House Amendment to Senate Amendment to H.R. 2576 — Toxic Substances Control Act Modernization Act of 2015 (Rep. Shimkus, R-IL)

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FLOOR SCHEDULE:

Scheduled for consideration on May 24, 2016 subject to a closed rule

TOPLINE SUMMARY:

The House Amendment to Senate Amendment to H.R. 2576 TSCA Modernization Act of 2015 would modify the Toxic Substances Control Act (TSCA) to identify and control unreasonable risks to health and the environment from the manufacture, processing, distribution in commerce, use, and disposal of chemical substances. The bill would increase the Environmental Protection Agency (EPA)'s authority over the management of toxic chemicals.

COST:

The Congressional Budget Office (CBO) estimate for the House-passed version of H.R. 2576 can be found here. No CBO estimate is available for the Senate-passed version of the bill.

CONSERVATIVE CONCERNS:

Some conservatives may be concerned that the bill would prohibit the EPA from considering costs when making the determination as to whether a chemical substance should be regulated. Conservatives may also be concerned that the bill also eliminates the requirement that the EPA consider the "least burdensome" method of regulating a substance, and instead allows the EPA to pursue any mitigation standard, regardless of the burden imposed.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** The bill would preempt state regulation of chemicals the EPA has evaluated and found not to present an unreasonable risk, as well regulation of chemicals included in the EPA's high priority list. As in current law, positive law EPA regulation of chemicals would automatically preempt state regulations.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

The House amendment to the Senate amendment to H.R. 2576 would amend the Toxic Substances Control Act by requiring the EPA Administrator to develop any policies, procedures, and guidance necessary to carry

out rulemaking on the testing, manufacturing, and regulating of chemical substances and mixtures after providing public notice and an opportunity for comment.

When requiring the development of new information relating to a chemical substance or mixture, the EPA would be directed to identify the need for the new information, describe how information reasonably available to the Administrator of the EPA was used to inform the decision to require new information, explain the basis for any decision that requires the use of vertebrate animals, and, as applicable, explain why issuance of an order is warranted instead of promulgating a rule or entering into a consent agreement.

When requiring the development of new information, the EPA would be directed to 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 one or more additional tests are necessary, unless information available to the Administrator of the EPA justifies more advanced testing of potential health or environmental effects or potential exposure without first conducting screening-level testing.

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) the EPA would be directed to identify the need intended to be met by the rule; explain why information reasonably available at that time is inadequate to meet that need; and explain the basis for any decision that requires the use of vertebrate animals for testing. The bill would further modify and clarify procedures for testing chemicals and mixtures on animals and would allow the EPA to waive certain restrictions on animal testing under specified conditions.

The EPA would be directed to establish, by rule, a risk-based screening process, including criteria for designating chemical substances as high-priority substances for risk evaluations or low-priority substances for which risk evaluations are not warranted at the time. The process to designate the priority of chemical substances shall include a consideration of the hazard and exposure potential, the conditions of use, and the volume of the chemical substance manufactured or processed. The EPA Administrator would be required to ensure that risk evaluations are being conducted on at least 20 high- priority substances and that at least 20 chemical substances have been designated as low-priority or low-hazard substances, subject to the limitation that at least 50 percent of all chemical substances on which risk evaluations are being conducted by the EPA are drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments.

The EPA, not later than 6 months after initiating a risk evaluation, would be directed to publish the scope of the risk evaluation to be conducted, including the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations the EPA Administrator expects to consider, and, for each designation of a high-priority substance, ensure not less than 12 months between the initiation of the prioritization process for the chemical substance and the publication of the scope of the risk evaluation for the chemical substance.

According to the House Energy and Commerce Committee, "EPA is required to review and make an affirmative finding about the level of risk posed by the new chemical without regard to cost. The chemical may not be commercially produced until EPA rules on it, and the chemical cannot be produced without being in compliance with EPA restrictions on the chemical that are without regard to cost."

