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CONGRESSIONAL RECORD — SENATE

S3511

and very fulfilling day up and down the State of Delaware.

With that, I thank my colleague from Rhode Island.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

TSCA MODERNIZATION ACT OF 2015

Mr. INHOFE. Mr. President, I ask that the Chair lay before the Senate the messages from the House of Representatives of:

Resolved, That the House agree to the amendment of the Senate to the bill (H.R. 2576) entitled “An Act to modernize the Toxic Substances Control Act, and for other purposes,” with an amendment to the Senate amendment.

MOTION TO CONCUR

Mr. INHOFE. Mr. President, I move to concur in the House amendment to the Senate amendment.

I ask unanimous consent that there now be 45 minutes of debate on the motion, and that following the use or yielding back of time, the Senate vote on the motion to concur.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INHOFE. For the information of Senators, this will allow us to pass this bill tonight by voice vote.

Mr. President, I seek unanimous consent that for that 45 minutes of debate, the Senator from California, Mrs. BOXER, be recognized for 10 minutes; followed by the Senator from Louisiana, Mr. Vitter; and then go back and forth in 5-minute increments.

The PRESIDING OFFICER. Is there objection?

The Senator from California.

Mrs. BOXER. Reserving the right to object, Mr. President, I want to make a little clarification.

Senator UDALL has asked for 10 minutes. If we could use our time, allowing this Senator 10 minutes, and then after Senator Vitter’s time, we would go to Senator Udall for 10 minutes and then back to the other side. Then Senator MARKET wanted 5 minutes and Senator Whitehouse wanted 5 minutes as well—if it would go in that order as stated, with 10 for myself, 10 for Senator Udall, 5 for Senator Markay, and 5 for Senator Whitehouse.

Mr. INHOFE. I believe that adds up to our 45 minutes, and I will just not speak until after the vote.

The PRESIDING OFFICER. Is there objection to modifying the request?

Mrs. BOXER. There would be 5 minutes left. That is all right.

Mr. INHOFE. I will amend my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mrs. BOXER. Mr. President, I want to stand-in for my dear friend, Senator INHOFE. We have had a wonderful relationship when it comes to the infrastructure issues. We have not worked terribly well together on environmental issues, but because of both of our staffs and the Members of our committee on both sides of the aisle, we were able to tough it out and come up with a bill that I absolutely believe is better than current law.

I will rise to respond to the point, and we never would have gotten to a bill worthy of Frank’s name, and it means a great deal to me.

The first major area of improvement is the preemption of State restrictions on chemicals. If it would go in that order as stated, we were able to make important exceptions to the preemption provisions.

First, the States are free to take whatever action they want on any chemical until EPA has taken a series of steps to study a particular chemical.

Second, when EPA announces the chemicals they are studying, the States still have up to a year and a half to take action on these particular chemicals to avoid preemption until the EPA takes final action.

Third, even after EPA announces its regulation, the States have the ability to get a waiver so they can still regulate the chemical, and we have made improvements to that waiver to make it easier for States.

For chemicals that industry has asked EPA to study, we made sure that States are not preempted until EPA issues a final restriction on the chemical, something that I really want to thank our friends in the House. They put a lot of effort into that.

The first 10 chemicals EPA evaluates under the bill are also exempted from preemption until the final rule is issued. Also, State or local restrictions on a chemical that were in place before April 22, 2016, will not be preempted.

So I want to say, as someone who comes from the great State of California—home to almost 40 million people and which has a good strong program, we protected, rather, have written this provision myself? Of course, and if I had written it myself I would have set a floor in terms of this standard and allowed the States to take whatever action they wanted to make it tougher. But this was not to be. This was not to be. So because I couldn’t get that done, what we were able to get done were those four or five improvements that I cited.

The States that may be watching this debate can really gear up and move forward right now. There is time. You can continue the work on regulations you passed before April. You can also have a year and a half once EPA announces the chemical, and if they don’t announce anything, you can go back to doing what you did before. An EPA that is not funded right, I say to my dearest friend on the floor today, is not going to do anything. So the States will have the ability to do it. I would have we would fund the EPA so we have strong Federal programs and strong State programs as well. But we will have to make sure that the EPA doesn’t continually get cut.
The second area of improvement concerns asbestos. I think I have talked about that before. It is covered in this bill.

The third area of improvement concerns cancer clusters. This one is so dear to my heart and to the heart of my colleague, Senator CRAPO. We wrote a bill together called the Community Disease Cluster Assistance Act, or "Trevor’s Law." Trevor’s Law provides localities that ask for it a coordinated response to cancer clusters in their communities.

What Trevor taught us from his experience with a horrible cancer is that sometimes these outbreaks occur and no one knows why. Yet it is considered a local issue. Now, if the local community requests it—if they request it—they will get help.

Fourth, we have something called persistent chemicals. Those are chemicals that build up in your body. You just don’t get rid of them. They are a priority in this legislation.

Fifth, another one that is dear to my heart and to the heart of Senator MANCHIN and Senator CAPITO is this provision that ensures that toxic chemicals stored near drinking water supplies are prioritized. This provision was prompted by the serious spill that contaminated the drinking water supplies in West Virginia in 2014, causing havoc and disruption. They didn’t know what the chemical was. It got into the water. They didn’t know what to do. As we all remember, it was a nightmare for the people there—no more. Now we are going to make sure that the EPA knows what is stored near drinking water supplies.

The sixth is very important and is something that got negotiated in the dead of night. I want to thank Senator Lautenberg’s staff for working with my staff on this. The bill enables EPA to order independent testing if there are safety concerns about a chemical, and these tests will be paid for by the chemical manufacturer. I also want to thank Members of the House who really brought this across the finish line.

Finally, even the standard for evaluating whether a chemical is dangerous is far better than in the old TSCA. The bill requires EPA to evaluate chemicals based on risks, not costs, and considers the impact on vulnerable populations. This is really critical. The old law was useless. So all of these fixes make this bill better than current Federal law.

Looking forward, I want to make a point. This new TSCA law will only be as good as the EPA is good. With a good EPA, we can deliver a much safer environment for the American people—safer products, less exposure to harmful toxics, and better health for our people. With a bad EPA that does not value our health, not much will get done. But, again, if a bad EPA takes no action, States will be free to act.

Mr. President, I ask for 30 additional seconds, and I will wrap this up.

Mr. INHOFE. Reserving the right to object, we do have this down with five people.

Mrs. BOXER. I ask unanimous consent for 30 seconds, I am just going to end with 30 seconds, and I will add 30 seconds to your time.

The PRESIDING OFFICIAL. Without objection, it is so ordered.

Mrs. BOXER. I say to the States: You are free to act with a bad EPA. Compared to where we started, we have a huge step forward. Between the States and the Federal Government. It is not perfect. The bills I worked on with Frank did not do this. They did not preempt the States. But because of this challenging journey, we respected each other on both sides, we listened to each other on both sides, and today is a day we can feel good about.

We have a decent bill, a Federal program, and the States will have a lot of latitude to act.

I yield the floor.

The PRESIDING OFFICIAL. The Senator from Louisiana.

Mr. VITTER. Mr. President, I rise also to laud a really significant achievement that we are going to finalize tonight. The passage of the Frank R. Lautenberg Chemical Safety for the 21st Century Act.

This much needed bill will provide updates that have been due literally for decades to the Toxic Substances Control Act, known as TSCA for short, which has been outdated and overdue for updating since almost that same moment. Now, getting to where we are tonight, about to pass this by an overwhelming vote, following the 403-to-12 vote in the Senate a few weeks ago, did not happen overnight. In fact, it took about 5-plus years.

In 2011 I started discussions with a broad array of folks, certainly including Senator Lautenberg. That is when I first sat down with Frank and started this process in a meaningful way and when we agreed that we would try to bridge the significant differences between our two viewpoints and come up with a strong bipartisan bill.

That same year I also sat down with JOHN SIMKUS of Illinois to let him know that Frank and I were going to put in a lot of effort to come up with this framework, and we wanted him to be a full and equal and contributing partner. Over the next year and a half, we slogged through that process of trying to come up with a strong bipartisan bill. It wasn’t easy. Between Senator Lautenberg and myself and our staffs and other staffs, there was an often brutal stretch of difficult negotiations and challenging times, testing everybody’s patience.

