute or administrative action of a State or a political subdivision of a State applicable to a specific chemical substance that—

"(A) is adopted under the authority of, or authorized to comply with, any other Federal law;

"(B) implements a reporting, monitoring, or other information collection obligation for the chemical substance not otherwise required by the Administrator under this Act or required under any other Federal law; or

"(C) is 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, unless the action taken by the State or political subdivision of a State—

"(i) imposes a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance; and

"(ii)(I) is already required by a decision by the Administrator under section 5 or

6;

"(II) is taken to address ~~a~~ the same health or environmental concern that applies to the same uses or conditions of use as those that are included in the scope of a safety determination pursuant to section 6 or the scope of a significant new use rule promulgated pursuant to section 5, but is inconsistent with the action of the Administrator; or

"(III) would cause a violation of the applicable action by the Administrator under section 5 or 6.

"(D) is identical to a requirement prescribed by the Administrator.

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"(2) NO PREEMPTION OF STATE STATUTES AND ADMINISTRATIVE ACTIONS.—Nothing in this Act, nor any amendment made by this Act, nor any rule, standard of performance, safety determination, or scientific assessment implemented pursuant to this Act, shall affect the right of a State or a political subdivision of a State to adopt or enforce any rule, standard of performance, safety determination, scientific assessment, or any protection for public health or the environment that—

"(A) is adopted under the authority of, or authorized to comply with, any other Federal law;

"(B) implements a reporting, monitoring, or other information collection obligation for the chemical substance not otherwise required by the Administrator under this Act or required under any other Federal law; or

"(C) is 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, unless the action taken by the State or political subdivision of a State—

"(i) imposes a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance; and

~~"(ii)(I) is already required by a decision by the Administrator under section 5 or 6;~~

"(II) is taken to address ~~a~~ the same health or environmental concern that applies to the same uses or conditions of use as those that are included in the scope of a safety determination pursuant to section 6 or the scope of a significant new use rule promulgated pursuant to section 5, but is inconsistent with the action of the Administrator; or

"(III) would cause a violation of the applicable action by the Administrator under section 5 or 6.

"(3) APPLICABILITY TO CERTAIN RULES OR ORDERS.—Notwithstanding subsection (e)—

"(A) nothing in this section shall be construed as modifying the effect under this section, as in effect on the day before the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, of any rule or order promulgated or issued under this Act prior to that effective date; and

"(B) with respect to a chemical substance or mixture for which any rule or order was promulgated or issued under section 6 prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act with regards to manufacturing, processing, distribution in commerce, use, or disposal of a chemical substance, this section (as in effect on the day before the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act) shall govern the preemptive effect of any rule or order that is promulgated or issued respecting such chemical substance or mixture under section 6 of this Act after that effective date, unless the latter rule or order is with respect to a chemical substance or mixture containing a chemical substance and follows a designation of that chemical substance as a high-priority substance under subsection (b) or (c) of section 4A or as an additional priority for safety assessment and safety determination under section 4A(d).

"(~~e~~d) Preservation of Certain State Law.—

"(1) IN GENERAL.—Nothing in this Act, subject to subsection (g) of this section, shall—

"(A) be construed to preempt or otherwise affect any action taken before January 1, 2015, under the authority of a State law 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 law that was in effect on August 31, 2003.

"(2) EFFECT OF SUBSECTION.—This subsection does not affect, modify, or alter the relationship between State and Federal law pursuant to any other Federal law.

"(~~f~~e) State Waivers.—

"(1) IN GENERAL.—Upon application of a State or political subdivision of a State, the Administrator may—

"(A) by rule, exempt from subsection (a), under such conditions as may be prescribed in the rule, a statute or administrative action of that State or political subdivision of the State that relates to the effects of, or exposure to, a chemical substance under the conditions of use if the Administrator determines that—

"(i) compelling State or local conditions warrant granting the waiver to protect health or the environment;

"(ii) compliance with the proposed requirement of the State or political subdivision of the State would not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

"(iii) compliance with the proposed requirement of the State or political subdivision of the State would not cause a violation of any applicable Federal law, rule, or order; and

"(iv) based on the judgment of the Administrator, the proposed requirement of the State or political subdivision of the State is consistent with sound objective scientific practices, the weight of the evidence, and the best available science; or

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"(B) exempt from subsection (b) a statute or administrative action of a State or political subdivision of a State that relates to the effects of exposure to a chemical substance under the conditions of use if the Administrator determines that—

"(i) the State has a compelling local interest that warrants granting the waiver to protect health or the environment;

"(ii) compliance with the proposed requirement of the State will not unduly burden interstate commerce in the manufacture, processing, distribution in commerce, or use of a chemical substance;

"(iii) compliance with the proposed requirement would not cause a violation of any applicable Federal law, rule, or order; and

"(iv) the proposed requirement is grounded in reasonable scientific concern.

"(2) APPROVAL OF A STATE WAIVER REQUEST.—The Administrator shall grant or deny a waiver application—

"(A) not later than 180 days after the date on which an application under paragraph (1)(A) is submitted; and

"(B) not later than 90 days after the date on which an application under paragraph (1)(B) is submitted.

"(3) NOTICE AND COMMENT.—The application of a State or political subdivision of the State shall be subject to public notice and comment.

"(4) FINAL AGENCY ACTION.—The decision of the Administrator on the application of a State or political subdivision of the State shall be—

"(A) considered to be a final agency action; and

"(B) subject to judicial review.

"(5) DURATION OF WAIVERS.—A waiver granted under paragraph (1)(B) shall remain in effect until the later of—

"(A) such time as the safety assessment and safety determination is completed; and

"(B) the date on which compliance with an applicable rule issued under section 6(d) is required.

"(6) JUDICIAL REVIEW OF WAIVERS.—Not later than 60 days after the date on which the Administrator makes a determination on an application of a State or political subdivision of the State under subparagraph (A) or (B) of paragraph (1), any person may file a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit, which shall have exclusive jurisdiction over the determination.

"(7) JUDICIAL REVIEW OF PRIORITIZATION SCREENING DECISION.—Not later than 60 days after the date on which the Administrator makes a decision on a recommendation made under section 4A(b)(4) to designate a chemical substance as a low priority, the Governor of a State or a State agency with responsibility for protecting health and the environment that submitted the recommendation under section 4A(a)(4)(A), as applicable, may file a petition for judicial review in the United States Court of Appeals for the District of Columbia Circuit, which shall have exclusive jurisdiction over the determination.

"(gf) Savings.—

"(1) NO PREEMPTION OF COMMON LAW OR STATUTORY CAUSES OF ACTION FOR CIVIL RELIEF OR CRIMINAL CONDUCT.—

"(A) IN GENERAL.—Nothing in this Act, nor any amendment made by this Act, nor any safety standard, rule, requirement, standard of performance, safety determination, or scientific assessment implemented pursuant to this Act, shall be construed to preempt, displace, or supplant any state or Federal common law rights or any state or Federal statute creating a remedy for civil relief, including those for civil damage, or a penalty for a criminal conduct.

"(B) CLARIFICATION OF NO PREEMPTION.—Notwithstanding any other provision of this Act, nothing in this Act, nor any amendments made by this Act, shall preempt or preclude any cause of action for personal injury, wrongful death, property damage, or other injury based on negligence, strict liability, products liability, failure to warn, or any other legal theory of liability under any State law, maritime law, or Federal common law or statutory theory.

"(2) NO EFFECT ON PRIVATE REMEDIES.—

"(A) Nothing in this Act, nor any amendments made by this Act, nor any rules, regulations, requirements, safety assessments, safety determinations, scientific assessments, or orders issued pursuant to this Act shall be interpreted as, in either the plaintiff's or defendant's favor, dispositive in any civil action.

"(B) This Act does not affect the authority of any court to make a determination in an adjudicatory proceeding under applicable State or Federal law with respect to the admission into evidence or any other use of this Act or rules, regulations, requirements, standards of performance, safety assessments, scientific assessments, or orders issued pursuant to this Act.".

"(g) CO-ENFORCEMENT. Any state that adopts requirements identical to those imposed by rules or orders of the Administrator under paragraph (c)(1)(D) may enforce such requirements under the laws of the state if --

"(1) the state refrains from enforcing the requirement where the Administrator has taken enforcement action under section 15 of this Act, and

"(2) the penalties and other sanctions applicable under state state law in the event of non-compliance with the requirement are no more stringent than the penalties and other sanctions available to the Administrator under section 15 of this Act."

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SEC. 19. JUDICIAL REVIEW.

Section 19 of the Toxic Substances Control Act (15 U.S.C. 2618) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking "section 4(a), 5(a)(2), 5(b)(4), 6(a), 6(e), or

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8, or under title II or IV" and inserting "section 4(a), 5(d), 6(c), 6(d), 6(g), or 8, or title II or IV"; and

(ii) in subparagraph (B), by striking "an order issued under subparagraph (A) or (B) of section 6(b)(1)" and inserting "an order issued under this title"; and

(B) in paragraph (2), in the first sentence, by striking "paragraph (1)(A)" and inserting "paragraph (1)"; and

(C) by striking paragraph (3); and

(2) in subsection (c)(1)(B)—

(A) in clause (i)—

(i) by striking "section 4(a), 5(b)(4), 6(a), or 6(e)" and inserting "section 4(a), 5(d), 6(d), or 6(g)"; and

(ii) by striking "evidence in the rulemaking record (as defined in subsection (a)(3)) taken as a whole;" and inserting "evidence (including any matter) in the rulemaking record, taken as a whole; and"; and

(B) by striking clauses (ii) and (iii) and the matter following clause (iii) and inserting the following:

"(ii) the court may not review the contents and adequacy of any statement of basis and purpose required by section 553(c) of title 5, United States Code, to be incorporated in the rule, except as part of the rulemaking record, taken as a whole.".

SEC. 20. CITIZENS' PETITIONS.

Section 21 of the Toxic Substances Control Act (15 U.S.C. 2620) is amended—

(1) in subsection (a), by striking "an order under section 5(e) or 6(b)(2)" and inserting "an order under section 4 or 5(d)"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "an order under section 5(e), 6(b)(1)(A), or 6(b)(1)(B)" and inserting "an order under section 4 or 5(d)"; and

(B) in paragraph (4), by striking subparagraph (B) and inserting the following:

"(B) DE NOVO PROCEEDING.—

"(i) IN GENERAL.—In an action under subparagraph (A) to initiate a proceeding to promulgate a rule pursuant to section 4, 5, 6, or 8 or an order issued under section 4 or 5, the petitioner shall be provided an opportunity to have the petition considered by the court in a de novo proceeding.

"(ii) DEMONSTRATION.—

"(I) IN GENERAL.—The court in a de novo proceeding under this subparagraph shall order the Administrator to initiate the action requested by the petitioner if the petitioner demonstrates to the satisfaction of the court by a preponderance of the evidence that—

"(aa) in the case of a petition to initiate a proceeding for the issuance of a rule or order under section 4, the information available to the Administrator is insufficient for the Administrator to perform an action described in section 4, 4A, 5, or 6(d);

"(bb) in the case of a petition to issue an order under section 5(d), there is a reasonable basis to conclude that the chemical substance is not likely to meet the safety standard;

"(cc) in the case of a petition to initiate a proceeding for the issuance of a rule under section 6(d), there is a reasonable basis to conclude that the chemical substance will not meet the safety standard; or

"(dd) in the case of a petition to initiate a proceeding for the issuance of a rule under section 8, there is a reasonable basis to conclude that the rule is necessary to protect health or the environment or ensure that the chemical substance meets the safety standard.

"(II) DEFERMENT.—The court in a de novo proceeding under this subparagraph may permit the Administrator to defer initiating the action requested by the petitioner until such time as the court prescribes, if the court finds that—

"(aa) the extent of the risk to health or the environment alleged by the petitioner is less than the extent of risks to health or the environment with respect to which the Administrator is taking action under this Act; and

"(bb) there are insufficient resources available to the Administrator to take the action requested by the petitioner.".

SEC. 21. EMPLOYMENT EFFECTS.

Section 24(b)(2)(B)(ii) of the Toxic Substances Control Act (15 U.S.C. 2623(b)(2)(B)(ii)) is amended by striking "section 6(c)(3)," and inserting "the applicable requirements of this Act;".

SEC. 22. STUDIES.

Section 25 of the Toxic Substances Control Act (15 U.S.C. 2624) is repealed.

SEC. 23. ADMINISTRATION.

Section 26 of the Toxic Substances Control Act (15 U.S.C. 2625) is amended—

(1) by striking subsection (b) and inserting the following:

"(b) Fees.—

"(1) IN GENERAL.—The Administrator shall establish, not later than 1 year after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, by rule—

"(A) the payment of 1 or more reasonable fees as a condition of submitting a notice or requesting an exemption under section 5;

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"(B) the payment of 1 or more reasonable fees by a manufacturer or processor that—

"(i) is required to submit a notice pursuant to the rule promulgated under section 8(b)(4)(A)(i) identifying a chemical substance as active;

"(ii) is required to submit a notice pursuant to section 8(b)(5)(B)(i) changing the status of a chemical substance from inactive to active;

"(iii) is required to report information pursuant to the rules promulgated under section 8(a)(4); and

"(iv) manufactures or processes a chemical substance subject to a safety assessment and safety determination pursuant to section 6.

"(2) UTILIZATION AND COLLECTION OF FEES.—The Administrator shall—

"(A) utilize the fees collected under paragraph (1) only to defray costs associated with the actions of the Administrator—

"(i) to collect, process, review, provide access to, and protect from disclosure (where appropriate) information on chemical substances under this Act;

"(ii) to review notices and make determinations for chemical substances under paragraphs (1) and (3) of section 5(d) and impose any necessary restrictions under section 5(d)(4);

"(iii) to make prioritization decisions under section 4A;

"(iv) to conduct and complete safety assessments and determinations under section 6; and

"(v) to conduct any necessary rulemaking pursuant to section 6(d);

"(B) insofar as possible, collect the fees described in paragraph (1) in advance of conducting any fee-supported activity;

"(C) deposit the fees in the Fund established by paragraph (4)(A); and

"(D) not collect excess fees or retain a significant amount of unused fees.

"(3) AMOUNT AND ADJUSTMENT OF FEES; REFUNDS.—In setting fees under this section, the Administrator shall—

"(A) take into account the cost to the Administrator of conducting the activities described in paragraph (2);

"(B) prescribe lower fees for small business concerns, after consultation with the Administrator of the Small Business Administration;

"(C) set the fees established under paragraph (1) at levels such that the fees will, in aggregate, provide a sustainable source of funds to defray approximately 25 percent of the costs of conducting the activities identified in paragraph (2)(A), not to exceed $18,000,000, not including fees under subparagraph (E) of this paragraph;

"(D) reflect an appropriate balance in the assessment of fees between manufacturers and processors, and allow the payment of fees by consortia of manufacturers or processors;

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"(E) for substances designated as additional priorities pursuant to section 4A(c), establish the fee at a level sufficient to defray the full costs to the Administrator of conducting the safety assessment and safety determination under section 6;

"(F) prior to the establishment or amendment of any fees under paragraph (1), consult and meet with parties potentially subject to the fees or their representatives, subject to the condition that no obligation under the Federal Advisory Committee Act (5 U.S.C. App.) or subchapter III of chapter 5 of title 5, United States Code, is applicable with respect to such meetings;

"(G) beginning with the fiscal year that is 3 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, and every 3 years thereafter, after consultation with parties potentially subject to the fees and their representatives, increase or decrease the fees established under paragraph (1) as necessary—

"(i) to ensure that funds deposited in the Fund are sufficient to conduct the activities identified in paragraph (2)(A) and the full costs of safety assessments and safety determinations pursuant to subparagraph (E); and

"(ii) to account for inflation;

"(H) adjust fees established under paragraph (1) as necessary to vary on account of differing circumstances, including reduced fees or waivers in appropriate circumstances, to reduce the burden on manufacturing or processing, remove barriers to innovation, or where the costs to the Administrator of collecting the fees exceed the fee revenue anticipated to be collected; and

"(I) if a notice submitted under section 5 is refused or subsequently withdrawn, refund the fee or a portion of the fee if no substantial work was performed on the notice.

"(4) TSCA IMPLEMENTATION FUND.—

"(A) ESTABLISHMENT.—There is established in the Treasury of the United States a fund, to be known as the 'TSCA Implementation Fund' (referred to in this subsection as the 'Fund'), consisting of—

"(i) such amounts as are deposited in the Fund under paragraph (2)(C); and

"(ii) any interest earned on the investment of amounts in the Fund; and

"(iii) any proceeds from the sale or redemption of investments held in the Fund.

"(B) CREDITING AND AVAILABILITY OF FEES.—

"(i) IN GENERAL.—Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts, and shall be available without fiscal year limitation.

"(ii) REQUIREMENTS.—Fees collected under this section shall not—

"(I) be made available or obligated for any purpose other than to defray the costs of conducting the activities identified in paragraph (2)(A);

"(II) otherwise be available for any purpose other than implementation of

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this Act; and

"(III) so long as amounts in the Fund remain available, be subject to restrictions on expenditures applicable to the Federal government as a whole.

"(C) UNUSED FUNDS.—Amounts in the Fund not currently needed to carry out this subsection shall be—

"(i) maintained readily available or on deposit;

"(ii) invested in obligations of the United States or guaranteed by the United States; or

"(iii) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

"(D) MINIMUM AMOUNT OF APPROPRIATIONS.—Fees may not be assessed for a fiscal year under this section unless the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2015) of the Office of Pollution Prevention and Toxics of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for covered functions for fiscal year 2015 (excluding the amount of any fees appropriated for the fiscal year).

"(5) AUDITING.—

"(A) FINANCIAL STATEMENTS OF AGENCIES.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an executive agency.

"(B) COMPONENTS.—The annual audit required under sections 3515(b) and 3521 of that title of the financial statements of activities under this subsection shall include an analysis of—

"(i) the fees collected under paragraph (1) and disbursed;

"(ii) compliance with the deadlines established in section 6 of this Act;

"(iii) the amounts budgeted, appropriated, collected from fees, and disbursed to meet the requirements of sections 4, 4A, 5, 6, 8, and 14, including the allocation of full time equivalent employees to each such section or activity; and

"(iv) the reasonableness of the allocation of the overhead associated with the conduct of the activities described in paragraph (2)(A).

"(C) INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall—

"(i) conduct the annual audit required under this subsection; and

"(ii) report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.

"(6) TERMINATION.—The authority provided by this section shall terminate at the conclusion of the fiscal year that is 10 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, unless otherwise reauthorized or

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modified by Congress.";

(2) in subsection (e), by striking "Health, Education, and Welfare" each place it appears and inserting "Health and Human Services"; and

(3) adding at the end the following:

"(h) Prior Actions.—Nothing in this Act eliminates, modifies, or withdraws any rule promulgated, order issued, or exemption established pursuant to this Act before the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.".

SEC. 24. DEVELOPMENT AND EVALUATION OF TEST METHODS AND SUSTAINABLE CHEMISTRY.

Section 27 of the Toxic Substances Control Act (15 U.S.C. 2626) is amended—

(1) in subsection (a), in the first sentence by striking "Health, Education, and Welfare" and inserting "Health and Human Services"; and

(2) by adding at the end the following:

"(c) Sustainable Chemistry Program.—The President shall establish an interagency Sustainable Chemistry Program to promote and coordinate Federal sustainable chemistry research, development, demonstration, technology transfer, commercialization, education, and training activities.

"(d) Program Activities.—The activities of the Program shall be designed to—

"(1) provide sustained support for sustainable chemistry research, development, demonstration, technology transfer, commercialization, education, and training through—

"(A) coordination of sustainable chemistry research, development, demonstration, and technology transfer conducted at Federal laboratories and agencies; and

"(B) to the extent practicable, encouragement of consideration of sustainable chemistry in, as appropriate—

"(i) the conduct of Federal and State science and engineering research and development; and

"(ii) the solicitation and evaluation of applicable proposals for science and engineering research and development;

"(2) examine methods by which the Federal Government can create incentives for consideration and use of sustainable chemistry processes and products, including innovative financing mechanisms;

"(3) expand the education and training of undergraduate and graduate students and professional scientists and engineers, including through partnerships with industry, in sustainable chemistry science and engineering;

"(4) collect and disseminate information on sustainable chemistry research, development, and technology transfer including information on—

"(A) incentives and impediments to development, manufacturing, and commercialization;

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"(B) accomplishments;

"(C) best practices; and

"(D) costs and benefits;

"(5) support (including through technical assistance, participation, financial support, or other forms of support) economic, legal, and other appropriate social science research to identify barriers to commercialization and methods to advance commercialization of sustainable chemistry.

"(e) Interagency Working Group.—

"(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the President, in consultation with the Office of Science and Technology Policy, shall establish an Interagency Working Group that shall include representatives from the National Science Foundation, the National Institute of Standards and Technology, the Department of Energy, the Environmental Protection Agency, the Department of Agriculture, the Department of Defense, the National Institutes of Health, and any other agency that the President may designate to oversee the planning, management, and coordination of the Program.

"(2) GOVERNANCE.—The Director of the National Science Foundation and the Assistant Administrator for Research and Development of the Environmental Protection Agency, or their designees, shall serve as co-chairs of the Interagency Working Group.

"(3) RESPONSIBILITIES.—In overseeing the planning, management, and coordination of the Program, the Interagency Working Group shall—

"(A) establish goals and priorities for the Program, in consultation with the Advisory Council;

"(B) provide for interagency coordination, including budget coordination, of activities under the Program;

"(C) meet not later than 90 days from its establishment and periodically thereafter; and

"(D) establish and consult with an Advisory Council on a regular basis.

"(4) MEMBERSHIP.—The Advisory Council members shall not be employees of the Federal Government and shall include a diverse representation of knowledgeable individuals from the private sector (including small- and medium-sized enterprises from across the value chain), academia, State and tribal governments, and nongovernmental organizations and others who are in a position to provide expertise.

"(f) Agency Budget Requests.—

"(1) IN GENERAL.—Each Federal agency and department participating in the Program shall, as part of its annual request for appropriations to the Office of Management and Budget, submit a report to the Office of Management and Budget that—

"(A) identifies the activities of the agency or department that contribute directly to the Program; and

"(B) states the portion of the agency or department's request for appropriations that

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is allocated to those activities.

"(2) ANNUAL BUDGET REQUEST TO CONGRESS.—The President shall include in the annual budget request to Congress a statement of the portion of the annual budget request for each agency or department that will be allocated to activities undertaken pursuant to the Program.

"(g) Report to Congress.—

"(1) IN GENERAL.—Not later than 2 years after the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Interagency Working Group shall submit a report to the Committee on Science, Space, and Technology and Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate that shall include—

"(A) a summary of federally funded sustainable chemistry research, development, demonstration, technology transfer, commercialization, education, and training activities;

"(B) a summary of the financial resources allocated to sustainable chemistry initiatives;

"(C) an analysis of the progress made toward achieving the goals and priorities of this Act, and recommendations for future program activities;

"(D) an assessment of the benefits of expanding existing, federally-supported regional innovation and manufacturing hubs to include sustainable chemistry and the value of directing the creation of 1 or more dedicated sustainable chemistry centers of excellence or hubs; and

"(E) an evaluation of steps taken and future strategies to avoid duplication of efforts, streamline interagency coordination, facilitate information sharing, and spread best practices between participating agencies in the Program.

"(2) SUBMISSION TO GAO.—The Interagency Working Group shall also submit the report described in paragraph (1) to the Government Accountability Office for consideration in future Congressional inquiries.".

SEC. 25. STATE PROGRAMS.

Section 28 of the Toxic Substances Control Act (15 U.S.C. 2627) is amended—

(1) in subsection (b)(1)—

(A) in subparagraphs (A) through (D), by striking the comma at the end of each subparagraph and inserting a semicolon; and

(B) in subparagraph (E), by striking ", and" and inserting "; and"; and

(2) by striking subsections (c) and (d).

SEC. 26. AUTHORIZATION OF APPROPRIATIONS.

Section 29 of the Toxic Substances Control Act (15 U.S.C. 2628) is repealed.

SEC. 27. ANNUAL REPORT.

Section 30 of the Toxic Substances Control Act (15 U.S.C. 2629) is amended by striking paragraph (2) and inserting the following:

"(2)(A) the number of notices received during each year under section 5; and

"(B) the number of the notices described in subparagraph (A) for chemical substances subject to a rule, testing consent agreement, or order under section 4;".

SEC. 28. EFFECTIVE DATE.

Section 31 of the Toxic Substances Control Act (15 U.S.C. 2601 note; Public Law 94–469) is amended—

(1) by striking "Except as provided in section 4(f), this" and inserting the following:

"(a) In General.—This"; and

(2) by adding at the end the following:

"(b) Retroactive Applicability.—Nothing in this Act shall be interpreted to apply retroactively to any State, Federal, or maritime legal action commenced prior to the effective date of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.".

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Message

From: Zipkin, Adam (Booker) [Adam_Zipkin@booker.senate.gov]
Sent: 3/25/2015 8:27:39 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
Subject: RE: TSCA reform principles doc

Yes will call in a few.

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Wednesday, March 25, 2015 4:27 PM
To: Zipkin, Adam (Booker)
Subject: RE: TSCA reform principles doc

Adam -- if you happen to be around and have a minute to touch base, give me a call at Ex. 6 - Personal Privacy

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From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Wednesday, March 25, 2015 12:05 PM
To: Vaught, Laura
Subject: RE: TSCA reform principles doc

Thanks!

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Wednesday, March 25, 2015 12:00 PM
To: Zipkin, Adam (Booker)
Subject: Re: TSCA reform principles doc

Hi Adam - sorry it has been so hard to connect. Jim is on travel today/this week, but let me see what we can figure out.

Sent from my iPhone

On Mar 25, 2015, at 11:05 AM, Zipkin, Adam (Booker) <Adam_Zipkin@booker.senate.gov> wrote:

> Hi Laura. Attached is a draft red-line of the current Udall-Vitter bill that I am working on for my boss and other EPW Dems to present to Sens Udall/Vitter as containing the changes needed in order for these Senators to support the bill. Please treat as confidential. Things are moving quickly, is there any chance Mr. Jones and/or any other EPA staff could review and do a TA call with me this afternoon? The amount of changes are limited, and can be summarized as follows:
>
> 1. Preemption
> - Consistent with existing law, timing of preemption for High Priority Chemicals is amended to occur at the implementation date of EPA action on a chemical (current bill has high priority preemption starting as soon as EPA starts reviewing a high priority chemical, rather than when EPA finishes).
>
> 2. Co-enforcement
> - Consistent with existing law, bill is amended to allow states to enact and co-enforce identical laws (current bill does not allow).
>
> 3. Judicial Review

- Bill is amended to allow full judicial review of chemicals that EPA designates as low priority (current bill only allows states to challenge).

4. Articles (i.e. consumer products)
   - Bill is amended to delete out this newly inserted section which Mr. Jones testified is inconsistent with statement of administration priorities.

5. Animal Testing
   - Language is added to minimize animal testing where EPA Administrator determines scientifically reliable alternatives exist that would generate equivalent information.

6. Pre-emption of State Clean Air/Clean Water Laws
   - Language is tweaked to try to make clear that this pre-emption should not occur.

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, March 24, 2015 11:13 AM
To: Zipkin, Adam (Booker)
Subject: RE: TSCA reform principles doc

My morning is a little crazy -- anything this afternoon that works?

From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Monday, March 23, 2015 8:47 PM
To: Vaught, Laura
Subject: RE: TSCA reform principles doc

Thanks Laura – I could do 10am or 11:30 if either of those work for you tmrw.

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Monday, March 23, 2015 5:24 PM
To: Zipkin, Adam (Booker)
Subject: RE: TSCA reform principles doc

Thanks Adam – and sorry today got away from me, and now I have to run out for something, but let's connect tomorrow?

From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Friday, March 20, 2015 5:21 PM
To: Vaught, Laura
Subject: RE: TSCA reform principles doc

Hi Laura FYI Jim Jones did great at the hearing. Do you have a few minutes Monday am to talk follow up?

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, March 17, 2015 3:47 PM
To: Zipkin, Adam (Booker)
Subject: Re: TSCA reform principles doc

Give me 2 minutes to get back to my desk and then yes.

Sent from my iPhone

On Mar 17, 2015, at 3:45 PM, Zipkin, Adam (Booker) <Adam_Zipkin@booker.senate.gov> wrote:

Laura any chance you could talk now? Otherwise I have a 4pm meeting and then open 4:30-5:30.

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, March 17, 2015 2:59 PM
To: Zipkin, Adam (Booker)
Subject: RE: TSCA reform principles doc

Sure.

From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Tuesday, March 17, 2015 2:58 PM
To: Vaught, Laura
Subject: Re: TSCA reform principles doc

Can u call my cell after your 3pm mtg Ex. 6 - Personal Privacy

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From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, March 17, 2015 02:48 PM
To: Zipkin, Adam (Booker)
Subject: RE: TSCA reform principles doc

Sounds good. I'm around until a little after 3 when I have to go to a meeting, but I don't think will take long.

From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Tuesday, March 17, 2015 2:38 PM
To: Vaught, Laura
Subject: Re: TSCA reform principles doc

I will try u in 5 min

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, March 17, 2015 12:27 PM
To: Zipkin, Adam (Booker)
Subject: RE: TSCA reform principles doc

Hi Adam – happy to connect on these when you're free. My direct is Ex. 6 - Personal Privacy

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From: Zipkin, Adam (Booker) [mailto:Adam_Zipkin@booker.senate.gov]
Sent: Tuesday, March 17, 2015 9:20 AM
To: Vaught, Laura
Subject: RE: TSCA reform principles doc

Laura good morning -- attached are draft questions. Could we do a call to discuss once you have a chance to review on your end? Thanks! Adam

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Monday, March 16, 2015 11:17 AM
To: Zipkin, Adam (Booker)
Subject: FW: TSCA reform principles doc

Hi Adam – here are the Administration's TSCA principles that were announced in 2009.

Message

From: Cohen, Jacqueline [jackie.cohen@mail.house.gov]
Sent: 6/18/2015 4:31:10 PM
To: Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]
CC: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
Subject: FW: language for suspension bill
Attachments: sus_01_xml.pdf

Close hold and FYI. The change for manufacturer requested risk evaluations is on page 8, and there are a few clarifying changes in the preemption section. We haven't been able to get a change on chemical formula in the CBI section.

Suspend the Rules and Pass the Bill, H. R. 2576, With An Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

114TH CONGRESS
1ST SESSION

H. R. 2576

To modernize the Toxic Substances Control Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 26, 2015

Mr. SHIMKUS (for himself, Mr. UPTON, Mr. PALLONE, and Mr. TONKO) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To modernize the Toxic Substances Control Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "TSCA Modernization Act of 2015".

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.
Sec. 3. Testing of chemical substances and mixtures.
Sec. 4. Regulation of hazardous chemical substances and mixtures.
Sec. 5. Relationship to other Federal laws.
Sec. 6. Disclosure of data.
Sec. 7. Effect on State law.
Sec. 8. Administration of the Act.
Sec. 9. Conforming amendments.

SEC. 2. DEFINITIONS.

Section 3 of the Toxic Substances Control Act (15 U.S.C. 2602) is amended—

(1) by redesignating paragraphs (7) through (14) as paragraphs (8) through (10) and (12) through (16), respectively;

(2) by inserting after paragraph (6) the following:

"(7) The term 'intended conditions of use' means the circumstances under which a chemical substance is intended, known, or reasonably foreseeable to be manufactured, processed, distributed in commerce, used, and disposed of."; and

(3) by inserting after paragraph (10), as so redesignated, the following:

"(11) The term 'potentially exposed subpopulation' means a group of individuals within the general population who, due to either greater susceptibility or greater potential exposure, are likely to be at greater risk than the general population of adverse health effects from exposure to a chemical substance.".

SEC. 3. TESTING OF CHEMICAL SUBSTANCES AND MIXTURES.

Section 4 of the Toxic Substances Control Act (15 U.S.C. 2603) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A)(iii), by striking "; or" and inserting a semicolon;

(B) in subparagraph (B)(iii), by striking "; and" and inserting "; or"; and

(C) by adding at the end the following:

"(C) testing of a chemical substance is necessary to conduct a risk evaluation under section 6(b); and";

(2) in the matter following subsection (a)(2), by inserting ", order, or consent agreement" after "by rule"; and

(3) in subsection (b)(5), by striking "paragraph (1)(A) or (1)(B)" and inserting "paragraph (1)(A), (1)(B), or (1)(C)".

SEC. 4. REGULATION OF HAZARDOUS CHEMICAL SUBSTANCES AND MIXTURES.

(a) SCOPE OF REGULATION.—Section 6(a) of the Toxic Substances Control Act (15 U.S.C. 2605(a)) is amended—

(1) by striking "finds that there is a reasonable basis to conclude" and inserting "determines under subsection (b)";

(2) by inserting "or designates a chemical substance under subsection (i)(2)," before "the Administrator shall by rule"; and

(3) by striking "to protect adequately against such risk using the least burdensome requirements" and inserting "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".

(b) RISK EVALUATIONS.—Section 6(b) of the Toxic Substances Control Act (15 U.S.C. 2605(b)) is amended to read as follows:

"(b) RISK EVALUATIONS.—

"(1) IN GENERAL.—The Administrator shall conduct risk evaluations pursuant to this subsection to determine whether or not a chemical substance presents or will present, in the absence of requirements under subsection (a), an unreasonable risk of injury to health or the environment.

"(2) APPLYING REQUIREMENTS.—The Administrator shall apply requirements with respect to a chemical substance through a rule under subsection

1 (a) only if the Administrator determines through a
2 risk evaluation under this subsection that the chem-
3 ical substance presents or will present, in the ab-
4 sence of such requirements, an unreasonable risk of
5 injury to health or the environment.

6 "(3) CONDUCTING RISK EVALUATION.—

7 "(A) REQUIRED RISK EVALUATIONS.—The
8 Administrator shall conduct and publish the re-
9 sults of a risk evaluation under this subsection
10 for a chemical substance if—

11 "(i) the Administrator determines
12 that the chemical substance may present
13 an unreasonable risk of injury to health or
14 the environment because of potential haz-
15 ard and a potential route of exposure
16 under the intended conditions of use; or

17 "(ii) a manufacturer of the chemical
18 substance requests such a risk evaluation
19 in a form and manner prescribed by the
20 Administrator.

21 "(B) TSCA WORK PLAN CHEMICALS.—The
22 Administrator may, without making a deter-
23 mination under subparagraph (A)(i), conduct
24 and publish the results of a risk evaluation
25 under this subsection for a chemical substance

that, on the date of enactment of the TSCA Modernization Act of 2015, is listed in the TSCA Work Plan for Chemical Assessments published by the Administrator.

"(4) REQUIREMENTS.—In conducting a risk evaluation under this subsection, the Administrator shall—

"(A) integrate and assess information on hazards and exposures for all of the intended conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on potentially exposed subpopulations;

"(B) not consider information on cost and other factors not directly related to health or the environment;

"(C) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the intended conditions of use of the chemical substance;

"(D) describe the weight of the scientific evidence for identified hazard and exposure;

"(E) consider whether the weight of the scientific evidence supports the identification of

1 doses of the chemical substance below which no
2 adverse effects can be expected to occur; and
3 "(F) in the case of a risk evaluation re-
4 quested by a manufacturer under paragraph
5 (3)(A)(ii), ensure that the costs to the Environ-
6 mental Protection Agency, including contractor
7 costs, of conducting the risk evaluation are paid
8 for by the manufacturer.
9 "(5) DEADLINES.—
10 "(A) RISK EVALUATIONS.—The Adminis-
11 trator shall conduct and publish a risk evalua-
12 tion under this subsection for a chemical sub-
13 stance as soon as reasonably possible, subject to
14 the availability of resources, but not later
15 than—
16 "(i) 3 years after the date on which
17 the Administrator—
18 "(I) makes a determination
19 under paragraph (3)(A)(i); or
20 "(II) begins the risk evaluation
21 under paragraph (3)(B); or
22 "(ii) in the case of a risk evaluation
23 requested by a manufacturer under para-
24 graph (3)(A)(ii), 2 years after the later of
25 the date on which—

"(I) the manufacturer requests the risk evaluation; or

"(II) if applicable, the risk evaluation is initiated pursuant to subparagraph (B).

"(B) DEADLINE ADJUSTMENT.—If the Administrator receives more requests for risk evaluations under paragraph (3)(A)(ii) than the Administrator has resources to conduct by the deadline under subparagraph (A)(ii)(I) (taking into account the requirement in paragraph (4)(F)), the Administrator shall—

"(i) initiate risk evaluations that exceed the Administrator's allotted resources as soon as resources for such risk evaluations are available; and

"(ii) not collect a fee under section 26 from the manufacturer for a risk evaluation until the Administrator initiates the risk evaluation.

"(C) SUBSECTION (a) RULES.—If, based on a risk evaluation conducted under this subsection, the Administrator determines that a chemical substance presents or will present, in the absence of a rule under subsection (a), an

1 unreasonable risk of injury to health or the en-
2 vironment, the Administrator shall—
3 "(i) propose a rule under subsection
4 (a) for the chemical substance not later
5 than 1 year after the date on which the
6 risk evaluation regarding such chemical
7 substance is published under subparagraph
8 (A); and
9 "(ii) publish in the Federal Register a
10 final rule not later than 2 years after the
11 date on which the risk evaluation regard-
12 ing such chemical substance is published
13 under subparagraph (A).
14 "(D) EXTENSION.—If the Administrator
15 determines that additional information is nec-
16 essary to make a risk evaluation determination
17 under this subsection, the Administrator may
18 extend the deadline under subparagraph (A) ac-
19 cordingly, except that the deadline may not be
20 extended to a date that is later than—
21 "(i) 90 days after receipt of such ad-
22 ditional information; or
23 "(ii) 2 years after the deadline being
24 extended under this subparagraph.

1 "(6) DETERMINATIONS OF NO UNREASONABLE
2 RISK.—
3 "(A) NOTICE AND COMMENT.—Not later
4 than 30 days before publishing a final deter-
5 mination under this subsection that a chemical
6 substance does not and will not present an un-
7 reasonable risk of injury to health or the envi-
8 ronment, the Administrator shall make a pre-
9 liminary determination to such effect and pro-
10 vide public notice of, and an opportunity for
11 comment regarding, such preliminary deter-
12 mination.
13 "(B) POTENTIALLY EXPOSED SUBPOPULA-
14 TIONS.—The Administrator shall not make a
15 determination under this subsection that a
16 chemical substance will not present an unrea-
17 sonable risk of injury to health or the environ-
18 ment if the Administrator determines that the
19 chemical substance, under the intended condi-
20 tions of use, presents or will present an unrea-
21 sonable risk of injury to 1 or more potentially
22 exposed subpopulations.
23 "(C) FINAL ACTION.—A final determina-
24 tion under this subsection that a chemical sub-
25 stance will not present an unreasonable risk of

injury to health or the environment shall be considered a final agency action.

"(7) MINIMUM NUMBER.—Subject to the availability of appropriations, the Administrator shall initiate 10 or more risk evaluations under paragraphs (3)(A)(i) or (3)(B) in each fiscal year beginning in the fiscal year of the date of enactment of the TSCA Modernization Act of 2015.".

