



# U.S. Senate Committee on Environment & Public Works

## **Myth vs. Fact: The CSIA and Preemption**

*Prepared by EPW Committee Minority Staff*

**Myth:** The Chemical Safety Improvement Act (CSIA) would enable sweeping preemption of current state environmental laws and regulations.

**Fact:** The CSIA is comprehensive, bipartisan reform that improves chemical safety nationwide; enhances cooperation between state governments and federal regulators; and provides clarity about the limited cases in which EPA decisions will take precedence over state regulations in order to promote a coherent national approach to chemical regulation and facilitate national commerce. While not widely known, current TSCA provides for preemption of state laws and regulations, but its application historically has had a minimal effect due not because of the weakness of the current preemption provision, but because of the ineffectiveness of TSCA to regulate. ***The CSIA will never preempt the traditional state roles of regulating water quality, air quality, waste treatment, or disposal and does not preempt wholesale state regulatory programs.*** Only in some instances could chemical-specific regulations be preempted in a narrowly tailored way based on EPA safety determinations.

---

**Chemical safety is important for all Americans, not just those living in states with the resources to develop their own chemical regulatory programs.**

- Chemical regulation is highly complex and very expensive. Most states do not have the monetary resources or technical expertise to implement chemical regulatory programs.
- Only four states (California, Maine, Minnesota, and Washington) have implemented chemical regulatory programs. The programs in Maine, Minnesota, and Washington primarily call for the development of a list of chemicals that could require a limited state review. California's more aggressive program has been in development for years and isn't yet fully operational.
- A strong, comprehensive federal chemical assessment and risk management program as envisioned by the CSIA will enhance the safety of all Americans, including those in states with chemical programs in place.

**The CSIA will give states access to chemical information to support environmental programs.**

- Most state regulators say that they don't need their own chemical assessment programs; rather, they need the ability to get sound and reliable information on chemical safety from EPA so that they can address chemical-related issues that may arise in their state.

- Generally, under the CSIA, states would have access to safety information that EPA has collected and analyzed so that their environmental programs reflect the best current knowledge about chemical uses, properties, what might constitute an unsafe exposure, and risk management.
- The CSIA also enables, for the first time, the sharing of Confidential Business Information between the federal government and state governments, as long as the state has adequate capability to protect that valuable intellectual property.

**The CSIA encourages and enhances state involvement in the chemical regulatory process.**

- The CSIA encourages the involvement of state agencies throughout the entire process of identifying, assessing, and regulating priority chemicals. The intent is to engage state governments in an approach that promotes a uniform, national system of chemical regulation that addresses the needs of the states in their roles as guardians for their citizens and that avoids the potential for duplication and/or conflict between state and federal decisions.
- For example, the CSIA allows a state to request expedited prioritization screening for a chemical, and it requires EPA to respond to a state's recommendation within 6 months.
- To expedite the process and ensure state concerns are reviewed, state governments can provide data and information to EPA for review in making a prioritization decision.
- After a chemical is prioritized, states can recommend that it be re-prioritized based on new information.
- In addition, states will have the ability to submit information relevant to the federal safety assessment and safety determination of high priority substances. This could include information on unique uses or exposure patterns, compelling state and local health or environmental concerns that may be relevant to EPA's assessment, as well as the effect of state laws and regulations that are currently in place.

**The CSIA will only preempt state chemical regulations in limited cases that apply to a specific chemical and that directly relate to chemical manufacturing, processing, or use.**

- Under the CSIA, states retain the ability to keep their citizens safe and protect their environment by knowing what is in the air, water, and waste. *The CSIA would not preempt any state laws or regulations that do not directly relate to chemical manufacturing.* For example, state water monitoring requirements do not directly regulate chemical manufacturing and would not be preempted.
- The CSIA would only preempt state regulations in two cases:
  - 1) When EPA classifies a chemical as a **low priority**, all existing state regulations of that chemical will be left in place, but the development of any new regulations related to that specific chemical would be preempted following an EPA finding that the chemical is "likely to meet the safety standard." If information is submitted to the Agency by a state, company, or NGO, EPA has the authority to immediately reclassify the chemical as high priority and assess it for the entire country, rather than waiting for states to act one-by-one, or individually.
  - 2) When EPA completes a final safety determination of a **high priority** chemical, any existing or new state regulation of that specific chemical would be preempted

to the degree that is in conflict with the scope of the federal determination or risk management regulations. State laws and regulations related to a specific chemical are left in place until the safety determination is complete and if they are not addressed in the scope of the determination they are not preempted.

- State laws and regulations that require information collection (like the programs in Maine and Washington) are not preempted under the CSIA.
- Preemption under the CSIA can only occur on a chemical-by-chemical basis as the EPA assesses them and makes its determinations. Therefore, the CSIA would never preempt entire regulatory programs like those in Maine, Washington, and California.
- **Currently, EPA has authority under TSCA to preempt state laws and regulations that are in conflict with federal regulations.** However, the current federal preemption provisions of TSCA have not been widely applied over the years due to the failings of TSCA.

**The CSIA enables states to work with EPA to address unique or pressing state concerns, including providing states with the ability to apply for a waiver from preemption.**

- The CSIA makes it possible for states to work with EPA to ensure their concerns are addressed in federal safety assessment and risk management decisions and applied nationwide to address all citizens. The CSIA also allows states to apply for a waiver permitting them to implement their own regulations if the circumstances warrant it.
- The CSIA allows states to apply for a waiver of the preemptive effect of an EPA decision in two cases:
  - 1) When compelling local conditions dictate a state response, or
  - 2) When EPA's assessment and determination are unreasonably delayed.
- The waiver provisions in the CSIA are based on those in today's TSCA, and similar to those in existing environmental laws such as the Clean Air Act. The CSIA also allows for more flexibility removing the requirement in the current TSCA waiver that a state requirement provide "a significantly higher degree of protection" than those of the federal government.
- When seeking a state waiver the state can impose any form of risk management, ranging from use restrictions to phase-outs and bans. As long as the waiver criteria are met, the waiver will be granted and the state can implement and/or enforce its law.

**TSCA is NOT a traditional environmental statute. It regulates how specific types of products are approved for the marketplace, which is traditionally the domain of the federal government.**

- Although under the jurisdiction of EPA, TSCA is not a traditional environmental statute that regulates a media (air, water, waste). It regulates how specific types of products (chemicals) are approved for the marketplace. The federal government has traditionally regulated how nationally marketed products are approved for commerce.
- For example, the federal government retains authority to approve pharmaceuticals and medical devices for the market. The “commercial” nature of TSCA can be illustrated by the fact that when the bill was first introduced, it was under the jurisdiction of the Senate committee that is the equivalent of today’s Commerce Committee.
- If there were 50 different approval processes for a product, products would never be developed or marketed in the United States. Having a strong, centralized approval process makes sense, as a national standard is set, and it should obviate the need for a state to develop its own different approval process.