Several times we walked away to come back together again. Finally, it did come together. In early 2013, that really started taking shape. Toward the end of April 2013, we were far enough along to lock a small group of staff and experts in a room to finalize that first bipartisan bill. There were folks like Bryan Zumwalt, my chief counsel then; Dimitri Karakitsos, who is my counsel and is now a key staffer who continues on the EPW Committee; Senator Lautenberg’s chief counsel, Ben Dunham; and his chemical adviser, Brendan Beil.

I led finally to this first bipartisan bill that we introduced on May 23, 2013. Now, that wasn’t the end of our TSCA journey. Unfortunately, in many ways, the most difficult segment of that journey was soon after that introduction on May 23, 2013, just a few weeks later, Frank passed. The single greatest champion of reforming how chemicals are regulated died at 89 years of age.

Looking forward, I want to make a point. I think I have talked about that before. It is covered in this book. Looking forward, I want to make a point. That was heartbreaking. But it was a moment when all of us who had been involved only redoubled our commitment to following this through to the end. Soon after Frank’s unfortunate passing, our colleague TOM UDALL really stepped up to the plate in a major way to take Frank’s role as the Democratic lead in this effort. We had a quiet dinner one night here on Capitol Hill to talk about our commitment to carry on this fight and get it done. We formed a partnership and a friendship that was really built around this work with an absolute commitment to get that done. I will always be so thankful to Tom and his partnership and also to his great staff, including their senior policy adviser, Jonathan Black.

As with most major undertakings, we had a lot of other help all along the way. Early on, at that stage of the process, Senators CRAPO and ALEXANDER were extremely helpful. Also, a little later on, Senators BOOKER, MERKLEY, and MARKEY did a lot to advance the ball and refine the product. Of course, at every step of the way, I continued to meet and talk with Congressman JOHN SIMKUS. He was a partner and a reliable partner in this process, as was his senior policy adviser, Chris Sarley.

Throughout this process, staff was absolutely essential and monumental. There were yeoman’s very difficult and trying circumstances. I mentioned Bryan Zumwalt, my former chief counsel. He was a driving force behind this. I deeply appreciate and acknowledge his work, as well as some other key players. Also, mentioned, Dimitri Karakitsos, who continues to work as a key staffer on the committee and who is seeing this over the goal line.

Let me also thank Ben Dunham, the former chief counsel to Senator Lautenberg. I think in the beginning, particularly, Ben, Bryan, and Dimitri gave each other plenty of help but worked through very difficult negotiations to get it done.

I want to thank Jonathan Black and Drew Wallace in Senator UDALL’s office and Michal Freedhoff and Adrian Deveny in Senator MARKLEY’s office.

On the outside, there are a lot of experts from all sorts of stakeholders across the political spectrum, certainly including industry representatives with the American Chemistry Council.
I want to thank Mike Walls, Dell Perelman, Rudy Underwood, Amy DuVall, Robert Flagg, and, of course their leader, Cal Dooley.

Finally, there is one enormous figure who is owed a great debt of gratitude and a story for Senator Lautenberg. I know he is the goal line tonight; that is, Frank’s better half—and I say that with deep respect and admiration to Frank, but surely his better half—Bonnie Lautenberg. She has been the called the 101st Senator, particularly on this issue. She was a driving force behind Frank’s work being completed. I thank her for her relentless effort reaching out to Members in the House and Senate and stakeholders to make sure this happened.

As I mentioned at the beginning, this is long overdue. All stakeholders across the political spectrum agreed for decades that this aspect of the law needed to be updated. We needed to fully protect public health and safety, which we all want to do. We also needed to ensure that industry, companies, which are world leaders today in science, research, and innovation remain so and do not get put behind a regulatory system which is overly burdensome and unworkable.

The TSCA reform bill, properly named after Frank Lautenberg, achieves those goals. It is a positive, workable compromise in the best sense of that term, so that we will achieve public health and safety. It ensures that our leading American companies, great scientists, great innovators, and great world leaders in this sector remain just that and that they remain the world leaders we want and need them to continue to be.

So I thank all of those who have contributed to this long but ultimately successful and worthwhile effort. With that, I look forward to your vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. UDALL. Mr. President, let me just initially, while Senator Vitter is still on the floor here, thank him so much. He was a great partner in terms of working on this piece of legislation thoroughly through the process over 3 years. We met, I think, about 3 years ago and had a dinner and decided, after Frank Lautenberg had died—he did a lot of work on the bill—that we would pick it up and make it happen. He has been a great partner, and it has been a real pleasure working with him.

Let me just say about Chairman INHOFE that what they say in the Senate is that if you have a strong chairman, you can get a bill done. He has been remarkable in his strength and his perseverance in terms of moving this bill. So we are at a very, very historic point today. I think I would call it a historic moment. I thank the Senate. It has been a pleasure working with the Senator when I was on the committee, and I am going to enjoy working with Chairman INHOFE in the future in terms of many other issues that come before us in the Senate.

I don’t have any doubt that this is a historic moment several years and Congresses in the making. For the first time in 40 years, the United States of America has an effective safety program that works and that protects our families from dangerous chemicals in their daily lives. This is significant. Most Americans believe that when they buy a product at the hardware store or the grocery store, that product has been labeled or determined to be safe. But that is not the case.

Americans are exposed to hundreds of chemicals from household items. We carry them around with us in our bodies and even before we are born. Some are known as carcinogens, others as highly toxic. But we don’t know the full extent of how they affect us because they have never been tested. When this bill becomes law, there will finally be a cop on the beat.

Today, as the old TSCA, reviewing chemicals is discretionary. When this bill is law, the EPA will be required to methodically review all existing chemicals for safety, starting with the worst offenders. Today, the old law requires the government to consider the costs and benefits of regulation when studying the safety of chemicals. Very soon, EPA will have to consider only the health and environmental impacts of a chemical. If they demonstrate a risk, EPA must ban them.

Very soon, it will be enshrined in the law that the EPA most protect the most vulnerable people—pregnant women, infants, the elderly, and chemical workers. Today, the old TSCA puts burdensome testing requirements on the EPA. To test a chemical, the EPA has to show a chemical possesses a potential risk, and then it has to go through a long rulemaking process.

Very soon, EPA will have authority to order companies to test those chemicals. Today, the old TSCA allows new chemicals to go to market without any real review, an average of 750 a year. Very soon, the EPA will be required to determine that all chemicals are safe before they go to the market.

Today, the old TSCA allows companies to hide information about their products, claiming it is confidential business information, even in an emergency. Very soon, we will ensure that companies can no longer hide this vital information.

States, medical professionals and the public will have access to the information they need to keep communities safe. Businesses will have to justify when they keep information confidential. That right will expire after 10 years. Today, the old TSCA understands the EPA so it doesn’t have the resources to do its job.

Very soon, there will be a dedicated funding stream for TSCA. It will require the chemical industry to pay its share, $25 million a year. In addition, this new law will ensure victims can get access to the courts if they are hurt. It will reinvigorate unnecessary testing on animals, and it will ensure that States can continue to take strong action on dangerous chemicals.

The Senate is about to pass this legislation. It is going to the President, and we will sign it. Over the past several days, I have gotten the same question over and over: What made this legislation different? Why was the agreement possible when other bills stalled? I thought about it quite a bit. It wasn’t that the bill was simple. This was one of the most complex environmental pieces of legislation around. It certainly wasn’t a lack of controversy. This process almost fell apart many times. It certainly wasn’t a lack of interest from stakeholders. Many groups were involved, all with strong and passionate views and some with deep distrust. We faced countless obstacles, but I think what made this possible was the commitment and the willpower by some involved in the legislation through and endure the slings and the arrows. I say a heartfelt thank-you to everyone involved.

I remember having dinner with Senator Vitter one evening on when I was trying to decide how we would take up Frank Lautenberg’s work on this bill. There was already plenty of controversy and concern about the bill. Senator Vitter and I were not used to working with each other. In fact, we were almost always on opposite sides. But I left that dinner with the feeling that Senator Vitter was committed, that he wanted to see this process through and was willing to do what it would take. For 3 years, I never doubted that. Both of us took more than a little heat. We both had to push hard and get important groups to the table and make sure they stayed at the table. I thank Senator Vitter. He has been a true partner in terms of pushing the bill.