(c) PROMULGATION OF SUBSECTION (a) RULES.—Section 6(c) of the Toxic Substances Control Act (15 U.S.C. 2605(c)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) REQUIREMENTS FOR RULE.—In promulgating any rule under subsection (a) with respect to a chemical substance or mixture, the Administrator shall—

"(A) consider and publish a statement with respect to—

"(i) the effects of the chemical substance or mixture on health and the magnitude of the exposure of human beings to the chemical substance or mixture;

"(ii) the effects of the chemical substance or mixture on the environment and

1 the magnitude of the exposure of the envi-
2 ronment to the chemical substance or mix-
3 ture;
4 "(iii) the benefits of the chemical sub-
5 stance or mixture for various uses; and
6 "(iv) the reasonably ascertainable eco-
7 nomic consequences of the rule, including
8 consideration of the likely effect of the rule
9 on the national economy, small business,
10 technological innovation, the environment,
11 and public health;
12 "(B) impose requirements under the rule
13 that the Administrator determines, consistent
14 with the information published under subpara-
15 graph (A), are cost-effective, except where the
16 Administrator determines that additional or dif-
17 ferent requirements described in subsection (a)
18 are necessary to protect against the identified
19 risk;
20 "(C) based on the information published
21 under subparagraph (A), in deciding whether to
22 prohibit or restrict in a manner that substan-
23 tially prevents a specific use of a chemical sub-
24 stance or mixture and in setting an appropriate
25 transition period for such action, determine

1 whether technically and economically feasible al-
2 ternatives that benefit health or the environ-
3 ment, compared to the use so proposed to be
4 prohibited or restricted, will be reasonably
5 available as a substitute when the proposed pro-
6 hibition or other restriction takes effect;
7 "(D) exempt replacement parts designed
8 prior to the date of publication in the Federal
9 Register of the rule unless the Administrator
10 finds such replacement parts contribute signifi-
11 cantly to the identified risk, including identified
12 risk to identified potentially exposed subpopula-
13 tions; and
14 "(E) in selecting among prohibitions and
15 other restrictions to address an identified risk,
16 apply prohibitions or other restrictions to arti-
17 cles on the basis of a chemical substance or
18 mixture contained in the article only to the ex-
19 tent necessary to protect against the identified
20 risk.";
21 (2) in paragraph (2)—
22 (A) by inserting "PROCEDURES.—" before
23 "When prescribing a rule";

(B) by striking "provide an opportunity for an informal hearing in accordance with paragraph (3); (D)";

(C) by striking ", and (E)" and inserting "; and (D)"; and

(D) by moving such paragraph 2 ems to the right;

(3) by striking paragraphs (3) and (4) and redesignating paragraph (5) as paragraph (3); and

(4) in paragraph (3) (as so redesignated)—

(A) by striking "Paragraphs (1), (2), (3), and (4)" and inserting "APPLICATION.—Paragraphs (1) and (2)"; and

(B) by moving such paragraph 2 ems to the right.

(d) EFFECTIVE DATE.—Section 6(d)(2)(B) of the Toxic Substances Control Act (15 U.S.C. 2605(d)(2)(B)) is amended by adding at the end the following: "Any rule promulgated under subsection (a) shall provide for a reasonable transition period.".

(e) NON-RISK FACTORS; CRITICAL USE EXEMPTIONS; PBT CHEMICALS.—Section 6 of the Toxic Substances Control Act (15 U.S.C. 2605) is amended by adding at the end the following:

1 "(g) NON-RISK FACTORS.—The Administrator shall
2 not consider costs or other non-risk factors when deciding
3 whether to initiate a rulemaking under subsection (a).
4 "(h) CRITICAL USE EXEMPTIONS.—
5 "(1) CRITERIA FOR EXEMPTION.—The Admin-
6 istrator may grant an exemption from a requirement
7 of a subsection (a) rule for a specific use of a chem-
8 ical substance or mixture, if—
9 "(A) the requirement is not cost-effective
10 with respect to the specific use, as determined
11 by the Administrator pursuant to subsection
12 (c)(1)(B); and
13 "(B) the Administrator finds that—
14 "(i) the specific use is a critical or es-
15 sential use; or
16 "(ii) the requirement, as applied with
17 respect to the specific use, would signifi-
18 cantly disrupt the national economy, na-
19 tional security, or critical infrastructure.
20 "(2) PROCEDURE.—An exemption granted
21 under paragraph (1) shall be—
22 "(A) supported by clear and convincing
23 evidence;

"(B) preceded by public notice of the proposed exemption and an opportunity for comment; and

"(C) followed by notice of the granted exemption—

"(i) to the public, by the Administrator; and

"(ii) to known commercial purchasers of the chemical substance or mixture with respect to which the exemption applies, by the manufacturers and processors of such chemical substance or mixture.

"(3) PERIOD OF EXEMPTION.—An exemption granted under paragraph (1) shall expire after a period not to exceed 5 years, but may be renewed for one or more additional 5-year periods if the Administrator finds that the requirements of paragraph (1) continue to be met.

"(4) CONDITIONS.—The Administrator shall impose conditions on any use for which an exemption is granted under paragraph (1) to reduce risk from the chemical substance or mixture to the greatest extent feasible.

"(i) CHEMICALS THAT ARE PERSISTENT, BIOACCUMULATIVE, AND TOXIC.—

1 "(1) IDENTIFICATION.—Not later than 9
2 months after the date of enactment of the TSCA
3 Modernization Act of 2015, the Administrator shall
4 publish a list of those chemical substances that the
5 Administrator has a reasonable basis to conclude are
6 persistent, bioaccumulative, and toxic, not including
7 any chemical substance that is a metal, a metal com-
8 pound, or subject to subsection (e).
9 "(2) CONFIRMATION OF CONCERN.—Not later
10 than 2 years after the date of enactment of the
11 TSCA Modernization Act of 2015, the Administrator
12 shall designate as a PBT chemical of concern each
13 chemical substance on the list published under para-
14 graph (1)—
15 "(A) that, with respect to persistence and
16 bioaccumulation, scores high for one and either
17 high or moderate for the other, pursuant to the
18 TSCA Work Plan Chemicals Methods Docu-
19 ment published by the Administrator in Feb-
20 ruary 2012; and
21 "(B) exposure to which is likely to the gen-
22 eral population or to a potentially exposed sub-
23 population identified by the Administrator.
24 "(3) EXPEDITED ACTION.—Notwithstanding
25 subsection (b)(2), subject to the availability of ap-

1 propriations, not later than 2 years after designating
2 a chemical substance under paragraph (2), the Ad-
3 ministrator shall promulgate a rule under subsection
4 (a) with respect to the chemical substance to reduce
5 likely exposure to the extent practicable.

6 "(4) RELATIONSHIP TO SUBSECTION (b).—If,
7 at any time prior to the date that is 90 days after
8 the date on which the Administrator publishes the
9 list under paragraph (1), the Administrator makes a
10 finding under subsection (b)(3)(A)(i), or a manufac-
11 turer requests a risk evaluation under subsection
12 (b)(3)(A)(ii), with respect to a chemical substance,
13 such chemical substance shall not be subject to this
14 subsection.".

15 **SEC. 5. RELATIONSHIP TO OTHER FEDERAL LAWS.**

16 Section 9(b) of the Toxic Substances Control Act (15
17 U.S.C. 2608(b)) is amended—

18 (1) by striking "The Administrator shall coordi-
19 nate" and inserting "(1) The Administrator shall co-
20 ordinate"; and

21 (2) by adding at the end the following:

22 "(2) In making a determination under paragraph (1)
23 that it is in the public interest for the Administrator to
24 take an action under this title with respect to a chemical
25 substance or mixture rather than under another law ad-

1 ministered in whole or in part by the Administrator, the
2 Administrator shall consider the relevant risks, and com-
3 pare the estimated costs and efficiencies, of the action to
4 be taken under this title and an action to be taken under
5 such other law to protect against such risk.''.

6 **SEC. 6. DISCLOSURE OF DATA.**

7 Section 14 of the Toxic Substances Control Act (15
8 U.S.C. 2613) is amended—

9 (1) in subsection (a)—

10 (A) by striking ''or'' at the end of para-
11 graph (3);

12 (B) by striking the period at the end of
13 paragraph (4) and inserting a semicolon; and

14 (C) by adding after paragraph (4) the fol-
15 lowing new paragraphs:

16 ''(5) may be disclosed to a State, local, or tribal
17 government official upon request of the official for
18 the purpose of administration or enforcement of a
19 law; and

20 ''(6) shall be disclosed upon request—

21 ''(A) to a health or environmental profes-
22 sional employed by a Federal or State agency in
23 response to an environmental release; or

"(B) to a treating physician or other health care professional to assist in the diagnosis or treatment of 1 or more individuals.";

(2) in subsection (b)(1), in the matter following subparagraph (B)—

(A) by striking "data which discloses" and inserting "data that disclose formulas (including molecular structures) of a chemical substance or mixture,";

(B) by striking "mixture or," and inserting "mixture, or,"; and

(C) by striking "the release of data disclosing";

(3) in subsection (c)—

(A) by striking the subsection heading and inserting "DESIGNATING AND SUBSTANTIATING CONFIDENTIALITY.—";

(B) by amending paragraph (1) to read as follows: "(1)(A) In submitting information under this Act after date of enactment of the TSCA Modernization Act of 2015, a manufacturer, processor, or distributor in commerce shall designate the information which such person believes is entitled to protection under this section, and submit such designated informa-

1 tion separately from other information sub-
2 mitted under this Act. A designation under this
3 subparagraph shall be made in writing and in
4 such manner as the Administrator may pre-
5 scribe, and shall include—
6 "(i) justification for each designation of
7 confidentiality;
8 "(ii) a certification that the information is
9 not otherwise publicly available; and
10 "(iii) separate copies of all submitted infor-
11 mation, with 1 copy containing and 1 copy ex-
12 cluding the information to which the request
13 applies.
14 "(B) Designations made under subparagraph
15 (A) after the date of enactment of the TSCA Mod-
16 ernization Act of 2015 shall expire after 10 years,
17 at which time the information shall be made public
18 unless the manufacturer, processor, or distributor in
19 commerce has reasserted the claim for protection, in
20 writing and in such manner as the Administrator
21 may prescribe, including all of the elements required
22 for the initial submission.
23 "(C) Not later than 60 days prior to making in-
24 formation public under subparagraph (B), the Ad-
25 ministrator shall notify, as appropriate and prac-

1 ticable, the manufacturer, processor, or distributor
2 in commerce who designated the information under
3 subparagraph (A) of the date on which such infor-
4 mation will be made public unless a request for re-
5 newal is granted under subparagraph (B).''; and
6 (C) in paragraph (2)—
7 (i) in subparagraph (A), by inserting
8 '', for a reason other than the expiration of
9 such designation pursuant to paragraph
10 (1)(B),'' before ''proposes to release''; and
11 (ii) in subparagraph (B)(i), by strik-
12 ing ''or (4)'' and inserting ''(4), or (6)'';
13 and
14 (4) by adding at the end the following new sub-
15 sections:
16 ''(f) PROHIBITION.—No person who receives informa-
17 tion as permitted under subsection (a) may use such infor-
18 mation for any purpose not specified in such subsection,
19 nor disclose such information to any person not authorized
20 to receive such information.
21 ''(g) SAVINGS.—Nothing in this section shall be con-
22 strued to affect the applicability of State or Federal rules
23 of evidence or procedure in any judicial proceeding.''.

1 **SEC. 7. EFFECT ON STATE LAW.**

2 (a) IN GENERAL.—Section 18(a) of the Toxic Sub-
3 stances Control Act (15 U.S.C. 2617(a)) is amended—

4 (1) in paragraph (2)(A), by striking "; and"
5 and inserting a semicolon;

6 (2) by striking paragraph (2)(B) and inserting
7 the following:

8 "(B) if the Administrator makes a final deter-
9 mination under section 6(b) that a chemical sub-
10 stance will not present an unreasonable risk of in-
11 jury to health or the environment under the intended
12 condition of use, no State or political subdivision
13 may, after the date of publication of such determina-
14 tion, establish or continue in effect any requirement
15 that applies to such chemical substance under the
16 intended conditions of use considered by the Admin-
17 istrator in the risk evaluation under section 6(b),
18 and is designed to protect against exposure to such
19 chemical substance under the intended conditions of
20 use, unless the requirement of the State or political
21 subdivision—

22 "(i) is adopted under the authority of a
23 Federal law; or

24 "(ii) is adopted to protect air or water
25 quality or is related to waste treatment or
26 waste disposal, except that this clause does not

1 apply to such a requirement if a provision of
2 this title, or an action or determination made
3 by the Administrator under this title, actually
4 conflicts with the requirement; and
5 "(C) if the Administrator imposes a require-
6 ment, through a rule or order under section 5 or 6,
7 that applies to a chemical substance or mixture
8 (other than a requirement described in section
9 6(a)(6)) and is designed to protect against a risk of
10 injury to health or the environment associated with
11 such chemical substance or mixture, no State or po-
12 litical subdivision may, after the effective date of
13 such requirement, establish or continue in effect any
14 requirement that applies to such chemical substance
15 or mixture (including a requirement that applies to
16 an article because the article contains the chemical
17 substance or mixture) and is designed to protect
18 against exposure to the chemical substance or mix-
19 ture either under the intended conditions of use con-
20 sidered by the Administrator in the risk evaluation
21 under section 6(b) or from a use identified in a no-
22 tice received by the Administrator under section
23 5(a), or, in the case of a requirement imposed pur-
24 suant to section 6(i), is designed to protect against
25 a risk of injury considered by the Administrator in

1 imposing such requirement, unless the requirement
2 of the State or political subdivision—
3 "(i) is identical to the requirement imposed
4 by the Administrator;
5 "(ii) is adopted under the authority of a
6 Federal law; or
7 "(iii) is adopted to protect air or water
8 quality or is related to waste treatment or
9 waste disposal, except that this clause does not
10 apply to such a requirement if a provision of
11 this title, or an action or determination made
12 by the Administrator under this title, actually
13 conflicts with the requirement."; and
14 (3) by adding at the end the following:
15 "(3) In the case of an identical requirement described
16 in paragraph (2)(C)(i)—
17 "(A) a State may not assess a penalty for a
18 specific violation for which the Administrator has as-
19 sessed a penalty under section 16; and
20 "(B) if a State has assessed a penalty for a
21 specific violation, the Administrator may not assess
22 a penalty for that violation in an amount that would
23 cause the total of the penalties assessed for the vio-
24 lation by the State and the Administrator combined
25 to exceed the maximum amount that may be as-

1 sessed for that violation by the Administrator under
2 section 16.''.
3 (b) SAVINGS.—Section 18 of the Toxic Substances
4 Control Act (15 U.S.C. 2617) is amended by adding at
5 the end the following:
6 ''(c) SAVINGS.—
7 ''(1) PRIOR STATE ACTIONS.—Nothing in this
8 title, nor any risk evaluation, rule, order, standard,
9 or requirement completed or implemented under this
10 title, shall be construed to preempt or otherwise af-
11 fect the authority of a State or political subdivision
12 of a State to continue to enforce any action taken
13 or requirement that has taken effect—
14 ''(A) before August 1, 2015, under the au-
15 thority of a State law that prohibits or other-
16 wise restricts the manufacturing, processing,
17 distribution in commerce, use, or disposal of a
18 chemical substance; or
19 ''(B) pursuant to a State law that was in
20 effect on August 31, 2003,
21 unless an action or determination made by the Ad-
22 ministrator under this title actually conflicts with
23 the action taken or requirement that has taken ef-
24 fect pursuant to such a State law.

1 "(2) TORT AND CONTRACT LAW.—Nothing in
2 this title, nor any risk evaluation, rule, order, stand-
3 ard, or requirement completed or implemented under
4 this title, shall be construed to preempt or otherwise
5 affect either Federal or State tort law or the law
6 governing the interpretation of contracts of any
7 State, including any remedy for civil relief, whether
8 under statutory or common law, including a remedy
9 for civil damages, and any cause of action for per-
10 sonal injury, wrongful death, property damage, or
11 other injury based on negligence, strict liability,
12 products liability, failure to warn, or any other legal
13 theory relating to tort law.
14 "(3) INTENT OF CONGRESS.—It is not the in-
15 tent of Congress that this title, or rules, regulations,
16 or orders issued pursuant to this title, be interpreted
17 as influencing, in either a plaintiff's or defendant's
18 favor, the disposition of any civil action for damages
19 in a State court, or the authority of any court to
20 make a determination in an adjudicatory proceeding
21 under applicable State law with respect to the ad-
22 missibility of evidence, unless a provision of this title
23 actually conflicts with the State court action.

"(4) APPLICATION.—For purposes of this title, the term 'requirements' does not include civil tort actions for damages under State law.".

(c) EFFECT OF ACTIONS BY ADMINISTRATOR.—Nothing in this Act, or the amendments made by this Act, shall be construed as changing the preemptive effect of an action taken by the Administrator prior to the date of enactment of this Act or under section 6(e).

SEC. 8. ADMINISTRATION OF THE ACT.

Section 26 of the Toxic Substances Control Act (15 U.S.C. 2625) is amended—

(1) in subsection (b)(1)—

(A) by striking "of a reasonable fee";

(B) by inserting "of a fee that is sufficient and not more than reasonably necessary" after "section 4 or 5";

(C) by inserting ", or who requests a risk evaluation under section 6(b)(3)(A)(ii)," before "to defray the cost";

(D) by striking "this Act" and inserting "the provision of this title for which such fee is collected"; and

(E) by striking "Such rules shall not provide for any fee in excess of $2,500 or, in the case of a small business concern, any fee in ex-

1 cess of $100." and inserting "Such rules shall
2 provide for lower fees for small business con-
3 cerns.";
4 (2) by adding at the end of subsection (b) the
5 following:
6 "(3) FUND.—
7 "(A) ESTABLISHMENT.—There is established in
8 the Treasury of the United States a revolving fund,
9 to be known as the TSCA Service Fee Fund (in this
10 paragraph referred to as the 'Fund'), consisting of
11 such amounts as are deposited in the Fund under
12 this paragraph.
13 "(B) COLLECTION AND DEPOSIT OF FEES.—
14 The Administrator shall collect the fees described in
15 paragraph (1) and deposit those fees in the Fund.
16 "(C) CREDITING AND AVAILABILITY OF
17 FEES.—On request by the Administrator, the Sec-
18 retary of the Treasury shall transfer from the Fund
19 to the Administrator amounts appropriated to pay
20 or recover the full costs incurred by the Environ-
21 mental Protection Agency, including contractor
22 costs, in carrying out the provisions of this title for
23 which the fees are collected under paragraph (1).
24 "(D) USE OF FUNDS BY ADMINISTRATOR.—
25 Amounts equivalent to fees collected by the Adminis-

1 trator and deposited in the Fund under this section
2 shall be available without fiscal year limitation to the
3 Administrator, subject to the availability of appro-
4 priations, for use only in administering the provi-
5 sions of this title for which the fees are collected.
6 "(E) ACCOUNTING AND AUDITING.—
7 "(i) ACCOUNTING.—The Administrator
8 shall biennially prepare and submit to the Com-
9 mittee on Environment and Public Works of the
10 Senate and the Committee on Energy and Com-
11 merce of the House of Representatives a report
12 that includes an accounting of the fees paid to
13 the Administrator under this paragraph and
14 amounts disbursed from the Fund for the pe-
15 riod covered by the report, as reflected by fi-
16 nancial statements provided in accordance with
17 sections 3515 and 3521 of title 31, United
18 States Code.
19 "(ii) AUDITING.—
20 "(I) IN GENERAL.—For the purpose
21 of section 3515(c) of title 31, United
22 States Code, the Fund shall be considered
23 a component of a covered executive agency.
24 "(II) COMPONENTS OF AUDIT.—The
25 annual audit required in accordance with

1 sections 3515 and 3521 of title 31, United
2 States Code, of the financial statements of
3 activities carried out using amounts from
4 the Fund shall include an analysis of—
5 "(aa) the fees collected and
6 amounts disbursed under this sub-
7 section;
8 "(bb) the reasonableness of the
9 fees in place as of the date of the
10 audit to meet current and projected
11 costs of administering the provisions
12 of the title for which the fees are col-
13 lected; and
14 "(cc) the number of requests for
15 a risk evaluation made by manufac-
16 turers under section 6(b)(3)(A)(ii).
17 "(III) FEDERAL RESPONSIBILITY.—
18 The Inspector General of the Environ-
19 mental Protection Agency shall conduct
20 the annual audit described in subclause
21 (II) and submit to the Administrator a re-
22 port that describes the findings and any
23 recommendations of the Inspector General
24 resulting from the audit."; and
25 (3) by adding at the end the following:

1 "(h) SCIENTIFIC STANDARDS.—In carrying out sec-
2 tions 4, 5, and 6, to the extent that the Administrator
3 makes a decision based on science, the Administrator shall
4 consider, as applicable—
5 "(1) the extent to which the scientific and tech-
6 nical procedures, measures, methods, or models em-
7 ployed to generate the information are reasonable
8 for and consistent with the use of the information;
9 "(2) the extent to which the information is rel-
10 evant for the Administrator's use in making a deci-
11 sion about a chemical substance or mixture;
12 "(3) the degree of clarity and completeness with
13 which the data, assumptions, methods, quality assur-
14 ance, and analyses employed to generate the infor-
15 mation are documented;
16 "(4) the extent to which the variability and un-
17 certainty in the information, or in the procedures,
18 measures, methods, or models, are evaluated and
19 characterized; and
20 "(5) the extent of independent verification or
21 peer review of the information or of the procedures,
22 measures, methods, or models.
23 "(i) WEIGHT OF SCIENTIFIC EVIDENCE.—The Ad-
24 ministrator shall make decisions under sections 4, 5, and
25 6 based on the weight of the scientific evidence.

1 "(j) AVAILABILITY OF INFORMATION.—Subject to
2 section 14, the Administrator shall make available to the
3 public all notices, determinations, findings, rules, and or-
4 ders of the Administrator under this title.

5 "(k) POLICIES, PROCEDURES, AND GUIDANCE.—

6 "(1) DEVELOPMENT.—Not later than 2 years
7 after the date of enactment of the TSCA Moderniza-
8 tion Act of 2015, the Administrator shall develop
9 any policies, procedures, and guidance the Adminis-
10 trator determines are necessary to carry out the
11 amendments to this Act made by the TSCA Mod-
12 ernization Act of 2015.

13 "(2) REVIEW.—Not later than 5 years after the
14 date of enactment of the TSCA Modernization Act
15 of 2015, and not less frequently than once every 5
16 years thereafter, the Administrator shall—

17 "(A) review the adequacy of the policies,
18 procedures, and guidance developed under para-
19 graph (1), including with respect to animal,
20 nonanimal, and epidemiological test methods
21 and procedures for assessing and determining
22 risk under this title; and

23 "(B) revise such policies, procedures, and
24 guidance as the Administrator determines nec-

1 essary to reflect new scientific developments or
2 understandings.
3 "(l) REPORT TO CONGRESS.—
4 "(1) INITIAL REPORT.—Not later than 6
5 months after the date of enactment of the TSCA
6 Modernization Act of 2015, the Administrator shall
7 submit to the Committees on Energy and Commerce
8 and Appropriations of the House of Representatives
9 and the Committees on Environment and Public
10 Works and Appropriations of the Senate a report
11 containing an estimation of—
12 "(A) the capacity of the Environmental
13 Protection Agency to conduct and publish risk
14 evaluations under subparagraphs (A)(i) and (B)
15 of section 6(b)(3), and the resources necessary
16 to initiate the minimum number of risk evalua-
17 tions required under section 6(b)(7);
18 "(B) the capacity of the Environmental
19 Protection Agency to conduct and publish risk
20 evaluations under section 6(b)(3)(A)(ii), the
21 likely demand for such risk evaluations, and the
22 anticipated schedule for accommodating that
23 demand;
24 "(C) the capacity of the Environmental
25 Protection Agency to promulgate rules under

1 section 6(a) as required based on risk evalua-
2 tions conducted and published under section
3 6(b); and
4 "(D) the actual and anticipated efforts of
5 the Environmental Protection Agency to in-
6 crease the Agency's capacity to conduct and
7 publish risk evaluations under section 6(b).
8 "(2) SUBSEQUENT REPORTS.—The Adminis-
9 trator shall update and resubmit the report de-
10 scribed in paragraph (1) not less frequently than
11 once every 5 years.".
12 **SEC. 9. CONFORMING AMENDMENTS.**
13 (a) SECTION 4.—Section 4 of the Toxic Substances
14 Control Act (15 U.S.C. 2603) is amended—
15 (1) in subsection (b)—
16 (A) in paragraph (1), by striking "rule"
17 each place it appears and inserting "rule, order,
18 or consent agreement";
19 (B) in paragraph (2)(B), by striking
20 "rules" and inserting "rules, orders, and con-
21 sent agreements";
22 (C) in paragraph (3), by striking "rule"
23 each place it appears and inserting "rule, order,
24 or consent agreement"; and
25 (D) in paragraph (4)—

(i) by striking "rule under subsection (a)" each place it appears and inserting "rule, order, or consent agreement under subsection (a)";

(ii) by striking "repeals the rule" each place it appears and inserting "repeals the rule or order or modifies the consent agreement to terminate the requirement"; and

(iii) by striking "repeals the application of the rule" and inserting "repeals or modifies the application of the rule, order, or consent agreement";

(2) in subsection (c)—

(A) in paragraph (1), by striking "rule" and inserting "rule or order";

(B) in paragraph (2)—

(i) in subparagraph (A), by striking "a rule under subsection (a) or for which data is being developed pursuant to such a rule" and inserting "a rule, order, or consent agreement under subsection (a) or for which data is being developed pursuant to such a rule, order, or consent agreement";

(ii) in subparagraph (B), by striking "such rule or which is being developed pursuant to such rule" and inserting "such rule, order, or consent agreement or which is being developed pursuant to such rule, order, or consent agreement"; and

(iii) in the matter following subparagraph (B), by striking "the rule" and inserting "the rule or order";

(C) in paragraph (3)(B)(i), by striking "rule promulgated" and inserting "rule, order, or consent agreement"; and

(D) in paragraph (4)—

(i) by striking "rule promulgated" each place it appears and inserting "rule, order, or consent agreement";

(ii) by striking "such rule" each place it appears and inserting "such rule, order, or consent agreement"; and

(iii) in subparagraph (B), by striking "the rule" and inserting "the rule, order, or consent agreement";

(3) in subsection (d), by striking "rule" and inserting "rule, order, or consent agreement"; and

1 (4) in subsection (g), by striking "rule" and in-
2 serting "rule, order, or consent agreement".
3 (b) SECTION 5.—Section 5 of the Toxic Substances
4 Control Act (15 U.S.C. 2604) is amended—
5 (1) in subsection (b)—
6 (A) in paragraph (1)(A)—
7 (i) by striking "rule promulgated"
8 and inserting "rule, order, or consent
9 agreement"; and
10 (ii) by striking "such rule" and insert-
11 ing "such rule, order, or consent agree-
12 ment";
13 (B) in paragraph (1)(B)—
14 (i) by striking "rule promulgated"
15 and inserting "rule or order"; and
16 (ii) by striking "the date of the sub-
17 mission in accordance with such rule" and
18 inserting "the required date of submis-
19 sion"; and
20 (C) in paragraph (2)(A)(ii), by striking
21 "rule promulgated" and inserting "rule, order,
22 or consent agreement";
23 (2) in subsection (d)(2)(C), by striking "rule"
24 and inserting "rule, order, or consent agreement";
25 and

1 (3) in subsection (h)(4), by striking "para-
2 graphs (2) and (3) of section 6(c)" and inserting
3 "paragraph (2) of section 6(c)".
4 (c) SECTION 6.—Section 6 of the Toxic Substances
5 Control Act (15 U.S.C. 2605) is amended—
6 (1) in subsection (d)(2)(B)—
7 (A) by striking ", provide reasonable op-
8 portunity, in accordance with paragraphs (2)
9 and (3) of subsection (c), for a hearing on such
10 rule," and inserting "in accordance with para-
11 graph (2) of subsection (c),"; and
12 (B) by striking "; and if such a hearing is
13 requested" and all that follows through "or re-
14 voke it." and inserting a period; and
15 (2) in subsection (e)(4), by striking "para-
16 graphs (2), (3), and (4) of subsection (c)" and in-
17 serting "paragraph (2) of subsection (c)".
18 (d) SECTION 7.—Section 7(a)(1) of the Toxic Sub-
19 stances Control Act (15 U.S.C. 2606(a)(1)) is amended,
20 in the matter following subparagraph (C), by striking "a
21 rule under section 4, 5, 6, or title IV or an order under
22 section 5 or title IV" and inserting "a rule under section
23 4, 5, or 6 or title IV, an order under section 4 or 5 or
24 title IV, or a consent agreement under section 4".

1 (e) SECTION 8.—Section 8(a)(3)(A)(ii)(I) of the
2 Toxic Substances Control Act (15 U.S.C.
3 2607(a)(3)(A)(ii)(I)) is amended by striking "or an order
4 in effect under section 5(e)" and inserting ", an order in
5 effect under section 4 or 5(e), or a consent agreement
6 under section 4".

7 (f) SECTION 9.—Section 9(a) of the Toxic Substances
8 Control Act (15 U.S.C. 2608(a)) is amended by striking
9 "section 6" each place it appears and inserting "section
10 6(a)".

11 (g) SECTION 11.—Section 11(b)(2)(E) of the Toxic
12 Substances Control Act (15 U.S.C. 2610(b)(2)(E)) is
13 amended by striking "rule promulgated" and inserting
14 "rule promulgated, order issued, or consent agreement en-
15 tered into".

16 (h) SECTION 15.—Section 15(1) of the Toxic Sub-
17 stances Control Act (15 U.S.C. 2614(1)) is amended by
18 striking "(A) any rule" and all that follows through "or
19 (D)" and inserting "any requirement of this title or any
20 rule promulgated, order issued, or consent agreement en-
21 tered into under this title, or".

22 (i) SECTION 18.—Section 18(a)(2)(A) of the Toxic
23 Substances Control Act (15 U.S.C. 2617(a)(2)(A)) is
24 amended—

1 (1) by striking "rule promulgated" and insert-
2 ing "rule, order, or consent agreement"; and
3 (2) by striking "such rule" each place it ap-
4 pears and inserting "such rule, order, or consent
5 agreement".
6 (j) SECTION 19.—Section 19 of the Toxic Substances
7 Control Act (15 U.S.C. 2618) is amended—
8 (1) in subsection (a)—
9 (A) in paragraph (1)(A)—
10 (i) by striking "(A) Not later than 60
11 days after the date of the promulgation of
12 a rule" and inserting "Not later than 60
13 days after the date on which a rule is pro-
14 mulgated";
15 (ii) by inserting "or the date on which
16 an order is issued under section 4," before
17 "any person";
18 (iii) by striking "such rule" and in-
19 serting "such rule or order"; and
20 (iv) by striking "such a rule" and in-
21 serting "such a rule or order";
22 (B) by striking paragraph (1)(B);
23 (C) in paragraph (2), by striking "the
24 rule" and inserting "the rule or order"; and
25 (D) in paragraph (3)—

(i) in subparagraph (A), by striking "the rule" and inserting "the rule or order";

(ii) in subparagraph (B), by striking "a rule under section 4(a)" and inserting "a rule or order under section 4(a)";

(iii) in subparagraph (C), by striking "such rule" and inserting "such rule or order";

(iv) in subparagraph (D), by striking "such rule" and inserting "such rule or order"; and

(v) in subparagraph (E)—

(I) by striking "to such rule" and inserting "to such rule or order"; and

(II) by striking "the date of the promulgation of such rule" and inserting "the date on which such rule is promulgated or such order is issued";

(2) in subsection (b)—

(A) by striking "review a rule" and inserting "review a rule, or an order under section 4,";

1 (B) by striking "such rule" and inserting
2 "such rule or order";
3 (C) by striking "the rule" and inserting
4 "the rule or order";
5 (D) by striking "new rule" each place it
6 appears and inserting "new rule or order"; and
7 (E) by striking "modified rule" and insert-
8 ing "modified rule or order"; and
9 (3) in subsection (c)—
10 (A) in paragraph (1)—
11 (i) in subparagraph (A)—
12 (I) by striking "a rule" and in-
13 serting "a rule, or an order under sec-
14 tion 4"; and
15 (II) by striking "such rule" and
16 inserting "such rule or order"; and
17 (ii) in subparagraph (B)—
18 (I) in the matter preceding clause
19 (i), by striking "a rule" and inserting
20 "a rule or order";
21 (II) in clause (i)—
22 (aa) by inserting "or an
23 order under section 4," before
24 "the standard for review";

(bb) by striking "such rule" and inserting "such rule or order";

(cc) by striking "the rule" and inserting "the rule or order"; and

(dd) by striking the semicolon and inserting "; and"; and

(III) by striking clause (ii) and redesignating clause (iii) as clause (ii); and

(B) in paragraph (2), by striking "any rule" and inserting "any rule or order".

(k) SECTION 20.—Section 20(a)(1) of the Toxic Substances Control Act (15 U.S.C. 2619(a)(1)) is amended by striking "order issued under section 5" and inserting "order issued under section 4 or 5".

(l) SECTION 21.—Section 21 of the Toxic Substances Control Act (15 U.S.C. 2620) is amended—

(1) in subsection (a), by striking "order under section 5(e) or (6)(b)(2)" and inserting "order under section 4 or 5(e)"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "order under section 5(e), 6(b)(1)(A), or 6(b)(1)(B)"

1 and inserting "order under section 4 or 5(e)";
2 and
3 (B) in paragraph (4)(B)—
4 (i) in the matter preceding clause (i),
5 by striking "order under section 5(e) or
6 6(b)(2)" and inserting "order under sec-
7 tion 4 or 5(e)";
8 (ii) in clause (i), by striking "order
9 under section 5(e)" and inserting "order
10 under section 4 or 5(e)"; and
11 (iii) in clause (ii), by striking "or an
12 order under section 6(b)(2)".
13 (m) SECTION 24.—Section 24(b)(2)(B) of the Toxic
14 Substances Control Act (15 U.S.C. 2623(b)(2)(B)) is
15 amended—
16 (1) by inserting "and" at the end of clause (i);
17 (2) by striking clause (ii); and
18 (3) by redesignating clause (iii) as clause (ii).
19 (n) SECTION 27.—Section 27(a) of the Toxic Sub-
20 stances Control Act (15 U.S.C. 2626(a)) is amended by
21 striking "rules promulgated" and inserting "rules, orders,
22 or consent agreements".
23 (o) SECTION 30.—Section 30(2) of the Toxic Sub-
24 stances Control Act (15 U.S.C. 2629(2)) is amended by

1 striking "rule" and inserting "rule, order, or consent
2 agreement".

Message

From: McCarthy, David [David.McCarthy@mail.house.gov]
Sent: 2/25/2015 3:08:53 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
Subject: RE: Draft Qs for hearing tomorrow

That's fine. And they may well end up as QFRs anyway.

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Wednesday, February 25, 2015 10:08 AM
To: McCarthy, David
Subject: Re: Draft Qs for hearing tomorrow

Thanks. She may not have specific answers so may just have to get back on details and talk at high level.

Sent from my iPhone

On Feb 25, 2015, at 9:47 AM, McCarthy, David <David.McCarthy@mail.house.gov> wrote:

Laura - Here are Qs we offered to Mr. Shimkus. He may or may not use them out loud. Thanks. D

TSCA Work Plan Chemicals:
8. In the budget justification, EPA commits to completing the original 83 Work Plan Chemical Risk Assessments by 2018 - approximately 5 have been completed and another 10 are projected to be completed in 2016. We anticipate that between 5 and 10 will likely be completed in 2015. If those goals are achieved, that still leaves approximately 58 chemical priorities to be completed between 2016 and 2018. We noted that you have allocated $1.8 million in savings identified from other programs to the Work Plan Chemical assessments.
. Is this sufficient to meet the Agency's goals? How and why do you believe this is a sufficient increase in the allocation? How are you anticipating the work on these assessments can be enhanced and completed more efficiently?

Confidential Business Information:
9. On page 1014-1015 of the budget justification, EPA proposes to seek an amendment of TSCA section 26 to assess fees on confidential business information (CBI) claims.
. Can you explain what EPA is contemplating and why? What amount of funding is necessary and why?

Chemical Data Reporting Rule
10. What steps is the Agency taken to enhance the information received from industry in the Chemical Data Reporting effort scheduled in 2016? Will that reporting information give us a better picture of the numbers of chemicals actually in commerce as opposed to the 84,000 listed on the TSCA Inventory?
. How many chemicals does EPA estimate currently in commerce

Message

From: McCarthy, David [David.McCarthy@mail.house.gov]
Sent: 4/3/2015 7:59:42 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
CC: Cohen, Jacqueline [jackie.cohen@mail.house.gov]
Subject: Fw: TSCA fixes
Attachments: 2015_04_xml.pdf

Laura - here's our draft so far. Bracketed items are either ones Jackie and I are still working on, or tweaks Leg Counsel raised today which Jackie's not had a chance to respond on. Try my cell if you have any questions. 202-731-1518. Thanks. And thanks, Jackie. Dave

From: Lin, Kakuti
Sent: Friday, April 3, 2015 1:26 PM
To: McCarthy, David
Cc: Brown, Tim D
Subject: RE: TSCA fixes

Hi Dave,
Here's a revised draft, based on our conversations.
The bracketed language on page 12, lines 16-17, seems superfluous. Can we strike it?
I left a couple of other questions in the draft; let me know if you'd like me to pull them out.
Best,
-k/Tim

From: McCarthy, David
Sent: Thursday, April 02, 2015 4:42 PM
To: Brown, Tim D; Lin, Kakuti
Cc: Cohen, Jacqueline
Subject: FW: TSCA fixes
Tim and Kakuti,
Here some additional answers and changes>
First, please do include in the draft conforming changes (e.g., adding "rules, orders, etc. where needed) but not other technical changes to underlying law (e.g., do not include repeal of studies or changing HEW to HHS). We will also not have changes to section 5.
Bill changes:
In the definition of potentially exposed subpopulation we want to strike "who are at greater risk" and insert "who, due to either greater susceptibility or greater exposure, are at greater risk"
In Sec. 6(b)(3)(B) strike "analyze" and insert "take into account, where relevant,"
In 6(b)(3) where you have "not including cost and other non-risk factors" insert "not including cost and other factors not directly related to human health or the environment" .
Strike TSCA s sec. 6(c) (1)(D) and insert "(D) shall exempt replacement parts for articles manufactured prior to promulgation of the rule unless the Administrator finds such replacement parts contribute significantly to the identified risk."
Strike subsection (c)(1)(E) and insert "(E) In selecting among options to address identified risk select options or restrictions on articles only to the extend needed to mitigate the identified risk."
TSCA section 9(b)
Please include the whole section from the March 20 draft but place brackets at the beginning and end
In section 14 language you have, but which is not in our draft,
In subsection (a) replace what I sent you with

"(5) may be disclosed to a state, local, or tribal government official upon request of the government official for the purpose of administration or enforcement of a law; and
(6) shall be disclosed to a health or environmental professional employed by a Federal or State agency in response to an environmental release; or to a treating physician or other health care professional to assist in the diagnosis or treatment of 1 or more individuals."
In subsection (c)(1) new language change "claiming" to "designating" and "claim" to "designation"

Pre-emption TSCA section 18

In the language you sent us please delete "or mixtures" wherever it appears and leave the brackets surrounding (B), but delete the brackets surrounding (C) and leave (C) in.
Also add "Nothing in this Title shall be construed to affect either the tort law or the law governing the interpretation of contracts of any State.