The EPA would additionally maintain and keep current designations of active substances and inactive substances. Any person that intends to manufacture or process for a nonexempt commercial purpose a chemical substance that is designated as an inactive substance would be required to notify the EPA. According to the committee summary, the EPA would "continue protecting trade secrets submitted to it for 10 years, including when disclosure of proprietary chemical formulas would reveal secrets about the chemical manufacturing process." The Administrator of the EPA would be directed to not disclose information that is exempt from disclosure, to include information describing the processes used in manufacture or processing of a chemical substance, mixture, or article, subject to existing law.

The bill would stipulate that if the EPA 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 agency, the EPA would be required to make the information available to the relevant federal agency.

A state would be prohibited from enforcing 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 in a rule, a testing consent agreement, an order issued by the EPA. A state would additionally be prohibited from restricting a chemical that EPA's scientific risk evaluation found does not present an unreasonable risk. Federal preemption would begin when the EPA defines the scope of a risk evaluation and ends either 30 months after that or when a risk evaluation is completed. Nothing in the bill, nor any rule, safety determination, or scientific assessment, would affect the right of a state to adopt or enforce any rule, safety determination, scientific assessment, or any protection for public health or the environment that is adopted or authorized under the authority of any other federal law.

The EPA would be authorized to allow fees, collected under one provision as a condition of submitting a notice or requesting an exemption, to be used to work on the same chemical under testing, evaluation and regulation, and information protection provisions. The EPA would only be authorized to utilize the fees collected to defray costs associated with the agency's actions to collect, process, review, and protect information on chemical substances from disclosure. The bill would limit overall fee collection to 25% of EPAs cost for regulating new and existing chemicals and test orders or $25 million, and would establish in the Treasury of the United States, the TSCA Implementation Fund. Fees would not be assessed for a fiscal year unless the amount of appropriations for the EPA Chemical Risk Review and Reduction program project of for the fiscal year are equal to or greater than the amount of appropriations for that program project for fiscal year 2014.

The bill would prohibit the export of a series of mercury compounds. The bill would require the Assistant Secretary of Labor for Occupational Safety and Health to develop and make available guidance that establishes procedures and standards for the management and short-term storage of elemental mercury at a generator, including requirements to ensure appropriate use of flasks or other suitable containers.

The EPA Administrator would be directed to establish Science Advisory Committee on Chemicals to provide independent advice and expert consultation, on the request of the Administrator, with respect to the scientific and technical aspects of issues relating managing toxic substances.

The Secretary of Health and Human Services would be directed to develop criteria for the designation of potential cancer clusters, and would be directed to consider whether it is appropriate to conduct an investigation of a potential cancer cluster; and in conducting investigations would have the discretion to prioritize certain potential cancer clusters, based on the availability of resources.

The bill would add "skilled nursing facilities" to the definition of a Health Provider in section 254 of the Communications Act related to Universal Service.

The House report (H. Rept. 114-176) accompanying H.R. 2576 can be found here. The RSC's legislative bulletin for the House-passed version of H.R. 2576 can be found here. A TSCA reform summary on the bill from the House Committee on Energy and Commerce can be found here. A fact sheet from the committee can be found here.

AMENDMENT CONSIDERED AS ADOPTED:

- #1 Shimkus (R-IL) [Manager's amendment]: would make technical and conforming changes, and would modify the preemption and deletion of a low hazard chemical designation. Under section 21 of the Toxic Substances Control Act, any person may petition the EPA Administrator to initiate a proceeding for the issuance, amendment, or repeal of a rule. If the petitioner demonstrates to the

satisfaction of the court by a preponderance of the evidence that the chemical substance or mixture subject to the rule presents an unreasonable risk of injury to health or the environment, without consideration of costs or other non-risk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation, the court shall order the EPA Administrator to initiate the action requested by the petitioner.

GROUPS IN SUPPORT:

- National Association of Manufacturers
- U.S. Chamber of Commerce
- American Chemistry Council
- Auto Alliance

COMMITTEE ACTION:

H.R. 2576 was introduced on May 26, 2015 and was referred to the House Committee on Energy and Commerce. On June 23, 2015, the bill was ordered to be reported (amended) by the committee, and passed the House on a motion to suspend the rules by the yeas and nays: (2/3 required) 398 – 1. On December 17, 2015, the bill passed the Senate with an amendment by voice vote.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the sponsor: "Congress has the power to enact this legislation pursuant to the following: Article I, Section 8, Clause 3: To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

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