There are many others to thank, and I will, but before I do that, I want to say a few words about this bill’s namesake. Frank Lautenberg was a champion for public health, a determined leader for TSCA reform. He cared so much for his children and grandchildren that he wanted to leave a better, healthier, safer environment for them. He always said that TSCA reform would save more lives than anything he ever worked on.

This is a bittersweet moment for all of us because Frank isn’t here to see this happen, but I have faith that he is watching us and he is cheering us on. His wife Bonnie has been here working as the 101st Senator. She has been a force and inspiration, keeping us going, pushing us when we needed it. She helped us fulfill Frank’s vision.

In the beginning, we thought that the bill might not ever get introduced in the Senate. We entered this Congress after the Republicans took the majority. Many felt that strong environmental legislation was impossible. They urged us to wait. But many of us felt that 40 years was already too long to wait. We knew we could do it, make it better, and get it passed.
The PRESIDING OFFICER. Who yields time?

Mr. UDALL. I yield time to—the agreement, as I understand it, is that Senator MARKEY will speak for 5 minutes and Senator WHITEHOUSE for 5 minutes and then back to the Chair. Mr. INHOFE. Yes, that is already a unanimous consent.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. MARKEY. Mr. President, today Congress stands ready to reform the last of the core four environmental statutes. It may do so with a stronger bipartisan vote than any other major environmental statute in recent American history.

For a generation, the American people have been guinea pigs in a terrible chemical experiment. Told that all the advances in our chemistry labs would make us healthier, happier, and safer, American families have had to suffer with decades of a law that did nothing to ensure that was true. That is because when the industry successfully overturned the EPA’s proposed ban on asbestos, it also rendered the Toxic Substance Control Act all but unusable. Children shouldn’t be unwitting scientists. Today we have a chance to protect them by reforming this failed law.

As ranking Democrat on the Senate subcommittee of jurisdiction, I was one of a handful of Members who participated in an informal conference with an insistence on the bill. With Senators UDALL, BOXER, and MERKLEY, I have prepared a document that is intended to memorialize certain agreements made in the bicameral negotiations that would typically have been included in a conference report.

In our work with the House, we truly did take the best of both bills when it came to enhancing EPA’s authority to regulate chemicals. The time has come for the States to be preempts chemical. As ranking Majority Whip, States will be preempted as the Federal Government regulates chemicals has been a source of considerable debate since this bill was first introduced. I have always been a very strong supporter of States’ rights to make actions needed to protect their own residents. For many of us, accepting preemption of our States was a difficult decision that we only made as we also secured increases to the robustness of the EPA chemical safety program.

I am particularly pleased that efforts I helped lead resulted in the assurance that Massachusetts’ pending flame retardant law will not be subjected to premature and that there is a mechanism in the bill to ensure that States ongoing work on chemicals can continue while EPA is studying those chemicals.

The fact that the bill is supported by the EPA, the chemical industry, the chamber of commerce, and the trial lawyers tells you something. The fact that a staggering 403 Members of the House of Representatives voted for this TSCA bill—more than the number who agreed to support the Clean Air Act, the Clean Water Act, or the Safe Drinking Water Act amendments when those laws were reauthorized—tells you something. What it tells you is that we worked together on a bipartisan and bicameral basis to compromise in the way Americans expect us to.

Although there are many people who helped to create this moment, I wish to thank some whose work over the past few months I especially want to recognize.

I thank Bonnie Lautenberg. On behalf of her husband Frank, she was relentless.

Senator INHOFE and his staffers, Ryan Jackson and Dimitri Karakitsos, remained as committed to agreements they made to Senate Democratic priorities as they were to their own commitment priorities throughout this process. I couldn’t have imagined a stronger or more constructive partnership.

I would like to thank Senator UDALL and his staff, Drew Wallace and Jonathan Black, whose leadership—especially during these challenging moments—was very important.

I also thank Senator MERKLEY and his staff, Adrian Deveny, whose creativity often led us to legislative breakthroughs, especially when it came to crafting certain preemption compromises.

My own staff, Michal Freedhoff, has done little but this for 1 consecutive year. This is her 20th year on my staff. With her Ph.D. in biochemistry—it was invaluable in negotiating with the American Chemistry Council and all other interests.

I want to thank many other Members: Senator BOXER; Senator WHITEHOUSE and his Staff, Bettina, along with BARBARA BOXER; Senator MCCONNELL; Senator REID; Senator DURBIN—all central players in making sure this legislation was here today.

I thank the spectacular and hard-working EPA team, all of whom provided us with technical assistance and other help, often late at night and before the dawn.

I thank Gina McCarthy, Jim Jones, Wendy Cleland-Hammet, Ryan Wallace, Priscilla Flattery, Kevin McLean, Brian Grant, David Berol, Laura Vaught, Nicole Distefano, Sven-Erik Kaiser, and Tristan Brown.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MARKEY. Mr. President, I ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MARKEY. Mr. President, I ask unanimous consent for 1 additional minute.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. MARKEY. I also thank Ryan Schmit, Don Sadowsky, and Scott Sherlock.

I want to thank Stephanie Harding and Andrew McConville at CEQ, whose day-to-day engagement helped us, especially in these last few weeks.

There are some outside stakeholders who worked particularly closely with
my staff and with me, including Andrew Rogers, Andrew Goldberg, Richard Denison, Joanna Slaney, Mike Walls, Rich Gold, and Scott Faber.

I have enjoyed meeting, working with, and partnering with each one of these outstanding people over the last year.

This is a huge bill. It is a historic moment. It is going to make a difference in the lives of millions of Americans. It is the most significant environmental law passed in this generation.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. MARKEY. The old law did not work. This one is going to protect the American people.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, as the song said, it has been a long, strange trip getting here, and it has had its share of near-death experiences, as Senator Udall is intimately aware of. I was involved with Senator Merkley and Senator Booker in one of those near-death experiences. If this was a rocket with stages, one of the major stages was the Merkley-Booker-Whitehouse effort in the committee. I just wanted to say it was the first time the three of us worked together as a triumvirate. They were wonderful to work with. They were truly a pleasure.

We had a lot on our plates. We made about a dozen major changes in the bill.

I want to take just a moment to thank Emily Enderle on my staff, who was terrific through all of the negotiations and renegotiations and counter-negotiations in that stage. But this was obviously a rocket that had many more stages than that one.

I thank Chairman Inhofe and his staff for their persistence through all of this.

Ranking Member BOXER was relentless in trying to make this bill as strong as she could make it through every single stage, and it is marked by that persistence.

Senators Vitter and Senator Udall forged the original notion that this compromise could be made to happen, and they have seen it through, so I congratulate them.

There’s been a rather different view of how this bill should look. Between Senator Inhofe, Senator Udall, Representative Pallone, and Representative Upton, they were able to work out a bicameral as well as a bipartisan compromise that we all could agree to.

There are a lot of thanks involved, but I close by offering a particular thank-you to my friend Senator Udall. In Greek mythology there is a Titan, Prometheus, who brought fire to humankind. His penalty for bringing fire to humankind was to be strapped to the rock by chains and have Zeus send an eagle to eat his liver every single day. It is an image of persisting through pain. I do have to say Senator Vitter may have had his issues on his side—I do not know how that looked—but I can promise on our side Tom Udall persisted through months and months of pain, always with the view that the bill could come to the place where this day could happen.

There are times when legislation is legislation, and there are times when legislation has a human story behind it. This is a human story of courage, foresight and tenacity, and willingness to absorb a considerable number of slings and arrows on the way to a day when slings and arrows are finally put down and everybody can shake hands and agree we have, I think, a terrific victory. While there is much credit in many places, my heart in this is with Senator Tom Udall of New Mexico.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. MERKLEY. Mr. President, today, while the Nation has been focused on the final six primaries across the Nation, the final six State primaries across the Nation, something extraordinary is unfolding here on the floor of the Senate. The Senate is taking the final congressional act to send the Frank R. Lautenberg Chemical Safety for the 21st Century Act to the President’s desk.