To add new language on Fees, In old TSCA sec. 26 (b):

insert "just and" before "reasonable" ;
strike "4 or 5" and insert "4,5, or 6(b)(2)(B)"; and
strike "such rule shall not provide for any fee in excess of $2,500 or, in the case of a small business concern, any fee in excess of $100." and insert "such rule shall provide lower fees for small business concerns."

Then add (where appropriate to section 26
"( ) Public Notice and Comment for Fees Related to Section 6(b)(2)(B) - the Administrator shall, subject to notice and comment, issue guidance regarding how the Administrator will evaluate, devise, and assess fees on manufacturers requesting a risk evaluation under section 6(b)(2)(B). the Administrator shall take notice and comment on any major modifications to such guidance."
In new TSCA section 26(j) strike "and all information submitted or issued under this Act"
Thanks so much. And thanks, Jackie. Dave

[DISCUSSION DRAFT]

114TH CONGRESS
1ST SESSION

H. R. _____

To modernize the Toxic Substances Control Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To modernize the Toxic Substances Control Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "TSCA Modernization Act of 2015".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Testing of chemical substances and mixtures.
Sec. 4. Regulation of hazardous chemical substances and mixtures.
Sec. 5. Reporting and retention of information.

Sec. 6. Relationship to other Federal laws.
Sec. 7. Disclosure of data.
Sec. 8. Effect on State law.
Sec. 9. Administration of the Act.
Sec. 10. Conforming amendments.

SEC. 2. DEFINITIONS.

Section 3 of the Toxic Substances Control Act (15 U.S.C. 2602) is amended—

(1) by redesignating paragraphs (7) through (14) as paragraphs (8) through (10) and (12) through (16), respectively;

(2) by inserting after paragraph (6) the following:

"(7) The term 'intended conditions of use' means the circumstances under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, and disposed of.";

(3) by inserting after paragraph (10), as so redesignated, the following:

"(11) The term 'potentially exposed subpopulation' means a group of individuals within the general population who, due to either greater susceptibility or greater exposure, are at greater risk than the general population of adverse health effects from exposure to a chemical substance under the intended conditions of use."; and

(4) by adding at the end the following:

"(17) The term 'weight of the scientific evidence' means the results of an approach that gives appropriate weight to all relevant information in an integrative and objective manner that—

"(A) takes into account the kinds of information available, the quality and quantity of the information, and the strengths and limitations associated with each type of information; and

"(B) explains the extent to which the various types of evidence reinforce each other.".

SEC. 3. TESTING OF CHEMICAL SUBSTANCES AND MIXTURES.

Section 4 of the Toxic Substances Control Act (15 U.S.C. 2603) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A)(iii), by striking "; or" and inserting a semicolon;

(B) in subparagraph (B)(iii), by striking "; and" and inserting "; or"; and

(C) by adding at the end the following:

"(C) testing of a chemical substance is necessary to conduct a risk evaluation under section 6(b); and"; and

(2) in the matter following subsection (a)(2), by inserting ", order, or consent agreement" after "by rule".

SEC. 4. REGULATION OF HAZARDOUS CHEMICAL SUBSTANCES AND MIXTURES.

(a) SCOPE OF REGULATION.—Section 6(a) of the Toxic Substances Control Act (15 U.S.C. 2605(a)) is amended—

(1) by striking "finds that there is a reasonable basis to conclude" and inserting "determines under subsection (b)";

[(2) by inserting ", consistent with section 9," after "Administrator shall by rule"; and **[***depending on what happens with the section 9(b) amendment, still want this?***]]**

(3) by striking "using the least burdensome requirements".

(b) RISK EVALUATIONS.—Section 6(b) of the Toxic Substances Control Act (15 U.S.C. 2605(b)) is amended to read as follows:

"(b) RISK EVALUATIONS.—

"(1) IN GENERAL.—The Administrator shall conduct risk evaluations pursuant to this subsection to determine whether or not a chemical substance presents or will present, in the absence of require-

1 ments under subsection (a), an unreasonable risk of
2 injury to health or the environment as described in
3 subsection (a).

4 "(2) STANDARD FOR APPLYING REQUIRE-
5 MENTS.—The Administrator shall apply require-
6 ments with respect to a chemical substance through
7 a rule under subsection (a) only if the Administrator
8 determines through a risk evaluation under this sub-
9 section that the chemical substance presents or will
10 present, in the absence of such requirements, an un-
11 reasonable risk of injury to health or the environ-
12 ment as described in subsection (a).

13 "(3) STANDARD FOR CONDUCTING RISK EVAL-
14 UATION.—

15 "(A) IN GENERAL.—The Administrator
16 shall conduct and publish the results of a risk
17 evaluation under this subsection for a chemical
18 substance if—

19 "(i) the Administrator finds a reason-
20 able basis for concluding that the combina-
21 tion of hazard from and exposure to the
22 chemical substance under any of its in-
23 tended conditions of use has the potential
24 to be high enough to present an unreason-

able risk of injury to health or the environment; or

"(ii) the manufacturer of a chemical substance requests such a risk evaluation.

"(B) PUBLICATION OF FINDINGS AND REQUESTS.—Before conducting a risk evaluation pursuant to subparagraph (A), the Administrator shall publish in the Federal Register the applicable finding made under subparagraph (A)(i) or request made under subparagraph (A)(ii).

"(4) REQUIREMENTS.—In conducting a risk evaluation under this subsection, the Administrator shall—

"(A) integrate and assess information on hazards and exposures for the specific uses of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on potentially exposed subpopulations, but not including information on cost and other factors not directly related to health or the environment;

"(B) take into account, where relevant, the likely duration, intensity, frequency, and num-

1 ber of exposures under the intended conditions
2 of use of the chemical substance;
3 "(C) describe the weight of the scientific
4 evidence for identified hazard and exposure;
5 "(D) consider whether the weight of the
6 scientific evidence supports the identification of
7 threshold doses of the chemical substance below
8 which no adverse effects can be expected to
9 occur;
10 "(E) make a determination regarding the
11 risk of each of the intended conditions of use of
12 the chemical substance; and
13 "(F) in the case of a risk evaluation re-
14 quested by a manufacturer under paragraph
15 (3)(A)(ii), ensure that the costs to the Environ-
16 mental Protection Agency, including contractor
17 costs, of conducting the risk evaluation are paid
18 for by the manufacturer.
19 "(5) DEADLINES.—
20 "(A) RISK EVALUATIONS.—The Adminis-
21 trator shall conduct and publish a risk evalua-
22 tion under this subsection for a chemical sub-
23 stance not later than—

"(i) 3 years after the date on which the Administrator publishes a finding under paragraph (3)(A)(i); or

"(ii) 180 days after the date on which a manufacturer requests the risk evaluation under paragraph (3)(A)(ii).

"(B) SUBSECTION (a) RULES.—If, based on a risk evaluation conducted under this subsection, the Administrator determines that a chemical substance presents or will present, in the absence of a rule under subsection (a), an unreasonable risk of injury to health or the environment as described in subsection (a), the Administrator shall—

"(i) propose a rule under subsection (a) for the chemical substance not later than 90 days after the date on which the risk evaluation regarding such chemical substance is published under subparagraph (A); and

"(ii) publish in the Federal Register a final rule not later than 180 days after such publication date.

"(C) EXTENSION.—If the Administrator determines that additional information is nec-

1 essary to make a risk evaluation determination
2 under this subsection, the Administrator may
3 extend deadlines under subparagraph (B) ac-
4 cordingly, except that the deadline under sub-
5 paragraph (B)(i) may not be extended to a date
6 that is later than—
7 "(i) 90 days after receipt of such ad-
8 ditional information; or
9 "(ii) 2 years after the original dead-
10 line.
11 "(6) DETERMINATIONS OF NO UNREASONABLE
12 RISK.—
13 "(A) NOTICE AND COMMENT.—Not later
14 than 30 days before publishing a final deter-
15 mination under this subsection that a chemical
16 substance will not present an unreasonable risk
17 of injury to health or the environment under an
18 intended condition of use, the Administrator
19 shall make a preliminary determination to such
20 effect and provide public notice of, and an op-
21 portunity for comment regarding, such prelimi-
22 nary determination.
23 "(B) POTENTIALLY EXPOSED SUBPOPULA-
24 TIONS.—The Administrator shall not make a
25 determination under this subsection that a

1 chemical substance will not present an unrea-
2 sonable risk of injury to health or the environ-
3 ment under an intended condition of use if the
4 Administrator determines that the chemical
5 substance, under the intended condition of use,
6 poses an unreasonable risk of injury to a poten-
7 tially exposed subpopulation.
8 "(C) FINAL ACTION.—A final determina-
9 tion under this subsection that a chemical sub-
10 stance will not present an unreasonable risk of
11 injury to health or the environment under an
12 intended condition of use shall be considered a
13 final agency action.".
14 (c) PROMULGATION OF SUBSECTION (a) RULES.—
15 Section 6(c) of the Toxic Substances Control Act (15
16 U.S.C. 2605(c)) is amended—
17 (1) by amending paragraph (1) to read as fol-
18 lows:
19 "(1) REQUIREMENTS FOR RULE.—In promul-
20 gating any rule under subsection (a) with respect to
21 a chemical substance or mixture, the Administrator
22 shall—
23 "(A) consider and publish a statement with
24 respect to—

"(i) the effects of the chemical substance or mixture on health and the magnitude of the exposure of human beings to the chemical substance or mixture;

"(ii) the effects of the chemical substance or mixture on the environment and the magnitude of the exposure of the environment to the chemical substance or mixture;

"(iii) the benefits of the chemical substance or mixture for various uses; and

"(iv) the reasonably ascertainable economic consequences of the rule, including consideration of the likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health;

[**"(B) not impose requirements under the rule unless the Administrator determines, consistent with the information published under subparagraph (A), that the requirements are cost-effective;]**

"(C) based on the information published under subparagraph (A), in deciding whether to prohibit or restrict in a manner that substan-

1 tially prevents a specific use of a chemical sub-
2 stance or mixture and in setting an appropriate
3 transition period for such action, determine
4 whether technically and economically feasible al-
5 ternatives that benefit health or the environ-
6 ment, compared to the use so proposed to be
7 prohibited or restricted, will be reasonably
8 available as a substitute when the proposed pro-
9 hibition or restriction takes effect;
10 "(D) exempt replacement parts for articles
11 that are first manufactured prior to the date of
12 publication in the Federal Register of the rule
13 unless the Administrator finds such replace-
14 ment parts contribute significantly to the iden-
15 tified risk; and
16 "(E) [in selecting among options to ad-
17 dress an identified risk,] apply prohibitions or
18 restrictions to articles on the basis of a chem-
19 ical substance or mixture contained in the arti-
20 cle only to the extent necessary to mitigate the
21 identified risk.";
22 (2) in paragraph (2)—
23 (A) by inserting "PROCEDURES.—" before
24 "When prescribing a rule";

(B) by striking "provide an opportunity for an informal hearing in accordance with paragraph (3); (D)";

(C) by striking ", and (E)" and inserting "; and (D)"; and

(D) by moving such paragraph 2 ems to the right;

(3) by striking paragraphs (3) and (4) and redesignating paragraph (5) as paragraph (3); and

(4) in paragraph (3) (as so redesignated)—

(A) by striking "Paragraphs (1), (2), (3), and (4)" and inserting "APPLICATION.—Paragraphs (1) and (2)"; and

(B) by moving such paragraph 2 ems to the right.

(d) EFFECTIVE DATE.—Section 6(d)(2)(B) of the Toxic Substances Control Act (15 U.S.C. 2605(d)(2)(B)) is amended by adding at the end the following: "Any rule promulgated under subsection (a) shall provide for a reasonable transition period.".

SEC. 5. REPORTING AND RETENTION OF INFORMATION.

Section 8(b) of the Toxic Substances Control Act (15 U.S.C. 2607(b)) is amended by adding at the end the following:

1 "(3) The Administrator shall periodically collect in-
2 formation under this subsection as necessary to remove
3 from the list any chemical substance that is no longer
4 manufactured or processed in the United States, and re-
5 vise the list accordingly.".

6 **[SEC. 6. RELATIONSHIP TO OTHER FEDERAL LAWS.**

7 Section 9(b) of the Toxic Substances Control Act (15
8 U.S.C. 2608(b)) is amended—]

9 [(1) by striking "The Administrator shall co-
10 ordinate" and inserting "(1) The Administrator
11 shall coordinate"; and]

12 [(2) by adding at the end the following:]

13 ["(2) In making a determination under paragraph
14 (1) that it is in the public interest for the Administrator
15 to take an action under this title rather than under an-
16 other law administered in whole or in part by the Adminis-
17 trator, the Administrator shall consider—]

18 ["(A) all relevant aspects of the risk to health
19 or the environment associated with the chemical sub-
20 stance or mixture, as determined by the Adminis-
21 trator;]

22 ["(B) a comparison of the estimated costs of
23 complying with the action to be taken under this
24 title and an action to be taken under such other law;
25 and]

1 [“(C) the relative efficiencies of the action to
2 be taken under this title and an action to be taken
3 under such other law to protect against such risk.”.]

4 **SEC. 7. DISCLOSURE OF DATA.**

5 Section 14 of the Toxic Substances Control Act (15
6 U.S.C. 2613) is amended—

7 (1) in subsection (a)—

8 (A) by striking “or” at the end of para-
9 graph (3);

10 (B) by striking the period at the end of
11 paragraph (4) and inserting a semicolon; and

12 (C) by adding after paragraph (4) the fol-
13 lowing new paragraphs:

14 “(5) may be disclosed to a State, local, or tribal
15 government official upon request of the government
16 for the purpose of administration or enforcement of
17 a law; and

18 “(6) shall be disclosed—

19 “(A) to a health or environmental profes-
20 sional employed by a Federal or State agency in
21 response to an environmental release; or

22 “(B) to a treating physician or other
23 health care professional to assist in the diag-
24 nosis or treatment of 1 or more individuals.”;

1 (2) by amending subsection (c)(1) to read as
2 follows:
3 "(c) DESIGNATING AND SUBSTANTIATING CON-
4 FIDENTIALITY.—(1)(A) In submitting information under
5 this Act after date of enactment of the TSCA Moderniza-
6 tion Act of 2015, a manufacturer, processor, or distributor
7 in commerce shall designate the information which such
8 person believes is entitled to protection under this section,
9 and submit such designated information separately from
10 other information submitted under this Act. A designation
11 under this subparagraph shall be made in writing and in
12 such manner as the Administrator may prescribe, and
13 shall include—
14 "(i) justification for each designation of
15 confidentiality;
16 "(ii) a certification that the information is
17 not otherwise publicly available; and
18 "(iii) separate copies of all submitted infor-
19 mation, with 1 copy containing and 1 copy ex-
20 cluding the information to which the request
21 applies.
22 "(B) Designations made under subparagraph (A)
23 after the date of enactment of the TSCA Modernization
24 Act of 2015 shall expire after 10 years, at which time the
25 information shall be made public unless the manufacturer,

1 processor, or distributor in commerce has submitted a re-
2 quest for renewal, made in writing and in such manner
3 as the Administrator may prescribe, including all of the
4 elements required for the initial submission."; and
5 (3) by adding at the end the following new sub-
6 section:
7 "(f) PROHIBITION.—No person who receives informa-
8 tion as permitted under subsection (a) or (b) may use such
9 information for any purpose not specified in such sub-
10 section, nor disclose such information to any person not
11 authorized to receive such information.".
12 **SEC. 8. EFFECT ON STATE LAW.**
13 Section 18(a)(2) of the Toxic Substances Control Act
14 (15 U.S.C. 2617(a)(2)) is amended—
15 (1) in subparagraph (A), by striking "; and"
16 and inserting a semicolon; and
17 (2) by striking subparagraph (B) and inserting
18 the following:
19 ["(B) no State or political subdivision may,
20 after the date on which the Administrator publishes
21 in the Federal Register a finding or request under
22 section 6(b)(3)(B) with respect to a chemical sub-
23 stance under an intended condition of use, establish
24 a requirement that applies to such chemical sub-
25 stance under that intended condition of use and is

1 designed to protect against exposure to such chem-
2 ical substance under that intended condition of use;]
3 "(C) if the Administrator makes a final deter-
4 mination under section 6(b) that a chemical sub-
5 stance will not present an unreasonable risk of in-
6 jury to health or the environment under an intended
7 condition of use, no State or political subdivision
8 may, after the date of publication of such determina-
9 tion, establish or continue in effect any requirement
10 that applies to such chemical substance under that
11 intended condition of use and is designed to protect
12 against exposure to such chemical substance under
13 that intended condition of use; and
14 "(D) if the Administrator imposes a require-
15 ment, through a rule or order under section 5 or 6,
16 that applies to a chemical substance or mixture
17 (other than a requirement described in section
18 6(a)(5)), no State or political subdivision may, after
19 the effective date of such requirement, establish or
20 continue in effect any requirement that applies to
21 such chemical substance or mixture (including a re-
22 quirement that applies to an article because the arti-
23 cle contains the chemical substance or mixture) and
24 is designed to protect against exposure to the chem-
25 ical substance or mixture, unless the requirement of

1 the State or political subdivision is adopted under
2 the authority of a Federal law.".

3 **SEC. 9. ADMINISTRATION OF THE ACT.**

4 Section 26 of the Toxic Substances Control Act (15
5 U.S.C. 2625) is amended—

6 (1) in subsection (b)(1)—

7 (A) by inserting ", or who requests a risk
8 evaluation under section 6(b)(3)(A)(ii)," before
9 "to defray the cost"; and

10 (B) by striking "Such rules shall not pro-
11 vide for any fee in excess of $2,500 or, in the
12 case of a small business concern, any fee in ex-
13 cess of $100." and inserting "Such rules shall
14 provide for lower fees for small business con-
15 cerns."; and

16 (2) by adding at the end the following:

17 "(h) SCIENTIFIC STANDARDS.—In evaluating infor-
18 mation from studies and tests, and in carrying out sec-
19 tions 4, 5, and 6 to the extent that the Administrator
20 makes a decision based on science, the Administrator shall
21 consider, among other applicable factors—

22 "(1) the extent to which the scientific and tech-
23 nical procedures, measures, methods, or models em-
24 ployed to generate the information are reasonable

1 for and consistent with the intended use of the infor-
2 mation;
3 "(2) the extent to which the information is rel-
4 evant for the Administrator's intended use;
5 "(3) the degree of clarity and completeness with
6 which the data, assumptions, methods, quality assur-
7 ance, sponsoring organizations, and analyses em-
8 ployed to generate the information are documented;
9 "(4) the extent to which the variability and un-
10 certainty in the information, or in the procedures,
11 measures, methods, or models, are evaluated and
12 characterized; and
13 "(5) the extent of independent verification, vali-
14 dation, and peer review of the information or of the
15 procedures, measures, methods, or models.
16 "(i) WEIGHT OF SCIENTIFIC EVIDENCE.—The Ad-
17 ministrator shall make decisions under sections 4, 5, and
18 6 based on the weight of the scientific evidence.
19 "(j) AVAILABILITY OF INFORMATION.—Subject to
20 section 14, the Administrator shall make available to the
21 public all notices, determinations, findings, rules, and or-
22 ders of the Administrator under this title.
23 "(k) POLICIES, PROCEDURES, AND GUIDANCE.—
24 "(1) DEVELOPMENT.—Not later than 2 years
25 after the date of enactment of the TSCA Moderniza-

1 tion Act of 2015, the Administrator shall develop
2 any policies, procedures, and guidance the Adminis-
3 trator determines are necessary to carry out the
4 amendments to this Act made by the TSCA Mod-
5 ernization Act of 2015.

6 "(2) REVIEW.—Not later than 5 years after the
7 date of enactment of the TSCA Modernization Act
8 of 2015, and not less frequently than once every 5
9 years thereafter, the Administrator shall—

10 "(A) review the adequacy of the policies,
11 procedures, and guidance developed under para-
12 graph (1), including with respect to animal,
13 nonanimal, and epidemiological test methods
14 and procedures for assessing and determining
15 risk under this title; and

16 "(B) revise such policies, procedures, and
17 guidance as the Administrator determines nec-
18 essary to reflect new scientific developments or
19 understandings.

20 "(l) SAVINGS.—Nothing in this title shall be con-
21 strued to affect either the tort law or the law governing
22 the interpretation of contracts of any State.".

23 **SEC. 10. CONFORMING AMENDMENTS.**

24 (a) SECTION 4.—Section 4 of the Toxic Substances
25 Control Act (15 U.S.C. 2603) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "rule" each place it appears and inserting "rule, order, or consent agreement";

(B) in paragraph (2)(B), by striking "rules" and inserting "rules, orders, and consent agreements";

(C) in paragraph (3), by striking "rule" each place it appears and inserting "rule, order, or consent agreement"; and

(D) in paragraph (4)—

(i) by striking "rule under subsection (a)" each place it appears and inserting "rule, order, or consent agreement under subsection (a)";

(ii) by striking "repeals the rule" each place it appears and inserting "repeals the rule or order or modifies the consent agreement to terminate the requirement"; and

(iii) by striking "repeals the application of the rule" and inserting "repeals or modifies the application of the rule, order, or consent agreement";

(2) in subsection (c)—

1 (A) in paragraph (1), by striking "rule"
2 and inserting "rule or order";
3 (B) in paragraph (2)—
4 (i) in subparagraph (A), by striking
5 "a rule under subsection (a) or for which
6 data is being developed pursuant to such a
7 rule" and inserting "a rule, order, or con-
8 sent agreement under subsection (a) or for
9 which data is being developed pursuant to
10 such a rule, order, or consent agreement";
11 (ii) in subparagraph (B), by striking
12 "such rule or which is being developed pur-
13 suant to such rule" and inserting "such
14 rule, order, or consent agreement or which
15 is being developed pursuant to such rule,
16 order, or consent agreement"; and
17 (iii) in the matter following subpara-
18 graph (B), by striking "the rule" and in-
19 serting "the rule or order";
20 (C) in paragraph (3)(B)(i), by striking
21 "rule promulgated" and inserting "rule, order,
22 or consent agreement"; and
23 (D) in paragraph (4)—

(i) by striking "rule promulgated" each place it appears and inserting "rule, order, or consent agreement";

(ii) by striking "such rule" each place it appears and inserting "such rule, order, or consent agreement"; and

(iii) in subparagraph (B), by striking "the rule" and inserting "the rule, order, or consent agreement";

(3) in subsection (d), by striking "rule" and inserting "rule, order, or consent agreement"; and

(4) in subsection (g), by striking "rule" and inserting "rule, order, or consent agreement".

(b) SECTION 5.—Section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A)—

(i) by striking "rule promulgated" and inserting "rule, order, or consent agreement"; and

(ii) by striking "such rule" and inserting "such rule, order, or consent agreement";

(B) in paragraph (1)(B)—

(i) by striking "rule promulgated" and inserting "rule or order"; and

(ii) by striking "the date of the submission in accordance with such rule" and inserting "the required date of submission"; and

(C) in paragraph (2)(A)(ii), by striking "rule promulgated" and inserting "rule, order, or consent agreement"; and

(2) in subsection (d)(2)(C), by striking "rule" and inserting "rule, order, or consent agreement".

(c) SECTION 7.—Section 7 of the Toxic Substances Control Act (15 U.S.C. 2606) is amended—

(1) in subsection (a)(1), in the matter following subparagraph (C), by striking "a rule under section 4, 5, 6, or title IV or an order under section 5 or title IV" and inserting "a rule under section 4, 5, or 6 or title IV, an order under section 4 or 5 or title IV, or a consent agreement under section 4"; and

[(2) in subsection (f), by striking "unreasonable" and inserting "significant". **[***is this still a conforming amendment?***]]**

(d) SECTION 8.—Section 8(a)(3)(A)(ii)(I) of the Toxic Substances Control Act (15 U.S.C.

1 2607(a)(3)(A)(ii)(I)) is amended by striking "or an order
2 in effect under section 5(e)" and inserting ", an order in
3 effect under section 4 or 5(e), or a consent agreement
4 under section 4".

5 (e) SECTION 9.—Section 9(a) of the Toxic Sub-
6 stances Control Act (15 U.S.C. 2608(a)) is amended by
7 striking "section 6" each place it appears and inserting
8 "section 6(a)".

9 (f) SECTION 11.—Section 11(b)(2)(E) of the Toxic
10 Substances Control Act (15 U.S.C. 2610(b)(2)(E)) is
11 amended by striking "rule promulgated" and inserting
12 "rule promulgated, order issued, or consent agreement en-
13 tered into".

14 (g) SECTION 15.—Section 15(1) (15 U.S.C. 2614(1))
15 is amended by striking "(A) any rule" and all that follows
16 through "or (D)" and inserting "any requirement of this
17 title or any rule promulgated, order issued, or consent
18 agreement entered into under this title, or".

19 (h) SECTION 18.—Section 18(a)(2)(A) of the Toxic
20 Substances Control Act (15 U.S.C. 2617(a)(2)(A)) is
21 amended—

22 (1) by striking "rule promulgated" and insert-
23 ing "rule, order, or consent agreement"; and

1 (2) by striking "such rule" each place it ap-
2 pears and inserting "such rule, order, or consent
3 agreement".
4 (i) SECTION 19.—Section 19 of the Toxic Substances
5 Control Act (15 U.S.C. 2618) is amended—
6 (1) in subsection (a)—
7 (A) in paragraph (1)(A)—
8 (i) by striking "[(A) Not later than
9 60 days after] the date of the promulga-
10 tion of a rule" and inserting "[Not later
11 than 60 days after] the date on which a
12 rule is promulgated";
13 (ii) by inserting "or the date on which
14 an order is issued under section 4," before
15 "any person";
16 (iii) by striking "such rule" and in-
17 serting "such rule or order"; and
18 (iv) by striking "such a rule" and in-
19 serting "such a rule or order";
20 [(B) by striking paragraph (1)(B); [*this*
21 *needs to come out because the old section 6(b)(1)*
22 *doesn't exist anymore. nothing to replace it with,*
23 *right? not sure what it did in any case, seems*
24 *to have at least a couple of typos in it*]]

1 (C) in paragraph (2), by striking "the
2 rule" and inserting "the rule or order"; and
3 (D) in paragraph (3)—
4 (i) in subparagraph (A), by striking
5 "the rule" and inserting "the rule or
6 order";
7 (ii) in subparagraph (B), by striking
8 "a rule under section 4(a)" and inserting
9 "a rule or order under section 4(a)";
10 (iii) in subparagraph (C), by striking
11 "such rule" and inserting "such rule or
12 order";
13 (iv) in subparagraph (D), by striking
14 "such rule" and inserting "such rule or
15 order"; and
16 (v) in subparagraph (E)—
17 (I) by striking "such rule" and
18 inserting "such rule or order"; and
19 (II) by striking "the date of the
20 promulgation of such rule" and in-
21 serting "the date on which such rule
22 is promulgated or such order is
23 issued";
24 (2) in subsection (b)—

1 (A) by striking "review a rule" and insert-
2 ing "review a rule, or an order under section
3 4,";
4 (B) by striking "such rule" and inserting
5 "such rule or order";
6 (C) by striking "the rule" and inserting
7 "the rule or order";
8 (D) by striking "new rule" each place it
9 appears and inserting "new rule or order"; and
10 (E) by striking "modified rule" and insert-
11 ing "modified rule or order"; and
12 (3) in subsection (c)—
13 (A) in paragraph (1)—
14 (i) in subparagraph (A)—
15 (I) by striking "a rule" and in-
16 serting "a rule, or an order under sec-
17 tion 4"; and
18 (II) by striking "such rule" and
19 inserting "such rule or order"; and
20 (ii) in subparagraph (B)—
21 (I) in the matter preceding clause
22 (i), by striking "a rule" and inserting
23 "a rule or order"; and
24 (II) in clause (i)—

(aa) by inserting "or an order under section 4," before "the standard for review";

(bb) by striking "such rule" inserting "such rule or order"; and

(cc) by striking "the rule" and inserting "the rule or order"; and

(B) in paragraph (2), by striking "any rule" and inserting "any rule or order".

(j) SECTION 20.—Section 20(a)(1) of the Toxic Substances Control Act (15 U.S.C. 2619(a)(1)) is amended by striking "order issued under section 5" and inserting "order issued under section 4 or 5".

(k) SECTION 21.—Section 21 of the Toxic Substances Control Act (15 U.S.C. 2620) is amended—

(1) in subsection (a), by striking "order under section 5(e) or (6)(b)(2)" and inserting "order under section 4 or 5(e)"; and

(2) in subsection (b)—

(A) in paragraph (1), by striking "order under section 5(e), 6(b)(1)(A), or 6(b)(1)(B)" and inserting "order under section 4 or 5(e)";

(B) in paragraph (4)(B)—

(i) in the matter preceding clause (i), by striking "order under section 5(e) or 6(b)(2)" and inserting "order under section 4 or 5(e)";

(ii) in clause (i), by striking "order under section 5(e)" and inserting "order under section 4 or 5(e)"; and

(iii) in clause (ii), by striking "or an order under section 6(b)(2)".

(l) SECTION 24.—Section 24(b)(2)(B) of the Toxic Substances Control Act (15 U.S.C. 2623(b)(2)(B)) is amended—

(1) by inserting "and" at the end of clause (i);

(2) by striking clause (ii); and

(3) by redesignating clause (iii) as clause (ii).

(m) SECTION 27.—Section 27(a) of the Toxic Substances Control Act (15 U.S.C. 2626(a)) is amended by striking "rules promulgated" and inserting "rules, orders, or consent agreements".

(n) SECTION 30.—Section 30(2) of the Toxic Substances Control Act (15 U.S.C. 2629(2)) is amended by striking "rule" and inserting "rule, order, or consent agreement".

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<section
id="HFF1FC18675D14CABA30461AE804BE9EC"><enum>2.</enum><header>Definitions</header><text
display-inline="no-display-inline">Section 3 of the Toxic Substances Control Act (15
U.S.C. 2602) is amendedâ€"</text>
<paragraph id="H3515061592714EACA22A8C50ED222EBE"><enum>(1)</enum><text>by
redesignating paragraphs (7) through (14) as paragraphs (8) through (10) and (12)
through (16), respectively;</text></paragraph>
<paragraph id="H69968D4029EB49F3BFE5E0D71FA643B7"><enum>(2)</enum><text>by inserting
after paragraph (6) the following:</text>
<quoted-block style="OLC" id="HB934055CFB014E16BA91F0EC96418496" display-inline="no-
display-inline">
<paragraph id="H29FAF60B847D47D2B000FDD6DE9084AE" indent="up1"><enum>(7)</enum><text
display-inline="yes-display-inline">The term <term>intended conditions of use</term>
means the circumstances under which a chemical substance is intended, known, or
reasonably foreseen to be manufactured, processed, distributed in commerce, used, and
disposed of.</text></paragraph><after-quoted-block>;</after-quoted-block></quoted-
block></paragraph>
<paragraph id="HDFAF78DEC8324FA2B64AD5962CBFF9B5"><enum>(3)</enum><text>by inserting
after paragraph (10), as so redesignated, the following:</text>
<quoted-block style="OLC" id="HA7D5790EBE9B420AB2176898B9CB07ED" display-inline="no-
display-inline">
<paragraph id="H85971536FB6D4C228A030997DE7434B1" indent="up1"><enum>(11)</enum><text
display-inline="yes-display-inline">The term <term>potentially exposed
subpopulation</term> means a group of individuals within the general population who,
due to either greater susceptibility or greater exposure, are at greater risk than the
general population of adverse health effects from exposure to a chemical substance
under the intended conditions of use.</text></paragraph><after-quoted-block>;
and</after-quoted-block></quoted-block></paragraph>
<paragraph id="HA227ADABCF624E11BEF43875A5D599DE"><enum>(4)</enum><text>by adding at

the end the following:</text>
<quoted-block style="OLC" id="H5D71CE71E2914AD59DC8150C755E2D58" display-inline="no-display-inline">
<paragraph id="HCD3DA95084754311A0BF080786DE1036" indent="up1"><enum>(17)</enum><text display-inline="yes-display-inline">The term <term>weight of the scientific evidence</term> means the results of an approach that gives appropriate weight to all relevant information in an integrative and objective manner thatâ€"</text>
<subparagraph id="H68B78DACE23D4E0CB3A9BBDFA8811BF3"><enum>(A)</enum><text>takes into account the kinds of information available, the quality and quantity of the information, and the strengths and limitations associated with each type of information; and</text></subparagraph>
<subparagraph id="H7A7BC3B1B8964C6CADEA52136728501B"><enum>(B)</enum><text>explains the extent to which the various types of evidence reinforce each other.</text></subparagraph></paragraph><after-quoted-block>.</after-quoted-block></quoted-block></paragraph></section>
<section id="HA09E84EBF5FA4B699905FDCC5E4047C4" commented="no"><enum>3.</enum><header>Testing of chemical substances and mixtures</header><text display-inline="no-display-inline">Section 4 of the Toxic Substances Control Act (15 U.S.C. 2603) is amendedâ€"</text>
<paragraph id="HAD04D95A74D64D509E7C07F1DFC74817" commented="no"><enum>(1)</enum><text display-inline="yes-display-inline">in subsection (a)(1)â€"</text>
<subparagraph id="HA1611D20636042149D90BEE52BBD1C09" commented="no"><enum>(A)</enum><text>in subparagraph (A)(iii), by striking <quote>; or</quote> and inserting a semicolon;</text></subparagraph>
<subparagraph id="HB40FB2F03FF348C793A7926821AC7A10" commented="no"><enum>(B)</enum><text>in subparagraph (B)(iii), by striking <quote>; and</quote> and inserting <quote>; or</quote>; and</text></subparagraph>
<subparagraph id="H71404C8AE2414392922161B7DEFD6F86" commented="no"><enum>(C)</enum><text>by adding at the end the following:</text>
<quoted-block style="OLC" id="H04F6ECA794AB4630B85EE456119F06D2" display-inline="no-display-inline">
<subparagraph id="HEA6096D56DF04B38AB440646BA570DD7" indent="up1" commented="no"><enum>(C)</enum><text display-inline="yes-display-inline">testing of a chemical substance is necessary to conduct a risk evaluation under section 6(b); and</text></subparagraph><after-quoted-block>; and</after-quoted-block></quoted-block></subparagraph></paragraph>
<paragraph id="H5DCB60C83D5F443DB140EFD8C3B076DE" commented="no"><enum>(2)</enum><text>in the matter following subsection (a)(2), by inserting <quote>, order, or consent agreement</quote> after <quote>by rule</quote>.</text></paragraph></section>
<section id="H1CCCE7E8C1664A4C8248CECB417272F6"><enum>4.</enum><header>Regulation of hazardous chemical substances and mixtures</header>
<subsection id="H26762A2550A34F6D914C384A3F045171"><enum>(a)</enum><header>Scope of regulation</header><text display-inline="yes-display-inline">Section 6(a) of the Toxic Substances Control Act (15 U.S.C. 2605(a)) is amendedâ€"</text>
<paragraph id="HBFFE3A6A92DE406CB75C5A60136E148C"><enum>(1)</enum><text>by striking <quote>finds that there is a reasonable basis to conclude</quote> and inserting <quote>determines under subsection (b)</quote>;</text></paragraph>

<paragraph id="H299EC3715417476CA95C770D09025B77" commented="yes"><enum>(2)</enum><text>by inserting <quote>, consistent with section 9,</quote> after <quote>Administrator shall by rule</quote>; and <inline-comment display="yes"><italic>depending on what happens with the section 9(b) amendment, still want this?</italic></inline-comment></text></paragraph>
<paragraph id="H5B00FD5B31A2460995D665D42C81E5A8"><enum>(3)</enum><text>by striking <quote>using the least burdensome requirements</quote>.</text></paragraph></subsection>

<subsection id="HAE4CC638F1414D819B32B8C084FD81F9"><enum>(b)</enum><header>Risk evaluations</header><text display-inline="yes-display-inline">Section 6(b) of the Toxic Substances Control Act (15 U.S.C. 2605(b)) is amended to read as follows:</text>
<quoted-block style="OLC" id="H0D79640F745D4D8DA4CD87FBFBDF5E4B" display-inline="no-display-inline">
<subsection id="H3C1F0B23D2064C1E93CA3E1D7E9C3F95"><enum>(b)</enum><header>Risk evaluations</header>
<paragraph id="H212283E82EA94855B8977BC6B50DD045"><enum>(1)</enum><header>In general</header><text display-inline="yes-display-inline">The Administrator shall conduct risk evaluations pursuant to this subsection to determine whether or not a chemical substance presents or will present, in the absence of requirements under subsection (a), an unreasonable risk of injury to health or the environment as described in subsection (a). </text> </paragraph>
<paragraph id="H30BA4B9CEB614E9F8904DB1484C050E7" commented="no"><enum>(2)</enum><header>Standard for applying requirements</header><text display-inline="yes-display-inline">The Administrator shall apply requirements with respect to a chemical substance through a rule under subsection (a) only if the Administrator determines through a risk evaluation under this subsection that the chemical substance presents or will present, in the absence of such requirements, an unreasonable risk of injury to health or the environment as described in subsection (a).</text></paragraph>
<paragraph id="HBB1856A6B2C34777B36F50EA77CB621E" commented="no"><enum>(3)</enum><header>Standard for conducting risk evaluation</header>

<subparagraph id="H8181F478803C49DFA8C2AA73FD62474A"><enum>(A)</enum><header>In general</header><text>The Administrator shall conduct and publish the results of a risk evaluation under this subsection for a chemical substance ifâ€"</text>
<clause id="H186C092059CC4BD1843EC412E26B76CB" commented="no"><enum>(i)</enum><text>the Administrator finds a reasonable basis for concluding that the combination of hazard from and exposure to the chemical substance under any of its intended conditions of use has the potential to be high enough to present an unreasonable risk of injury to health or the environment; or</text></clause>
<clause id="HDBF4B185241D4909B483C16819E77986" commented="no"><enum>(ii)</enum><text>the manufacturer of a chemical substance requests such a risk evaluation.</text></clause></subparagraph>
<subparagraph id="H87F4DF9D3683468E91E6717E9A47FB3F"><enum>(B)</enum><header>Publication of findings and requests</header><text>Before conducting a risk evaluation pursuant to subparagraph (A), the Administrator shall publish in the Federal Register the applicable finding made under subparagraph (A)(i) or request made under subparagraph

