

Degrees of Freedom:

How States can Regulate Chemicals under the new Toxic Substances Control Act (TSCA)

Freedom to Act	State Requirements on Chemical Substances
<p>States Always Free to Act (Never subject to TSCA preemption)</p>	<p>Any restrictions on non-TSCA uses of chemicals, e.g. FDA-regulated food, food additives (includes anything in contact with food), drugs, cosmetics, and devices; and pesticides, tobacco, radioactive substances, and chemicals in guns and ammo</p> <p>Restrictions on chemicals adopted under the authority of another federal law</p> <p>Requirements that impose reporting, monitoring or other information obligation</p> <p>Chemical use restrictions that are identical to those adopted by the US EPA</p> <p>Actions under state air, water, and waste laws that do <i>not</i> restrict chemical use</p> <p>Enforcement of restrictions on chemical use imposed before April 22, 2016</p> <p>Any action taken under the authority of state laws adopted prior to Aug. 31, 2003</p> <p>Restrictions on chemicals <i>never</i> designated by EPA as high-priority substances</p> <p>Restrictions on uses, hazards, exposures & risks <i>not</i> within scope of risk evaluation</p> <p>A waiver from final preemption granted by rule by EPA or upheld by the courts</p>
<p>States Free to Act until Final Preemption (No early “pause” preemption that can last for up to 3.5 years)</p>	<p>Restrictions on <i>first 10</i> Work Plan chemicals for which EPA initiates risk evaluation</p> <p>Restrictions on <i>any</i> chemicals subject to industry-requested EPA risk evaluations</p> <p>Through a “required” waiver application, if state use restrictions are adopted or <i>proposed</i> within 12 to 18 months <i>before</i> EPA publishes the scope of risk evaluation</p> <p>By a “required” waiver application, if EPA fails to make a decision within 110 days</p> <p>By a “required” waiver application, if granted by EPA and it survives an industry legal challenge, or if denied by EPA and overturned by a state legal challenge</p> <p>If EPA misses its 3.5-year deadline for completing a chemical risk evaluation</p> <p>After EPA determines that a chemical substance presents an “unreasonable risk”</p>
<p>States May Be Preempted</p>	<p>An action under a state law on air or water quality or waste that restricts chemical use, <i>and</i> is deemed “inconsistent” with an EPA action on that same chemical</p>
<p>States Presumptively Preempted (State must secure a waiver to avoid final preemption)</p>	<p>Any requirements to “restrict or otherwise prohibit the manufacture, processing, distribution in commerce or use of a chemical” <i>after</i> EPA restriction’s effective date</p> <p>Restrictions or testing on chemicals EPA finds do <i>not</i> pose an “unreasonable risk”</p> <p>Any testing data required on a chemical that’s subject to a similar EPA requirement</p> <p>Any use reporting for which EPA also requires notification of significant new use</p>
<p>States Always Preempted (Final preemption)</p>	<p>Any presumptive preemption not challenged through a State waiver application</p> <p>A “discretionary” waiver denied by EPA for failure to show “compelling conditions” and “consistent with best available science ... (and) weight of scientific evidence”</p> <p>A “discretionary” waiver denied by the courts based on an industry legal challenge</p>