This is landmark legislation that honors the legacy of our dear colleague Frank Lautenberg. This is landmark legislation that will make a real difference for the health and safety of every American. This is the first significant environmental legislation to be enacted by this Chamber in 25 years.

This bill—this extraordinary bill—brought Democrats and Republicans together to take action to protect public health. I have been honored to be a part of this coalition as we have worked toward a final bill for over a year. It hasn’t been easy, but things worth doing are rarely easy.

A huge thank-you to Senators Udall and Vitter, who cosponsored this bill, lead the way; Senators BOXER and INHOFE, the chair and ranking member of the Environment Committee; and Senators MARKEY, WHITEHOUSE, and BOOKER for their leadership and contributions throughout this entire process.

Also, a special thank-you to the staff who worked day and night. I know I received calls from my staff member Adrian Deveny at a variety of hours on a variety of weekends as he worked with other staff members to work out, iron out the challenges that remained, so a special thank-you to Adrian Deveny.

Just a short time ago, I had the chance to speak to Bonnie Lautenberg, Frank Lautenberg’s wife. She would have loved being here when we took this vote, but she is going to be down in the Capitol next week with children and grandchildren. I hope to get a chance to really thank her in person for her husband’s leadership but also for her leadership, her advocacy that we reached this final moment. She said to me: It appears it takes a village to pass a bill. Well, it does. This village was a bipartisan village. This was a bi- cameral as well as a bi-partisan compromise that we all could agree to.

In the most powerful Nation on Earth, we should not be powerless to protect our citizens from toxic chemicals in everyday products. Today marks a sea shift in which we finally begin to change that. For too long, we have been unable to protect our citizens from toxic chemicals that hurt pregnant women and young children, chemicals that hurt our children’s development, chemicals that cause cancer.

The Frank R. Lautenberg Chemical Safety for the 21st Century Act will tremendously improve how we regulate toxic chemicals in the United States—those that are already in products and should no longer be used and those new chemicals that are invented that should be thoroughly examined before they end up in our lives. The Frank R. Lautenberg Chemical Safety for the 21st Century Act will make sure that toxic chemicals don’t find their way into our classrooms, into our bedrooms, into our homes, into our workplaces. Now the Environmental Protection Agency will have the tools and resources needed to evaluate the dangerous chemicals and to eliminate any unsafe uses.

My introduction to this issue began with a bill in the Oregon State Legislature about the cancer-causing flame retardants that are in our carpets and our couches and the foam in our furniture that should not be there. This bill gives us the ability to review that and to get rid of those toxic chemicals.

It was enormously disturbing to me to find out that our little babies crawling on the carpet, their noses 1 inch off the ground, were breathing in dust from the carpet that included these cancer-causing flame retardants. It should never have happened, but we did not have the type of review process that protects Americans. Now we will.

So, together, a bipartisan team has run a marathon, and today we cross the finish line. In short order, this bill will be sitting in the Oval Office, on the President’s desk, and filled with ink to paper and creating this new and powerful tool for protecting the health of American citizens. That is an enormous accomplishment.

Mr. President, on behalf of Senator BOXER, the printing cost of the statement of additional views with respect to H.R. 2576, TSCA, will exceed the two-page rule and cost $2,111.20.

I ask unanimous consent that the Boxer statement of additional views be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:
make an affirmative finding regarding the chemical’s or significant new use’s potential risks as a condition for commencement of manufacture for commercial purposes and, in some cases, for significant new uses. The Administrator concludes, based on information sufficient to establish, without consideration of costs or other nonrisk factors, that such substance does not meet the standard identified in classifying a chemical substance a high-priority substance.

The direction to EPA for the designation of low-priority substances is not clear. It requires such designations to be made only when there is ‘‘information sufficient to establish that the standard for designating a substance as a high-priority substance is not met.’’ Clear authority is provided under section 4(a)(2)(B), as created in the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to enable EPA to obtain the information needed to prioritize chemicals for which information is initially insufficient. The text also notes that if ‘‘the information available to the Administrator at the end of such an extension [for testing of a chemical substance in order to determine its priority] remains insufficient to enable the designation of the chemical substance as a low-priority substance, the Administrator shall designate that chemical substance as a high-priority substance.’’

These provisions are intended to ensure that the only chemicals to be designated low-priority are those for which both have sufficient information and, based on that information, affirmatively concludes that the substance does not warrant a finding that may present an unreasonable risk.

6. INDUSTRY REQUESTED CHEMICALS

Sec. 6(b)(4)(E) sets the percentage of risk evaluations that the Administrator shall conduct at industry’s request between 25 percent (if enough requests are submitted) and 50 percent. The Administrator should set up a system to ensure that those percentages are met and not exceeded in each fiscal year. An informal effort that simply takes requests as they come in and hopes that the percentages will work out does not meet the requirement that the percentages be set ‘‘in a reasonable and prudent manner’’ and that the percentage be set ‘‘that the percentages be met. Also, clause (E)(ii) makes clear that industry requests for risk evaluations ‘‘shall be subject to a fee.’’ The fees imposed by the Frank Lautenberg Act (which are subject to a termination in section 26(b)(6)) are allowed to lapse, industry’s opportunity to seek risk evaluations will also lapse and the minimum 25 percent requirement will not apply.

7. FACE OF AND LONG-TERM GOAL FOR EPA SAFETY REVIEWS OF EXISTING CHEMICALS

The Frank R. Lautenberg Chemical Safety for the 21st Century Act requires EPA to review the safety of thousands of chemicals to the inventory without requiring any review of their safety. The Frank R. Lautenberg Chemical Safety for the 21st Century Act defines a process under which EPA will for the first time systematically review the safety of chemicals in active commerce. While this will take many years, the goal of the legislation is to ensure that all chemicals on the market get such a review. The initial targets for numbers of reviews are relatively low, requiring current EPA resources. These targets represent floors, not ceilings, and Senate Democratic negotiators expect that as EPA begins to collect fees, gets proposals for new uses, and tracks the practice of these targets can be exceeded in furtherance of the legislation’s goals.
Several sections of the Frank R. Lautenberg Chemical Safety for the 21st Century Act include direction to EPA to take certain actions to “the extent practicable”, in contrast to the term “maximum extent practicable” used in Senate Executive Orders. This section of the Act requires the Senate that actions be taken to “the maximum extent practicable.”

Regarding the scope of the statement EPA is required to prepare under subsection (i), the FRP Lautenberg Chemical Safety for the 21st Century Act is limited to the regulation of toxic substances. The scope of the statement EPA is required to prepare under subsection (i), the FRP Lautenberg Chemical Safety for the 21st Century Act is limited to the regulation of toxic substances.

The scope of the statement EPA is required to prepare under subsection (i) is bounded in two important respects. First, it is to be based on information reasonably available to the Administrator, including the proposed promulgation of a rule under subsection (a) with respect to a chemical substance or mixture, that the Administrator shall consider and publish a statement based on reasonably available information with respect to—

(i) the effects of the chemical substance or mixture on health and the magnitude of the expected exposure of the environment to such substance or mixture;

(ii) the benefits of the chemical substance or mixture on health and the magnitude of the exposure of the environment to such substance or mixture;

(iii) the reasonably ascertainable economic consequences of the rule, including consideration of—

(A) the effects of the rule on the national economy, small business, technological innovation, the environment, and public health;

(B) the costs and benefits of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator; and

(C) the effectiveness of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.

The language above specifies the information on effects, exposures and costs that EPA is to consider in determining how to regulate a chemical substance that presents an unreasonable risk as determined in EPA’s risk evaluation.

Senate Democratic negotiators clarify that section 6(c)(2)(A)(i) and (ii) do not require EPA to conduct a second risk evaluation-like analysis to identify the specified information, but rather, can satisfy these requirements in practice by considering the chemical’s health and environmental effects and exposures in the risk evaluation itself.