(A)(ii).</text></subparagraph> </paragraph>
<paragraph id="H132A53891D704EDA810547A4B2BC1789"
commented="no"><enum>(4)</enum><header>Requirements</header><text>In conducting a risk evaluation under this subsection, the Administrator shallâ€"</text>
<subparagraph id="H38F121BEB13D47F9BAB16C2E5502A56E"
commented="no"><enum>(A)</enum><text display-inline="yes-display-inline">integrate and assess information on hazards and exposures for the specific uses of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on potentially exposed subpopulations, but not including information on cost and other factors not directly related to health or the environment;</text></subparagraph>
<subparagraph id="H0552C802C6F848B79E4E8ABA71C3181A"
commented="no"><enum>(B)</enum><text>take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the intended conditions of use of the chemical substance;</text></subparagraph>
<subparagraph id="HDF3C02B3E8F143A6999AC2D26BE5EC5F"
commented="no"><enum>(C)</enum><text>describe the weight of the scientific evidence for identified hazard and exposure;</text></subparagraph>
<subparagraph id="H0B36E9FD9526403E87C61C36D3A7484F"
commented="no"><enum>(D)</enum><text>consider whether the weight of the scientific evidence supports the identification of threshold doses of the chemical substance below which no adverse effects can be expected to occur;</text></subparagraph>
<subparagraph id="H82E3B3629F3E46789194F34DF6A371BE"
commented="no"><enum>(E)</enum><text>make a determination regarding the risk of each of the intended conditions of use of the chemical substance; and</text></subparagraph>
<subparagraph id="HCE1682E81271450781FF3056E7FC0705"><enum>(F)</enum><text>in the case of a risk evaluation requested by a manufacturer under paragraph (3)(A)(ii), ensure that the costs to the Environmental Protection Agency, including contractor costs, of conducting the risk evaluation are paid for by the
manufacturer.</text></subparagraph></paragraph>
<paragraph
id="H7C94A6A2620546329B8BD7D0F9271654"><enum>(5)</enum><header>Deadlines</header>
<subparagraph id="H8A8540A391FC415F897A7131C207AA56"><enum>(A)</enum><header>Risk evaluations</header><text>The Administrator shall conduct and publish a risk evaluation under this subsection for a chemical substance not later thanâ€"</text>
<clause id="HC764415560144779B95B6C2B3349BB18" commented="no"><enum>(i)</enum><text display-inline="yes-display-inline">3 years after the date on which the Administrator publishes a finding under paragraph (3)(A)(i); or</text></clause>
<clause id="H2D29641D7A8B4E159156B222034871A1"><enum>(ii)</enum><text>180 days after the date on which a manufacturer requests the risk evaluation under paragraph (3)(A)(ii).</text></clause></subparagraph>
<subparagraph id="H43B493A105AC436081424221AD6DD0C0"
commented="no"><enum>(B)</enum><header>Subsection <enum-in-header>(a)</enum-in-header> rules</header><text display-inline="yes-display-inline">If, based on a risk evaluation conducted under this subsection, the Administrator determines that a chemical substance presents or will present, in the absence of a rule under subsection (a), an unreasonable risk of injury to health or the environment as described in subsection (a), the Administrator shallâ€"</text>

<clause id="H3DC25AE9FB2740E6909AEEF33AFD8B38"
commented="no"><enum>(i)</enum><text>propose a rule under subsection (a) for the
chemical substance not later than 90 days after the date on which the risk evaluation
regarding such chemical substance is published under subparagraph (A);
and</text></clause>
<clause id="H95A1910636544E8D9AE5F60AAAC6B11B" commented="no"><enum>(ii)</enum><text
display-inline="yes-display-inline">publish in the Federal Register a final rule not
later than 180 days after such publication date.</text></clause></subparagraph>
<subparagraph
id="HCB4327C136814F04A7CC491F6F0B89F7"><enum>(C)</enum><header>Extension</header><text>
If the Administrator determines that additional information is necessary to make a risk
evaluation determination under this subsection, the Administrator may extend deadlines
under subparagraph (B) accordingly, except that the deadline under subparagraph (B)(i)
may not be extended to a date that is later thanâ€"</text>
<clause id="H95345C6CB4FC495EB777B20454CC804E"><enum>(i)</enum><text>90 days after
receipt of such additional information; or</text></clause>
<clause id="H8559A0B4F9D0464495FB06E5A2471C91"><enum>(ii)</enum><text>2 years after the
original deadline.</text></clause></subparagraph></paragraph>
<paragraph
id="H582D0CBA183B499E8608F136DD039D0D"><enum>(6)</enum><header>Determinations of no
unreasonable risk</header>
<subparagraph id="H1DED1C64523947E1935E3314458B93C2"
commented="no"><enum>(A)</enum><header>Notice and comment</header><text display-
inline="yes-display-inline">Not later than 30 days before publishing a final
determination under this subsection that a chemical substance will not present an
unreasonable risk of injury to health or the environment under an intended condition of
use, the Administrator shall make a preliminary determination to such effect and
provide public notice of, and an opportunity for comment regarding, such preliminary
determination.</text></subparagraph>
<subparagraph
id="HB5B794EDC60D44C098C37753D3F17B60"><enum>(B)</enum><header>Potentially exposed
subpopulations</header><text display-inline="yes-display-inline">The Administrator
shall not make a determination under this subsection that a chemical substance will not
present an unreasonable risk of injury to health or the environment under an intended
condition of use if the Administrator determines that the chemical substance, under the
intended condition of use, poses an unreasonable risk of injury to a potentially
exposed subpopulation.</text></subparagraph>
<subparagraph id="H17749FC53F9040A7A7F9C372BD7D5D66"><enum>(C)</enum><header>Final
action</header><text>A final determination under this subsection that a chemical
substance will not present an unreasonable risk of injury to health or the environment
under an intended condition of use shall be considered a final agency action.</text>
</subparagraph></paragraph></subsection><after-quoted-block>.</after-quoted-
block></quoted-block></subsection>
<subsection id="HCB1FEF68410C4C439B1BE53A954D085E"><enum>(c)</enum><header>Promulgation
of subsection <enum-in-header>(a) </enum-in-header>rules</header><text display-
inline="yes-display-inline">Section 6(c) of the Toxic Substances Control Act (15 U.S.C.
2605(c)) is amendedâ€"</text>
<paragraph id="H92F122CF69C2426AA4B19B4DD2FDA005"><enum>(1)</enum><text>by amending

paragraph (1) to read as follows:</text>
<quoted-block style="OLC" id="H83F82C2DA0364954B341D5B02500BC64" display-inline="no-display-inline">
<paragraph id="HD4883518D0004B0DB82A81E79D06662E"><enum>(1)</enum><header>Requirements for rule</header><text display-inline="yes-display-inline">In promulgating any rule under subsection (a) with respect to a chemical substance or mixture, the Administrator shallâ€"</text>
<subparagraph id="H2F6FBF744BA44FC0A9D06C995516D1FD"><enum>(A)</enum><text>consider and publish a statement with respect toâ€"</text>
<clause id="H53766F8797B84A06AF143A13ECE589DB"><enum>(i)</enum><text display-inline="yes-display-inline">the effects of the chemical substance or mixture on health and the magnitude of the exposure of human beings to the chemical substance or mixture;</text></clause>
<clause id="HF5F955EC84D64BFBAF01FA3DE6F3A7AE"><enum>(ii)</enum><text display-inline="yes-display-inline">the effects of the chemical substance or mixture on the environment and the magnitude of the exposure of the environment to the chemical substance or mixture;</text></clause>
<clause id="HD1CD04981B9C427088CE285873853E0A"><enum>(iii)</enum><text display-inline="yes-display-inline">the benefits of the chemical substance or mixture for various uses; and</text></clause>
<clause id="HC38E661C5494476EB0B1D079A9BA93A2"><enum>(iv)</enum><text>the reasonably ascertainable economic consequences of the rule, including consideration of the likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health;</text></clause></subparagraph>
<subparagraph id="HF6AEBA1DAA314701A5D0E9C2FA0B0E15" commented="yes"><enum>(B)</enum><text> not impose requirements under the rule unless the Administrator determines, consistent with the information published under subparagraph (A), that the requirements are cost-effective;</text></subparagraph>
<subparagraph id="H6BE06FCD31E44364928BAB346455470C"><enum>(C)</enum><text display-inline="yes-display-inline">based on the information published under subparagraph (A), in deciding whether to prohibit or restrict in a manner that substantially prevents a specific use of a chemical substance or mixture and in setting an appropriate transition period for such action, determine whether technically and economically feasible alternatives that benefit health or the environment, compared to the use so proposed to be prohibited or restricted, will be reasonably available as a substitute when the proposed prohibition or restriction takes effect; </text></subparagraph>
<subparagraph id="H267FFE888FA2442DB1FFCF2599E26E3C" commented="no"><enum>(D)</enum><text display-inline="yes-display-inline">exempt replacement parts for articles that are first manufactured prior to the date of publication in the Federal Register of the rule unless the Administrator finds such replacement parts contribute significantly to the identified risk; and</text></subparagraph>
<subparagraph id="H2040261ABD5E47F1929FD2C789E63FC7" commented="no"><enum>(E)</enum><text display-inline="yes-display-inline"><inline-comment display="yes">in selecting among options to address an identified risk,</inline-comment> apply prohibitions or restrictions to articles on the basis of a chemical substance or mixture contained in the article only to the extent necessary to mitigate the identified risk.</text></subparagraph></paragraph><after-quoted-

block>;</after-quoted-block></quoted-block></paragraph>
<paragraph id="HCBB1DE6AEED14769BCFD7E8409C26550"><enum>(2)</enum><text>in paragraph (2)â€"</text>
<subparagraph id="H0502509448E34B5A8C254DBFED930880"><enum>(A)</enum><text>by inserting <quote><header-in-text level="paragraph" style="OLC">Procedures.</header-in-text>â€"</quote> before <quote>When prescribing a rule</quote>; </text></subparagraph>
<subparagraph id="H83C793552D164747A2878665C31BA19A"><enum>(B)</enum><text>by striking <quote>provide an opportunity for an informal hearing in accordance with paragraph (3); (D)</quote>;</text></subparagraph>
<subparagraph id="H8F43FF73274049069E1011395F2C8F95"><enum>(C)</enum><text>by striking <quote>, and (E)</quote> and inserting <quote>; and (D)</quote>; and</text></subparagraph>
<subparagraph id="H53640C43B8C6499EBC3FFFA7CFD2DAC0" commented="no"><enum>(D)</enum><text>by moving such paragraph 2 ems to the right;</text></subparagraph></paragraph>
<paragraph id="H9E9FB57E76A14A8083E1D4E11C7C2CC7"><enum>(3)</enum><text>by striking paragraphs (3) and (4) and redesignating paragraph (5) as paragraph (3); and</text></paragraph>
<paragraph id="H154D007FC63F427793F64EA4CEE05044"><enum>(4)</enum><text>in paragraph (3) (as so redesignated)â€"</text>
<subparagraph id="HA50D9DDE63F74DD89B73E68449422CF2"><enum>(A)</enum><text>by striking <quote>Paragraphs (1), (2), (3), and (4)</quote> and inserting <quote><header-in-text level="paragraph" style="OLC">Application.â€"</header-in-text>Paragraphs (1) and (2)</quote>; and</text></subparagraph>
<subparagraph id="HB4C9497A01B742BB8CA09B6818378EDB"><enum>(B)</enum><text display-inline="yes-display-inline">by moving such paragraph 2 ems to the right.</text></subparagraph></paragraph></subsection>
<subsection id="H82450639DCB645BDB82E6A8AFC36B1DE"><enum>(d)</enum><header>Effective date</header><text display-inline="yes-display-inline">Section 6(d)(2)(B) of the Toxic Substances Control Act (15 U.S.C. 2605(d)(2)(B)) is amended by adding at the end the following: <quote>Any rule promulgated under subsection (a) shall provide for a reasonable transition period.</quote>.</text></subsection></section>
<section id="HAE9C169B9F684A76BB4242C155E3CD71"><enum>5.</enum><header>Reporting and retention of information</header><text display-inline="no-display-inline">Section 8(b) of the Toxic Substances Control Act (15 U.S.C. 2607(b)) is amended by adding at the end the following:</text>
<quoted-block style="traditional" id="H11487C67EACB411BA2CDC46953800A86" display-inline="no-display-inline">
<paragraph id="HFDC38C4AEB474E86B3131983288E76D0" indent="up1"><enum>(3)</enum><text display-inline="yes-display-inline">The Administrator shall periodically collect information under this subsection as necessary to remove from the list any chemical substance that is no longer manufactured or processed in the United States, and revise the list accordingly.</text></paragraph><after-quoted-block>.</after-quoted-block></quoted-block></section>
<section id="HED61DC4820CD429DA9F007A7F0ABD0BD" commented="yes"><enum>6.</enum><header>Relationship to other Federal laws</header><text display-inline="no-display-inline">Section 9(b) of the Toxic Substances Control Act (15 U.S.C. 2608(b)) is amendedâ€"</text>

<paragraph id="H43FFCB167E204EB6B474342FB05DF3D9"
commented="yes"><enum>(1)</enum><text>by striking <quote>The Administrator shall
coordinate</quote> and inserting <quote>(1) The Administrator shall coordinate</quote>;
and</text></paragraph>
<paragraph id="HEF508E9A4FA04856A126BFA0A030C241"
commented="yes"><enum>(2)</enum><text>by adding at the end the following:</text>
<quoted-block style="OLC" id="H8EA5682D9A9042659AD786E9A9B24E8D" display-inline="no-
display-inline">
<paragraph id="H858F7392E06C42E8A5A615F125DDB123" indent="up1"
commented="yes"><enum>(2)</enum><text display-inline="yes-display-inline">In making a
determination under paragraph (1) that it is in the public interest for the
Administrator to take an action under this title rather than under another law
administered in whole or in part by the Administrator, the Administrator shall
considerâ€"</text>
<subparagraph id="H4754B934C9FB488CBB4C0DE7017AFE2A"
commented="yes"><enum>(A)</enum><text>all relevant aspects of the risk to health or the
environment associated with the chemical substance or mixture, as determined by the
Administrator;</text></subparagraph>
<subparagraph id="HADCA16572D9446678A29B2CE787F2450"
commented="yes"><enum>(B)</enum><text>a comparison of the estimated costs of complying
with the action to be taken under this title and an action to be taken under such other
law; and</text></subparagraph>
<subparagraph id="H7FC10213DA7D47CB81B3EE7F6A4A1454"
commented="yes"><enum>(C)</enum><text display-inline="yes-display-inline">the relative
efficiencies of the action to be taken under this title and an action to be taken under
such other law to protect against such risk.</text></subparagraph></paragraph><after-
quoted-block>.</after-quoted-block></quoted-block></paragraph></section>
<section id="H04F9109BB9044F8AA823CEC7D1137CFF"><enum>7.</enum><header>Disclosure of
data</header><text display-inline="no-display-inline">Section 14 of the Toxic
Substances Control Act (15 U.S.C. 2613) is amendedâ€"</text>
<paragraph id="HFD338259715942E7967CC8B196F593C1"><enum>(1)</enum><text>in subsection
(a)â€"</text>
<subparagraph id="H79C47FC8AB43442C87B8816277393190"><enum>(A)</enum><text>by striking
<quote>or</quote> at the end of paragraph (3);</text></subparagraph>
<subparagraph id="H5AF52C331C98451693BFAC516109724B"><enum>(B)</enum><text>by striking
the period at the end of paragraph (4) and inserting a semicolon;
and</text></subparagraph>
<subparagraph id="H6A04D74F4CBB442595FCF0234ADE562F"><enum>(C)</enum><text>by adding
after paragraph (4) the following new paragraphs:</text>
<quoted-block style="traditional" id="H84DCB9B0E05F4E96B41B636664F59268" display-
inline="no-display-inline">
<paragraph id="H74CC0C5479A645989625478E0E189F4A"><enum>(5)</enum><text display-
inline="yes-display-inline">may be disclosed to a State, local, or tribal government
official upon request of the government for the purpose of administration or
enforcement of a law; and</text></paragraph>
<paragraph id="H78F6A6A1E66343ECA70B0A6971A4DAC3"
commented="no"><enum>(6)</enum><text>shall be disclosedâ€"</text>
<subparagraph id="HF3301DEB37D44C66BECCDFE7AEC3026C"

commented="no"><enum>(A)</enum><text display-inline="yes-display-inline">to a health or environmental professional employed by a Federal or State agency in response to an environmental release; or</text></subparagraph>
<subparagraph id="HBF2125E4092E465697F19399F7AB98E6" commented="no"><enum>(B)</enum><text>to a treating physician or other health care professional to assist in the diagnosis or treatment of 1 or more individuals.</text></subparagraph></paragraph><after-quoted-block>;</after-quoted-block></quoted-block></subparagraph></paragraph>
<paragraph id="HF9DF0908C6DB45D180D60343C37E4A46"><enum>(2)</enum><text>by amending subsection (c)(1) to read as follows:</text>
<quoted-block style="traditional" id="H72454E85EE134B8DA7EA24289B30BE7D" display-inline="no-display-inline">
<subsection id="HA750CF74D42C485A9169B73A9AE5A2D0"><enum>(c)</enum><header>Designating and substantiating confidentiality</header>
<paragraph id="H7DF31F70E5194A6C9A7AC3E5D247A792" display-inline="yes-display-inline"><enum>(1)</enum>
<subparagraph id="H7C89D16C085E4E40A3A85795850757B3" display-inline="yes-display-inline"><enum>(A)</enum><text display-inline="yes-display-inline">In submitting information under this Act after date of enactment of the <short-title>TSCA Modernization Act of 2015</short-title>, a manufacturer, processor, or distributor in commerce shall designate the information which such person believes is entitled to protection under this section, and submit such designated information separately from other information submitted under this Act. A designation under this subparagraph shall be made in writing and in such manner as the Administrator may prescribe, and shall includeâ€"</text>
<clause id="HD48B0B6A47BC4E1B9B6924221DE81613" indent="up1"><enum>(i)</enum><text>justification for each designation of confidentiality;</text></clause>
<clause id="H347D6F3A2F264B4AA66C01F1FB7083C9" indent="up1"><enum>(ii)</enum><text>a certification that the information is not otherwise publicly available; and</text></clause>
<clause id="H4748F491909B41C68406D4596615C4CC" indent="up1"><enum>(iii)</enum><text>separate copies of all submitted information, with 1 copy containing and 1 copy excluding the information to which the request applies.</text></clause></subparagraph>
<subparagraph id="HC2F5EA10D6094705834B95E7F5EA16FF" indent="up2"><enum>(B)</enum><text>Designations made under subparagraph (A) after the date of enactment of the <short-title>TSCA Modernization Act of 2015</short-title> shall expire after 10 years, at which time the information shall be made public unless the manufacturer, processor, or distributor in commerce has submitted a request for renewal, made in writing and in such manner as the Administrator may prescribe, including all of the elements required for the initial submission.</text></subparagraph></paragraph></subsection><after-quoted-block>; and</after-quoted-block></quoted-block></paragraph>
<paragraph id="H496477C012C54399953EC2D1179EF8FC"><enum>(3)</enum><text>by adding at the end the following new subsection:</text>
<quoted-block style="traditional" id="H4626EAD8651848BCB9D39232B21C68F0" display-inline="no-display-inline">

<subsection id="H165A45E4670048ECBA7B26D9FD8065D4"><enum>(f)</enum><header>Prohibition</header><text display-inline="yes-display-inline">No person who receives information as permitted under subsection (a) or (b) may use such information for any purpose not specified in such subsection, nor disclose such information to any person not authorized to receive such information.</text></subsection><after-quoted-block>.</after-quoted-block></quoted-block></paragraph></section>
<section id="H3E7FB19E4A2E4769AF3E078B01C279EE"><enum>8.</enum><header>Effect on State law</header><text display-inline="no-display-inline">Section 18(a)(2) of the Toxic Substances Control Act (15 U.S.C. 2617(a)(2)) is amendedâ€"</text>
<paragraph id="H8A2F1FC441404F719EF644258C862CCA"><enum>(1)</enum><text>in subparagraph (A), by striking <quote>; and</quote> and inserting a semicolon; and</text></paragraph>

<paragraph id="HA59CBFFF7DC8496E8EB1C6B523E2676D"><enum>(2)</enum><text>by striking subparagraph (B) and inserting the following:</text>
<quoted-block style="OLC" id="H68D31D8E6F054A9E87A56F54C3F34926" display-inline="no-display-inline">
<subparagraph id="HB1EA320B8B694D198AB8933D9D9A76B2" indent="up1" commented="yes"><enum>(B)</enum><text display-inline="yes-display-inline">no State or political subdivision may, after the date on which the Administrator publishes in the Federal Register a finding or request under section 6(b)(3)(B) with respect to a chemical substance under an intended condition of use, establish a requirement that applies to such chemical substance under that intended condition of use and is designed to protect against exposure to such chemical substance under that intended condition of use;</text></subparagraph>
<subparagraph id="HDD70FC20C60342B3930EDE24F846E505" indent="up1" commented="no"><enum>(C)</enum><text display-inline="yes-display-inline">if the Administrator makes a final determination under section 6(b) that a chemical substance will not present an unreasonable risk of injury to health or the environment under an intended condition of use, no State or political subdivision may, after the date of publication of such determination, establish or continue in effect any requirement that applies to such chemical substance under that intended condition of use and is designed to protect against exposure to such chemical substance under that intended condition of use; and</text></subparagraph>
<subparagraph id="HB063AC3E023940F1BD0068D6F586300A" indent="up1"><enum>(D)</enum><text display-inline="yes-display-inline">if the Administrator imposes a requirement, through a rule or order under section 5 or 6, that applies to a chemical substance or mixture (other than a requirement described in section 6(a)(5)), no State or political subdivision may, after the effective date of such requirement, establish or continue in effect any requirement that applies to such chemical substance or mixture (including a requirement that applies to an article because the article contains the chemical substance or mixture) and is designed to protect against exposure to the chemical substance or mixture, unless the requirement of the State or political subdivision is adopted under the authority of a Federal law.</text> </subparagraph><after-quoted-block>.</after-quoted-block></quoted-block></paragraph> </section>
<section id="H7039D6BB15D0467593407275402E90F3"><enum>9.</enum><header>Administration of the Act</header><text display-inline="no-display-inline">Section 26 of the Toxic Substances Control Act (15 U.S.C. 2625) is amendedâ€"</text>

<paragraph id="H8181A2232CAF41D4AA3655694DFE6DF4"><enum>(1)</enum><text>in subsection (b)(1)â€"</text>
<subparagraph id="HBCFADCE02F1F4E3F9439BA87A0EEB487" commented="no"><enum>(A)</enum><text>by inserting <quote>, or who requests a risk evaluation under section 6(b)(3)(A)(ii),</quote> before <quote>to defray the cost</quote>; and</text></subparagraph>
<subparagraph id="H3F76935D1E644F68A779E3850E5F3E68"><enum>(B)</enum><text>by striking <quote>Such rules shall not provide for any fee in excess of $2,500 or, in the case of a small business concern, any fee in excess of $100.</quote> and inserting <quote>Such rules shall provide for lower fees for small business concerns.</quote>; and</text></subparagraph> </paragraph>
<paragraph id="H09B4DF32157147CB871DCA41FF32A617"><enum>(2)</enum><text>by adding at the end the following:</text>
<quoted-block id="HA6081514FED94FFD87703586178DFFC9" style="OLC">
<subsection id="HB1DDFE1DBB8B4F9ABC00C2256C538D45"><enum>(h)</enum><header>Scientific standards</header><text>In evaluating information from studies and tests, and in carrying out sections 4, 5, and 6 to the extent that the Administrator makes a decision based on science, the Administrator shall consider, among other applicable factorsâ€"</text>
<paragraph id="H46706E81CC984F1A95A51E934A32AEA1"><enum>(1)</enum><text>the extent to which the scientific and technical procedures, measures, methods, or models employed to generate the information are reasonable for and consistent with the intended use of the information;</text></paragraph>
<paragraph id="H1D281F2440C04BCFB6210A94016ACE92"><enum>(2)</enum><text>the extent to which the information is relevant for the Administratorâ€™s intended use;</text></paragraph>
<paragraph id="H1A5E89AB1CD141D2ACA802850C307CF9"><enum>(3)</enum><text>the degree of clarity and completeness with which the data, assumptions, methods, quality assurance, sponsoring organizations, and analyses employed to generate the information are documented;</text></paragraph>
<paragraph id="H2FF9650FE1D246D1A6E74F548B314952"><enum>(4)</enum><text>the extent to which the variability and uncertainty in the information, or in the procedures, measures, methods, or models, are evaluated and characterized; and</text></paragraph>
<paragraph id="H0A69326402BE4116916AAC4E09E3C680"><enum>(5)</enum><text>the extent of independent verification, validation, and peer review of the information or of the procedures, measures, methods, or models.</text></paragraph></subsection>
<subsection id="HBCB6868465FE4DBF9DBE82B5D1C08DA3" commented="no"><enum>(i)</enum><header>Weight of scientific evidence</header><text>The Administrator shall make decisions under sections 4, 5, and 6 based on the weight of the scientific evidence.</text></subsection>
<subsection id="HCEA9B8BEA44E46A1BBCF2A85EF4FDBFA" commented="no"><enum>(j)</enum><header>Availability of information</header><text>Subject to section 14, the Administrator shall make available to the public all notices, determinations, findings, rules, and orders of the Administrator under this title.</text></subsection>
<subsection id="H6CC3D14563DB4B55A21BD1535719289E"><enum>(k)</enum><header>Policies, procedures, and guidance</header>
<paragraph

id="H68119F9535E34964B31E63A0A7F7877E"><enum>(1)</enum><header>Development</header><text>Not later than 2 years after the date of enactment of the <short-title>TSCA Modernization Act of 2015</short-title>, the Administrator shall develop any policies, procedures, and guidance the Administrator determines are necessary to carry out the amendments to this Act made by the <short-title>TSCA Modernization Act of 2015</short-title>.</text></paragraph>
<paragraph id="HC0C5D9F754654388ADC66DC0508BDB51"><enum>(2)</enum><header>Review</header><text>Not later than 5 years after the date of enactment of the <short-title>TSCA Modernization Act of 2015</short-title>, and not less frequently than once every 5 years thereafter, the Administrator shallâ€"</text>
<subparagraph id="H32C57F78ECA542578A9702E900BF7CA8"><enum>(A)</enum><text>review the adequacy of the policies, procedures, and guidance developed under paragraph (1), including with respect to animal, nonanimal, and epidemiological test methods and procedures for assessing and determining risk under this title; and</text></subparagraph>
<subparagraph id="H9BBCDE344ECE4065978B467F7BAB7F8E"><enum>(B)</enum><text>revise such policies, procedures, and guidance as the Administrator determines necessary to reflect new scientific developments or understandings.</text></subparagraph></paragraph></subsection>
<subsection id="HE4584113799F4E2A87751A86921E0C1A" commented="no" display-inline="no-display-inline"><enum>(l)</enum><header>Savings</header><text display-inline="yes-display-inline">Nothing in this title shall be construed to affect either the tort law or the law governing the interpretation of contracts of any State.</text></subsection>
<after-quoted-block>.</after-quoted-block></quoted-block></paragraph></section>
<section id="HB3B5A04A15DA49D5A46CBD4991E92286"><enum>10.</enum><header>Conforming amendments</header>
<subsection id="H138179AD7F8448F9992A82628E119178" commented="no"><enum>(a)</enum><header>Section 4</header><text display-inline="yes-display-inline">Section 4 of the Toxic Substances Control Act (15 U.S.C. 2603) is amendedâ€"</text>
<paragraph id="HF406355DE93E4247AB25A0614C77636C" commented="no"><enum>(1)</enum><text>in subsection (b)â€"</text>
<subparagraph id="H69CFEFD5FCD64A118AACE4B84C741BC6" commented="no"><enum>(A)</enum><text>in paragraph (1), by striking <quote>rule</quote> each place it appears and inserting <quote>rule, order, or consent agreement</quote>;</text></subparagraph>
<subparagraph id="H54951E34A52A47DD9D87D6233FF3B446" commented="no"><enum>(B)</enum><text display-inline="yes-display-inline">in paragraph (2)(B), by striking <quote>rules</quote> and inserting <quote>rules, orders, and consent agreements</quote>;</text></subparagraph>
<subparagraph id="H166BBD25F301481483938418939C7B61" commented="no"><enum>(C)</enum><text display-inline="yes-display-inline">in paragraph (3), by striking <quote>rule</quote> each place it appears and inserting <quote>rule, order, or consent agreement</quote>; and </text></subparagraph>
<subparagraph id="H3F51DB5024E84E3CAAB7AF7FB38DF6FA" commented="no"><enum>(D)</enum><text display-inline="yes-display-inline">in paragraph (4)â€"</text>

<clause id="H89ED5EED64A34BC1A6BF2623BC004F74" commented="no"><enum>(i)</enum><text>by striking <quote>rule under subsection (a)</quote> each place it appears and inserting <quote>rule, order, or consent agreement under subsection (a)</quote>;</text></clause>
<clause id="H9E79275E1F0E44E8BAFD0300F7517A71" commented="no"><enum>(ii)</enum><text display-inline="yes-display-inline">by striking <quote>repeals the rule</quote> each place it appears and inserting <quote>repeals the rule or order or modifies the consent agreement to terminate the requirement</quote>; and</text></clause>
<clause id="H35EBA335BE0D47ACA5BEF940B72873F8" commented="no"><enum>(iii)</enum><text display-inline="yes-display-inline">by striking <quote>repeals the application of the rule</quote> and inserting <quote>repeals or modifies the application of the rule, order, or consent agreement</quote>;</text></clause></subparagraph></paragraph>
<paragraph id="HE73632E6D07E485E9DEC402A87238711" commented="no"><enum>(2)</enum><text display-inline="yes-display-inline">in subsection (c)â€"</text>
<subparagraph id="H487915C911BC4DE78AEA5ED68093EAB5" commented="no"><enum>(A)</enum><text>in paragraph (1), by striking <quote>rule</quote> and inserting <quote>rule or order</quote>;</text></subparagraph>
<subparagraph id="H60FE601ED4C44074A5D71E3151DF76A9" commented="no"><enum>(B)</enum><text display-inline="yes-display-inline">in paragraph (2)â€"</text>
<clause id="H0F3D24393B894D4BA52566E20FE2D16E" commented="no"><enum>(i)</enum><text>in subparagraph (A), by striking <quote>a rule under subsection (a) or for which data is being developed pursuant to such a rule</quote> and inserting <quote>a rule, order, or consent agreement under subsection (a) or for which data is being developed pursuant to such a rule, order, or consent agreement</quote>;</text></clause>
<clause id="H6DF8D9F6E90242C793CC8CDB44F3EF27" commented="no"><enum>(ii)</enum><text>in subparagraph (B), by striking <quote>such rule or which is being developed pursuant to such rule</quote> and inserting <quote>such rule, order, or consent agreement or which is being developed pursuant to such rule, order, or consent agreement</quote>; and</text></clause>
<clause id="HE2EC20C6D9074767BDEA4FC9CD91D92E" commented="no"><enum>(iii)</enum><text>in the matter following subparagraph (B), by striking <quote>the rule</quote> and inserting <quote>the rule or order</quote>;</text></clause></subparagraph>
<subparagraph id="HC6F547E588554AAB8FC32DED954EDBA4" commented="no"><enum>(C)</enum><text display-inline="yes-display-inline">in paragraph (3)(B)(i), by striking <quote>rule promulgated</quote> and inserting <quote>rule, order, or consent agreement</quote>; and</text></subparagraph>
<subparagraph id="H234371FD3BEF4B759D88F2B35D963C9F" commented="no"><enum>(D)</enum><text display-inline="yes-display-inline">in paragraph (4)â€"</text>
<clause id="H3D8DBBF648404206AF6DCDE4C073D218" commented="no"><enum>(i)</enum><text>by striking <quote>rule promulgated</quote> each place it appears and inserting <quote>rule, order, or consent agreement</quote>;</text></clause>
<clause id="H8933D64481A94013A78D926D79A5152A" commented="no"><enum>(ii)</enum><text>by striking <quote>such rule</quote> each place it appears and inserting <quote>such rule, order, or consent agreement</quote>; and</text></clause>
<clause id="H243F077607774B229C0B2EC02D66327B" commented="no"><enum>(iii)</enum><text display-inline="yes-display-inline">in subparagraph (B), by striking <quote>the

rule</quote> and inserting <quote>the rule, order, or consent agreement</quote>;</text></clause></subparagraph></paragraph>
<paragraph id="H397C7CA08BB64737B3F208F38B74F7B9" commented="no"><enum>(3)</enum><text display-inline="yes-display-inline">in subsection (d), by striking <quote>rule</quote> and inserting <quote>rule, order, or consent agreement</quote>; and</text></paragraph>
<paragraph id="HDA4427A1AF214EEE899DA531A85473CF" commented="no"><enum>(4)</enum><text display-inline="yes-display-inline">in subsection (g), by striking <quote>rule</quote> and inserting <quote>rule, order, or consent agreement</quote>.</text></paragraph></subsection>
<subsection id="HF5027D04D7BC4C30A55643181153EC18"><enum>(b)</enum><header>Section 5</header><text display-inline="yes-display-inline">Section 5 of the Toxic Substances Control Act (15 U.S.C. 2604) is amendedâ€"</text>
<paragraph id="H1832730FFDF04976B4732CBCFF0FE0D3"><enum>(1)</enum><text>in subsection (b)â€"</text>
<subparagraph id="H1F8781A0E96C4ABEAAB283B4F7C15365"><enum>(A)</enum><text>in paragraph (1)(A)â€"</text>
<clause id="H931C5400579A4BE89C7F4D822A1FE623" commented="no"><enum>(i)</enum><text>by striking <quote>rule promulgated</quote> and inserting <quote>rule, order, or consent agreement</quote>; and</text></clause>
<clause id="H57AB8C78F2834F0285C523870C55BE3A"><enum>(ii)</enum><text>by striking <quote>such rule</quote> and inserting <quote>such rule, order, or consent agreement</quote>; </text></clause></subparagraph>
<subparagraph id="H05EECEB0FC194F54835DA0B576630194"><enum>(B)</enum><text>in paragraph (1)(B)â€"</text>
<clause id="H4BADDAC664694AA284A80D841198A20E" commented="no"><enum>(i)</enum><text display-inline="yes-display-inline">by striking <quote>rule promulgated</quote> and inserting <quote>rule or order</quote>; and</text></clause>
<clause id="H57EB343FE73E41C190EC63FEA3971B29" commented="no"><enum>(ii)</enum><text>by striking <quote>the date of the submission in accordance with such rule</quote> and inserting <quote>the required date of submission</quote>; and</text></clause></subparagraph>
<subparagraph id="HB5967A0B93B943B890FC50A19A3F8002" commented="no"><enum>(C)</enum><text display-inline="yes-display-inline">in paragraph (2)(A)(ii), by striking <quote>rule promulgated</quote> and inserting <quote>rule, order, or consent agreement</quote>; and</text></subparagraph></paragraph>
<paragraph id="H989F129C71E74FF19A9EFB7248210D59"><enum>(2)</enum><text>in subsection (d)(2)(C), by striking <quote>rule</quote> and inserting <quote>rule, order, or consent agreement</quote>.</text></paragraph></subsection>
<subsection id="H09ADEECB10FB492890AD2B622171EBF5" commented="no"><enum>(c)</enum><header>Section 7</header><text display-inline="yes-display-inline">Section 7 of the Toxic Substances Control Act (15 U.S.C. 2606) is amendedâ€"</text>
<paragraph id="HA7463366018142B3B807E5AE801CE3CE"><enum>(1)</enum><text>in subsection (a)(1), in the matter following subparagraph (C), by striking <quote>a rule under section 4, 5, 6, or title IV or an order under section 5 or title IV</quote> and inserting <quote>a rule under section 4, 5, or 6 or title IV, an order under section 4 or 5 or title IV, or a consent agreement under section 4</quote>; and</text>
</paragraph>

