



ECOS

A Quick Guide to Preemption in the Lautenberg Act

Key Points

Scope of Preemption

The Lautenberg Act limits the scope of preemption to the “hazards, exposures, risks, and uses or conditions of use” included in the scope of the risk evaluation of final EPA action.

Certain existing laws are grandfathered from preemption:

- State laws in place before Aug. 31, 2003
- State/local chemical restrictions in place before Apr. 22, 2016

Other types of state actions not subject to preemption:

- Information obligation purposes
- Air, water, waste and related activities with limitations

Preemption under the original TSCA

While the original TSCA did include state preemption provisions, preemption had little effect on states because EPA did not take many regulatory actions under the original law.

Old preemption provisions will still apply to actions taken by EPA before the Lautenberg Act was adopted, unless EPA subjects those chemicals to a new risk evaluation and regulatory process.

This summary has been created by ECOS, drawing on materials originally developed by the Toxics Use Reduction Institute (TURI) at UMass Lowell. For more information, please see the following:

<http://www.ecos.org/documents/ecos-key-issues-and-comments-on-toxic-substances-control-act-tsca-reform/>

http://www.turi.org/TURI_Publications/TURI_Chemical_Fact_Sheets/TSCA_Preemption_Provisions

Risk Evaluation...

The Lautenberg Act requires EPA to conduct a risk-based evaluation and determine whether a chemical poses an unreasonable risk to human health or environment.

triggers Pause Preemption.

New state prohibitions/restrictions are preempted, starting when EPA publishes the scope of a risk evaluation, and ending when EPA either publishes the risk evaluation or reaches the statutory deadline for publication of the risk evaluation (up to 3 years).

Duration of pause preemption depends on how quickly EPA publishes the scope of the risk evaluation and completes the risk evaluation (likely 2.5 to 3 years).

During pause preemption, states are prohibited from adopting new restrictions, even though EPA will not have taken action yet.

Waiver from Pause Preemption “Required Exemptions”

Considerations on a waiver application from pause preemption include an EPA determination that the state “has a concern” about the chemical “based in peer-reviewed science.”

Note: EPA must provide a waiver if the state “has enacted a statute or proposed or finalized an administrative action intended to prohibit or otherwise restrict the manufacture, processing, distribution in commerce, or use of the chemical substance” by either 18 months after the date EPA initiated the prioritization process or the date when EPA publishes the scope of its risk evaluation, whichever comes first.

Note: If EPA fails to make a waiver determination within the required time period, the waiver is automatically granted.

EPA determines that...

- There is not enough information to determine whether the chemical presents unreasonable risk.
- The chemical **does or does not** present unreasonable risk.

Exceptions to Pause Preemption

- Chemicals for which EPA grants a manufacturer-requested risk evaluation
- First 10 Work Plan chemicals for which EPA undertakes a risk evaluation.

Long-Term Preemption

For a chemical that is found to **present unreasonable risk**, long-term preemption is effective on the effective date of the rule issued by EPA.

For a chemical that is found to **not present unreasonable risk**, long-term preemption is effective on the date of the EPA determination.

Note: Long-term preemption can apply to both new and existing state restrictions. Also, if EPA requires notification of a chemical use under a significant new use rule, states are preempted from issuing similar notification requirements for the same uses.

Waiver from Long-Term Preemption “Discretionary Exemptions”

Considerations on a waiver application from long-term preemption include “compelling conditions” related to health or environment, and an EPA evaluation of the state’s use of science in decision making.