The scope of the statement EPA is required to prepare under subsection (i)(iv) is bounded in two important respects. First, it is to be based on information reasonably available to the Administrator, including the proposed promulgation of a rule under subsection (a) with respect to a chemical substance or mixture, that the Administrator shall consider and publish a statement based on reasonably available information with respect to—

(i) the effects of the chemical substance or mixture on health and the magnitude of the expected exposure of the environment to such substance or mixture;

(ii) the benefits of the chemical substance or mixture on health and the magnitude of the exposure of the environment to such substance or mixture;

(iii) the reasonably ascertainable economic consequences of the rule, including consideration of—

(A) the effects of the rule on the national economy, small business, technological innovation, the environment, and public health;

(B) the costs and benefits of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator; and

(C) the effectiveness of the proposed regulatory action and of the 1 or more primary alternative regulatory actions considered by the Administrator.

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Section 14(b)(2) of the bill retains TSCA’s provision making clear that information from health and safety studies is not protected from disclosure. It also retains TSCA’s exceptions from disclosure of information from health and safety studies. This clarification does not signal any Congressional intent to alter the meaning of the provision, only to clarify its intent.

16. “Requirements”

Subsection 5(i)(2) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act clarifies the Congressional intent to ensure that state requirements, including legal causes of action arising under statutory or common law, are not preempted or limited in any way by EPA action or inaction on a chemical substance.

17. State-Federal Relationship

Sections 18(a)(1)(B) and 18(b)(1) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, refer to circumstances under which a state may not establish or continue to enforce a “statute, criminal penalty, or administrative action” on a chemical substance. Section 18(b)(2) states that “this subsection does not restrict the authority of a State or political subdivision of a State to continue to enforce any statute enacted, criminal penalty assessed, or administrative action or inaction on a chemical substance.”

18. Fees

Fees under section 26(b), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, are authorized to be collected so that 25% of EPA’s overall costs to carry out section 4, 5, and 6, and to collect, process, review, provide access to and protect from disclosure information, to provide warnings or to label products or chemicals with certain information regarding risks and recommended actions to reduce exposure. Subsection 18(d)(3) of TSCA, as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, specifies that if at any time in the life of the Administrator prior to the effective date, responding to the perceived conflict in Geier v. American Honda Motor Co., 529 U.S. 861 (2000) and its progeny.

19. Scientific Standards

The term “systematic review” refers to a systematic review method that uses a pre-established protocol to comprehensively, objectively, transparently, and consistently, from the costs that can be covered by fees. This was not the intent and is not consistent with the statutory language. As clearly indicated in section 26(b)(1), the amended law provides that manufacturers and processors of chemicals subject to risk evaluations under Sections 4, 5, and 6, and to collect, process, review, provide access to and protect from disclosure information.

We also note that some have raised the possibility that section 26(b)(4)(B)(i), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, could be read to exclude the cost of risk evaluations, from the costs that can be covered by fees. This was not the intent and is not consistent with the statutory language. Risk evaluations are a central element of Sections 4, 5, and 6, and to collect, processing, reviewing and providing access to and protecting from disclosure information.

This requirement is not intended to prevent the Agency from considering academic studies, or any other category of study. We expect that when EPA makes a weight of the evidence decision it will fully describe its use and methods.
Section 5(a)(5) addresses the implementation of significant new use rules (SNURs) to articles or categories of articles containing substances of concern. It provides that promulgating such SNURs, EPA must make “an affirmative finding . . . that the reasonable potential exposure to the chemical substance through the article or category of articles subject to the rule justifies notification.” This language clarifies that potential exposure to the chemical substance factor in applying SNURs to articles. Exposure is a relevant factor in identifying other significant new uses of a chemical substance as well. It is not intended for EPA to consider in an exposure assessment or provide evidence that exposure to the substance through the article or category of articles will in fact occur in the U.S. and it’s critical that SNURs continue to perform this important public health function under the amended law.

22. COMPLIANCE DEADLINES

The amended law expands on existing section 6(d) by providing that rules under section 6 must include “mandatory compliance dates.” These dates can vary somewhat with the type of restriction being imposed but, in general, call for compliance deadlines that ‘shall be as soon as practicable, but not later than 5 years after the promulgation of the rule.’ While EPA could in unusual circumstances delay compliance for as long as five years, this should be the exception and not the rule, especially if the covered chemicals are known to be hazardous. Congress shared these concerns when it restored House-Senate language included above is intended to allow EPA to proceed with the regulation of these substances if the scope of the proposed and final rules is consistent with the scope of the risk assessments conducted on these substances.

21. SNURS FOR ARTICLES

Section 5(a)(5) addresses the implementation of significant new use rules (SNURs) to articles or categories of articles containing substances of concern. It provides that in promulgating such SNURs, EPA must make “an affirmative finding . . . that the reasonable potential exposure to the chemical substance through the article or category of articles subject to the rule justifies notification.” This language clarifies that potential exposure to the chemical substance factor in applying SNURs to articles. Exposure is a relevant factor in identifying other significant new uses of a chemical substance as well. It is not intended for EPA to consider in an exposure assessment or provide evidence that exposure to the substance through the article or category of articles will in fact occur in the U.S. and it’s critical that SNURs continue to perform this important public health function under the amended law.

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to ask. If EPA’s final Section 6(a) risk management rule includes a restriction or prohibition on some of the conditions of use identified in EPA’s scope of the risk evaluation, but not all of them, is it final agency action as to those conditions of use?

Mr. VITTER. That is a very important question and the clear intent of Congress is the answer is yes. This is because, to be legally sufficient according to EPA’s own technical assistance, EPA’s Section 6(a) rule must ensure that the chemical substance or mixture no longer presents an unreasonable risk. A Section 6(i) order, determining that a chemical substance does not present an unreasonable risk under conditions of use, is similarly final Agency action applicable to all those conditions of use that were identified in the scope of EPA’s risk evaluation on the chemical substance. To be clear, every condition of use identified by the Administrator in the scope of the risk evaluation will either be found to present or not present an unreasonable risk.

Mr. INHOFE. This brings me to a question on the testing EPA has the authority require manufacturing to conduct under the compromise. One of the major flaws in TSCA is the so-called ‘catch 22’ under which EPA cannot require testing of chemicals without first making a finding that the chemical may present an unreasonable risk. Once sufficient information is available. It must describe how the compromise requires EPA to use ‘tiered’ screening and testing processes. This means EPA must require less expensive, less complex screening tests to determine whether higher level testing is required. This is an efficient approach to testing chemicals that is based on EPA experience in other testing programs. Tiered testing will also help assure that EPA is meeting the objective to minimize animal testing that is set out in the compromise.

Finally, section 4 prohibits the creation of a ‘minimum information requirement’ for the prioritization of chemicals. That is a very important provision that should be applied to any and all testing by the Agency regardless of which authority it uses.

Senator VITTER, in addition to new testing authorities the bill also makes changes to the new chemicals program under section 5 which has been largely viewed as one of the major strengths of existing law. It has been credited with spurring innovation in chemistry used for new products and technologies throughout the value chain. The industry we’re regulating in TSCA is highly innovative: 17 percent of all US patents are chemistry or chemistry related. Clearly Congress has an interest in preserving the economic strength of TSCA’s history. EPA has been able to make that finding only for about 200 chemicals. Does the compromise remedy that provision of TSCA?

Mr. INHOFE. It is clear that the compromise directs EPA to systematically evaluate more chemicals than ever before. To help the Agency meet that objective, the compromise does two things. First, EPA can issue a test rule or order if it finds that a chemical substance may present an unreasonable risk to health or the environment. In this case, an EPA order would be a final agency action subject to judicial review. EPA would be well-advised to consider the practice of issuing a ‘statement of need’ similar to that required under section 6(a)(3) when using this authority.

The section also provides EPA discretionary authority to require testing—by rule, order or consent agreement—when EPA determines that new information is necessary to review a pre-manufacture notice under section 5, to conduct a risk evaluation under section 6, or to implement rules or orders under those sections. The compromise also recognizes that EPA may need new information to prioritize a chemical substance for review, to assess certain exports, and at the request of other federal agency. To use this discretionary order authority, EPA must issue a ‘statement of need’ that explains the reasons for testing/exposure information. It must describe how new available information has informed the decision to require new information, whether vertebrate animal testing is needed, and why an order is preferred to a rule.

Section 4 of the compromise also requires EPA to use ‘tiered’ screening and testing processes. This means EPA must require less expensive, less complex screening tests to determine whether higher level testing is required. This is an efficient approach to testing chemicals that is based on EPA experience in other testing programs. Tiered testing will also help assure that EPA is meeting the objective to minimize animal testing that is set out in the compromise.