<paragraph id="H9A9229DC458847E685751228B3312B24"
commented="yes"><enum>(2)</enum><text>in subsection (f), by striking
<quote>unreasonable</quote> and inserting <quote>significant</quote>. <inline-comment
display="yes"><italic>is this still a conforming amendment?</italic></inline-
comment></text></paragraph></subsection>
<subsection id="H5A054C1E0BB34182A278D75636850FA2"
commented="no"><enum>(d)</enum><header>Section 8</header><text display-inline="yes-
display-inline">Section 8(a)(3)(A)(ii)(I) of the Toxic Substances Control Act (15
U.S.C. 2607(a)(3)(A)(ii)(I)) is amended by striking <quote>or an order in effect under
section 5(e)</quote> and inserting <quote>, an order in effect under section 4 or 5(e),
or a consent agreement under section 4</quote>.</text></subsection>
<subsection id="HEDBC563FBC2B4D7CADA0D76C423A118D"><enum>(e)</enum><header>Section
9</header><text display-inline="yes-display-inline">Section 9(a) of the Toxic
Substances Control Act (15 U.S.C. 2608(a)) is amended by striking <quote>section
6</quote> each place it appears and inserting <quote>section 6(a)</quote>.</text>
</subsection>
<subsection id="H1E75CEE2E939412D8116169215701217"><enum>(f)</enum><header>Section
11</header><text display-inline="yes-display-inline">Section 11(b)(2)(E) of the Toxic
Substances Control Act (15 U.S.C. 2610(b)(2)(E)) is amended by striking <quote>rule
promulgated</quote> and inserting <quote>rule promulgated, order issued, or consent
agreement entered into</quote>. </text></subsection>
<subsection id="H43D089D8592040819212DC3BBD8A95BF"
commented="no"><enum>(g)</enum><header>Section 15</header><text>Section 15(1) (15
U.S.C. 2614(1)) is amended by striking <quote>(A) any rule</quote> and all that follows
through <quote>or (D)</quote> and inserting <quote>any requirement of this title or any
rule promulgated, order issued, or consent agreement entered into under this title,
or</quote>.</text></subsection>
<subsection id="HD9542E84FDC1443C96E18D941BC185F7"
commented="no"><enum>(h)</enum><header>Section 18</header><text display-inline="yes-
display-inline">Section 18(a)(2)(A) of the Toxic Substances Control Act (15 U.S.C.
2617(a)(2)(A)) is amendedâ€"</text>
<paragraph id="HE658616F2E2D4C62BA044EBC71C23375"
commented="no"><enum>(1)</enum><text>by striking <quote>rule promulgated</quote> and
inserting <quote>rule, order, or consent agreement</quote>; and</text></paragraph>
<paragraph id="H46994CD68AAF4E7C9E0A4D33A19018FE"
commented="no"><enum>(2)</enum><text>by striking <quote>such rule</quote> each place it
appears and inserting <quote>such rule, order, or consent
agreement</quote>.</text></paragraph></subsection>
<subsection id="H32E94106319942C9B256AF0E1F46F996"
commented="no"><enum>(i)</enum><header>Section 19</header><text display-inline="yes-
display-inline">Section 19 of the Toxic Substances Control Act (15 U.S.C. 2618) is
amendedâ€"</text>
<paragraph id="HDDC22E363FEC418AA2894DF2A2AF79D0"
commented="no"><enum>(1)</enum><text>in subsection (a)â€"</text>
<subparagraph id="H287747698F7A409B9EBCA9094BA9CFB9"
commented="no"><enum>(A)</enum><text>in paragraph (1)(A)â€"</text>
<clause id="HB15965B2F07B4107BD0FADECF4F1FA9F" commented="no"><enum>(i)</enum><text>by
striking <quote><inline-comment display="yes">(A) Not later than 60 days after</inline-

comment> the date of the promulgation of a rule</quote> and inserting <quote><inline-comment display="yes">Not later than 60 days after</inline-comment> the date on which a rule is promulgated</quote>;</text></clause>
<clause id="HEC84202E86164A08B6383EDCBAF9525C" commented="no"><enum>(ii)</enum><text>by inserting <quote>or the date on which an order is issued under section 4,</quote> before <quote>any person</quote>;</text></clause>
<clause id="HF34C4491C7AF4C99A89499494E4D3033" commented="no"><enum>(iii)</enum><text>by striking <quote>such rule</quote> and inserting <quote>such rule or order</quote>; and</text></clause>
<clause id="H6A4206C525044969B366DDF872B2786D" commented="no"><enum>(iv)</enum><text display-inline="yes-display-inline">by striking <quote>such a rule</quote> and inserting <quote>such a rule or order</quote>;</text></clause></subparagraph>
<subparagraph id="H569FE9096CB54CACA0B4A97CE5112CC7" commented="yes"><enum>(B)</enum><text>by striking paragraph (1)(B); <inline-comment display="yes"><italic>this needs to come out because the old section 6(b)(1) doesnâ€™t exist anymore. nothing to replace it with, right? not sure what it did in any case, seems to have at least a couple of typos in it</italic></inline-comment></text></subparagraph>
<subparagraph id="H530DF49D671A4C319E7A5E92FAAA2E7F" commented="no"><enum>(C)</enum><text display-inline="yes-display-inline">in paragraph (2), by striking <quote>the rule</quote> and inserting <quote>the rule or order</quote>; and</text></subparagraph>
<subparagraph id="H0BBD735E276442EFA29932CB9B83DBF1" commented="no"><enum>(D)</enum><text>in paragraph (3)â€"</text>
<clause id="H0FA60410F8DC4833A177A2386B7E3AC1" commented="no"><enum>(i)</enum><text>in subparagraph (A), by striking <quote>the rule</quote> and inserting <quote>the rule or order</quote>;</text></clause>
<clause id="H11AD554AA2AB414BBEDEE07B3C043E54" commented="no"><enum>(ii)</enum><text>in subparagraph (B), by striking <quote>a rule under section 4(a)</quote> and inserting <quote>a rule or order under section 4(a)</quote>;</text></clause>
<clause id="H56707D9881914977919F1A2A61324F67" commented="no"><enum>(iii)</enum><text>in subparagraph (C), by striking <quote>such rule</quote> and inserting <quote>such rule or order</quote>; </text></clause>
<clause id="HDFD71E7BC0824026A1A4F97914D60664" commented="no"><enum>(iv)</enum><text>in subparagraph (D), by striking <quote>such rule</quote> and inserting <quote>such rule or order</quote>; and</text></clause>
<clause id="H5D42C82DADD648C78610E43BA1A5DFD4" commented="no"><enum>(v)</enum><text>in subparagraph (E)â€"</text>
<subclause id="HA8675FA33B514E3DBDF4C1C5FD32A926" commented="no"><enum>(I)</enum><text>by striking <quote>such rule</quote> and inserting <quote>such rule or order</quote>; and</text></subclause>
<subclause id="HEAEA56A5B25044D2AAF80F5B1519BE1C" commented="no"><enum>(II)</enum><text>by striking <quote>the date of the promulgation of such rule</quote> and inserting <quote>the date on which such rule is promulgated or such order is issued</quote>;</text></subclause></clause></subparagraph></paragraph>
<paragraph id="H254320FDE27445DD8AF0800F993DD19B" commented="no"><enum>(2)</enum><text>in subsection (b)â€"</text>
<subparagraph id="HD433FA80B3FB420683A35CF3264996DD"

commented="no"><enum>(A)</enum><text>by striking <quote>review a rule</quote> and inserting <quote>review a rule, or an order under section 4,</quote>;</text></subparagraph>
<subparagraph id="HF136B6E2AA964ED9899CBD50B2D5F5F6" commented="no"><enum>(B)</enum><text>by striking <quote>such rule</quote> and inserting <quote>such rule or order</quote>;</text></subparagraph>
<subparagraph id="H7BBB776E607A4525B0D57426325E57F9" commented="no" display-inline="no-display-inline"><enum>(C)</enum><text>by striking <quote>the rule</quote> and inserting <quote>the rule or order</quote>;</text></subparagraph>
<subparagraph id="H29D93DB1069E47DA9A6CEF382FFFFC12" commented="no" display-inline="no-display-inline"><enum>(D)</enum><text>by striking <quote>new rule</quote> each place it appears and inserting <quote>new rule or order</quote>; and</text></subparagraph>
<subparagraph id="H47DA9E92B5A943D6AF6C24435C0CFE0E" commented="no" display-inline="no-display-inline"><enum>(E)</enum><text>by striking <quote>modified rule</quote> and inserting <quote>modified rule or order</quote>; and</text></subparagraph></paragraph>
<paragraph id="HC1D0445AF65C4E089F55CD70C6F1C154" commented="no"><enum>(3)</enum><text>in subsection (c)â€"</text>
<subparagraph id="H768C8A6FA5D54777B914178E0F518243" commented="no"><enum>(A)</enum><text>in paragraph (1)â€"</text>
<clause id="HD4F9BF833A214A77A7CE6CE16970472A" commented="no"><enum>(i)</enum><text>in subparagraph (A)â€"</text>
<subclause id="HE365D691E09641819CD57A4A60B33228"><enum>(I)</enum><text>by striking <quote>a rule</quote> and inserting <quote>a rule, or an order under section 4</quote>; and</text></subclause>
<subclause id="H9DF628FD8AF046B0890FDC26D77FED19"><enum>(II)</enum><text>by striking <quote>such rule</quote> and inserting <quote>such rule or order</quote>; and</text></subclause></clause>
<clause id="H3377EC36B141406D8685B82DEED19232" commented="no"><enum>(ii)</enum><text>in subparagraph (B)â€"</text>
<subclause id="H18CC3830540849608A2C0322600D4FF3" commented="no"><enum>(I)</enum><text>in the matter preceding clause (i), by striking <quote>a rule</quote> and inserting <quote>a rule or order</quote>; and</text></subclause>
<subclause id="HF157808B237642E783D4D2FB9929048B" commented="no"><enum>(II)</enum><text>in clause (i)â€"</text>
<item id="H38BEFDB70DD545B1B1A0425508EDDAFA" commented="no"><enum>(aa)</enum><text>by inserting <quote>or an order under section 4,</quote> before <quote>the standard for review</quote>; </text></item>
<item id="HF20678A35E824D7EB2D346AE027C54C0" commented="no"><enum>(bb)</enum><text>by striking <quote>such rule</quote> inserting <quote>such rule or order</quote>; and</text></item>
<item id="HD4612FF8654240EFA43234B46F2BC210" commented="no"><enum>(cc)</enum><text>by striking <quote>the rule</quote> and inserting <quote>the rule or order</quote>; and</text></item></subclause></clause></subparagraph>
<subparagraph id="H851F60D07B8C4A70BB5D82199FD1245B" commented="no"><enum>(B)</enum><text>in paragraph (2), by striking <quote>any rule</quote> and inserting <quote>any rule or order</quote>.
</text></subparagraph></paragraph></subsection>

<subsection id="HB554A4A022824CB8856DEFF82AB487BC"
commented="no"><enum>(j)</enum><header>Section 20</header><text display-inline="yes-display-inline">Section 20(a)(1) of the Toxic Substances Control Act (15 U.S.C. 2619(a)(1)) is amended by striking <quote>order issued under section 5</quote> and inserting <quote>order issued under section 4 or 5</quote>.</text></subsection>
<subsection id="H2C81553BF9594CD8B63DC8B935BD9D27"
commented="no"><enum>(k)</enum><header>Section 21</header><text display-inline="yes-display-inline">Section 21 of the Toxic Substances Control Act (15 U.S.C. 2620) is amendedâ€"</text>
<paragraph id="H00C6C726C1CE40798994C06D1F885F01"
commented="no"><enum>(1)</enum><text>in subsection (a), by striking <quote>order under section 5(e) or (6)(b)(2)</quote> and inserting <quote>order under section 4 or 5(e)</quote>; and</text></paragraph>
<paragraph id="H135A437705354F40980747ECD434BDCC" commented="no"><enum>(2)</enum><text display-inline="yes-display-inline">in subsection (b)â€"</text>
<subparagraph id="H90DEF5BE3E774C7680AA49127B9E53F6"
commented="no"><enum>(A)</enum><text>in paragraph (1), by striking <quote>order under section 5(e), 6(b)(1)(A), or 6(b)(1)(B)</quote> and inserting <quote>order under section 4 or 5(e)</quote>;</text></subparagraph>
<subparagraph id="H480376627A03436EB945A0B390BDD515"
commented="no"><enum>(B)</enum><text>in paragraph (4)(B)â€"</text>
<clause id="H3E0E0038F0F44B0B95DC85B7386DB3F7" commented="no"><enum>(i)</enum><text display-inline="yes-display-inline">in the matter preceding clause (i), by striking <quote>order under section 5(e) or 6(b)(2)</quote> and inserting <quote>order under section 4 or 5(e)</quote>;</text></clause>
<clause id="HAB856E40435A435EA77EF5A3B06112BF" commented="no"><enum>(ii)</enum><text display-inline="yes-display-inline">in clause (i), by striking <quote>order under section 5(e)</quote> and inserting <quote>order under section 4 or 5(e)</quote>; and</text></clause>
<clause id="H82B30CD5CD554922A84F0489488E296C"><enum>(iii)</enum><text>in clause (ii), by striking <quote>or an order under section 6(b)(2)</quote>.
</text></clause></subparagraph></paragraph></subsection>
<subsection id="HC2293D604866410C94068AC1D13EBF6E"><enum>(l)</enum><header>Section 24</header><text display-inline="yes-display-inline">Section 24(b)(2)(B) of the Toxic Substances Control Act (15 U.S.C. 2623(b)(2)(B)) is amendedâ€"</text>
<paragraph id="H2023621D6A1D485196A0403676D9840E"><enum>(1)</enum><text>by inserting <quote>and</quote> at the end of clause (i);</text></paragraph>
<paragraph id="H9118C2D09D2B4A86964685605E8B91D6"><enum>(2)</enum><text>by striking clause (ii); and</text></paragraph>
<paragraph id="H9D025644321344199B3797A7C42379A4"><enum>(3)</enum><text>by redesignating clause (iii) as clause (ii).</text></paragraph></subsection>
<subsection id="H93685443E2E94475868C884E97920368"
commented="no"><enum>(m)</enum><header>Section 27</header><text display-inline="yes-display-inline">Section 27(a) of the Toxic Substances Control Act (15 U.S.C. 2626(a)) is amended by striking <quote>rules promulgated</quote> and inserting <quote>rules, orders, or consent agreements</quote>.</text> </subsection>
<subsection id="HDF3C0B317CD1421B9CD13F555BE2D983"
commented="no"><enum>(n)</enum><header>Section 30</header><text display-inline="yes-

display-inline">Section 30(2) of the Toxic Substances Control Act (15 U.S.C. 2629(2)) is amended by striking <quote>rule</quote> and inserting <quote>rule, order, or consent agreement</quote>.</text></subsection> </section>
</legis-body>
</bill>

Message

From: Black, Jonathan (Tom Udall) [Jonathan_Black@tomudall.senate.gov]
Sent: 3/10/2015 7:09:11 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]
Subject: FW: Udall, Vitter Introduce Landmark Legislation to Protect Our Families from Toxic Chemicals
Attachments: FRL21 - Section by Section - (3-10-15).pdf; FRL21 - TSCA flow chart (3-10-15).pdf; The Frank R. Lautenberg Chemical Safety for the 21st Century Act - (3-10-15).pdf

From: Tom Udall Press Office
Sent: Tuesday, March 10, 2015 2:31 PM
To: Tom Udall Press Office
Subject: Udall, Vitter Introduce Landmark Legislation to Protect Our Families from Toxic Chemicals

NEWS FROM
The United States Senate

FOR IMMEDIATE RELEASE: **March 10, 2015**

Udall, Vitter Introduce Landmark Legislation to Protect Our Families from Toxic Chemicals

The Frank R. Lautenberg Chemical Safety for the 21st Century Act fixes broken chemical regulatory scheme, ensures EPA can act based on latest science to protect all Americans

WASHINGTON – Today, **U.S. Senators Tom Udall (D-N.M.)** and **David Vitter (R-La.)** introduced major bipartisan legislation to protect Americans from toxic chemicals by enacting common-sense and necessary reforms to update the United States' wholly ineffective, outdated chemical regulatory program. The Frank R. Lautenberg Chemical Safety for the 21st Century Act is the result of nearly two years of deliberations and negotiations with stakeholders, affected communities and a bipartisan group of lawmakers who believe that Americans deserve certainty that the Environmental Protection Agency (EPA) is overseeing the safety of chemicals in the marketplace. The legislation creates a predictable and transparent federal system to regulate the safety of chemicals based on the latest science, providing greater regulatory certainty to the chemical manufacturing industry and striking a balance between state and federal roles in chemical safety management.

The current 40-year-old law governing the use of chemicals in everyday products, the Toxic Substances Control Act (TSCA), is widely considered to be ineffective as it has failed to ban even dangerous chemicals like asbestos. After years of unsuccessful efforts to rewrite the law, in 2013, the late Senator Frank R. Lautenberg joined Vitter to introduce the first ever bipartisan proposal to update TSCA, which the New York Times

editorial board endorsed as "a significant advance over the current law." Udall joined Vitter in the effort to carry the torch and further strengthen the bill after Lautenberg passed away.

The new Udall-Vitter bill builds on and strengthens the 2013 proposal by ensuring that cost cannot be considered in determining the safety of a chemical, defining "vulnerable populations" and requiring their protection, strengthening deadlines for the EPA to evaluate existing chemicals, adding new structure and requirements for confidential business information claims, and mandating that new chemicals cannot be manufactured until the EPA has approved them.

Fifteen cosponsors joined Udall and Vitter to introduce the bill, including seven Democrats and eight Republicans.

"Americans are exposed to a toxic soup of more than 80,000 different chemicals, but we have no idea what the impact of those chemicals is on our bodies — or those of our children. Current law has failed to protect Americans from dangerous carcinogens like asbestos, and Congress can't afford to stand on the sidelines any longer," **Udall said.** "This bill represents the best opportunity to strengthen safeguards against dangerous chemicals and dramatically improve existing law, while allowing innovation in the industry. I've worked closely with experts, environmental leaders and community groups to craft this bipartisan proposal, and am proud that we've come to a consensus on a bill that will break the logjam and protect our families."

"The Frank R. Lautenberg Chemical Safety for the 21st Century Act is a hugely important step into a new era of chemical safety that will better protect our future generations while promoting innovation and growth within our economy," **Vitter said.** "TSCA reform is too important for consumers and job-creating businesses to not follow through, especially when you consider the fact that chemicals are used to produce 96 percent of all manufactured goods consumers rely on every day. Our legislation is a solid, balanced, bipartisan compromise that will provide the necessary reforms to our nation's most important chemical safety law."

"Frank believed that fixing America's chemical law could be his most significant legacy — in a career devoted to protecting public health," **said Bonnie Lautenberg,** widow of Frank R. Lautenberg. "The new bipartisan proposal from senators Tom Udall and David Vitter builds important improvements upon the solid foundation Frank laid with Senator Vitter in 2013. I strongly encourage senators in both parties to step up and help finish the job of ensuring our families are protected from toxic chemicals."

Original cosponsors include Sens. Joe Manchin (D-W.Va.), Jim Inhofe (R-Okla.), Tom Carper (D-Del.), Roy Blunt (R-Mo.), Chris Coons (D-Del.), John Boozman (R-Ark.), Joe Donnelly (D-Ind.), Mike Crapo (R-Idaho), Martin Heinrich (D-N.M.), Shelley Moore Capito (R-W.Va.), Heidi Heitkamp (D-N.D.), John Hoeven (R-N.D.), Debbie Stabenow (D-Mich.), Rob Portman (R-Ohio) and Bill Cassidy (R-La.).

Core provisions of the Frank R. Lautenberg Chemical Safety for the 21st Century Act:

Strengthens the Safety Standard

- Mandates that EPA base chemical safety decisions solely on considerations of risk to public health and the environment. The legislation makes clear that costs and benefits may not factor into a chemical safety evaluation.
- Eliminates TSCA's "least burdensome" requirement for regulating a chemical, which prevented EPA from banning asbestos.

Mandates safety reviews for new and existing chemicals

- Requires that all chemicals in commerce, including those "grandfathered" under TSCA, undergo safety reviews.

- Requires a safety finding for new chemicals before they can enter the market.

Strengthens Protections for the Most Vulnerable

- Places greater emphasis on and requires protection of those who may be more exposed or particularly vulnerable to the effects of exposure to chemicals, and clearly defines them for the first time as including infants, children, pregnant women, workers and the elderly.

Sets Aggressive and Attainable Deadlines

- Imposes at least 15 deadlines for EPA action, developed with input from the Agency.

Creates additional requirements and sets reasonable limits on Confidential Business Information claims

- Requires that confidentiality claims be substantiated up front and imposes a 10-year, renewable time limit on such claims.
- Requires EPA to review claims that protect the identities of chemicals in commerce.

Preserves Existing Private Rights of Action

- Clarifies that the existing right of Americans to sue and seek damages when they believe harm has been done is not affected by the bill.
- Makes clear that nothing in the bill affects the ability of litigants to obtain confidential information in a judicial proceeding.

Balances State and Federal Regulations

- Grandfathers in state regulations on chemicals enacted prior to Jan. 1, 2015.
- States can act to restrict a chemical until and unless EPA takes up that same chemical and addresses the same uses.
- State actions that do not restrict a chemical or are taken to address a different problem are not affected.
- Includes a waiver process for states to set different regulations than EPA during the safety assessment and after a final rule.
- Once EPA acts on a chemical substance, a uniform federal standard is applied across the nation, which creates more regulatory certainty and equally protects citizens across the country.

A full overview of the Udall-Vitter bill can be found **HERE**. Bill text is available **HERE**.

###

Contacts: Jennifer Talhelm (Udall) 202.228.6870 / Cheyenne Klotz (Vitter) 202.224.4623

Section-by-Section

Short title and Intent (amending TSCA Sections 1 and 2)
To amend the Toxic Substances Control Act (TSCA) to protect public health and the environment from the risks of all chemical substances in commerce.

Definitions (amending TSCA Section 3)
Defines "conditions of use" to ensure that EPA is focused on uses of chemical substances that are known, intended or reasonably foreseeable. Defines a new safety standard of no unreasonable risk of harm to health or the environment from exposure to a chemical substance under the conditions of use, including no unreasonable risk to sensitive populations. By definition, cost and other non-risk factors cannot be considered in applying the safety standard. Also defines the term potentially exposed or susceptible populations, and the safety assessment and determination elements of safety evaluations required under the bill.

Policies, Procedures and Guidance (new Section 3A)
Requires EPA to develop any necessary policies, procedures and guidance not later than two years after enactment. In order to ensure that EPA can quickly implement the Act, existing policies and guidance can be used as the new ones are developed. EPA is to review policies, procedures and guidance every five years, and to update them to reflect emerging science. Policies, procedures and guidance are to address testing, safety assessments and determinations, and science, including policies aimed at reducing animal testing. Establishes a new Scientific Advisory Committee on Chemicals to provide EPA independent scientific advice.

Testing of Chemical Substances and Mixtures (amending TSCA Section 4)
Authorizes EPA to obtain new information on chemical substances at all stages of the safety evaluation process (new chemicals and prioritization, safety assessment and safety determination of existing chemicals) and for export notification purposes. EPA can mandate new testing by rule, order and consent agreement. Requires the Administrator to minimize the use of animals in testing through specific testing mandates, a strategic plan and research on non-animal test methods. In order to avoid duplicative testing, the bill allows one company to conduct toxicity testing on behalf of other companies and to obtain fair and equitable reimbursement for developing the data. In order to avoid unnecessary testing, the data set may be tailored to specific chemicals or category of chemicals.

Prioritization Screening (new Section 4A)
Requires EPA to establish a risk-based prioritization screening process, by rule, within one year of enactment. Under the prioritization screening process, EPA is to designate substances as high or low priority for safety assessment and determination, and possible regulation. EPA is to establish an interim list of at least 10 high and 10 low priority substances within 180 days of enactment, drawing on the existing TSCA Work Plan Chemical list (a list of about 100 substances EPA has prioritized for hazard, exposure, persistence and bioaccumulation). Within 3 years of enactment, EPA is to have designated at least 20 high priority and 20 low priority chemicals. No later than 5 years after enactment, a total number of 25 high priority and 25 low priority substances are to have been designated. As the safety assessment and determination process is completed for each high priority substance, it must be replaced by a new high priority chemical.

The bill establishes criteria for prioritization screening decisions, including the recommendations of a Governor or State. States may seek judicial review of EPA decisions to designate a substance as a low priority. The lack of information is a sufficient basis to designate a substance as a high priority. Prioritization screening decisions are subject to public notice and comment. Prioritization screening

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decisions may be postponed where development of additional information is needed, which EPA may request or require.

EPA decisions to designate a substance as a low priority must be based on information sufficient to establish that the substance is likely to meet the safety standard. All priority designations are subject to review and revision at any time, based on information available to the Administrator.

EPA is to make an effort to complete the prioritization process of all chemicals in active commerce in a timely manner, taking into account the resources available to complete safety assessments and determinations. As provided in Section 23 of the bill, EPA is to develop and implement a user fee program to generate a level of funding sufficient to defray about 25% of the Agency's costs of program implementation, including safety evaluations and any necessary regulations. The prioritization screening process is subject to review and modification every 5 years, to ensure that the process is operating efficiently and effectively.

Provides manufacturers an opportunity to request that EPA designate a substance as an "additional priority" for safety evaluation, subject to the payment of 100% of the costs associated with the safety assessment and determination. In order to ensure that EPA's activity is focused on the substances it has identified as high priorities, no more than 15 percent of the total number of chemicals in the safety evaluation process can be designated under this approach.

New Chemicals and Significant New Uses (amending TSCA Section 5)

Amends the new chemical review process of TSCA by requiring that EPA determine that a new chemical substance or a significant new use is likely to meet the safety standard before it is approved for commercial manufacturing or processing. Allows EPA to postpone a decision on a new chemical until additional information is generated. Prohibits manufacture or processing of a new chemical or significant new use except in compliance with any conditions or restrictions imposed by EPA sufficient to ensure likely safety. Ensures transparency in all EPA decisions on new chemicals or significant new uses.

Continues appropriate, long-standing exemptions established by EPA under existing TSCA authority.

Safety Assessments and Determinations (Section 6)

Requires EPA to conduct a safety assessment and safety determination for all high priority substances. Establishes strict deadlines for EPA action under this section:

- Within 6 months of designation as a high priority, EPA must define the scope of the assessment and determination, including the conditions of use that will be evaluated.
- Safety assessments and determinations must be completed within 3 years of designation.
- If EPA finds a chemical does not meet the safety standard, risk management measures must be imposed within 2 years.
- EPA is permitted to extend these deadlines for an aggregate period not to exceed 2 years upon showing of cause.

EPA is expressly authorized to initiate assessments or continue assessments that have already been initiated, for substances such as those identified by EPA in its TSCA Work Plan Chemical program.

In the safety assessment and determination process, EPA is to determine that a substance meets the safety standard, or does not meet the safety standard.

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If a substance is found not to meet the safety standard under the conditions of use, EPA must impose the risk management measures necessary to ensure the safety standard is met. If the safety standard cannot be met through risk management measures, EPA is authorized to ban or phase out the substance. All safety determinations are subject to public notice and comment, as are any risk management rules. Cost and technical feasibility are to be considered only in the choice of applicable risk management rule. The bill eliminates the controversial provision of existing TSCA that requires EPA to adopt the least burdensome regulatory requirement.

EPA is authorized to postpone a determination if additional information is necessary. If the chemical substance is likely to cause an unreasonable risk of harm before the effective date of a rule, EPA is authorized to declare a proposed rule to be effective upon publication in the Federal Register. Safety determinations and associated safety assessments are considered final agency action effective upon completion (for substances found to meet the safety standard) or the effective date of the requisite final risk management rule (for substances found to not meet the safety standard).

Information Collection and Reporting (amending TSCA Section 8)
Ensures that EPA's information collection and reporting requirements produce a more complete picture of chemical substances in active commerce in the United States, and applies reporting and recordkeeping requirements to both manufacturers and processors. Requires EPA to review all claims for the protection of chemical identity against disclosure (as confidential business information) within 5 years of enactment. Requires EPA to keep the list of active and inactive chemical substances up to date.

Exports and Imports (amending TSCA Sections 12 and 13)
Conforms the export and import notification requirements established by current TSCA to the requirements of the Act. Mandates that exporters provide prior notice of exports of substances that are not likely to meet, or that do not meet, the safety standard. Requires the United States to refuse the entry of any import that does not meet the safety standard or for which a regulation banning the substance has been promulgated. Requires importers of substances to certify compliance with the Act, and authorizes EPA to require certification of articles containing regulated substances where warranted.

Confidential Information (amending TSCA Section 14)
As a condition for protecting confidential information from disclosure, requires that all confidentiality claims be asserted and meet specific requirements. All information must be disclosed to EPA; claims to protect information against disclosure only apply to possible public disclosures. Establishes a presumption of protection for a limited set of information generally considered to be proprietary, such as sales information and customer lists. Requires the up-front substantiation of all other confidentiality claims, including claims to protect chemical identity from disclosure. Requires EPA to review all claims for protection of chemical identity, and a representative subset of all other claims.

Establishes exceptions from protection against disclosure, including information already in the public domain, information EPA believes must be disclosed to protect health and the environment, and disclosures to state agencies, as well as to medical personnel, first responders, and government health and environmental officials in emergency and non-emergency situations subject to certain conditions.

Information not protected from disclosure must be made public. Information that qualifies for protection against disclosure will be protected for 10 years. The period of protection may be extended upon re-substantiation of the confidentiality claim. Provides for appropriate notice to owners of confidential information when claims expire or when confidential information will be disclosed.

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EPA is to develop a system of unique identifiers for confidential chemical identities to ensure that all relevant information is disclosed when the claim expires or is withdrawn.

Penalties (amending TSCA Section 16)
Increases existing TSCA penalties from $25,000 to $37,500 per violation. Establishes a criminal penalty for violations that create an imminent danger of death or serious bodily injury, based on similar provisions in other federal environmental laws.

State-Federal Relationship (amending TSCA Section 18)
Delineates the relationship of State governments and the federal government by preserving the ability of States to regulate chemical substances that have not been designated as high priority substances or subject to a safety assessment or determination. Preempts state government action only on a chemical-specific basis consistent with the scope of EPA's assessments and determinations. New state requirements that prohibit or otherwise restrict a chemical cannot be imposed once EPA has designated it as a high priority and developed a scope of review for a safety assessment and determination which must be done within 6 months of making a high-priority designation. Existing and new state requirements to require testing are preempted once EPA has issued a rule or order under Section 4. Use notifications are preempted if EPA requires the same notification through a significant new use rule under section 5. Existing and new state requirements that prohibit or otherwise restrict a chemical cannot be imposed once EPA has completed a safety assessment and determination under section 6, or, for a chemical EPA finds does not meet the safety standard, upon issuance of the final risk management rule. The preemptive effect of any EPA action is limited to the scope of the applicable decision (for example, the conditions of use included in the scope of a safety assessment and determination).

Creates an explicit exception from preemption for State actions under authority of any other federal law, or under state law related to air or water quality, waste treatment or disposal, and for reporting and information collection requirements. Further creates two exceptions from preemption for state actions to prohibit or restrict a chemical substance taken before January 1, 2015, and for any state law in effect on August 31, 2003.

Provides States the ability to obtain a waiver from preemption for compelling local conditions. States may seek judicial review of EPA decisions on waivers. Also allows States to seek judicial review of EPA decisions on States' low-priority recommendations under section 4A.

Makes clear that nothing in the Act affects a common law or statutory cause of action for civil relief or to address criminal conduct, including causes of action for personal injury, wrongful death, or strict liability, among others. Also makes clear that nothing in the Act has an effect on private remedies, including the admissibility into evidence of any information or decision under the Act.

Section 23 (amending TSCA Section 26)
Expands the existing TSCA fee authority to ensure that funds sufficient to defray a portion of EPA expenses in prioritization, safety assessment and determination and implementation of the Act are provided through user fees. Authorizes EPA to raise fees to defray approximately 25% of the cost of implementation, to a maximum of $18 million. All fee revenue is directed to a new TSCA Implementation Fund, to ensure that resources will be directly available to EPA . Similar to user fees in several other federal product assessment programs, fee authority is conditioned upon continued federal appropriations.

Authorizes EPA to adjust fees for inflation and to ensure sufficiency of funds and avoid surpluses. Requires manufacturers of "additional priorities" identified under Section 4A to pay 100% of the costs

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of safety assessments and determinations. Establishes audit and transparency requirements in EPA's implementation of the fee program.

Section 24 (amending TSCA Section 27)
Establishes a new Sustainable Chemistry program, designed to ensure that EPA and the federal government support education, and research and development, into new, sustainable chemistries.

Conforming Changes
Makes appropriate conforming changes to Section 7 (Imminent Hazards), Section 9 (Relationship to Other Federal Laws), Section 16 (Prohibited Acts), Section 19 (Judicial Review), and Section 21 (Citizens' Petitions), among others, to conform those sections to the provisions of the Act.

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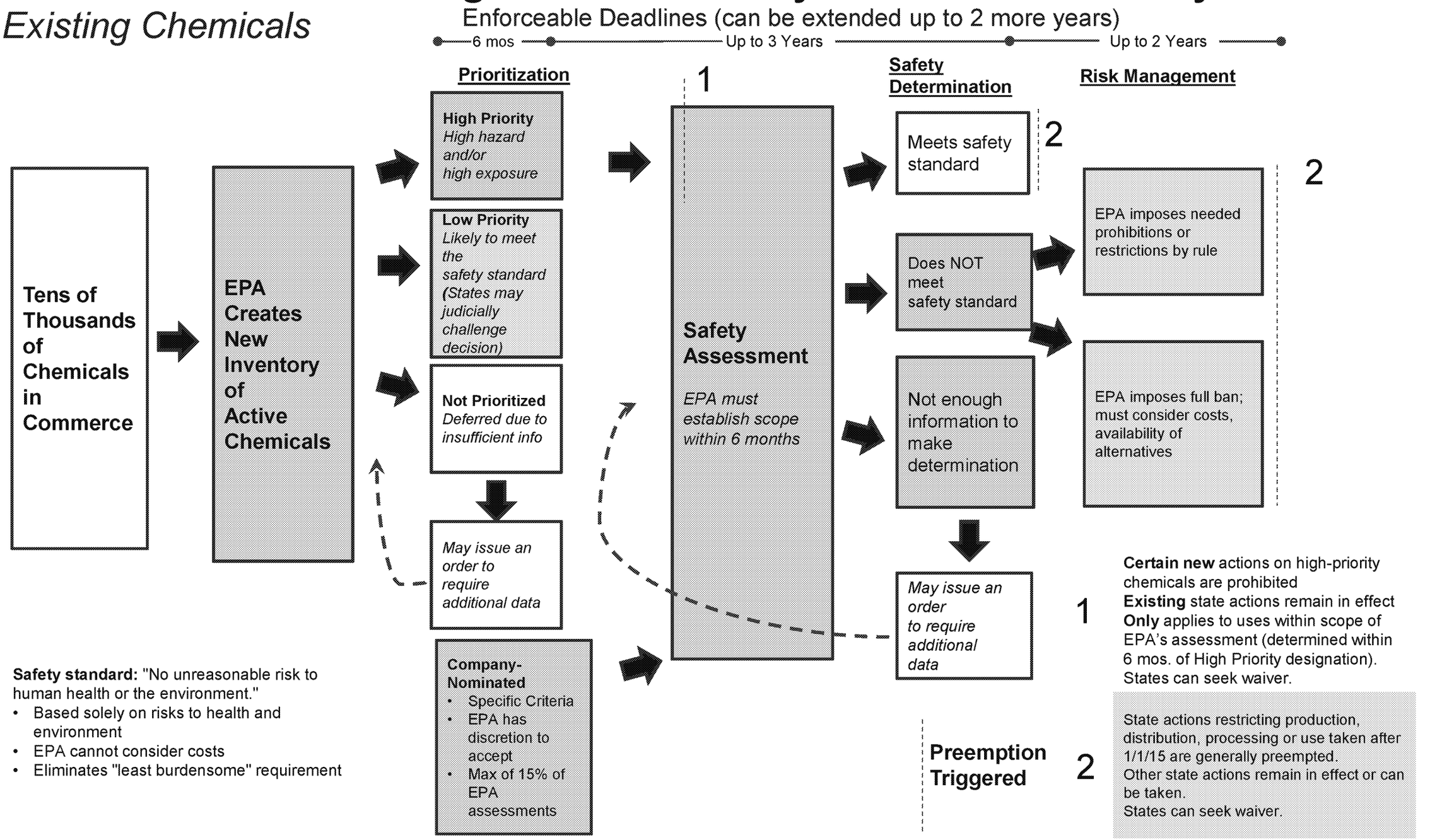
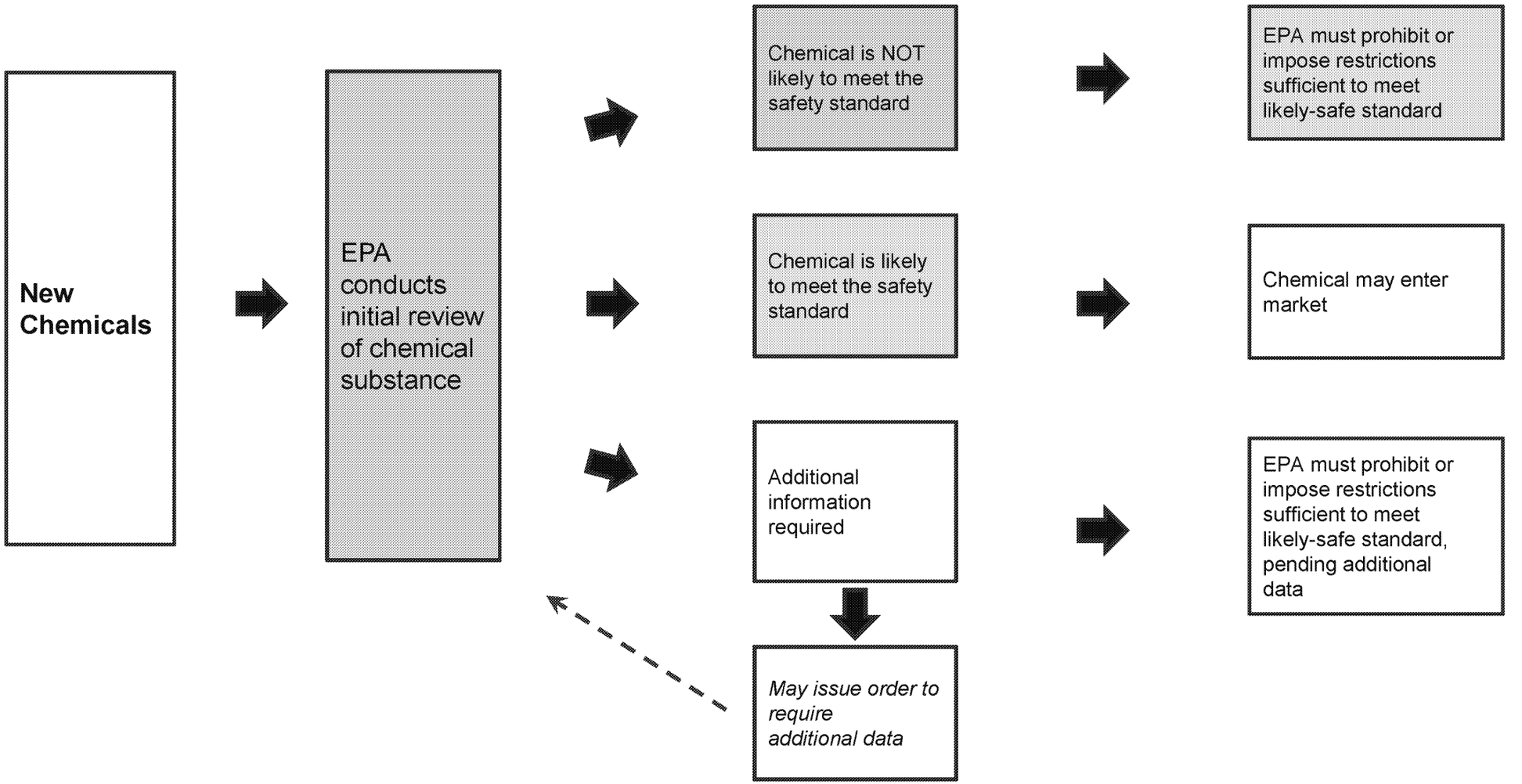
The Frank R. Lautenberg Chemical Safety for the 21st Century Act

Existing Chemicals



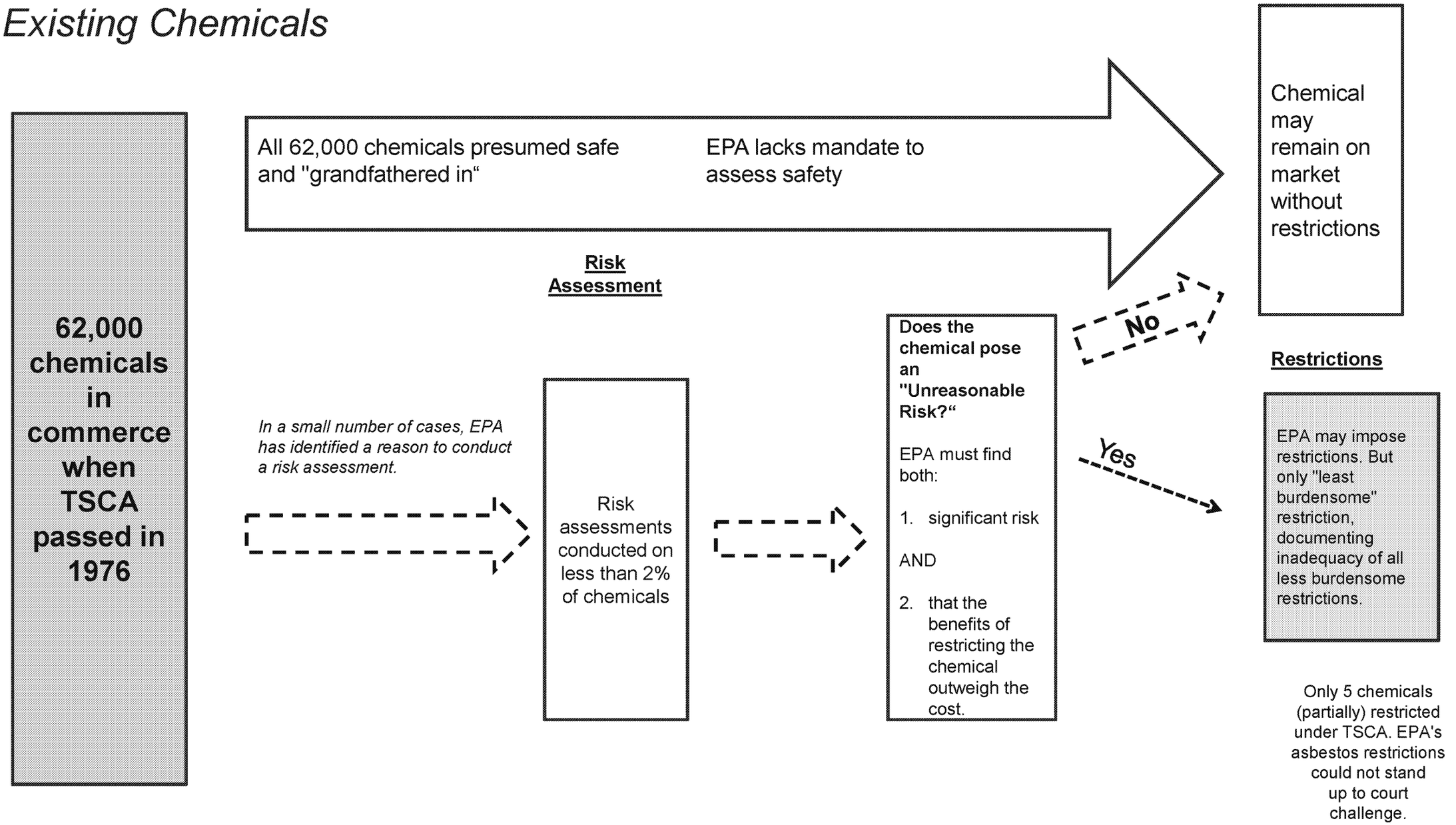
The Frank R. Lautenberg Chemical Safety for the 21st Century Act

New Chemicals



How the Toxic Substances Control Act Works

Existing Chemicals



Message

From: Black, Jonathan (Tom Udall) [Jonathan_Black@tomudall.senate.gov]
Sent: 3/26/2015 7:09:22 PM
To: Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Jones, Jim [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c32c4b9347004778b0a93a4cbd83fc8a-JJONES1]
Subject: RE: Sen. Udall TSCA TA on Preemption

Thanks.

I don't understand this one below.

Under this scenario (in S.697 as currently drafted) can a state start a NEW regulation after a chemical has failed to meet the safety standard? -- Is a state permitted to implement a NEW regulation when EPA is doing risk management?

2) Please provide EPA technical assistance in drafting the following scenarios for High Priority Preemption:
a) Allow for a prohibition (pause) on NEW state laws during the EPA's safety assessment and evaluation. BUT, lift that prohibition once a safety determination is made.
No drafting changes to section 18(b) are needed to accomplish this - whether intended or not, this is what the bill text already provides. This is because section 18(b) applies to a chemical that "is a high-priority substance", as of the commencement of a safety determination. Per 4A(a)(3)(A)(iii)(I), a chemical is removed from the high priority list upon completion of a safety determination, so 18(b) preemption would cut off at that point without the need for specific language to that effect. (Although no changes are needed for this purpose, we suggest that the phrase in 18(b) "statute or administrative action prohibiting or restricting" be changed to "statute or administrative action to prohibit or otherwise restrict", to conform with changes made elsewhere in the bill - including in 18(a) - per earlier TA.)
Although no change is needed to section 18(b), we suggest dropping section 18(f)(5) addressing duration of section 18(b) waivers. This paragraph is unnecessary under this construct: since (b) preemption by its terms would last only until the safety determination is complete, there is no need to specify that waivers of (b) preemption terminate at that point. But if it is retained, these suggested conforming edits should be made.
(f) . . . "(5) DURATION OF WAIVERS.-A waiver granted under paragraph (1)(B) shall remain in effect until the later of-
"(A) such time as the safety assessment and safety determination is completed; and
"(B) the date on which compliance with an applicable rule issued under section 6(d) is required.

-----Original Message-----
From: Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]
Sent: Thursday, March 26, 2015 2:17 PM
To: Black, Jonathan (Tom Udall); Vaught, Laura; Jones, Jim
Subject: Sen. Udall TSCA TA on Preemption

Jonathan,
Please see the attached technical assistance. The TA is provided in response to your request and does not necessarily represent the policy positions of the agency and the administration on the bill, draft language and comments. Please let me know if any questions. Thanks, Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

-----Original Message-----
From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Monday, March 23, 2015 12:23 PM
To: Kaiser, Sven-Erik; Vaught, Laura; Jones, Jim
Cc: Black, Jonathan (Tom Udall)
Subject: Preemption Technical Assistance

Since Jim mentioned that preemption would figure prominently into the Administration's evaluation of any TSCA reform bill, I assume you can help with some technical assistance on the issue.

I need a few things:

1) Please address the "ambiguity" about whether state clean air, clean water and GHG laws are preempted.
a) Please provide technical assistance on clarifying that this bill does not preempt those laws.
2) Please provide EPA technical assistance in drafting the following scenarios for High Priority Preemption:
a) Allow for a prohibition (pause) on NEW state laws during the EPA's safety assessment and evaluation. BUT, lift that prohibition once a safety determination is made.
b) Move the prohibition on NEW state laws back to the end of the safety assessment -- to the point of a safety determination.
c) Move the prohibition on NEW state laws back to the point at which EPA circulates a "draft" safety determination for public comment.
d) we may have some other scenarios.
3) Please provide technical assistance on the concern with "articles" that was referenced in the hearing.

Thanks,
---Jonathan

Message

From: Black, Jonathan (Tom Udall) [Jonathan_Black@tomudall.senate.gov]
Sent: 4/15/2015 8:56:39 PM
To: Kaiser, Sven-Erik [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac78d3704ba94edbbd0da970921271ff-SKAISER]; Karakitsos, Dimitri (EPW) [Dimitri_Karakitsos@epw.senate.gov]; Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]; Distefano, Nichole [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31d32a3a3a9e4591b5fdfc3eb96e8b78-Distefano,]
Subject: Re: SEPW TSCA TA Request

Thanks!

From: Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]
Sent: Wednesday, April 15, 2015 04:52 PM
To: Black, Jonathan (Tom Udall); Karakitsos, Dimitri (EPW); Vaught, Laura ; Distefano, Nichole
Subject: SEPW TSCA TA Request

Jonathan and Dimitri,
Attached please find technical assistance in response to your request. The attachment includes technical assistance on all of the questions except Q2 (preemption and other federal laws). Q2 is still in progress. The technical assistance does not necessarily represent the policy positions of the agency and the administration on the bill, the draft language and the comments. Please let me know if any additional questions. Thanks,
Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Wednesday, April 15, 2015 11:56 AM
To: Kaiser, Sven-Erik; Karakitsos, Dimitri (EPW)
Subject: RE: SEPW TSCA TA Request

Checking in. Any chance we can have this by 4pm today?

Thanks!
---jb

From: Kaiser, Sven-Erik [mailto:Kaiser.Sven-Erik@epa.gov]
Sent: Friday, April 10, 2015 4:12 PM
To: Black, Jonathan (Tom Udall); Karakitsos, Dimitri (EPW)
Subject: RE: SEPW TSCA TA Request

Jonathan and Dimitri,
Thanks for talking with us today about the technical assistance. We'll start on the request below and let you know if any questions. Best,

Sven

Sven-Erik Kaiser
U.S. EPA
Office of Congressional and Intergovernmental Relations
1200 Pennsylvania Ave., NW (1305A)
Washington, DC 20460
202-566-2753

From: Black, Jonathan (Tom Udall) [mailto:Jonathan_Black@tomudall.senate.gov]
Sent: Friday, April 10, 2015 4:05 PM
To: Kaiser, Sven-Erik; Karakitsos, Dimitri (EPW)
Cc: Black, Jonathan (Tom Udall)
Subject: RE: SEPW TSCA TA Request

Sven,

Thanks for the Technical Assistance Call today.

To follow-up, EPA has agreed to propose some language on "articles" that would codify existing practice on treatment of articles. We are hoping to see that language by Tuesday/Wednesday.

As well, we discussed exceptions for state statutes. We have a few questions that are keyed from the following draft text:

Q1: Would there be any effect from deleting 18(d)(1) if 18(d)(2) is retained?

Q2: Is it possible to delete/simplify "**or adopted for the purpose of satisfying or obtaining authorization or approval under** any other Federal law"?

Q3: Can you review the proposed draft changes to subsection (d)(1)(C) [mirrored in (d)(2)(C)] to ensure the intent of preserving actions (including even chemical restrictions) that states have taken or would take under state statutes to address different health/environmental concerns than those EPA has addressed under TSCA?

(d) Exceptions.—

"(1) IN ~~GENERAL.—SUBSECTIONS (A) AND (B)~~ GENERAL.—**Subsection (a)** shall not apply to a statute or administrative action of a State or a political subdivision of a State applicable to a specific chemical substance that—

"(A) is adopted **or authorized** under the authority of~~, or authorized to comply with,~~ **any other Federal law or adopted for the purpose of satisfying or obtaining authorization or approval under** any other Federal law;

"(B) implements a reporting, monitoring, or other information collection obligation for the chemical substance not otherwise required by the Administrator under this Act or required under any other Federal law; ~~or~~

"(C) is 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, ~~unless the action taken by the State or political subdivision of a State—~~ **except to the extent that the action—**

"(i) imposes a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance; and

"(ii)(I) **addresses the same hazards** ~~and~~ or **exposures, with respect to the same conditions of use, as** ~~is already required by a decision by the Administrator under section 5 or 6;~~

~~"(II) is taken to address a health or environmental concern that applies to the uses or conditions of use that~~ are included in the scope of a safety determination pursuant to section 6 ~~or the scope of a significant new use rule promulgated pursuant to section 5~~, but is inconsistent with the ~~action~~ **determination** of the Administrator under section 6(c)(1)(A) or a rule promulgated by the Administrator under section 6(d); or

~~"(III)~~**"(II)** would cause a violation of the applicable action by the Administrator under section 5 or 6**; or**

"(2) NO PREEMPTION OF STATE STATUTES AND ADMINISTRATIVE ACTIONS.—Nothing in this Act, nor any amendment made by this Act, nor any rule, standard of performance, safety determination, or scientific assessment implemented pursuant to this Act, shall affect the right of a State or a political subdivision of a State to adopt or enforce any rule, standard of performance, safety determination, scientific assessment, or any protection for public health or the environment that—

"(A) is adopted **or authorized** under the authority of~~, or authorized to comply with,~~ **any other Federal law or adopted for the purpose of satisfying or obtaining authorization or approval under** any other Federal law;

"(B) implements a reporting, monitoring, **disclosure,** or other information ~~collection~~ obligation for the chemical substance not otherwise required by the Administrator under this Act or required under any other Federal law; ~~or~~

"(C) is 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, ~~unless the action taken by the State or political subdivision of a State—~~ **except to the extent that the action—**

"(i) imposes a restriction on the manufacture, processing, distribution in commerce, or use of a chemical substance; and

"(ii)(I) **addresses the same hazards** ~~and~~ or **exposures, with respect to the same conditions of use as** ~~is already required by a decision by the Administrator under section 5 or 6;~~

~~"(II) is taken to address a health or environmental concern that applies to the uses or conditions of use that~~ are included in the scope of a safety determination pursuant to section 6 ~~or the scope of a significant new use rule promulgated pursuant to section 5~~, but is inconsistent with the ~~action~~ determination of the Administrator under section 6(c)(1)(A) or a rule promulgated by the Administrator under section 6(d);

~~"(III)~~**"(II)** would cause a violation of the applicable action by the Administrator under section 5 or 6**; or**

From: Karakitsos, Dimitri (EPW) [mailto:Dimitri_Karakitsos@epw.senate.gov]
Sent: Thursday, April 09, 2015 5:13 PM
To: Kaiser, Sven-Erik
Cc: Black, Jonathan (Tom Udall)
Subject: EPA TA

Sven,

Here are a few things we would greatly appreciate some EPA TA on. We may need to discuss some further so if a phone call would be helpful please just let me know and thanks in advance for the help. I am also happy to work with you to help facilitate a call between your folks and some interested parties on the articles language if you think that would help.

Dimitri

Articles

It was my understanding that under current TSCA if EPA were looking to regulate an article or articles the Agency would already have somewhat of a higher bar and do some level of extra analysis of finding there is an exposure to a chemical substance from an article or group of articles. I had a brief conversation that I interpreted as the Agency not being against some heightened review to determine when article specific regulations were necessary but clearly we understand the challenges and hurdles the language we have in the bill today seem to cause. Below are two proposals, one from an outside counsel which I don't think addresses all your concerns and one that we worked up to see what you all thought. It is important to us to have something on articles in the bill, striking is not much of an option so if you all can please review and provide guidance we would appreciate.

- Proposed language – If the Administrator intends to prohibit or otherwise restrict an article, or a category of articles that perform similar functions and have similar patterns of exposure, on the basis of a chemical substance contained in that article or category, the Administrator shall have evidence of significant exposure to the chemical substance from such article or category.
- Draft staff language - New 3A(h)(2)(C)(ii)(III): " when considering the regulation of an article, or a category of articles, in a rulemaking under section 6, clearly describe the exposure or exposures to the chemical substance determined by the Administrator to be associated with such articles or categories of articles."

Preemption

Waiver – in our State Waivers we have two separate provisions that require a showing of a "compelling state or local" condition or interest. Those provisions were not intended to mean that the state would have to show some different exposures or unique conditions to meet that requirement, it was simply that they had a genuine concern with the substance that led them to request the waiver. Is there some way to clarify?

Exceptions/No Preemption of State Statutes and Administrative Actions – these two provisions other than their intro paragraphs are identical. The request for clarification and TA comes from subsection A in both 1 and 2. I have concern that "for the purpose of satisfying or obtaining authorization or approval under any other federal law" is incredibly broad and could leave loop holes for states to regulate TSCA regulated chemical substances in ways inconsistent with EPA decisions under the law. If EPA for example (possibly not the most eloquent or well thought out example) found a product safe for use in an aerosol application yet a state banned it under their state law to comply with the CAA to reduce VOCs or some other air pollutant – maybe it is one option the state could take "for the purpose of satisfying or obtaining authorization or approval" but it may be one of a range of options – why should that be inconsistent with an EPA TSCA decision. I think at a minimum I would prefer language stating the state level restriction is "necessary" to satisfy or obtain authorization or approval rather than "for the purpose of."

Message

From: McCarthy, David [David.McCarthy@mail.house.gov]
Sent: 7/6/2015 2:29:00 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
Subject: Re: Possible TSCA hearing

July 16 is the new date we're holding. Thanks. Dave

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Thursday, July 02, 2015 05:38 PM
To: McCarthy, David
Subject: RE: Possible TSCA hearing

Sorry the day got away from me – let's connect Monday morning?

The Jim out of town part is the main problem here as he's definitely the right person to do something like this for us, though I do want to understand format as well. Any flexibility in the date?

From: McCarthy, David [mailto:David.McCarthy@mail.house.gov]
Sent: Thursday, July 02, 2015 4:50 PM
To: Vaught, Laura
Subject: Re: Possible TSCA hearing

Laura - Call whenever it's convenient. Thanks! Dave

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Thursday, July 02, 2015 03:03 PM
To: McCarthy, David
Cc: Couri, Jerry
Subject: RE: Possible TSCA hearing

Dave – I'll try to give you a call in a bit to discuss. But just to flag one big problem I know we have – Jim is out of town on vacation next week.

From: McCarthy, David [mailto:David.McCarthy@mail.house.gov]
Sent: Thursday, July 02, 2015 1:48 PM
To: Vaught, Laura
Cc: Couri, Jerry
Subject: RE: Possible TSCA hearing

Laura - Just left you a voice mail. As Jerry has mentioned to Sven, It turns out that what works better for our Members is a July 10 informal discussion of these section 8 issues. So no formal testimony or on-the-record testimony. We'll likely gather in 2322 Rayburn at around 10. The five issues we've narrowed it down to are nomenclature, resetting the inventory, the aluminum petition on reporting, recyclers, and the size threshold definition of small business. Each is mentioned in our Committee Report that accompanies H.R. 2576. The meeting will, of course, be bi-par. Besides Shimkus and Tonko, I think Doyle, Johnson, Schrader, Green, and Latta have shown the most interest. I don't anticipate us doing any press on it. We would like very much for the Agency to join us and participate so that our Members can get the Agency perspective on each of these issues. All five issues were ones where we had Member interest in addressing in HR 2576 but we did not have time to sort out. We're all trying to gauge people's continuing interest. I'm at my desk for another hour or so, 226-9606. Or try my cell anytime 202-731-1518. Thanks so much. Dave

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, June 09, 2015 7:08 PM
To: McCarthy, David
Subject: RE: Possible TSCA hearing

Sounds good – thanks.

From: McCarthy, David [mailto:David.McCarthy@mail.house.gov]
Sent: Tuesday, June 09, 2015 7:04 PM
To: Vaught, Laura
Subject: Re: Possible TSCA hearing

It.s not 100 percent that we do it, and it's small potatoes. May I call tomorrow? Thanks. D

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, June 09, 2015 06:38 PM
To: McCarthy, David
Subject: Re: Possible TSCA hearing

Thanks. Will give you a call. I think Jim is out on vacation that week though...

Sent from my iPhone

On Jun 9, 2015, at 6:21 PM, McCarthy, David <David.McCarthy@mail.house.gov> wrote:

> Laura – We're looking at July 8 as a hearing date for a short hearing on TSCA section 8 reporting issues. Happy to discuss. 226-9606. Thanks. Dave
>
> PS: Hope all's well.

Message

From: McCarthy, David [David.McCarthy@mail.house.gov]
Sent: 7/10/2015 5:50:53 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
CC: Couri, Jerry [JerryCouri@mail.house.gov]
Subject: Re: Tsca chat

Hat's grand. Thanks so much. D

----- Original Message -----
From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Friday, July 10, 2015 01:49 PM
To: McCarthy, David
Subject: RE: Tsca chat

Seems like this will work. We may have the usual agency cast of thousands, but probably at least a couple other substantive people if that's ok.

-----Original Message-----
From: McCarthy, David [mailto:David.McCarthy@mail.house.gov]
Sent: Friday, July 10, 2015 1:26 PM
To: Vaught, Laura
Subject: Tsca chat

Laura - Hope it works for Jim to come in at 11AM next Thursday to visit with Members on the section 8 stuff. We'll finish with the stakeholders before that. You and Jim are welcome to enter 2322 through the staff and Member doors, and we'll make you comfortable in a small conference room if you arrive before 11AM. Thanks so much. Dave

Message

From: Tsiamis, Christos (Markey) [Christos_Tsiamis@markey.senate.gov]
Sent: 10/17/2015 6:10:53 PM
To: Vaught, Laura [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c30920bcb6214a91b7e3c1e7810c63e1-Vaught, Laura]
CC: Tsiamis, Christos (Markey) [Christos_Tsiamis@markey.senate.gov]
Subject: RE: Follow-up to Friday's meeting on 10/21 hearing
Attachments: cpp final rule ria - chapter 6.pdf

Hi, Laura. Thanks for your offer to assist. It would help immensely if you could help answer these two questions.

First, in item 3 in your email, below, you cite an employment analysis example in Chapter 6 of the RIA (attached). Did you mean the entirety of Section 6.5 of Chapter 6, or a more discrete example? If it's the latter, can you please provide the bracketing page numbers?

Second, can you help locate the citation, link to, and/or pdf of an agency-wide memo issued by EPA's Office of Policy requesting that Assistant Administrators "pay particular attention to transparency and clarity in drafting is RIAs." We need a citation, at least date and author.

Thank you very much for your help, Laura.

Christos

—
Christos Tsiamis, Esq.
Knauss Sea Grant Legislative Fellow
Office of Senator Edward J. Markey
255 Dirksen Senate Building
Washington, D.C. 20510
Office Main: (202) 224-2742
Office Direct: (202) 228-2475
christos_tsiamis@markey.senate.gov

From: Unruh Cohen, Ana (Markey)
Sent: Tuesday, October 13, 2015 3:51 PM
To: Paczkowski, Karen (Markey); Tomboulian, Briana (Markey); Tsiamis, Christos (Markey)
Subject: FW: Follow-up to Friday's meeting on 10/21 hearing

fyi

From: Vaught, Laura [mailto:Vaught.Laura@epa.gov]
Sent: Tuesday, October 13, 2015 3:49 PM
To: Unruh Cohen, Ana (Markey); Freedhoff, Michal (Markey)
Subject: FW: Follow-up to Friday's meeting on 10/21 hearing

Michal and Ana – attached and below please find some additional information following up on our call. Let us know if questions.

Thanks!

Here is the information we discussed at our meeting on Friday that may be useful for preparation of the hearing on October 21. Let us know if we can provide further assistance. Thanks.

1. RFF Monograph entitled "Defining the Unknown: A Look at the Cost of Tighter Ozone Standards" http://www.rff.org/files/document/file/RFF-IB-15-03.pdf

2. American Economic Review paper on ozone and worker productivity, see(also attached): https://www.aeaweb.org/articles.php?doi=10.1257/aer.102.7.3652

3. Employment analysis example using updated approach – see attached chapter from the Clean Power Plan RIA

4. Attached are 2 excerpts that addresses OMB's views on discounting and SCC – specifically with respect to perceived inconsistency with A4. The excerpts are from the SCC Response to Comments (RTC) document that was released in July. The RTC is authored by the interagency working group, of which OMB is a member and active participant. OMB coordinated the drafting of the document and it was released by OMB on July 2 via a blog post. It is posted on OIRA's "For Agencies" webpage.

   The relevant parts of the second excerpt can be condensed to:
   - "Circular A-4 is a living document, which may be updated as appropriate to reflect new developments and unforeseen issues. OMB was fully involved in the development of the SCC estimates as a working group co-chair and supports the working group's recommendations regarding the discount ... The departure from the standard discount rate recommendations in Circular A-4 is explained in detail in the TSDs and in Section 5 of this document. Briefly, the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A-4 itself.." (https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-response-to-comments-final-july-2015.pdf, p. 36)

5. Economy-Wide Panel members, see (also posted below): http://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalSubCommitteeRosters?OpenView&committee=BOARD&subcommittee=Economy-Wide%20Modeling%20Panel

Wilcoxen, Peter J.	**Chair**	Syracuse University	Syracuse	NY
Balistreri, Edward		Colorado School of Mines	Golden	CO
Belzer, Richard		Independent consultant	Mt. Vernon	VA
Bui, Linda		Brandeis University	Waltham	MA
Carbone, Jared		Colorado School of Mines	Golden	CO
de la Chesnaye, Francisco		Electric Power Research Institute	Washington	DC
Fisher-Vanden, Karen		Pennsylvania State University	University Park	PA
Fox, Alan		International Trade Commission	Washington	DC
Fullerton, Don		University of Illinois	Champaign	
Hertel, Thomas		Purdue University	West Lafayette	IN
Leamer, Edward		University of California, Los Angeles	Los Angeles	CA
Metcalf, Gilbert		Tufts University	Medford	MA

Montgomery, W. David	Affiliated Consultant at National Economic Research Associates (NERA)	Washington	DC
Muller, Nick	Carnegie Mellon University, Middlebury College and National Bureau of Economic Research	Middlebury	VT
Paltsev, Sergey	MIT	Cambridge	MA
Revesz, Richard L.	New York University	New York City	NY
Rhomberg, Lorenz	Gradient	Cambridge	MA
Rose, Adam	University of Southern California	Los Angeles	CA
Shimer, Robert	University of Chicago	Chicago	IL
Smith, V. Kerry	Arizona State University	Tempe	AZ
Sue Wing, Ian	Boston University	Boston	MA
Webster, Mort	Pennsylvania State University	State College	PA
Williams, Roberton	University of Maryland	College Park	MD

With regard to agendas, there is one posted for the July 15 call at:
http://yosemite.epa.gov/sab/sabproduct.nsf/165F936E2001C2C485257DFD00602CFB/$File/July+15+2015+Telec+Agenda_aw_revised.pdf

Also meeting minutes from that call:
http://yosemite.epa.gov/sab/sabproduct.nsf/MeetingCal/165F936E2001C2C485257DFD00602CFB/$File/Minutes+7-15-15-pw.pdf

For the October 22-23 meeting, you can find the agenda here:
http://yosemite.epa.gov/sab/sabproduct.nsf/7F1209FEB69099EC85257DFD00605B67/$File/Oct+22+-+23+EWM+Agenda_Version+2.pdf

CHAPTER 6: EMPLOYMENT IMPACT ANALYSIS

6.1 Introduction

Executive Order 13563 directs federal agencies to consider regulatory impacts on job creation and employment. According to the Executive Order, "our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science" (Executive Order 13563, 2011). Although standard benefit-cost analyses have not typically included a separate analysis of regulation-induced employment impacts,[129] we typically conduct employment analyses for economically significant rules. While the economy continues moving toward full-employment, employment impacts are of particular concern and questions may arise about their existence and magnitude. This chapter discusses and projects potential employment impacts for the utility power, coal and natural gas production, and demand-side energy efficiency sectors which may result from the Final Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (herein referred to as "final emission guidelines" or the "Clean Power Plan Final Rule").[130]

Section 6.2 describes the theoretical framework used to analyze regulation-induced employment impacts, discussing how economic theory alone cannot predict whether such impacts are positive or negative. Section 6.3 presents an overview of the peer-reviewed literature relevant to evaluating the effect of environmental regulation on employment. Section 6.4 provides background regarding recent employment trends in the electricity generation, coal and natural gas extraction, renewable energy, and demand-side energy efficiency-related sectors. Section 6.5 presents the EPA's quantitative projections of potential employment impacts in these sectors. These projections are based in part on a detailed model of the electricity production sector used for this regulatory analysis. Additionally, this section discusses projected employment impacts due to demand-side energy efficiency activities. Section 6.6 offers several conclusions.

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[129] Labor expenses do, however, contribute toward total costs in the EPA's standard benefit-cost analyses.

[130] The employment analysis in this RIA is part of EPA's ongoing effort to "conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of [the Act]" pursuant to CAA section 321(a).

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6.2 Economic Theory and Employment

Regulatory employment impacts are difficult to disentangle from other economic changes affecting employment decisions over time and across regions and industries. Labor market responses to regulation are complex. They depend on labor demand and supply elasticities and possible labor market imperfections (e.g., wage stickiness, long-term unemployment, etc.). The unit of measurement (e.g., number of jobs, types of job hours worked, and earnings) may affect observability of that response. Net employment impacts are composed of a mix of potential declines and gains in different areas of the economy (e.g., the directly regulated sector, the environmental protection sector, upstream and downstream sectors, etc.) over time. In light of these difficulties, economic theory provides a constructive framework for analysis.

Microeconomic theory describes how firms adjust their use of inputs in response to changes in economic conditions.[131] Labor is one of many inputs to production, along with capital, energy, and materials. In competitive markets, firms choose inputs and outputs to maximize profit as a function of market prices and technological constraints.[132,133] Berman and Bui (2001) adapt this model to analyze how environmental regulations affect labor demand.[134] They model environmental regulation as effectively requiring certain factors of production, such as pollution abatement capital, at levels that firms would not otherwise choose. Berman and Bui (2001) model two components that drive changes in firm-level labor demand: output effects and substitution effects.[135] Regulation affects the profit-maximizing quantity of output by changing the marginal cost of production. If a regulation causes marginal cost to increase, it will place upward pressure on output prices, leading to a decrease in demand, and resulting in a decrease in production. The output effect describes how, holding labor intensity constant, a decrease in production causes a decrease in labor demand. As noted by Berman and Bui, although many

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[131] See Layard and Walters (1978), a standard microeconomic theory textbook, for a discussion, in Chapter 9.

[132] See Hamermesh (1993), Ch. 2, for a derivation of the firm's labor demand function from cost-minimization.

[133] In this framework, labor demand is a function of quantity of output and prices (of both outputs and inputs).

[134] Morgenstern, Pizer, and Shih (2002) develop a similar model.

[135] The authors also discuss a third component, the impact of regulation on factor prices, but conclude that this effect is unlikely to be important for large competitive factor markets, such as labor and capital. Morgenstern, Pizer and Shih (2002) use a very similar model, but they break the employment effect into three parts: 1) a demand effect; 2) a cost effect; and 3) a factor-shift effect.

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assume that regulations must increases marginal cost, it need not be the case. A regulation could induce a firm to upgrade to less polluting and more efficient equipment that lowers the marginal cost of production. In such a case, output could increase after firms comply with the regulation. For example, in the context of the current rule, improving the heat rate of utility boiler increases fuel efficiency, lowering marginal production costs, and thereby potentially increasing the utility boiler's generation. An unregulated profit-maximizing firm may not have chosen to install such an efficiency-improving technology if the return on investment were too low, but once the investment is required it lowers marginal production costs.

The substitution effect describes how, holding output constant, regulation affects the labor-intensity of production. Although increased environmental regulation may increase use of pollution control equipment and energy to operate that equipment, the impact on labor demand is ambiguous. For example, equipment inspection requirements, specialized waste handling, completing required paperwork, or pollution technologies that alter the production process may affect the number of workers necessary to produce a unit of output. Berman and Bui (2001) model the substitution effect as the effect of regulation on pollution control equipment and expenditures required by the regulation and the corresponding change in the labor-intensity of production.

In summary, as output and substitution effects may be positive or negative, economic theory alone cannot predict the direction of the net effect of regulation on labor demand at the level of the regulated firm. Operating within the bounds of standard economic theory, however, empirical estimation of net employment effects on regulated firms is possible when methods and data of sufficient detail and quality are available. The extant literature, however, illustrates difficulties with empirical estimation. For example, there is a paucity of publicly-available data on plant-level employment, thus most studies must rely on confidential plant-level employment data from the U.S. Census Bureau, typically combined with pollution abatement expenditure data, that are too dated to be reliably informative, or other measures of the stringency of regulation. In addition, the most commonly used empirical methods, for example, Greenstone (2002), likely overstate employment impacts because they rely on relative comparisons between more regulated and less regulated counties, which can lead to "double counting" of impacts

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when production and employment shift from more regulated towards less regulated areas. Thus these empirical methods cannot be used to estimate net employment effects.[136].

The conceptual framework described thus far focused on regulatory effects on plant-level decisions within a regulated industry. Employment impacts at an individual plant do not necessarily represent impacts for the sector as a whole. The theoretical approach must be modified when applied at the industry level.

At the industry-level, labor demand is more responsive if: (1) the price elasticity of demand for the product is high, (2) other factors of production can be easily substituted for labor, (3) the supply of other factors is highly elastic, or (4) labor costs are a large share of total production costs.[137] For example, if all firms in an industry are faced with the same regulatory compliance costs and product demand is inelastic, then industry output may not change much, and output of individual firms may change slightly.[138] In this case, the output effect may be small, while the substitution effect depends on input substitutability. Suppose, for example, that new equipment for heat rate improvements requires labor to install and operate. In this case, the substitution effect may be positive, and with a small output effect, the total effect may be positive. As with potential effects for an individual firm, theory cannot determine the sign or magnitude of industry-level regulatory effects on labor demand. Determining these signs and magnitudes requires additional sector-specific empirical study. For environmental rules, much of the data needed for these empirical studies is not publicly available, would require significant time and resources in order to access confidential U.S. Census data for research, and also would not be necessary for other components of a typical regulatory impact analysis (RIA).

In addition to changes to labor demand in the regulated industry, net employment impacts encompass changes in other related sectors. For example, the final guidelines may increase demand for heat rate improving equipment and services. This increased demand may increase revenue and employment in the firms supporting this technology. At the same time, the regulated

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[136] See Greenstone (2002) p. 1212.

[137] See Ehrenberg & Smith, p. 108.

[138] This discussion draws from Berman and Bui (2001), pp. 293.

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industry is purchasing the equipment, and these costs may impact labor demand at regulated firms. Therefore, it is important to consider the net effect of compliance actions on employment across multiple sectors or industries.

If the U.S. economy is at full employment, even a large-scale environmental regulation is unlikely to have a noticeable impact on aggregate net employment.[139] Instead, labor in affected sectors would primarily be reallocated from one productive use to another (e.g., from producing electricity or steel to producing high efficiency equipment), and net national employment effects from environmental regulation would be small and transitory (e.g., as workers move from one job to another).[140] Some workers may retrain or relocate in anticipation of new requirements or require time to search for new jobs, while shortages in some sectors or regions could bid up wages to attract workers. These adjustment costs can lead to local labor disruptions. Although the net change in the national workforce is expected to be small, localized reductions in employment may adversely impact individuals and communities just as localized increases may have positive impacts.

If, on the other hand, the economy is operating at less than full employment, economic theory does not clearly indicate the direction or magnitude of the net impact of environmental regulation on employment; it could cause either a short-run net increase or short-run net decrease (Schmalansee and Stavins, 2011). For example, the Congressional Budget Office considered EPA's Mercury Air Toxics Standards and regulations for industrial boilers and process heaters as potentially leading to short-run net increases in economic growth and employment, driven by capital investments for compliance with the regulations (Congressional Budget Office, 2011). An important research question is how to accommodate unemployment as a structural feature in economic models. This feature may be important in assessing large-scale regulatory impacts on employment (Smith, 2012).

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[139] Full employment is a conceptual target for the economy where everyone who wants to work and is available to do so at prevailing wages is actively employed. The unemployment rate at full employment is not zero.

[140] Arrow *et al.* 1996; see discussion on bottom of p. 8. In practice, distributional impacts on individual workers can be important, as discussed in later paragraphs of this section.

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Environmental regulation may also affect labor supply and productivity. In particular, pollution and other environmental risks may impact labor productivity or employees' ability to work.[141] While the theoretical framework for analyzing labor supply effects is analogous to that for labor demand, it is more difficult to study empirically. There is a small emerging literature described in the next section that uses detailed labor and environmental data to assess these impacts.

To summarize, economic theory provides a framework for analyzing the impacts of environmental regulation on employment. The net employment effect incorporates expected employment changes (both positive and negative) in the regulated sector and other related sectors. Labor demand impacts for regulated firms, and also for the regulated industry, can be decomposed into output and substitution effects which may be either negative or positive. Estimation of net employment effects for regulated sectors is possible when data of sufficient detail and quality are available. Finally, economic theory suggests that labor supply effects are also possible. In the next section, we discuss the empirical literature.

6.3 Current State of Knowledge Based on the Peer-Reviewed Literature

The labor economics literature contains an extensive body of peer-reviewed empirical work analyzing various aspects of labor demand, relying on the theoretical framework discussed in the preceding section.[142] This work focuses primarily on effects of employment policies such as labor taxes and minimum wages.[143] In contrast, the peer-reviewed empirical literature specifically estimating employment effects of environmental regulations is growing, but is more limited. In this section, we present an overview of the latter. As discussed in the preceding section on theory, determining the direction of employment effects in regulated industries is challenging because of the complexity of the output and substitution effects. Complying with a new or more stringent regulation may require additional inputs, including labor, and may alter the relative proportions of labor and capital used by regulated firms (and firms in other relevant industries) in their production processes.

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[141] E.g. Graff Zivin and Neidell (2012).

[142] Again, see Hamermesh (1993) for a detailed treatment.

[143] See Ehrenberg & Smith (2000), Chapter 4: "Employment Effects: Empirical Estimates" for a concise overview.

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Empirical studies, such as Berman and Bui (2001), suggest that net employment impacts due to regulation were not statistically different from zero in the regulated sector. Other research, such as Greenstone (2002), suggests that more highly regulated counties may generate fewer jobs than less regulated ones, but the methodology used likely overstates employment impacts because it relies on relative comparisons between more regulated and less regulated counties, which can lead to "double counting" of impacts when production and employment shift from more regulated towards less regulated areas.[144]. Moreover, environmental regulations may affect sectors that support pollution reduction earlier than the regulated industry. Rules are usually announced well in advance of their effective dates and then typically provide a period of time for firms to invest in technologies and process changes to meet the new requirements. When a regulation is promulgated, the initial response of firms is often to order pollution control equipment and services to enable compliance when the regulation becomes effective. Estimates of short-term increases in demand for specialized labor within the environmental protection sector have been prepared for several EPA regulations in the past, including the Mercury and Air Toxics Standards (MATS).[145] Overall, the peer-reviewed literature does not contain evidence that environmental regulation has a large impact on net employment (either negative or positive) in the long run across the whole economy.

6.3.1 Regulated Sector

Several empirical studies, including Berman and Bui (2001) and Ferris, Shadbegian, and Wolverton (2014), suggest that regulation-induced net employment impacts may be zero or slightly positive, but small in the regulated sector. Gray et al (2014) find that pulp mills that had to comply with both the air and water regulations in EPA's 1998 "Cluster Rule" experienced relatively small, and not always statistically significant, decreases in employment. Other research on regulated sectors suggests that employment growth may be lower in more regulated areas (Greenstone 2002, Walker 2011, 2013). However since these latter studies compare more regulated to less regulated counties this methodological approach likely overstates employment impacts to the extent that regulation causes plants to locate in one area of the country rather than

[144] See Greenstone (2002) p. 1212.

[145] U.S. EPA (2011b).

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another, which would lead to "double counting" of the employment impacts. List *et al.* (2003) find some evidence that this type of geographic relocation may be occurring.

A small literature examines impacts of environmental regulations on manufacturing employment. Greenstone (2002) and Walker (2011, 2013) study the impact of air quality regulations on manufacturing employment, estimating the effects in non-attainment areas relative to attainment areas. Kahn and Mansur (2013) study environmental regulatory impacts on geographic distribution of manufacturing employment, controlling for electricity prices and labor regulation (right to work laws). Their methodology identifies employment impacts by focusing on neighboring counties with different air quality regulations. They find limited evidence that environmental regulations may cause employment to be lower within "county-border-pairs." This result suggests that regulation may cause an effective relocation of labor across a county border, but since one county's loss is another's gain, such shifts cannot be transformed into an estimate of a national net effect on employment. Moreover this result is sensitive to model specification choices.

The few studies in peer-reviewed journals evaluating employment impacts of policies that reduce CO_2 emissions in the electric power generation sector are in the European context. In a sample of 419 German firms, 13 percent of which were in the electricity sector, Anger and Oberndorfer (2008) find that the initial allocation of emission permits did not significantly affect employment growth in the first year of the European Union (EU) Emissions Trading Scheme (ETS). Examining European firms from 1996-2007, Commins *et al.* (2011) find that a 1 percent increase in energy taxes is associated with a 0.01 percent decrease in employees in the electricity and gas sector. Chan *et al.* (2013) estimate the impact of the EU ETS on a panel of almost 6,000 firms in 10 European countries from 2005-2009. They find that firms in the power sector that participated in the ETS had 2-3 percent fewer employees relative to those that did not participate, but this effect is not statistically significant.

This literature suggests that the employment impacts of controlling CO_2 emissions in the European power sector were small. The degree to which these studies' results apply to the U.S. context is unclear. European policies analyzed in these studies effectively put a price on emissions of both existing and new sources either through taxes or tradable permits with an emissions cap. An emission rate-based regulatory approach may not generate similar

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employment effects. Moreover, European firms face relative fuel prices and market regulatory structures different from their U.S. counterparts, further complicating attempts to transfer quantitative results from the EU experience to evaluate this rule.

6.3.2 Economy-Wide

As noted above it is very difficult to estimate the net national employment impacts of environmental regulation. Given the difficulty with estimating national impacts of regulations, EPA has not generally estimated economy-wide employment impacts of its regulations in its benefit-cost analyses. However, in its continuing effort to advance the evaluation of costs, benefits, and economic impacts associated with environmental regulation, EPA has formed a panel of experts as part of EPA's Science Advisory Board (SAB) to advise EPA on the technical merits and challenges of using economy-wide economic models to evaluate the impacts of its regulations, including the impact on net national employment.[146] Once EPA receives guidance from this panel it will carefully consider this input and then decide if and how to proceed on economy-wide modeling of employment impacts of its regulations.

EPA received several comments regarding the potential net national employment impact of the proposed emission guidelines. Many of these comments referred to analyses that pre-dated the Clean Power Plan proposal, or focused on only one component of the proposal.[147] However, one comment was based on an "economy-wide assessment of the employment impacts associated with the U.S. Environmental Protection Agency's (EPA's) proposed Clean Power Plan" using the Long-term Inter-industry Forecasting Tool (LIFT) model.[148] The LIFT model, which is from the Interindustry Forecasting Project (Inforum) at the University of Maryland, has been used in the peer-reviewed academic literature[149] and has also been used to examine the

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[146] For further information see: http://yosemite.epa.gov/sab/sabproduct.nsf/0/07E67CF77B54734285257BB0004F87ED?OpenDocument

[147] See, for example, comments EPA-HQ-OAR-2013-0602-6743 and EPA-HQ-OAR-2013-0602-23140, within Docket ID: EPA-HQ-OAR-2013-0602.

[148] See comment EPA-HQ-OAR-2013-0602-22960, within Docket ID: EPA-HQ-OAR-2013-0602.