Finally, section 4 prohibits the creation of a ‘minimum information requirement’ for the prioritization of chemicals. That is a very important provision that should be applied to any and all testing by the Agency regardless of which authority it uses.
currently identified on the TSCA Inventory under multiple nomenclatures as ‘equivalents.’

Importantly, the equivalency provision relates only to chemical substances that are already on the TSCA Inventory. The equivalency provision specifically references substances that have Chemical Abstract Service (CAS) numbers, EPA could usefully apply an equivalency approach to substances on the Inventory that do not have CAS numbers as well, such as for naturally-occurring substances.

Now, Senator VITTER, once a chemical is on the inventory, information about the substance that is provided to EPA often contains sensitive proprietary CBI or trade secrets, and appropriate balance between protection of confidential chemical identities, particularly protected. In other cases involving proprietary CBI or trade secrets, and information that would reveal proprietary CBI or trade secrets disclosed within a health and safety study under TSCA section 14(b). Although new section 14(b) is substantially similar to the existing statute, what is the intent behind the additional language related to formulas?

Mr. VITTER. It was the Congressional intent of the legislation to balance the need for public access to health and safety studies with the need to protect from public disclosure valuable confidential business information (CBI) and trade secrets that are already exempt from mandatory disclosure under the Freedom of Information Act. Striking the appropriate balance between public disclosure on the one hand, and the protection of a company’s valuable intellectual property rights embodied in CBI and trade secrets on the other hand, is essential to better informing the public regarding decisions by regulatory authorities with respect to chemical, while encouraging innovation and economic competitiveness.

The compromise retains the language of existing section 14(b) to make clear that the Administrator is not prohibited from disclosing health and safety studies, but that certain types of CBI and trade secrets disclosed within health and safety studies must always be protected from disclosure. The new, additional language in this section is intended to clarify that confidential chemical identities—which includes chemical names, formulas and structures, but also references to themselves reveal CBI or trade secret process information. In such cases, the confidential chemical identity must always be protected from disclosure. The new language is not limiting; it makes clear that any other information that would reveal proprietary or trade secret processes is similarly protected. In other cases involving confidential chemical identities, EPA should continue to strike an appropriate balance between protection of proprietary CBI or trade secrets, and ensuring public access to health and safety information.

In addition to the protection of confidential information, another critically important provision in the deal was preemption. Senator Inhofe could you describe how the compromise addresses the relationship between State governments and the Federal government?

Mr. INHOFE. As we all recognize, the preemption section of this bill was the most contentious issue of the negotiations as well as the most important linchpin in the final deal. The compromise includes several notable provisions. First, it is clear that when a chemical has undergone a risk evaluation and determined to pose no unreasonable risk, any state chemical management action to restrict or regulate the substance is preempted. This outcome furthers Congress’s legislative objective of achieving uniform, risk-based chemical management nationwide in a manner that supports robust national commerce. Federal determinations reached after the risk evaluation process that a chemical presents no significant risk in a particular use should be viewed as determinative and not subject to different interpretations on a state-by-state or locality-by-locality basis. Further, under the new legislation, EPA will make decisions related to preemption only after it has considered various conditions of use, so there could be circumstances where EPA determines that a chemical does not present an unreasonable risk in certain uses, but does in others. Preemption determinations would apply as these determinations are made on a use-by-use basis.

Second, to promote the engagement of all stakeholders in the risk evaluation process—including State governments—the compromise creates a temporary preemption period for identified high priority chemicals moving through EPA’s risk evaluation process. The period only runs from the time EPA finishes the risk evaluation to the time that EPA finishes the evaluation, or the agency deadline runs out. It does not apply to the first 10 TSCA Work Plan chemicals the EPA reviews, and it does not apply to manufacturers-requested risk evaluations. It does apply to any and all other chemical substances EPA chooses to review through a risk evaluation. States with compelling circumstances can request and be granted a waiver by EPA. In addition, the compromise ensures that the phase has its intended effect—to ensure that there is one, comprehensive, nationally-led risk evaluation occurring at a time, allowing EPA and affected manufacturers to focus on and complete the work on a timely basis, and to ensure a uniform and consistent federal approach to risk evaluation and risk management.

Senator VITTER, before we conclude our discussion on preemption, I would like to ask you to help clarify the intent of the preemption provision as it relates to actions taken prior to enactment of the Frank Launenberg bill.

Mr. VITTER. Thank you, Senator INHOFE. For those important clarifications to the preemption of the TSCA Act, what is the intent behind the additional language in this section?
addition to by rule. This new order authority is intended to allow EPA greater flexibility to move quickly to collect certain information and take certain actions. It is intended that an agency order constitute final agency action on issuance and be subject to judicial review. Sections 4, 5, and 6 of TSCA constitute final agency action on issuance, and continue to be reviewed under the standards established by the Administrative Procedures Act. The intention is that regulatory actions that result in total or partial bans of chemicals, regardless of whether such action is by rule or order authority, be supported by substantial evidence in the rulemaking record taken as a whole.

Senator INHOFE, before we are done I think there are a few other sections of the bill that have been less discussed that it would be important to touch on. The first is Section 9 of TSCA which discusses the relationship between this and other laws such as the Solid Waste Disposal Act. The legislation affords EPA the discretionary authority to address unreasonable risks of chemical substances and mixtures under other environmental laws. “For example, if the Administrator finds that disposal of a chemical substance may pose risks that could be prevented or reduced under the Solid Waste Disposal Act, the Administrator should ensure that the relevant office of the EPA receives that information.”

Likewise, the House Report on section 9 of TSCA states: “For example, if the Administrator determines that a risk to health or the environment associated with disposal of a chemical substance could be eliminated or reduced to a sufficient extent under the Solid Waste Disposal Act, the Administrator should use those authorities to protect against the risk.”

This act states in new section 9(a)(5) of TSCA that the Administrator shall not be relieved of any obligation to take appropriate action to address risks from a chemical substance under sections 6(a) and 7, including risks posed by disposal of the chemical substance or mixture. Consistent with the Senate and House reports, this provision means that the Administrator should act under the other laws such as the Solid Waste Disposal Act to prevent or reduce the risks associated with disposal of a chemical substance or mixture.

Senator VITTER. I know another section that is very important to you is the language around sound science and we all know you have worked to ensure that this bill fixes the scientific concerns of the National Academy of Science and other scientific bodies who have raised concerns with the way EPA has been conducting its business. Could you please discuss the Congressional intent of the bills science provisions?

Mr. VITTER. Thank you Senator INHOFE. The sound science provisions were a critical part of TSCA reform in my opinion and I hope this bill serves as a model for how to responsibly reform other laws administered by EPA and other Federal Agencies that are responsible for regulating hazards to health and the environment.

For far too long Federal agencies have manipulated science to fit predetermined political outcomes, hiding information and underlying data, rather than using open and transparent regulatory processes to justify final regulatory decisions. Making this Act seeks to change all of that and ensure that EPA uses the best available science, bases scientific decisions on the weight of the scientific evidence rather than one or two individual cherry-picked studies, and forces a much greater level of transparency that forces EPA to show their work to Congress and the American public.

Congress recognized the need to use available studies, reports and recommendations for purposes of chemical assessments rather than creating them from whole cloth. We do believe, however, that the recommendations in reports of the National Academy of Sciences should not be the basis of the chemical assessments completed by EPA. Rather, the EPA must conduct chemical assessments consistent with all applicable statutory provisions and agency guidelines, policies and procedures. Where there were other studies and reports unavailable at the time of the NASE recommendations, EPA should take advantage of those studies and reports in order to ensure that the science used for chemical assessments is the best available and most current science.

Mr. INHOFE. Thank you for clarifying the Congressional intent of the important science provisions in this bill. I wanted to ask you one final question that is a key element to reforming this outdated law. It should be clear to all that H.R. 2576 attempts to ensure that the Environmental Protection Agency takes the possible exposures to sensitive subpopulations into account when prioritizing, assessing and regulating high priority chemical substances. The goal, of course, is to ensure that factors that may influence exposures or risk are considered as the Agency assesses and determines the safety of chemical substances.

A concern, however, could be that the language regarding sensitive subpopulations may be read by some to promote the concept of “low dose linearity” or “no threshold” for many chemicals, including substances that are not carcinogens. This concept has not been firmly established in the scientific community. Does H.R. 2576 address this concern?

Mr. VITTER. That is an important question Senator INHOFE and I appreciate your concern. The Lautenberg bill tries to address the concern about forcing paralysis by analysis in several ways. First, the bill establishes that “unreasonable risk under the conditions of use” as the safety standard to be applied by EPA. “Unreasonable risk” does not mean no risk; it means that EPA must determine, on a case-by-case basis, whether the risks posed by a specific high priority substance is unreasonable in the circumstances of exposure and use. Second, the bill requires EPA to specifically identify the sensitive subpopulations that are relevant to and within the scope of the safety assessments. Third, the bill states that the substance in question. At the same time, EPA should identify the scientific basis for the susceptibility, to ensure transparency for all stakeholders. In this way, the legislation affords EPA the discretion to identify relevant subpopulations but does not require—or expect—that all hypothetical subpopulations be addressed.

While a principle element of this compromise is including protections for potentially susceptible subpopulations to better protect pregnant women and children, a concern I have is that it was first introduced by Senator Lautenberg and I was never to require the national standard to be protective of every identified subpopulation in every instance. If a chemical substance is being regulated in a condition of use that we know has no exposure to a subpopulation, EPA should apply the “unreasonable risk” standard appropriately. In addition, it is clear that the concept of low dose linearity is not firmly established by the science, and the concept is not appropriate to apply as a default in risk evaluations.

Mr. INHOFE. Thank you very much for that explanation, Senator VITTER.

MERCURY-SPECIFIC PROVISIONS IN THE BILL

Mr. WHITEHOUSE. Mr. President, we rise to highlight two mercury-specific provisions—the creation of a mercury inventory and expansion of the export ban to certain mercury compounds—in the Frank R. Lautenberg Chemical Safety for the 21st Century Act that the Senate will approve tonight. These provisions are sections of the Mercury Use Reduction Act that we introduced in the 112th Congress with the late Senator Frank R. Lautenberg, after whom this legislation is named, and with then-Senator John Kerry. Senator LEAHY and Senator MERKLEY have been longtime partners in these efforts. Senator LEAHY was a leader in the Senate’s consideration of a resolution of disapproval concerning the Bush administration’s mercury rule. I yield to Senator LEAHY.

Mr. LEAHY. Mr. President, I thank Senator WHITEHOUSE. His leadership in this area has been paramount.

Under the mercury inventory provision, the EPA will be required to prepare an inventory of mercury supply, use, and trade in the United States every 3 years. Despite an EPA commitment in 2006 to collect this data, there is not yet any good data on mercury
supply and uses in the United States. This lack of data has impacted our ability to reduce health risks from mercury exposure and would compromise our ability to comply with the Minamata Convention of Mercury, which will come into force next year and to which the U.S. Government has agreed to become a party. When preparing the inventory, EPA shall identify the remaining manufacturing and product uses in the United States and recommend revisions to federal laws and regulations for addressing the remaining uses. The term “revisions” in this provision includes both new laws or regulations or modifications to existing laws.

To provide the data needed to compile the inventory, companies producing or importing mercury or mercury compounds or using mercury or mercury compounds will be required to report on this activity under a rule to be issued by the Administrator. To minimize any reporting burden, EPA must coordinate its reporting with State mercury product reporting required under the Interstate Mercury Education and Reduction Clearinghouse, IMERC. In addition, the provision excludes waste management activities already reported under the Resource Conservation and Recovery Act, RCRA, from this reporting, unless the waste management activity produces mercury via retorts or other treatment operations. A company engaged in both waste generation or management and mercury manufacture or use must report on the mercury manufacture and use activity, since that data would not be provided under the RCRA reporting. I yield to Senator MERKLEY.

Mr. MERKLEY. Mr. President, I thank Senator LEAHY.

The second mercury provision builds upon the Mercury Export Ban Act of 2008, expanding the export ban currently in effect for elemental mercury to cover mercury compounds previously identified by EPA or other regulatory bodies as capable of being traded to produce elemental mercury in commercial quantities and thereby undermine the existing export ban. The mercury compound export ban would go into effect in 2020, providing EPA and companies ample preparation time. An exemption is provided to allow the landfilling of these compounds in Canada, a member country to the Organization for Economic Co-operation and Development, OECD, with which we have a bilateral arrangement to allow these cross-border transfers. The export is only authorized for landfilling; no form of mercury or mercury compound under law as needed. EPA must evaluate whether such exports should continue within 5 years, in part based upon available domestic disposal options, and report to Congress on this evaluation so we may revise the law as needed. I have been happy to partner with Senator WHITEHOUSE and Senator LEAHY on these issues.

Mr. WHITEHOUSE. Mr. President, I thank Senator MERKLEY. We are pleased these provisions were included in a bill and believe it is fitting they are included in a package designed to protect the public from toxic chemicals, like mercury, and named after the late Frank Lautenberg, one of the original cosponsors of the Mercury Use Reduction Act.

The PRESIDING OFFICER (Mr. DAINES). The Senator from Oklahoma.

Mr. INHOFE. Mr. President, may I inquire as to how much time is remaining?

The PRESIDING OFFICER. There is 7½ minutes remaining.

Mr. WHITEHOUSE. I will yield the time.

The PRESIDING OFFICER. That is all the time remaining.

Mr. INHOFE. That is all the time remaining; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. INHOFE. I will not use 7½ minutes, but I will be using that after the vote. I do want to include one more person who has not been thanked, and that is Senator MCCAIN.

Right now we are in the middle of the must-pass bill every year, the Defense authorization bill. He was kind enough to allow us to work this in during his very busy schedule on this bill, which we are trying to get through this week. So I do thank him very much.

It is important, even though we thank the same people over and over again. When it gets to Dimitri, I am going to pronounce his name right, and I will be thanking him and several others. With that, I yield our time back.

I see the Senator from Massachusetts.

Mr. MARKEY. Will the Senator yield?

Mr. INHOFE. Of course.

Mr. MARKEY. I just want to once again compliment Senator INHOFE and Senator VITTER. It didn’t have to wind up this way. It wound up this way because you reached across the aisle, because you ensured that all sides were given a fair hearing, and that at the end of the day there would be this result.

I have been doing this for 40 years. I have been on the Environment Committee for 40 years. This is not easy. From my perspective, it is historic and it is unprecedented in terms of ultimately how easy the Senator made this process. I was there at the table of Superfund, Clean Air Act, all the way down the line. You—you, my friend, have distinguished yourself, and along with Senator VITTER you have made it possible for all of us to hold hands here as this historic bill tonight will pass on the Senate floor.

I just wanted to compliment the Senator.

Mr. INHOFE. I appreciate the remarks of the Senator from Massachusetts very much.

Mr. President, I yield back our time and ask for the vote.

The PRESIDING OFFICER. The question is on agreeing to the motion to concur.

The motion was agreed to.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, let me go through the list. As I made the statement, it is important that people recognize how long staff works around here. Quite frankly, I have often said, when they come around for a report from our committee—the Environment and Public Works Committee, the committee that has the largest jurisdiction in the entire U.S. Senate—we are the committee that gets things done.

If we look at the variety of philosophies that are present praising this work that is being done, we had the very most conservative to the very most progressive of Members, and it is not just this bill. We did the highway reauthorization bill, something that had to wait for about 9 years to get done, the largest one since 1998. We had the WRDA bill, which we anticipate is going to be a reality. It has come out of our committee. This committee also has jurisdiction over the Nuclear Regulatory Commission and then all of the public works. As ranking member, Senator BOXER, has said several times during this process, we get things done.

Now, we do disagree on a lot of the issues on the environment. As I say to my good friends on the other side of this aisle, you have every right to be wrong, but we get things done, and I appreciate that very much.

Senator MCCAIN, I already thanked you for yielding to us to allow us to pass one of the most significant bills which we just passed by voice vote.

Mr. MCCAIN. I would be glad to be thanked again.