[149] See, for example, Almon (1991) and Mccarthy (1991).

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economic impacts of other national policies [Meade (2009); Werling (2011)].[150] The commenter noted that "While EPA's analysis provides a reasonable first approximation of the proposed rule's employment effects, its focus on direct employment impacts does not capture various indirect employment impacts that may be of interest to policymakers and the public." [...] "These include the employment impact associated with changes in electricity and other energy prices (both positive and negative, depending on the year), the productivity impacts associated with heat rate improvements at power plants, households and businesses re-directing expenditures to other uses because of increased demand-side energy efficiency, expenditures crowded out by energy efficiency expenditures, and changes in investments for air pollution control devices."

As mentioned previously, EPA is currently engaged in an SAB process on economy-wide modeling. EPA will not make any determinations on whether modeling the economy-wide impacts of its regulations – including employment impacts - is feasible and, if so, how and when to do this until it receives guidance from the SAB panel. While the purpose of the SAB process is not to peer review any particular economy-wide model, it is worth noting that the use of models such as LIFT may be addressed by one of the charge questions to the SAB: "Are there other economy-wide modeling approaches that EPA could consider in conjunction with CGE models to evaluate the short run implications of an air regulation (e.g., macro-economic, disequilibrium, input/output models)? What are the advantages or disadvantages of these approaches?"[151]

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[150] The commenter provides the following description of the LIFT model: "LIFT is a 97-sector dynamic representation of the U.S. national economy. The model combines an interindustry input / output (I-O) formulation with extensive use of regression analysis to employ a 'bottom-up' approach to macroeconomic modeling. That is, the model works like the actual economy, building macroeconomic totals from details of industry activity, rather than distributing predetermined macroeconomic quantities among industries. The commenter also describes LIFT also captures interactions between industries across the economy, enabling the model to gauge how changes in prices, investment, or productivity in one industry cascade across the economy. In the context of the Clean Power Plan, this is an important feature for understanding how the rule's direct impacts for the electric power sector affect other industries."

[151] See p. 10, http://yosemite.epa.gov/sab/sabproduct.nsf/0/07E67CF77B54734285257BB0004F87ED/$File/Charge+Questions+2-26-15.pdf

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6.3.3 Labor Supply Impacts

The empirical literature on environmental regulatory employment impacts focuses primarily on labor demand. However, there is a nascent literature focusing on regulation-induced effects on labor supply.[152] Although this literature is limited by empirical challenges, researchers have found that air quality improvements lead to reductions in lost work days (e.g., Ostro, 1987). Limited evidence suggests worker productivity may also improve when pollution is reduced. Graff Zivin and Neidell (2012) used detailed worker-level productivity data from 2009 and 2010, paired with local ozone air quality monitoring data for one large California farm growing multiple crops, with a piece-rate payment structure. Their quasi-experimental structure identifies an effect of daily variation in monitored ozone levels on productivity. They find "ozone levels well below federal air quality standards have a significant impact on productivity: a 10 parts per billion (ppb) decreases in ozone concentrations increases worker productivity by 5.5 percent." (Graff Zivin and Neidell, 2012, p. 3654).[153]

This section (section 6.3) has outlined the challenges associated with estimating regulatory effects on both labor demand and supply for specific sectors. These challenges make it difficult to estimate net national employment estimates that would appropriately capture the way in which costs, compliance spending, and environmental benefits propagate through the macro-economy.

6.4 Recent Employment Trends

The U.S. electricity system includes employees that support electric power generation, transmission and distribution; the extraction of fossil fuels; renewable energy generation; and supply-side and demand-side energy efficiency. This section describes recent employment trends in the electricity system.

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[152] For a recent review see Graff-Zivin and Neidell (2013).

[153] The EPA is not quantifying productivity impacts of reduced pollution in this rulemaking using this study. In light of this recent research, however, the EPA is considering how best to incorporate possible productivity effects in the future.

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6.4.1 Electric Power Generation

In 2014, the electric power generation, transmission and distribution sector (NAICS 2211) employed about 390,000 workers in the U.S.[154] Installation, maintenance, and repair occupations accounted for the largest share of workers (25 percent).[155] These categories include inspection, testing, repairing and maintaining of electrical equipment and/or installation and repair of cables used in electrical power and distribution systems. Other major occupation categories include office and administrative support (18 percent), production occupations (16 percent), architecture and engineering (10 percent), business and financial operations (7 percent) and management (7 percent). As shown in Figure 6.1, employment in the Electric Power Industry averaged about 420,000 workers 2000 to 2005, declining to an average of about 400,000 workers for the rest of the decade, and then declining to about 390,000 workers in 2014.

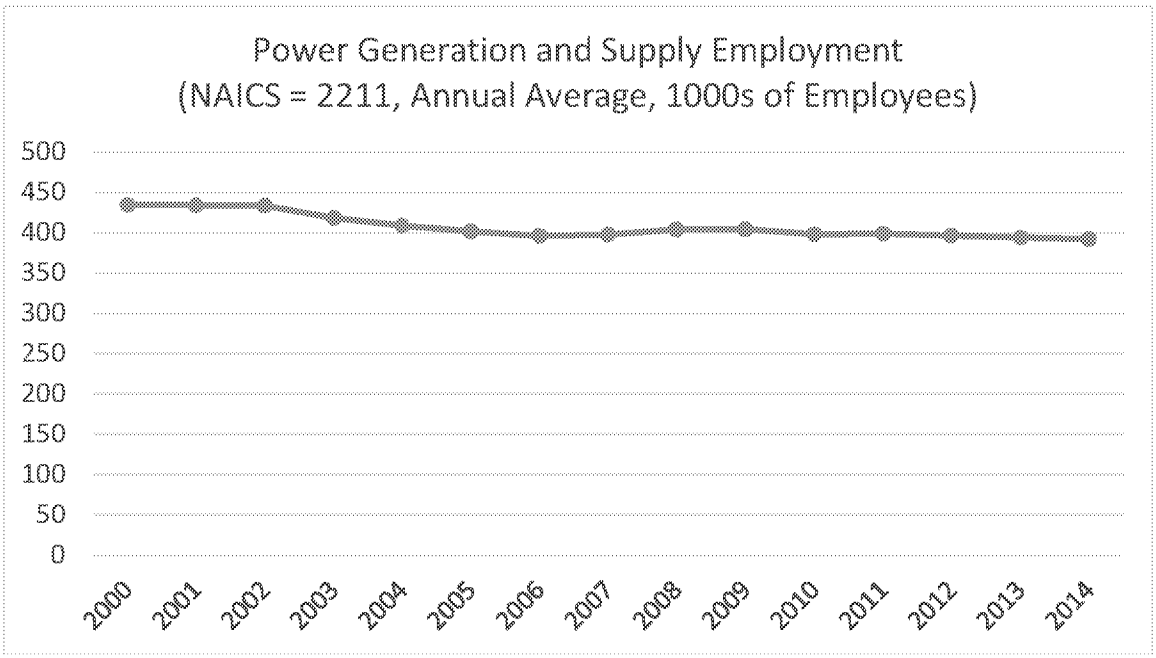

Figure 6.1. Electric Power Industry Employment

[154] U.S. Bureau of Labor Statistics. "Current Employment Survey Seasonally Adjusted Employment for Electric Power Generation, Transmission, and Distribution (national employment)." Series ID: CES4422110001. Available at <http://www.bls.gov/data/>. Accessed June 9, 2015.

[155] U.S. Bureau of Labor Statistics, Occupational Employment Statistics, May 2014 National Industry-Specific Occupational Employment and Wage Estimates, Electric Power Generation, Transmission, and Distribution (NAICS 2211). Available at: <http://www.bls.gov/oes/current/naics4_221100.htm>.

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6.4.2 Fossil Fuel Extraction

6.4.2.1 Coal Mining

The coal mining sector (NAICS 2121) is primarily engaged in coal mining and coal mine site development, excluding metal ore mining and nonmetallic mineral mining and quarrying. In 2014, BLS reported about 74,000 coal mining employees (Figure 6.2). During the 2000 to 2014, period, coal mining employment peaked in 2011 at about 87,000 employees.

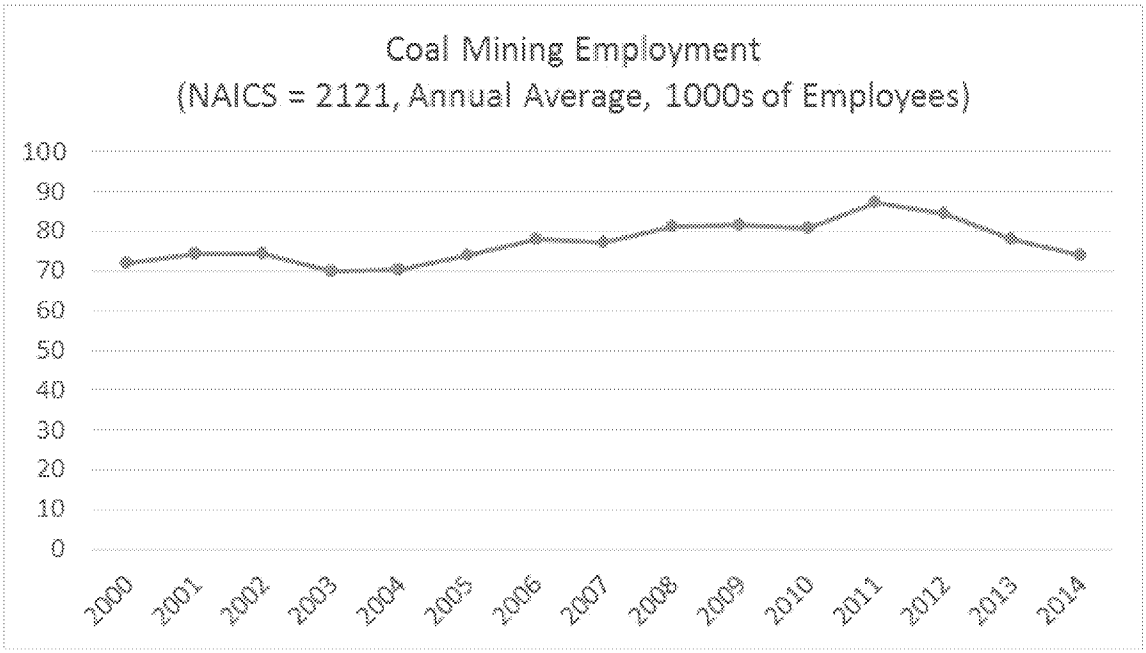

Figure 6.2. Coal Production Employment

6.4.2.2 Oil and Gas Extraction

In 2014, there were close to 200,000 employees in the oil and gas extraction sector (NAICS 211).[156] This sector includes production of crude petroleum, oil from oil shale and oil sands, production of natural gas, sulfur recovery from natural gas, and recovery of hydrocarbon liquids. Activities include the development of gas and oil fields, exploration activities for crude petroleum and natural gas, drilling, completing, and equipping wells, and other production

[156] BLS, Current Employment Statistics. Seasonally adjusted employment for oil and gas extraction (national employment), NAICS 211. Series ID: CES1021100001. Available at <http://www.bls.gov/data/>. Accessed June 9, 2015.

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activities.[157] In contrast with coal, and looking at Figure 6.3, there has been a sharp increase in employment in this sector over the past decade.

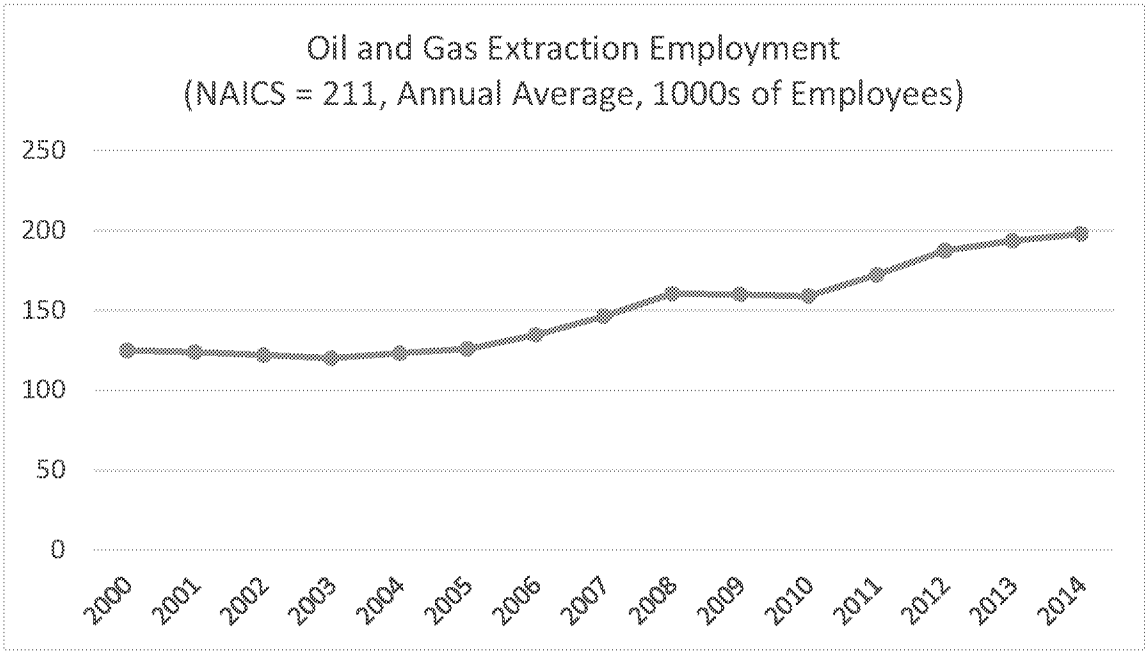

Figure 6.3. Oil and Gas Production Employment

6.4.3 Clean Energy Employment Trends

Clean energy resources, such as energy efficiency and renewable energy, are used to meet energy demand, reduce peak electricity system loads, and reduce reliance on the most carbon-intensive sources of electricity. However, there is not a single clean energy sector in standard national accounts classifications. Renewable generation is not reported to the BLS separately from other electric power generation. Similarly, manufacturers of energy efficient appliances are not reported separately from conventional appliance manufacturers and green building design is not separate from the construction sector. Instead, clean energy technology and services are supported by industries throughout the economy.

Without a specific industrial classification, it is difficult to quantify the exact number of clean energy-related jobs or document the trends. Employees engaged in clean energy can span many job classifications, such as experts required to design and produce a renewable or energy-

[157] U.S. Bureau of Labor Statistics. 20014. Available at: <http://www.bls.gov/iag/tgs/iag211.htm Accessed Feb. 19>.

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efficient technology, workers that supply inputs and technicians who install service or operate equipment. As such, there are a variety of definitions of clean or green jobs used, some more expansive than others.

6.4.3.1 Defining Clean Energy Jobs

Two U.S. Government sources, the 2010 Department of Commerce (DOC) report, *Measuring the Green Economy* and the 2010 and 2011 BLS *Green Goods and Services* surveys have subdivided industrial classifications into "green" categories. In both cases the approach was to determine which product classifications, rather than industries, were green. They multiplied green production by product revenue and defined an industrial sector as green if it met a threshold of green revenue as a proportion of total revenue.

DOC broadly defined green jobs in 2010 as those "created and supported in businesses that produce green products and services."[158] They further classified green jobs into a broad and a narrow category. The narrow category includes only products deemed to be green without disagreement, while the broad category is more inclusive definition of green goods and services to over 22,000 product codes in the 2007 Economic Census to estimate their contribution to the U.S. economy. The report found that the number of green jobs in 2007 ranged from 1.8 million to 2.4 million jobs, accounting for between 1.5 and 2 percent of total private sector employment.[159]

BLS used an expansive definition of clean or green jobs in 2010 and 2011. It goes beyond direct clean energy-related investments and includes "those in businesses that produce goods and provide services that benefit the environment or conserve natural resources. These goods and services, which are sold to customers, include research and development, installation, and maintenance services for renewable energy and energy efficiency and education and training related to green technologies and practices" but also include recycling and natural resource

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[158] U.S. Department of Commerce Economics and Statistics Administration. 2010. "Measuring the Green Economy," April. Available at: <http://www.esa.doc.gov/sites/default/files/reports/documents/greeneconomyreport_0.pdf>.

[159] U.S. Department of Commerce Economics and Statistics Administration. 2010. "Measuring the Green Economy, April. Available at: <http://www.esa.doc.gov/sites/default/files/reports/documents/greeneconomyreport_0.pdf>.

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conservation, such as forestry management.[160] Based on surveys across the 325 industries it identified as potential producers of green goods and services, BLS counts approximately 2.3 million jobs in the green economy in 2010, rising 7.4 percent to 2.5 million in 2011,[161] compared to increases of about one percent across all occupations in the entire economy over the same period.[162] The table below, Table 6-1, presents BLS green job estimates nationally and for the utility sector.

Table 6-1. U. S. Green Goods and Services (GGS) Employment (annual average)

	Total GGS Employment	Utility GGS Employment	Total GGS Growth 2010-11	Utility GGS Growth 2010-11
2010	2,342,562	69,031	NA	NA
2011	2,515,200	71,129	7.4%	3.0%

Source: Bureau of Labor Statistics

6.4.3.2 Renewable Electricity Generation Employment Trends

The DOC report does not separate renewable energy data and the BLS data include only privately owned electricity generating facilities. As such, neither source isolates renewable electricity generation employment. For historical trends in this sector, we therefore, rely on a Brookings Institution study, Muro *et al.* (2011). This study built a national database of "clean economy" jobs from the bottom up, verifying each company individually.[163] They include a list of categories similar but not identical to that of BLS, including agricultural and natural resources conservation, education and compliance, energy and resource efficiency, greenhouse gas reduction, environmental management and recycling, and renewable energy. This study found about 138,000 jobs in the renewable energy sector in 2010, with an overall average annual growth rate of 3.1 percent from 2003-2010. Table 6-2 details the national results by energy source.

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[160] BLS has identified 325 detailed industries (6-digit NAICS) as potential producers of green goods and services. Available at: <http://www.bls.gov/ggs/ggsoverview.htm>. (Accessed on 1-14-14, **last modified date:** March 19, 2013.

[161] U.S. Department of Labor, U.S. Bureau of Labor Statistics. (n.d.). 2011. "Green Goods and Services 2010-2011." (Retrieved on January 14, 2014). Available at :< http://www.bls.gov/ggs/ggsoverview.htm>.

[162]U.S. Department of Labor, U.S. Bureau of Labor Statistics. 2010. National Occupational Employment and Wage Estimates, United States. Available at: <http://www.bls.gov/oes/2010/may/oes_nat.htm>, May. National Occupational Employment and Wage Estimates, United States http://www.bls.gov/oes/2010/may/oes_nat.htm.

[163] <http://www.brookings.edu/~/media/Series/resources/0713_clean_economy.pdf> p. 15.

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Table 6-2. Renewable Electricity Generation-Related Employment

Sector	Jobs, 2010	2003-2010 Average Annual Growth Rate (%)
Biofuels/Biomass	20,680	8.9
Geothermal	2,720	6.7
Hydropower	55,467	-3.6
Renewable Energy Services	1,981	6.3
Solar Photovoltaic	24,152	10.7
Solar Thermal	5,379	18.4
Waste-to-Energy	3,320	3.7
Wave/Ocean Power	371	20.9
Wind	24,294	14.9
Total	**138,364**	**3.1**

Source: http://www.brookings.edu/~/media/Series/resources/0713_clean_economy.pdf, Appendix A.

More recent industry data, from 2014, indicate higher employment numbers and growth in the solar sector.[164]

6.4.3.3 Employment Trends in Demand-Side Energy Efficiency Activities

U.S. government data used for calculating the historical trends in the demand-side energy efficiency sector come from the BLS green goods and services surveys. BLS reports an energy efficiency category, finding 1.49 million private sector energy efficiency jobs in 2010 and 1.64 million in 2011.

In addition to the "clean energy" jobs, Muro *et al* (2011) found about 428,000 jobs in the Energy and Resource Efficiency sector in 2010, with an overall average annual growth rate of 2.6 percent from 2003-2010.[165] Table 6-3 details the results by energy sector.

[164] The Solar Foundation, National Solar Jobs Census 2014. < http://www.thesolarfoundation.org/national-solar-jobs-census-2014/>

[165] <http://www.brookings.edu/~/media/Series/resources/0713_clean_economy.pdf> p. 15.

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Table 6-3. Energy and Resources Efficiency-Related Employment

Sector	Jobs, 2010	2003-2010 Average Annual Growth Rate (%)
Appliances	36,608	-3.1
Energy-saving Building Materials	161,896	2.5
Energy-saving Consumer Products	19,210	-2.9
Green Architecture and Construction Services	56,190	6.4
HVAC and Building Control Systems	73,600	3.3
Lighting	14,298	-1.8
Professional Energy Services	49,863	6.9
Smart Grid	15,987	8.6
Total	**427,652**	**2.6**

Source: http://www.brookings.edu/~/media/Series/resources/0713_clean_economy.pdf, Appendix A

In addition, other research institutes and industry groups have clean economy or clean energy employment databases. While definitions and timeframes vary, all show positive employment trends of 1.9 percent or more growth in clean energy-related jobs annually.

6.5 Projected Sectoral Employment Changes due to the Final Emission Guidelines

Affected EGUs may respond to these final CO_2 emission performance rates by placing new orders for efficiency-related or renewable energy equipment and services to reduce GHG emissions. Implementing the CPP Final Rule will involve changes in the amount of labor needed in different parts of the utility power sector. Installing and operating new equipment or improving heat rate efficiency could increase labor demand in the electricity generating sector itself, as well as associated equipment and services sectors. Specifically, the direct employment effects of supply-side initiatives include increases in labor demand during the implementation phase for manufacturing, installing, and operating higher efficiency and renewable energy electricity generating assets, as well as making heat rate improvements at existing fossil units. Additional supply-side direct employment impacts are the reductions in labor demand for labor that would have been used by less efficient or higher emitting generating assets. Once implemented, increases in operating efficiency and shifting generation to existing or new NGCC units and renewable energy generation will impact the utility power sector's demand for fossil fuels and plans for EGU retirement and new construction.

In addition, EPA expects state plans may also include demand-side energy efficiency policies and programs that typically change energy consumption patterns of business and residential consumers by reducing the quantity of energy required for a given level of production or service. Demand-side initiatives generally aim to increase the use of cost-effective energy

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efficiency technologies (e.g., including more efficient appliances and air conditioning systems, more efficient lighting devices, more efficient design of homes and businesses), and advance efficiency improvements in motor systems and other industrial processes. Demand-side initiatives can also directly reduce energy consumption, such as through programs encouraging changing the thermostat during the hours a building is unoccupied or motion-detecting room light switches. Such demand-side energy efficiency initiatives directly affect employment by encouraging firms and consumers to shift to more efficient products and processes than would otherwise be the case. Employment in the sectors that provide these more efficient devices and services would be expected to increase, while employment in the sectors that produce less efficient devices would be expected to contract.

This generation-side employment analysis uses the cost projections from the engineering-based Integrated Planning Model (IPM) to project labor demand impacts of the final emission guidelines on affected EGUs in the electricity power sector and the fuel production sector (coal and natural gas). These projections include effects attributable to heat rate improvements, construction of new EGUs, generation shifts, changes in fuel use, and reductions in electricity generation due to demand-side energy efficiency activities. To project labor requirements for demand-side energy efficiency activities, the analysis uses a different approach that combines data on historic changes in employment and expenditures in the energy efficiency sector with projected changes in expenditures in the sector arising from state implementation of the emission guidelines. We project labor impacts for the rate-based and mass-based illustrative plan approach.

6.5.1 Projected Changes in Employment in Electricity Generation and Fossil Fuel Extraction

The analytical approach used in this analysis is a bottom-up engineering method combining EPA's cost analysis of the emission guidelines with data on labor productivity, engineering estimates of the amount and types of labor needed to manufacture, construct, and operate different types of generating units, and prevailing wage rates for skilled and general labor categories. This approach is different from the economy-wide types of economic analyses discussed in section 6.2. Lacking robust peer-reviewed methods to estimate economy-wide impacts, the engineering-based analysis focuses on the supply-side direct impact on labor demand in industries closely involved with electricity generation. The engineering approach

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projects labor changes measured as the change in each analysis year in job-years[166] employed in the utility power sector and directly related sectors (e.g., equipment manufacturing, fuel supply, EGU construction and generating efficiency services). For example, this approach projects the amounts and types of labor required to implement improvements in generating efficiency. The generation efficiency improvements reduce the amount of fossil fuel needed. The efficiency-driven change in fuel use is included in the estimates of the CPP's impact on the overall changes in labor required to extract fossil fuels. Some of the quantified employment impacts in this analysis are one-time impacts, such as changes associated with building new NGCC or renewable generating units. Other labor impacts will continue, such as changes associated with operating and maintaining generating units that will be retired, and labor providing the fuel supplied to newly built, retired and improved EGUs.

This analysis relies on projections and the cost analysis from IPM, which uses industry-specific data and assumptions to estimate costs and energy impacts of the final guidelines (see Chapter 3). The EPA uses IPM to predict coal generating capacity that is likely to undertake improvements in heat rate efficiency (HRI).[167] IPM also predicts the guidelines' impacts on fuel use, retirement of existing units, and construction of new ones.

The methods EPA uses to estimate the labor impacts are based on the analytical methods used in many previous EPA regulatory analyses. The most relevant prior analysis was the Regulatory Impact Analysis for the Mercury and Air Toxics Standards (MATS). While the methods used in this analysis to estimate the recurring labor impacts (e.g., labor associated with operating and maintaining generating units, as well as labor needed to mine coal and natural gas) are the same as we used in MATS (with updated data where available), the methods used to estimate the labor associated with installing new capacity and implementing heat rate improvements were developed for the purpose of the Clean Power Plan RIA.

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[166] Job-years are not individual jobs, but rather the amount of work performed by the equivalent of one full-time individual for one year. For example, 20 job-years in 2020 may represent 20 full-time jobs or 40 half-time jobs in that year.

[167] HRI could include a range of activities in the power plant to lower the heat rate required to generate a net electrical output. Assuming all other things being equal, a lower heat rate is more efficient because more electricity is generated from each ton of coal.

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The bottom-up engineering-based labor analysis in the MATS RIA primarily was concerned with the labor needs of retrofitting pollution control equipment. A central feature of the supply-side labor analysis for this RIA, however, involves the quantity and timing of the labor needs of building new renewable and NGCC units and retiring coal units. The estimated response of the utility power sector involves changes in the amount and timing of retirements of existing coal and oil/gas units, as well as changes in the amount and timing of building new NGCC units and renewable generating capacity. In addition to the changes in retirements and construction of new units, there are also estimated changes in the utilization of existing generating units, and changes in the gas and coal supply sectors.

For example, as presented in Chapter 3, the IPM analysis of the rate-based illustrative plan approach scenario finds that in 2025 (part way through the 2022-2029 interim plan performance period) less total generating capacity is needed than in the base case. The estimated reduction in capacity by 2025 with the rate-based scenario is 49.4 GW less than the estimated base case capacity (a 4.8 percent net capacity reduction). This 49.4 GW net reduction includes more retirements of coal units (an additional 22.9 GW of coal-fired capacity retired) and oil/gas steam units (an additional 9.3 GW of oil/gas retirement) compared to the base case, as well as a reduction in the amount of new natural gas units needed to be built by 2025 (a decrease of 10.9 GW in new capacity from the amount forecast in the base case) and non-hydro renewables (1.7 GW less renewable capacity built). Fossil fuel utilization will also be impacted. The rate-based scenario finds that in 2025 less coal will be used (102.9 million tons less, a 14.1 percent decrease from the base case) and less gas will also be used (0.1 TCF less, a 1.0 percent decrease).

An important aspect of the labor analysis is that building new units, and all the associated construction-related labor, occurs before the new units become operational. While the financial costs of building the new units are amortized and recouped over the book life of the new equipment, the labor involved with manufacturing equipment and constructing the new units occurs, and is actually paid for, in a concentrated amount of time before the new capacity begins to generate electricity. IPM assumes[168] that new NGCC units take 3 years to build, and both natural gas combustion turbines and wind-powered renewables take 2 years.

[168] Table 4.13, IPM 5.13 Documentation.

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Avoiding some of the need for new capacity due to both demand and supply efficiency improvements results in both a significant cost savings to consumers and the power sector, as well as reduced emissions of both CO_2 and non-CO_2 pollutants from fossil fuel-fired generation. The avoided new capacity, however, also has significant labor impacts. A portion of the labor that would have been used to build the new capacity in the base case will not be employed in the power generation sector with the implementation of the GHG guidelines, though it likely will be employed in construction elsewhere. Similarly, less labor involved with operating and providing fuel for new units will be needed with the emissions guidelines than in the base case.

A critical component of the overall labor impacts of implementing the GHG guidelines is the impact of the labor associated with the demand-side energy efficiency activities. The demand-side labor impacts are presented in section 6.5.2. The demand-side energy efficiency activities are increases in labor needs and estimated in units of jobs, while the supply-side employment impacts are estimated as job-years. The IPM labor expenditure projections are distributed across different labor categories (e.g., general construction labor, boilermakers and engineering) using data from engineering analyses of labor's overall share of total expenditures, and apportionment of total labor cost to various labor categories. Hourly labor expenditures (including wages, fringe benefits, and employer-paid costs including taxes, insurance and administrative costs) for each category are used to estimate the labor quantity (measured in full-time job-years) consistent with the compliance scenario projections. Projected labor impacts arising from changes in fuel demand are primarily derived from labor productivity data for coal mining (tons mined per employee hour) and natural gas extraction (MMBtu produced/job-year). Tables 6.4 and 6.5 present projected changes relative to the baseline of four labor categories:

1. manufacturing, engineering and construction for building, designing and implementing heat rate improvements;
2. manufacturing and construction for new generating capacity;
3. operating and maintenance for existing generating capacity; and
4. extraction of coal and natural gas fuel.

All of the employment estimates presented in Tables 6-4 and 6-5 are estimates occurring in a single year. For the construction-related (one-time) labor impacts, including the installation of HRI, Tables 6-4 and 6-5 present the average annual impact occurring in each year of three

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different intervals. The three intervals are from 2018 through 2020 (a three year interval), during which there are modest labor impacts from the early changes in the power utility sectors operations, from 2021 through 2025 (five years), and 2026 through 2030 (5 years). The construction-related labor analysis are based on the IPM estimates of the net change in capital investment that occurs during each multi-year interval to fund building new units completed during that interval. The new build labor analysis uses the net change in capital investment to estimate the amount and type of labor needed during the interval to build the new capacity. The analysis assumes that the new build labor within each interval is evenly distributed throughout the interval. Tables 6-4 and 6-5 reflect this assumption by presenting the average labor utilization per year during each of the three intervals.

The HRI-related labor impacts are estimated based on the assumed capital cost of $100/kw (see section 3.9.3). The labor estimates for operating and maintaining generating units annually are based on IPMs estimates of Fixed Operating and Maintenance (FOM) and Variable Operating and Maintenance (VOM) costs. IPM estimates FOM and VOM for each year individually, so the net changes in O&M-related labor estimates in Tables 6-4 and 6-5 are single year estimates for 2020, 2025 and 2030. These single year O&M labor estimates are not merely the average annual averages labor needs throughout each multi-year interval. There are O&M labor changes occurring in the all years throughout the entire period 2020-2030, but the labor impacts in each labor category change each year. The fuel-related labor estimates are also single-year estimates, and not multi-year averages. The labor analysis of the impacts on the fuel extraction industries uses IPM's estimates of the net changes in the amount of coal and natural gas in 2020, 2025 and 2030, which are inherently estimates of the fuel usage in a single year. As with the O&M labor impacts, the fuels-related labor impacts occur in every year throughout 2020-2030, and the labor impact changes every year.

It should be noted that the supply-side labor impact estimates in Tables 6-4 and 6-5 reflect the supply-side changes that will potentially occur with each illustrative plan scenario. These labor impacts include not only the direct supply-side impacts of the illustrative implementation scenarios of the CPP, but also the changes in total generation activity that result from the demand-side energy efficiency activities expected to be an important component of state compliance strategies. The additional labor impact estimates from demand-side energy efficiency activities are presented below in section 6.5.2.

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More details on methodology, assumptions, and data sources used to estimate the supply-side labor impacts discussed in this section can be found in Appendix 6A.

Table 6-4. Engineering-Based[a] Changes in Labor Utilization, Rate-based Scenario (Number of Job-Years[b] of Employment in a Single Year)

	Construction-related (One-time) Changes*		
	2018-2020	**2021-2025**	**2026-2030**
Heat Rate Improvement: Total	**0**	**15,400**	**2,200**
Boilermakers and General Construction	0	11,000	1,600
Engineering and Management	0	2,800	400
Equipment-related	0	1,200	200
Material-related	0	400	0
New Capacity Construction: Total	**500**	**-15,600**	**400**
Renewables	700	-5,000	23,300
Natural Gas	-200	-10,600	-22,900

	Recurring Changes**		
	2020	**2025**	**2030**
Operation and Maintenance: Total	**-9,100**	**-17,000**	**-19,600**
Changes in Renewables	600	-100	1,100
Changes in Gas***	300	-1,100	-3,700
Changes in Coal***	-8,000	-13,300	-14,700
Retired Oil and Gas	-2,000	-2,500	-2,300
Fuel Extraction: Total	**100**	**-7,800**	**-13,900**
Coal	-1,300	-7,300	-13,300
Natural Gas	1,400	-500	-600
Supply-Side Employment Impacts - Quantified	**-8,500**	**-25,000**	**-30,900**

[a] Job-year estimates are derived from IPM investment and O&M cost estimates, as well as IPM fuel use estimates (tons coals or MMBtu gas).

[b] All job-year estimates on this are full-time equivalent (FTE) jobs. Job estimates in the demand-side energy efficiency section (below) include both full-time and part-time jobs.

*Construction-related job-year changes are one-time impacts, occurring during each year of the multi-year period during which construction and HRI installation activities occur. Construction-related figures in table are the average annual job-years in each year between the years in the range. Negative construction job-year estimates occur when additional generating capacity must be built in the base case, but is avoided in the final rule.

**Recurring Changes are job-years associated with annual recurring jobs including operating and maintenance activities and fuel extraction jobs. Newly built generating capacity creates a recurring stream of positive job-years, while retiring generating capacity, as well as avoided new built capacity, create a stream of negative job-years.

***O&M job-year changes include changes from new, retired and avoided capacity, and also changes arising from changes in utilization (i.e., capacity factor changes) of existing EGU capacity that continue to operate but generate a different amount of MWh/year.

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Table 6-5. Engineering-Based[a] Changes in Labor Utilization, Mass-Based Illustrative Plan Approach (Number of Job-Years of Employment in a Single Year)

	Construction-related (One-time) Changes*		
	2018-2020	**2021-2025**	**2026-2030**
Heat Rate Improvement: Total	**0**	**14,900**	**800**
Boilermakers and General Construction	0	10,700	600
Engineering and Management	0	2,700	100
Equipment-related	0	1,200	100
Material-related	0	300	0
New Capacity Construction: Total	**-1,700**	**-11,100**	**4,700**
Renewables	-1,400	-3,500	21,300
Natural Gas	-300	-7,600	-16,600

	Recurring Changes**		
	2020	**2025**	**2030**
Operation and Maintenance: Total	**-11,700**	**-21,200**	**-25,000**
Changes in Renewables	-900	-1,000	700
Changes in Gas***	500	-400	-2,300
Changes in Coal***	-9,100	-17,000	-20,800
Retired Oil and Gas	-2,200	-2,800	-2,600
Fuel Extraction: Total	**200**	**-8,600**	**-14,300**
Coal	-1,800	-8,700	-12,200
Natural Gas	2,000	100	-2,100
Supply-Side Employment Impacts - Quantified	**-13,100**	**-26,000**	**-33,700**

[a] Job-year estimates are derived from IPM investment and O&M cost estimates, as well as IPM fuel use estimates (tons coals or MMBtu gas).

[b] All job-year estimates on this are full-time equivalent (FTE) jobs. Job estimates in the demand-side energy efficiency section (below) include both full-time and part-time jobs.

*Construction-related job-year changes are one-time impacts, occurring during each year of the multi-year period during which construction and HRI installation activities occur. Construction-related figures in table are the average annual job-years in each year between the years in the range. Negative construction job-year estimates occur when additional generating capacity must be built in the base case, but is avoided in the final rule.

**Recurring Changes are job-years associated with annual recurring jobs including operating and maintenance activities and fuel extraction jobs. Newly built generating capacity creates a recurring stream of positive job-years, while retiring generating capacity, as well as avoided new built capacity, create a stream of negative job-years.

***O&M job-year changes include changes from new, retired and avoided capacity, and also changes arising from changes in utilization (i.e., capacity factor changes) of existing EGU capacity that continue to operate but generate a different amount of MWh/year.

6.5.2 Projected Changes in Employment in Demand-Side Energy Efficiency Activities

As described in Chapter 3, EPA anticipates that this rule may stimulate investment in clean energy technologies and services, resulting in considerable increases in energy efficiency.

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Many of these investments may support demand-side energy efficiency activities such as: reducing energy required for a given activity by encouraging more efficient technologies (e.g., ENERGY STAR appliances), implementing energy improvements for existing systems (e.g., weatherization of older homes), or encouraging changes in behavior (e.g., reducing air conditioning during periods of high electricity demand).We expect these increases in energy efficiency, specifically, to support a significant number of jobs in related industries. For more information on EPA's illustrative investment levels in demand-side energy efficiency activities, assumed to be adopted in response to the CPP, please see Section 3.7 "Demand-Side Energy Efficiency" in Chapter 3 of this RIA.

In this section, we project employment impacts in demand-side energy efficiency activities arising from these guidelines using illustrative calculations. The approach uses information from power sector modeling and projected impacts on energy efficiency investments analyzed (see Chapter 3), and U.S. government data on employment and expenditures in energy efficiency.[169] This approach is limited by the fact that we do not know which options states will choose for demand-side energy efficiency activities and by uncertainties associated with methods. These illustrative employment projections are gross; thus they do not include impacts in other sectors of any shift in resources from other sectors to implement the demand-side energy efficiency activities. Nor does this analysis attempt to quantify the positive employment impacts in other sectors arising from changes in consumer expenditures on electricity due to reduced electricity bills. In other words, these projections are not attempts at estimating net national job creation. Also, this approach attempts to calculate the number of employees (full-time and part-time) rather than full-time supply-side job-years estimated in section 6.5.1.

Employment impacts of demand-side energy efficiency programs have not been extensively studied in the peer-reviewed, published economics literature. Instead, most research has focused on consumer response to and amount of energy savings achieved by these programs (e.g., Allcott (2011a, 2011b), Arimura *et al.* (2012)). Results suggest that demand-side energy

[169] Investments in demand-side energy efficiency reduce energy required for a given activity by encouraging more efficient technologies (e.g., ENERGY STAR appliances), implementing energy improvements for existing systems (e.g., weatherization of older homes), or encouraging changes in behavior (e.g., reducing air conditioning during periods of high electricity demand).