Mr. UDALL. I am ready to do that also, if the Senator will yield.

Mr. INHOFE. I yield the floor. Mr. UDALL. I just want to make sure we get it done tonight or do we want to take a chance for later.

Mr.白色. Mr. President, I just want to say, because I do want to make sure we get on the record on this, Senators Vitter and Udall, certainly the Senator from New Mexico. The way we have worked together is remarkable. The work she has brought in today, to do the work she has done. I know she wanted to be here as we are voting on this bill, but it got down to do we want to get it done tonight or do we want to take a chance for later.

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I just wanted to compliment the Senator.

Mr. INHOFE. I appreciate the remarks of the Senator from Massachusetts very much.

Mr. President, I yield back our time and ask for the vote.
BOOKER. A special thanks goes to Bill Ghent and Emily Span with Senator CARPER. Senator CARPER has not been mentioned much tonight, but he has been very active in getting this done. Emily Enderle with Senator Whitehouse-Carpers, Whitehouse-Merkley, and Booker have been partners in getting this completed. Finally, I appreciate, as I have said many times before, Senator BOXER and her team, Bettina Poirier and Jason Albritton, for working with us in support of this bill. We have done not just this bill but a lot of bills in the committee, and these same characters keep coming up. So it is the staff who has driven this thing; I have to say, my chief of staff, the one most prominent on the committee, obviously did so much of the work on this. So, Ryan Jackson, you did a great job.

With that, I yield the floor.

Mr. UDALL. I thank the chairman. I just want to say to Chairman INHOFE, the bipartisanship he showed is incredible, and it showed what a significant accomplishment we could have.

I also want to thank my friend Senator McCaskill for coming to sit with us to fit a little slice here in the middle of this very important bill, the NDAA, which I know he works on all year long. He does a terrific job. He allowed us to come in.

He knew my uncle, Mo Udall. They served together in the House. I said: I hope you will do this for Mo. He just got a very big smile on his face because he spent so much time with him.

Mr. INHOFE. Will the Senator yield?

Mr. UDALL. I yield.

Mr. INHOFE. I save one of the best for last, and that is Alex Herrgott. I neglected to mention him.

Mr. UDALL. Of course. Alex, thank you.

Mr. President, I ask unanimous consent to use enough time here to just get through my thank-you.

The PRESIDING OFFICER. Without objection.

Mr. UDALL. The House and the Senate passed bills. We didn’t actually go through conference committee, but we worked hard on those differences from late December through just a few weeks ago. We faced challenges working out a final agreement with the House. We had two very different bills. Both had broad bipartisan support, but they took very different paths to fix our broken chemical safety program, but worked through those issues too. All of us, including the conference, it was a true bicameral process with a lot of give-and-take. To that end, I want to ensure the record reflects a number of views that I and some of my colleagues have about the final product.

We are not filing a traditional conference report, but Senators BOXER, MARKEY, MERKLEY, and I have prepared a document to enshrine the views we have on the compromised language. That will be added to the Record for posterity on our final product.

I thank all of our Senate and House colleagues who were instrumental in pulling this together. Again, Chairman INHOFE was a driving force, and Senators VITTER, CRAPO, CAPITO, and Senators MERKLEY, MARKEY, and BOXER. Throughout this entire process, Ranking Member BOXER and I didn’t always agree, but we also have different opinions about the most important aspects of this legislation. I want to say I sincerely appreciate her work and advocacy, especially on State preemption. She is a force in college, and the Green Chemistry Institute, and over 100 other members of the American Alliance for Innovation. Thank you for engaging in the
process to get this done. Many thousands of Americans have worked for chemical safety reform over the last four decades. I am thanking you for not giving up.

My dad always said—and Senator McCain, I think my father Stewart Udall—‘Get it done, but get it done right.’ And today I can say that not only did we get it done, but we got it done right. Let’s not forget, this is just one step in the process. We must find a way to work collaboratively as we turn to the next step—implementation. Implementation needs to be done and needs to be done right. I look forward to working with all of these members and groups to ensure we needs to be done right.

Thank you, Senator McCain. I am sorry if this went longer than you expected. I know my Uncle Mo is looking down and saying thank you to you and my father Stewart and the long relationship you have had with the Udall family and the chapters in your books about Mo Udall and that relationship. So thank you so much, and I thank also Ranking Member Jack Reed for his patience. I know the hour is getting late. Thank you so much.

I yield the floor.
Mr. McCain. Will the Senator yield?
I just wonder if there is anyone left in America whom he has not thanked.
Mr. Udall. I did my best.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2017—Continued

The PRESIDING OFFICER. The Senator from Rhode Island.

AMENDMENT NO. 459 TO AMENDMENT NO. 429
Mr. Reed. Mr. President, I call up amendment No. 459 to McCain amendment No. 429, and I ask unanimous consent that it be reported by number.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator will report the amendment by number.

The senior assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. Reed] proposes an amendment numbered 459 to amendment No. 429.

The amendment is as follows:

(Purpose: To authorize parity for defense and nondefense spending pursuant to the Bipartisan Budget Act of 2015)

At the end, add the following:

SEC. 1513. OTHER OVERSEAS CONTINGENCY OPERATIONS MATTERS.

(a) Adjustments.—Section 101(d) of the Bipartisan Budget Act of 2015 (Public Law 114–74; 129 Stat. 587) is amended—

(1) by striking paragraph (2)(B) and inserting the following:

‘‘(B) for fiscal year 2017, $76,798,000,000;’’; and

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

‘‘(3) For purposes authorized by section 1513(b) of the National Defense Authorization Act of 2017—

(A) $332,000,000,000 for irregularly shaped debris, containment; and

(B) $600,000,000 for wildland fire suppression; and

(10) $900,000,000,000 for wildland fire suppression; and

(10) $900,000,000,000 for fully implement the FDA Food Safety Modernization Act (Public Law 111–353; 124 Stat. 3885) and protect food safety, the Every Student Succeeds Act (Public Law 114–95; 129 Stat. 1862), the Individuals with Disabilities Education Act (20 U.S.C. 1400), the Workforce Innovation and Opportunity Act (29 U.S.C. 3101 et seq.), and for college affordability.

Mr. Reed. Mr. President. I look forward to a very thoughtful debate tomorrow. Senator McCain has introduced an amendment that would increase spending with respect to the Department of Defense and related functions. In this amendment, we are proposing an additional increase in non-defense programs. I look forward to tomorrow.

I thank the chairman for his consideration through the process of this floor debate.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCain. Mr. President, I thank my friend from Rhode Island and look forward to vigorous debate on both the initial amendment and the second-degree amendment proposed by my friend from Rhode Island. I would like to engage in very vigorous debate on both, and hopefully, for the benefit of my colleagues, cloture on both will be filed by the majority leader and hopefully we can finish debate on it either late morning tomorrow or early afternoon, if necessary, so we can move on to other amendments.

Let’s have no doubt about how important this debate and discussion on this amendment will be tomorrow. We are talking about $18 billion. In the case of the Senator from Rhode Island, I am sure there are numerous billions more as well. I think it deserves every Member’s attention and debate.

I say to my friend from Rhode Island, I certainly understand the point of view and the position they have taken, and from a glance at this, it looks like there are some areas of funding that are related to national security that I think are supportable. There are others that are not, but we look forward to the debate tomorrow, and hopefully any Member who wants to be involved will come down and engage in this debate. We would like to wrap it up tomorrow because there are a number of other amendments pending.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. Wyden. Mr. President, it was extraordinary to watch this bipartisan effort on TSCA

An hour ago, Senator Peters and I thought we were going to have floor time for some brief remarks. I would like to ask unanimous consent, that Senator Peters have the chance to address the issues he thought he was going to address, and he is going to be brief. I will go next. I will be brief. I ask unanimous consent that following Senator Peters’ remarks, I be allowed to address the Senate briefly.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Michigan.

Mr. Peters. Mr. President, I rise to thank Chairman McCain and Ranking Member Reed for their support for and for their help in passing the Peters amendment No. 4138 to the National Defense Authorization Act. I also would like to thank Chairman Cotton, Senators Daines, Tillis, and Gillibrand for joining me in this important bipartisan amendment. I would also like to thank all the