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efficiency programs reduce energy use and generate small increases in consumer welfare. These policy impacts are due to low investment in energy efficiency as described in "energy paradox" literature (Gillingham, Newell, and Palmer (2009), Gillingham and Palmer (2014)).[170]

Two recent articles discuss employment effects of demand-side energy efficiency programs. Aldy (2013) describes clean energy investments funded by the American Recovery and Reinvestment Act of 2009, which "included more than $90 billion for strategic clean energy investments intended to promote job creation and the deployment of low-carbon technologies" (p. 137), with nearly $20 billion for energy efficiency investments. The Council of Economic Advisors (CEA) (2011) estimated higher economic activity and employment than would have otherwise occurred without the American Recovery and Reinvestment Act. Using CEA's methods to quantify job creation for the Recovery Act, Aldy uses the share of stimulus funds for clean energy investments to estimate job-years supported by the Recovery Act. The largest sources of job creation in clean energy are those that received the largest shares of stimulus funds: renewable energy, energy efficiency, and transit. Aldy's estimates, while informative, are not directly applicable for employment analysis in this rulemaking as there are important differences in expected employment impacts from a historically large fiscal stimulus specifically targeting job creation during a period of exceptionally high unemployment versus environmental regulations taking effect several years from now.

Yi (2013) analyzes clean energy policies and employment for U.S. metropolitan areas in 2006, prior to the Recovery Act, to evaluate impacts on clean energy job growth. Implementing an additional state clean energy policy tool (renewable energy policies, GHG emissions policies, and energy efficiency polices such as energy efficiency resource standards, appliance or equipment energy efficiency standards, tax incentives, and public building energy efficiency standards) is associated with 1 percent more clean energy employment within that MSA. These estimates are not transferable to this rulemaking since states are likely to change intensity as well as number of clean energy programs.

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[170] For more information on this efficiency paradox see Chapter 3 and the Technical Support Document (TSD) for the Final Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units. Demand-Side Energy Efficiency

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Lacking a peer-reviewed methodology, we use the following approach to illustrate possible effects on labor demand in the energy efficiency sector due to demand-side management strategies. We use U.S. government data and divide energy efficiency employment by expenditures on energy efficiency activities to calculate an estimate of jobs per million dollars. We then multiply this fraction by projected expenditure in energy efficiency activities undertaken in response to these final guidelines.

Data used for calculating employment in energy efficiency sectors comes from the "energy efficiency" industry category of the BLS *Green Goods and Services* survey.[171] Using BLS Green Goods and Services (GGS) information on 132 energy efficiency industries, as identified by BLS,[172] we adjusted the list to remove ten industries expected to not be directly affected by the rule, e.g. transportation.[173] Next we used this detailed list of 122 industries to extract 2011 BLS data on green employment.[174] Employment data at the most-detailed industry level (6-digit NAICS) is available only for a portion of these 122 industries. Therefore we use both the most-detailed industry level (6-digit NAICS) and also a more aggregate level (4-digit NAICS) to estimate a range of energy efficiency employment with the 2011 BLS Green Goods and Services data.[175]

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[171]For more details on this survey, see section 6.5.3.1.

[172] See detailed listing available here: http://www.bls.gov/ggs/naics_2012.xlsx. Category 2 is "Energy Efficiency". More information is available here: http://www.bls.gov/ggs/ggsfaq.htm#3.

[173] The ten industries we removed from the list were: NAICS 483114 Coastal and Great Lakes passenger transport, 483212 Inland water passenger transportation, 485111 Mixed mode transit systems, 485112 Commuter rail systems, 485113 Bus and other motor vehicle transit systems, 485119 Other urban transit systems, 485210 Interurban and rural bus transportation, 485410 School and employee bus transportation, 485999 All other ground passenger transportation, and 926120 Transportation program administration. It is possible that certain energy efficiency services and products produced by the remaining sectors may also be applied in activities that may not be creditable for compliance with rate-based plans in, or may otherwise be directly incentivized by, this final rule. However, there is no reason to categorically exclude the remaining sectors from this analysis.

[174] BLS Green Goods and Services data is available here: http://download.bls.gov/pub/time.series/gg/gg.data.1.AllData. A BLS technical note indicates that the scope of the GGS survey changed between 2010 and 2011 (http://www.bls.gov/news.release/ggqcew.tn.htm). Some industries and establishments that were not previously included in the 2010 survey were included in 2011. Rather than using the change from 2010 to 2011, here we use only the 2011 data.

[175] At the 6-digit NAICS level, 27 of the 122 energy efficiency industries listed have employment data available. At the 4-digit NAICS level, 46 of the 122 energy efficiency industries listed have employment data available.

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BLS does not collect data on energy efficiency expenditures directly, however. Instead, BLS collects data on the share of revenues associated with green goods and services, at the establishment level.[176] We multiply data on total revenues by NAICS by the share of green revenues reported by BLS to obtain a measure of green revenues by industry. The only U.S. Government data source containing this revenue information for all NAICS sectors is the U.S. Economic Census. This Census is conducted at 5-year intervals (the latest available year is 2012), however, making it unsuitable for directly pairing with 2011 data from BLS. Instead, we use U.S. Census Bureau data on total value of shipments by industry, for 2011, from the Annual Survey of Manufacturers.[177] The disadvantage of this data source is that the manufacturing sector makes up only 50 percent of the 132 NAICS codes belonging to the energy efficiency sector as defined by the BLS *Green Goods and Services* surveys, with the remainder in the construction or service sectors. Thus, this analysis implicitly projects that the same number of jobs per dollar are supported in construction and service sectors as in manufacturing. Also, the Annual Survey of Manufacturers contains data for some, but not all, detailed industry codes, e.g. 4-digit and 6-digit NAICS. We pair our BLS GGS data by industry, either by 4-digit or 6-digit NAICS, with data from the Annual Survey of Manufacturers. At the more detailed, 6-digit level, 17 industries have data available for both employment and total value of shipments.[178] At the less detailed, 4-digit level, 15 industries have data available for both employment and total value of shipments.[179] Using this approach we obtain estimates of 2.07 demand-side energy efficiency jobs per million 2011 dollars of expenditure, using the less-detailed industry level (4-digit NAICS), and 3.29 demand-side energy efficiency jobs per million 2011 dollars of expenditure, using the more-detailed industry level (6-digit NAICS).

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[176] More information is available here: http://www.bls.gov/ggs/ggsfaq.htm#5.

[177] Census data on total value of shipments, by industry, for 2011 is available here: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ASM_2011_31GS101&prodType=table.

[178] The 17 industries are: NAICS 321219, 321991, 321992, 327993, 327999, 332913, 332996, 333414, 333415, 334513, 334514, 334515, 335110, 335222, 335311, 335312, and 335999.

[179] The 15 industries are: NAICS 314100, 321100, 324100, 326100, 327100, 327300, 327400, 332100, 333300, 334200, 334300, 334400, 335200, 336300, and 337900.

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Having calculated estimates of jobs per million dollars of energy efficiency expenditure, we use EPA's illustrative energy efficiency investment levels of the first-year costs expected for states to attain a target of 1 percent growth in demand-side efficiency improvements (see Chapter 3.7 of this RIA for more information). If some states were to target rates of energy efficiency savings greater than one percent, they may see increased energy efficiency employment impacts, relative to the one percent growth assumed in this analysis. The first year cost of saved energy (i.e., reduced electricity demand) accounts for both the costs to the utilities that are funding the demand-side energy efficiency programs (known as the program costs), and the additional cost to the end-user purchasing a more energy efficient technology (known as the participant costs).[180] Total costs were divided evenly, 50 percent each, between program costs and participant costs. First-year costs are not annualized; they are the projected expenditures on demand-side energy efficiency activities in that year. As shown in the Demand-Side Energy Efficiency Technical Support Document[181], first-year costs for achieving a 1 percent growth target[182] in energy efficiency activities are projected to be $18.1 billion (2011 $) in 2020. Multiplying this dollar expenditure by the jobs per dollar estimates results in projected employment impacts for demand-side energy efficiency activities ranging from 37,570 to 59,700 jobs in 2020 depending on the jobs per million dollars estimate used: low or high. Employment impacts for demand-side energy efficiency activities range from 52,590 to 83,590 jobs in 2025, and from 52,440 to 83,360 jobs in 2030. These estimates are shown in Table 6-6 below.

[180] See Section 3.6.2, "Demand-Side Energy Efficiency Total Costs", in this RIA, for more information.

[181] U.S. EPA. 2015. Technical Support Document (TSD) the Final Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units. Demand-Side Energy Efficiency.

[182] The illustrative demand-side energy efficiency plan scenario reflects each state ramping up to the 1% incremental savings target from their 2013 level, beginning in 2020. Thus, most states are below 1% in 2020. All states have achieved the 1% target no later than 2025 and the plan scenario has each state remain at that level through 2030.

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Table 6-6. Estimated Demand-Side Energy Efficiency Employment Impacts: Target 1 percent Growth in Energy Efficiency

		Employment impact (jobs)*		
Source	**Factor**	**2020**	**2025**	**2030**
EPA low estimate, using BLS and Census data, and power sector modeling projections	2.07	37,570	52,590	52,440
EPA high estimate, using BLS and Census data, and power sector modeling projections	3.29	59,700	83,590	83,360

*Since these figures represent number of employees (full- or part-time) they should not be added to the full-time equivalent job-years reported in Table 6-4 and Table 6-5. Energy efficiency costs are from 1 percent growth target projections for the continental U.S.. First-year energy efficiency costs are the same for rate-based and mass-based scenarios. See Chapter 3 of this RIA and Demand-Side Energy Efficiency TSD for more information.

Although this approach has the advantage of using a range of estimates, derived from U.S. government data, on energy efficiency employment per million dollars in industry shipments, this approach is limited by its focus on manufacturing sectors and direction of bias (overestimation or underestimation) cannot be determined at this time. As stated earlier, if, rather than a one percent target, some states were to target rates of energy efficiency savings greater than one percent, they may see increased energy efficiency employment impacts, relative to the one percent growth assumed in this analysis. Finally, because states can choose to reduce emissions by means of adopting more and broader demand-side energy efficiency programs, there is uncertainty around the mix of energy efficiency programs and their associated demand-side energy efficiency employment impacts.

Our estimates of 2.07 to 3.29 demand-side energy efficiency jobs per million dollars of 2011 expenditure fit with other estimates in the literature, focused on government data sources, and are on the smaller end of the range.[183] Figure 6.4 shows the range of estimates, including EPA low (2.07) and EPA high (3.29). The Department of Commerce report estimates overall employment per million dollar values, ranging from 4.65 to 4.85 (Department of Commerce 2010a).[184] The report also contains some case studies, and for those focused on energy efficiency, the Department of Commerce estimates 6.21 jobs per million dollars in green buildings activities

[183] See Section 6.5.3 for more information on sources in the literature.

[184] Calculated values using data on employment and shipments reported in Department of Commerce (2010a), Table 2, p. 12.

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and 7.53 jobs per million dollars for energy efficiency appliances.[185] Lawrence Berkeley National Lab (Goldman *et al.* 2010) reports a wide range of estimates: from 2.5 jobs per million dollars for energy service companies (ESCOs), to 8.9 jobs per million dollars for low income weatherization activities. The Pacific Northwest National Labs report (Anderson *et al.* 2014), in surveying the literature, estimates 11 jobs per million dollars of initial energy efficiency investments.

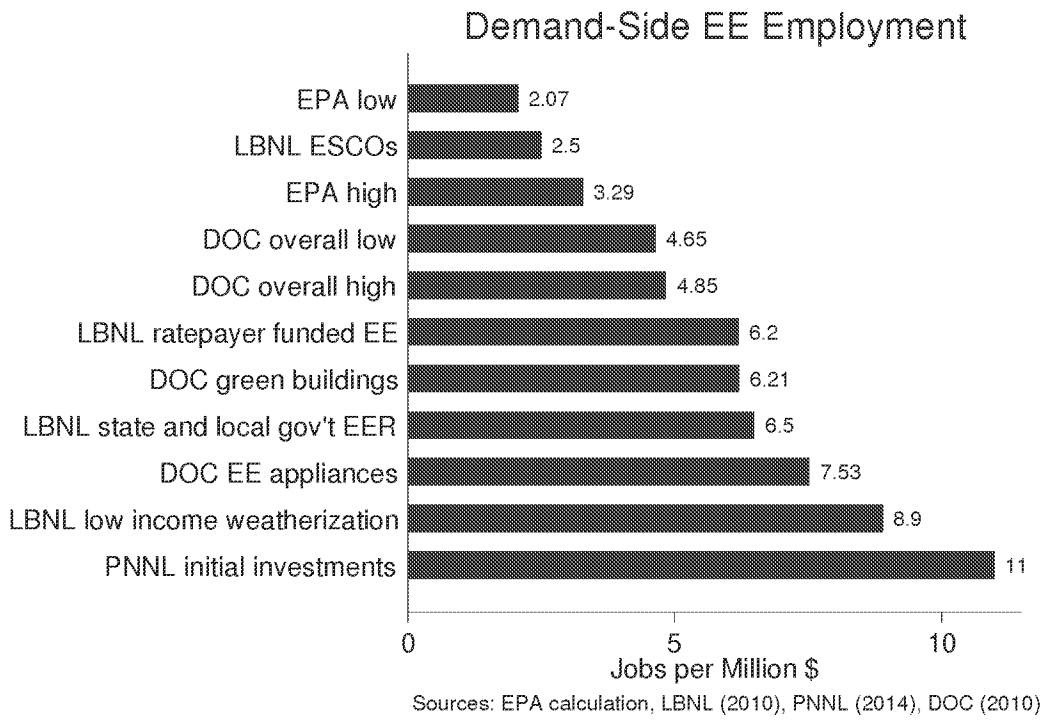

Figure 6.4. Demand-Side Energy Efficiency Employment: Jobs per One Million Dollars (2011$)

There is more uncertainty involved in this approach than the standard bottom-up engineering analysis used to estimate electricity generation and fuel production employment impacts of this rulemaking. For those, the EPA was able to identify a limited set of activities (e.g., constructing a new NGCC power plant), and study associated labor requirements. Demand-

[185] Calculated values using data on employment and shipments reported in Department of Commerce (2010a), Appendix 2, Table 2B, p. 4. http://www.esa.doc.gov/sites/default/files/appendix2_0.pdf

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side energy efficiency improvements, in contrast, encompass a wide array of activities (subsidies for efficient appliances, "smart meters," etc.). In addition, there is considerable uncertainty regarding which activities a state will choose. Thus, the validity of the jobs per dollar approach used here relies on the assumption that states will use a mix of activities similar to the 2011 composition of energy efficiency sectors identified by BLS. Finally, this approach recognizes that shifts in economic activity towards investments in demand-side energy efficiency are accompanied by potential shifts in employment.

In addition, the EPA does not have access to bottom-up information regarding labor requirements for these activities. Use of a constant job per dollar fraction is at best a crude approximation of these labor requirements. The EPA has identified several other limitations of this approach, outlined below.

Job Reclassification. Job numbers in this chapter represent gross changes in the affected sector. As such they may over-estimate impacts to the extent that jobs created displace workers employed elsewhere in the economy. For demand-side efficiency activities this potential over-statement may be higher than in other sectors. If states encourage consumers to purchase ENERGY STAR appliances, for example, currently employed workers in factories and retail outlets may simply be given a different task. This approach, however, would count these workers as jobs created.

Imports. The job per dollar fraction used in the employment projection is calculated based on jobs per dollar of revenue for domestic firms only. To the extent that spending on demand-side energy efficiency activities goes toward the purchase of imported goods this projection will overstate the U.S. employment impact of those expenditures.

Fixed Coefficient. Implicit in this approach is the assumption that employment impacts can be projected decades into the future on the basis of a single calculation from 2011 data. The labor intensity of demand-side energy efficiency will likely change with technological innovation in the sector. In addition, even absent technological change, labor intensity of expenditures will likely change over time as states alter their portfolio of efficiency activities (e.g., by moving to higher cost activities after exhausting low-cost efficiency activities).

Non-additional Activities. Here we assume that all activities financed by demand-side energy efficiency expenditures are additional to what would have been undertaken in the absence of

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these programs. For example, if utilities finance some actions customers would have undertaken in the absence of these programs (e.g., if a customer receives a rebate for an energy efficient appliance that would have been purchased without the rebate), these numbers would overestimate employment impacts of the final emissions guidelines.

6.6 Conclusion

This chapter presents qualitative and quantitative discussions of potential employment impacts of the final guidelines for electricity generation, fuel production, and demand-side energy efficiency sectors. The qualitative discussion identifies challenges associated with estimating net employment effects and discusses anticipated impacts related to the rule. It includes an in-depth discussion of economic theory underlying analysis of employment impacts. The employment impacts for regulated firms can be decomposed into output and substitution effects, both of which may be positive or negative. Consequently, economic theory alone cannot predict the direction or magnitude of a regulation's employment impact. It is possible to combine theory with empirical studies specific to the regulated firms and other relevant sectors if data and methods of sufficient detail and quality are available. Finally, economic theory suggests that environmental regulations may have positive impacts on labor supply and productivity as well.

We examine the peer-reviewed economics literature analyzing various aspects of labor demand, relying on the above theoretical framework. Determining the direction of employment effects in regulated industries is challenging because of the complexity of the output and substitution effects. Complying with a new or more stringent regulation may require additional inputs, including labor, and may alter the relative proportions of labor and capital used by regulated firms (and firms in other relevant industries) in their production processes. The available literature illustrates some of the difficulties for empirical estimation: for example, there is a paucity of publicly data on plant-level employment, thus most studies must rely on confidential plant-level employment data from the U.S. Census Bureau, typically combined with pollution abatement expenditure data, that are too dated to be reliably informative, or other measures of the stringency of regulation. In addition, the most commonly used empirical methods, for example, Greenstone (2002), likely overstate employment impacts because they rely on relative comparisons between more regulated and less regulated counties, which can lead to "double counting" of impacts when production and employment shift from more regulated

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towards less regulated areas. Thus these empirical methods cannot be used to estimate net employment effects. . Empirical analysis at the industry level requires estimates of product demand elasticity; production factor substitutability; supply elasticity of production factors; and the share of total costs contributed by wages, by industry, and perhaps even by facility. Econometric studies of environmental rules converge on the finding that employment effects, whether positive or negative, have been small in regulated sectors.

The illustrative quantitative analysis in this chapter projects a subset of potential employment impacts in the electricity generation, fuel production, and demand-side energy efficiency sectors. States have the responsibility and flexibility to implement plans that satisfy final emissions guidelines, while affected EGUs may choose their compliance strategies from requirements imposed by these plans. As such, given the wide range of approaches that may be used, quantifying the associated employment impacts is difficult. EPA's employment analysis includes projected employment impacts associated with these guidelines assuming two illustrative plan approach scenarios for the electric power industry, coal and natural gas production, and demand-side energy efficiency activities. These projections are derived, in part, from a detailed model of the electricity production sector used for this regulatory analysis, and U.S. government data on employment and labor productivity. In the electricity, coal, and natural gas sectors, the EPA estimates that these guidelines could have an employment impact of roughly -8,500 job-years in 2020, -25,000 job-years in 2025, and -30,900 job-years in 2030 for the rate-based scenario. For the mass-based scenario, the EPA estimates that these guidelines could have an employment impact of roughly -13,100 job-years in 2020, -26,000 job-years in 2025, and -33,700 job-years in 2030 (see Tables 6-4 and 6-5).

Employment impacts from demand-side energy efficiency activities are based on historic data on jobs supported per million dollars of expenditure on energy efficiency. Demand-side energy efficiency employment impacts would approximately range from 37,570 to 59,700 jobs in 2020, 52,590 to 83,590 jobs in 2025, and from 52,440 to 83,360 jobs in 2030 for both the rate-based and mass-based approaches and a 1 percent growth target for energy efficiency expenditures (see Table 6-6).

The IPM-generated job-year numbers for the electricity, coal and natural gas sectors <u>should not</u> be added to the demand-side efficiency job impacts, since the former are reported in

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full-time equivalent job-years, whereas the latter do not distinguish between full- and part-time employment. Finally, note again that this analysis is based on two an illustrative plan approaches, and CAA section 111(d) allows each state to determine its state plan, by way of meeting its state-specific goal. Given the flexibilities afforded states in implementing plans that satisfy the emission guidelines, and in the compliance options affected EGUs may take, the impacts reported in this chapter are illustrative of actions states may take.

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APPENDIX 6A: ESTIMATING SUPPLY SIDE EMPLOYMENT IMPACTS

This appendix presents the methods used to estimate the supply-side employment impacts of the Final Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (herein referred to as "final emission guidelines" or the "Clean Power Plan Final Rule"). The focus of the employment analysis is limited to the direct changes in the amount of labor needed in the power, fuels and generating equipment sectors directly influenced by the illustrative plan approaches analyzed for the final emission guidelines. It does not include the ripple effects of these impacts on the broader economy (i.e., the "multiplier" effect), nor does it include the wider economy-wide effects of the changes to the energy markets, such as changes in electricity prices.

The methods used to estimate the supply-side employments are based on methods previously developed for the Mercury and Air Toxics Standards (MATS) Regulatory Impact Analysis (RIA). The methods used in this analysis to estimate the recurring labor impacts (e.g., labor associated with operating and maintaining generating units, as well as labor needed to mine coal and natural gas) are the same as was used in MATS (with updated data where available).

The labor analysis in the MATS RIA was primarily concerned with the labor needs of retrofitting pollution control equipment. The analysis for the Clean Power Plan Final Rule, however, involves the quantity and timing of the labor needs of building new renewable and natural gas, as well as making heat rate improvements (HRI) at existing coal fired EGUs. These construction-related compliance activities in the Clean Power Plan Final Rule required developing additional appropriate analytical methods that were not needed for the MATS analysis. The newly developed analytical methods for the construction-related activities are similar in structure and overall approach to the methods used in MATS, but required additional data and engineering information not needed in the MATS RIA.

6A.1 General Approach

The analytical approach used in this analysis is a bottom-up engineering method combining the EPA's cost analysis of the final emission guidelines with data on labor

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productivity, engineering estimates of the amount and types of labor needed to manufacture, construct, and operate different types of generating units, and prevailing wage rates for skilled and general labor categories. The approach involved using utility power sector projections and various energy market implications under the final emission guidelines from modeling conducted with the EPA Base Case version 5.15, using the Integrated Planning Model (IPM)[186], along with data from secondary sources, to estimate the first order employment impacts for 2020, 2025, and 2030.

Throughout the supply-side labor analysis the engineering approach projects labor changes measured as the change in each analysis year in job-years employed in the power generation and directly related sectors (e.g., equipment manufacturing, fuel supply and generating efficiency services). Job-years are not individual jobs, nor are they necessarily permanent nor full time jobs. Job-years are the amount of work performed by one full time equivalent (FTE) employee in one year. For example, 20 job-years in 2020 may represent 20 full-time jobs or 40 half-time jobs in that year, or any combination of full- and part-time workers such that total 20 FTEs.

The estimates of the employment impacts (both positive and negative) are divided into five categories:

- additional employment to make HRI[187] at existing coal fired EGUs;
- additional construction-related employment to manufacture and install additional new generating capacity (renewables, and natural gas combined cycle or combustion turbine units) when needed as part of early compliance actions;
- lost construction-related employment opportunities due to reductions in the total amount of new generating capacity needed to be built in the later years because of reduced overall demand for electricity because of demand-side energy efficiency activities;

[186] Results for this analysis were developed using various outputs from EPA's Base Case v.5.15 using ICF's Integrated Planning Model (IPM). See http://www.epa.gov/powersectormodeling/ for more information.

[187] Heat rate improvements could include a range of activities in the power plant to lower the heat rate required to generate a net electrical output. Assuming all other things being equal, a lower heat rate is more efficient because less fuel is needed per unit of electric output.

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- lost operating and maintenance employment opportunities due to increased retirements of coal and small oil/gas units;
- changes (both positive and negative) in coal mining and natural gas extraction employment due to the aggregate net changes in fuel demands arising from all the activities occurring due to compliance with the final emission guidelines.

Some of the changes are one-time labor effects which are associated with the building (or avoiding building) new generating capacity and installing HRI. This type of employment effects involves project-specific labor that is used for 2 to 4 years to complete a specific construction and installation type of project. There are other labor effects, however, which continue year after year. For example, bringing new generating capacity online creates an ongoing need for labor to operate and maintain the new generating capacity throughout the expected service life of the unit. New generating capacity also creates a need for additional employment to provide the fuel annually to run the new capacity. There are also continuing effects from the lost operations and maintenance (O&M) and fuel sector labor opportunities from decisions to retire existing capacity, as well as similar lost labor opportunities from decisions to reduce a portion of the amount of additional capacity needed in the base case.

6A.2 Employment Changes due to Heat Rate Improvements

The employment changes due to HRI were estimated based on the incremental MW capacity estimated to implement such improvements between 2021 and 2030 as indicated by the IPM analysis presented in Chapter 3. The labor analysis assumes there will be no HRI-related costs jobs associated with operating or maintaining an EGU after HRI improvements are made. As described in Chapter 3 of this RIA, EPA modeled the heat rate improvements exogenously to IPM using the assumption that all "relevant" units can improve their heat rate at a capital cost of $100/kW. The labor analysis assumes that the cost of implementing the HRI investments at a particular EGU will occur over a four year period. Hence, the labor analysis calculates the per-year cost of implementing the HRI is calculated to be $25/kW over a four year period, and these HRI cost occur in the 4 years prior to the HRI improvements at an individual EGU being operational.

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The HRI costs were then allocated to four categories based on the estimates provided by Andover Technology Partners (ATP), which were adapted from proxy projects involving installation of combustion control retrofits, such as those installed under the Best Available Retrofit Technology (BART) submissions from coal-fired power plants located in Wyoming and Arizona. For more details, refer to the Staudt (2014) report.[188] The data from the BART submissions are used as proxies that are representative of the activities (and their associated costs) EGUs will improve use to implement the HRI.

Information on cost for these proxies were then extrapolated to approximate the labor requirements for four broad categories of labor – boilermakers and general construction, engineering and management support labor, labor required to produce the equipment in upstream sectors, and labor required to supply the materials (assumed to be primarily steel) in upstream sectors. More details about these estimates are provided in the Staudt (2014) report.

Based on the cost allocated to each labor categories, output per worker estimates for respective labor categories, and the assumed growth in labor productivity during the period 2021 through 2030 (with the bulk of HRI occurring between 2021 and 2025), the employment gains for heat rate improvement were estimated for 2025 using the assumptions summarized in Table 6A-1 below. Output per workers in future years were adjusted to account for growth in labor productivity, based on historical evidence of productivity growth rates for the relevant sectors.[189]

[188] Staudt, James, Andover Technology Partners, Inc. Estimating Labor Effects of Heat Rate Improvements. Report prepared for the Clean Power Plan Proposed Rule, March 6, 2014.

[189] Total value of shipments or receipts in 20012 and total employees were taken from 2012 Economic Census, Statistics by Industry for Mining and Manufacturing sectors. The average annual growth rate of labor productivity was taken from the Bureau of Labor Statistics. Average growth rate calculated for years 1988-2007, applied to 2012 productivity to determine 2025 estimates of productivity. For the construction sector, BLS productivity growth rate data was unavailable. Because of this, and lack of reliable data on construction sector productivity growth, the output per worker for the construction sector was not forecasted to 2030, and the most recent available value from 2012 was used.

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Table 6A-1. Labor Productivity Growth Rate due to Heat Rate Improvement

	Share of the Total Capital Cost	Output/Worker (2025)	Labor Productivity Growth Rate
Boilermaker and Gen. Const.	40%	$78,500	0%
Management/Engineering	20%	$156,000	0.8%
Equipment	30%	$542,000	2.7%
Materials	10%	$600,000	1.0%

For these output per worker figures, a power sector construction industry (NAICS 237130) was used for general construction and boilermakers, Engineering Services (NAICS 54133) was used for the engineering and management component, Machinery Manufacturing (NAICS 333) was used for the equipment sector, and steel manufacturing (NAICS 3312) was used for materials. Use of machinery manufacturing for equipment and steel for materials was based on an analysis of the types of materials and equipment needed for these projects, and what EPA determined to be the most appropriate industry sectors for those. For more details, refer to the Staudt (2014) report.

6A.2.1 Employment Changes Due to Building (or Avoiding) New Generation Capacity

Employment changes due to new generation units were based on the incremental changes in capacity (MW), capital costs ($MM), and fixed operations and maintenance (FOM) costs ($MM) between the policy scenarios and the base case in a given year.

New capacities were aggregated by generation type into the following categories:

- Combined Cycle,
- Combustion Turbine, and
- Renewables (which includes biomass, geothermal, landfill gas, onshore wind, and solar).

For each category, the analysis estimated the impacts due to both the construction and operating labor requirements for corresponding capacity changes. The construction labor was estimated using information on the capital costs, while the operating labor was estimated using the FOM costs.

Because IPM outputs provide annualized capital costs ($MM), EPA first converted the annualized capital costs to changes in the total capital investment using the corresponding capital

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charge rates.[190] These total capital investments were then converted to annual capital investments using assumptions about the estimated duration of the construction phase, in order to estimate the annual impacts on construction phase labor. Duration estimates were based on assumptions for construction lengths used in EPA's IPM modeling.[191] Specific assumptions used for different generating technologies are shown in Table 6A-2 below.

Table 6A-2. Capital Charge Rate and Duration Assumptions

New Investment Technology	Capital Charge Rate	Construction Duration (Years)
Advanced Combined Cycle	10.3%	3
Advanced Combustion Turbine	10.6%	2
Renewables		
Dedicated Biomass	9.5%	3
Wind (Onshore)	10.9%	3
Landfill Gas	10.9%	3
Solar	10.9%	3
Geothermal	10.9%	3

Annual capital costs for each generation type were then broken down into four categories: equipment, material (which is assumed to be primarily steel), installation labor, and support labor in engineering and management. The percentage breakdowns shown in Table 6A-3 were estimated using information provided by Staudt (2014), based primarily on published budgets for new unit assembled in a study for the National Energy Technology Laboratory (NETL). For more details, refer to the Staudt (2014) report. Annual capital costs for each generation type provided by the IPM output were allocated according to this breakdown.

Table 6A-3. Expenditure Breakdown due to New Generating Capacity

	Equipment	Material	Labor	Eng. and Const. Mgt
Renewables	54%	6%	31%	9%
Combined Cycle	65%	10%	18%	7%
Combustion Turbine	65%	10%	18%	7%

The short-term construction labor of the new generation units were based on output ($ per worker) figures for the respective sectors. The total direct workers per $1 million of output for the baseline year 20012 were forecasted to the years under analysis using the relevant labor

[190] Capital charge rates obtained from EPA's resource, EPA #450R13002: Documentation for EPA Base Case v.5.13 using the Integrated Programming Model (IPM).

[191] Ibid.

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productivity growth rate. Table 6A-4 shows the figures for each of the five productivities: general power plant construction; engineering and management; material use; equipment use; and plant operators. The resulting values were multiplied by the capital costs to get the job impact.

Table 6A-4. Labor Productivity due to New Generating Capacity

	Labor Productivity Growth Rate	Workers per Million $ (20012)
General Power Plant Construction	0.0%	5.0
Engineering and Management	0.8%	5.24.7
Material Use (Steel)	1.0%	1.9
Equipment Use (Machinery)	2.7%	2.1
Plant Operators	1.7%	9.9

General installation labor, assumed to be mostly related to the general power plant construction phase, was matched with the power industry specific construction sector. Engineering/management was matched to the engineering services sector to determine their respective output per worker. For materials, EPA assumed steel to be the proxy and used the steel manufacturing sector for this productivity. Equipment was assumed to primarily come from machinery manufacturing sector (such as turbines, engines and fans).

The net labor impact for construction labor for a given year was adjusted to account for changes in capacity that has already taken place in the prior IPM run year. Because IPM reports cumulative changes for new generating capacity for any given run year, this adjustment ensured that the short-term construction phase job impacts in any given run year does not reflect the cumulative effects of prior construction changes for the given policy scenario. The estimated amount of the change in construction-related labor in a single IPM run year (e.g., 2025) represents the average labor impact that occurs in all years between that IPM run year and the previous run year (i.e., the labor estimates derived from the 2025 IPM run year are the average annual labor impacts in 2021 through 2025). The construction labor results for 2020 represent the average labor impacts in 2017 through 2020.

The plant operating employment estimates used a simpler methodology as the one described above. The operating employment estimates use the IPM estimated change in FOM costs for the IPM run year. Because the FOM costs are inherently estimates for a single year, the operating employment estimates are for a single year only. While there are obviously operating

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employment effects occurring in every year throughout the entire IPM estimation period (2017-2030), the labor analysis only estimates the single year labor impacts in the IPM run years: 2020, 2025 and 2030. The total direct workers for $1 million and labor productivity growth rate provided for plant operators in Table 6A-4 were used to estimate the employment impact.

6A.2.2 Employment Changes due to Coal and Oil/Gas Retirements

Employment changes due to plant retirements were calculated using the IPM projected changes in retirement capacities for coal and oil/gas units for the relevant year and the estimated changes in total FOM costs due to those retiring units. Thus, the basic assumption in this analysis is that increased retirements (over the base case) will lead to reduced FOM expenditures at those plants which were assumed to lead to direct job losses for plant workers.

In order to estimate the total FOM changes due to retirements, EPA first estimated the average FOM costs ($/kW) for existing coal-fired and oil/gas-fired units in the base case, as shown in Table 6A-5 below. It was assumed that the average FOM cost of existing units in the base case can be used as a proxy for the lost economic output due to fossil retirements. Thus, changes in the FOM costs for these retiring units were derived by taking the product of the incremental change in capacity and the average FOM costs. These values were converted to lost employment using data from the Economic Census and BLS on the output/worker estimates for the utility sector.[192]

Table 6A-5. Average FOM Costs for Existing Coal and Oil and Gas Steam Capacity ($/kW, 2011$)

	2020	2025	2030
Coal	$70	$73	$74
Oil and Gas	$34	$33	$33

Note that the retirement related employment losses are assumed to include losses directly affecting the utility sector, and do not include losses in upstream sectors that supply other inputs to the EGU sector (except fuel related job losses, which are estimated separately and discussed in the next section).

[192] The same specific sources as cited before, however, used workers and total payroll.

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6A.2.3 Employment Changes due to Changes in Fossil Fuel Extraction

Two types of employment impacts due to projected fuel use changes were estimated in this section. First, employment losses due to either reductions or shifts in coal demand were estimated using an approach similar to EPA's coal employment analyses under Title IV of the Clean Air Act Amendments. Using this approach, changes in coal demand (in short tons) for various coal supplying regions were taken from EPA's base case and illustrative plan scenario model runs for the final EGU GHG NSPS. These changes were converted to job-years using U.S. Energy information Administration (EIA) data on regional coal mining productivity (in short tons per employee hour), using 2012 labor productivity estimates.[193,194]

Specifically, the incremental changes to coal demand were calculated based on the coal supply regions in IPM -- Appalachia, Interior, and West and Waste Coal (which was estimated using U.S. total productivity). Worker productivity values used for estimating coal related job impacts are shown in Table 6A-6 below.

Table 6A-6. Labor Productivity due to Fossil Fuel Extraction

	Labor Productivity
Coal (Short tons/ employee hour)	
Appalachia	2.32
Interior	4.73
West	17.09
Waste	5.19
Natural Gas (MMBtu/ employee hour)	122.0
Pipeline Construction (Workers per $Million)	4.2

For natural gas demand, labor productivity per unit of natural gas was unavailable, unlike coal labor productivities used above. Most secondary data sources (such as Census and EIA) provide estimates for the combined oil and gas extraction sector. This section thus used an adjusted labor productivity estimate for the combined oil and gas sector that accounts for the relative contributions of oil and natural gas in the total sector output (in terms of the value of

[193] EIA Annual Energy Review. 2012.

[194] Unlike the labor productivity estimates for various equipment resources which were forecasted to 2020 using BLS average growth rates, the labor analysis uses the most recent historical productivity estimates for fuel sectors. In general, labor productivity for the fuel sectors (both coal and natural gas) showed a significantly higher degree of variability in recent years than the manufacturing sectors, which would have introduced a high degree of uncertainty in forecasting productivity growth rates for future years.

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energy output in MMBtu). This estimate of labor productivity was then used with the incremental natural gas demand for the respective IPM runs to estimate the job-years for the specific year (converting the TCF of gas used projected by IPM into MMBtu using the appropriate conversion factors). In addition, the pipeline construction costs were estimated using endogenously determined gas market model parameters in IPM used by EPA for the MATS rule (using assumptions for EPA's Base Case v4.10). This analysis assumed that the need for additional pipeline would be proportionate to those projected for the MATS rule and were hence extrapolated from those estimates (U.S. EPA, 2011). The job-years associated with the pipeline construction were included in the natural gas employment estimates. Worker productivity values used for estimating natural gas related job impacts are shown in Table 6A-6.

6A.3 References

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U.S. Environmental Protection Agency (U.S. EPA). 2011. Regulatory Impact Analysis for the Mercury and Air Toxics Standards (MATS). Office of Air Quality Planning and Standards, Research Triangle Park, NC. Available at <http://www.epa.gov/ttn/ecas/regdata/RIAs/matsriafinal.pdf>. Acessed June 4, 2015.

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Message

From: Vaught, Laura [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C30920BCB6214A91B7E3C1E7810C63E1-VAUGHT, LAURA]
Sent: 10/13/2015 7:49:27 PM
To: 'Unruh Cohen, Ana (Markey)' [Ana_UnruhCohen@markey.senate.gov]; 'Freedhoff, Michal (Markey)' [Michal_Freedhoff@markey.senate.gov]
Subject: FW: Follow-up to Friday's meeting on 10/21 hearing
Attachments: zivin and neidell_ozone_workerprod.pdf; cpp final rule ria - chapter 6.pdf; Excerpt on discounting from OMB RTC.docx

Michal and Ana - attached and below please find some additional information following up on our call. Let us know if questions.

Thanks!

PS - I confess I can't remember which of your colleagues joined us on the call, so that's why I'm just sending to you two. Sorry about that.

Here is the information we discussed at our meeting on Friday that may be useful for preparation of the hearing on October 21. Let us know if we can provide further assistance. Thanks.

1. RFF Monograph entitled "Defining the Unknown: A Look at the Cost of Tighter Ozone Standards" http://www.rff.org/files/document/file/RFF-IB-15-03.pdf

2. American Economic Review paper on ozone and worker productivity, see(also attached): https://www.aeaweb.org/articles.php?doi=10.1257/aer.102.7.3652

3. Employment analysis example using updated approach - see attached chapter from the Clean Power Plan RIA

4. Attached are 2 excerpts that addresses OMB's views on discounting and SCC - specifically with respect to perceived inconsistency with A4. The excerpts are from the SCC Response to Comments (RTC) document that was released in July. The RTC is authored by the interagency working group, of which OMB is a member and active participant. OMB coordinated the drafting of the document and it was released by OMB on July 2 via a blog post. It is posted on OIRA's "For Agencies" webpage.

   The relevant parts of the second excerpt can be condensed to:
   - "Circular A-4 is a living document, which may be updated as appropriate to reflect new developments and unforeseen issues. OMB was fully involved in the development of the SCC estimates as a working group co-chair and supports the working group's recommendations regarding the discount ... The departure from the standard discount rate recommendations in Circular A-4 is explained in detail in the TSDs and in Section 5 of this document. Briefly, the use of 7 percent is not considered appropriate for intergenerational discounting. There is wide support for this view in the academic literature, and it is recognized in Circular A-4 itself.." (https://www.whitehouse.gov/sites/default/files/omb/inforeg/scc-response-to-comments-final-july-2015.pdf, p. 36)

5. Economy-Wide Panel members, see (also posted below): http://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalSubCommitteeRosters?OpenView&committee=BOARD&subcommittee=Economy-Wide%20Modeling%20Panel

Wilcoxen, Peter J.	**Chair**	Syracuse University	Syracuse	NY