U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE

May 29, 2015

TO: Members, Committee on Energy and Commerce

FROM: Committee Majority Staff

RE: Full Committee Markup

I. INTRODUCTION

The Committee on Energy and Commerce will meet in open markup session on June 2, 2015, in 2123 Rayburn House Office Building.

On Tuesday, June 2, 2015, at 5:00 p.m. the Committee will convene for opening statements only. The Committee will reconvene on Wednesday, June 3, 2015, at 10:00 a.m. to consider the following:

- H.R. 2576, TSCA Modernization Act of 2015; and
- H.R. 2583, Federal Communications Commission Process Reform Act of 2015.

In keeping with Chairman Upton's announced policy, Members must submit any amendments they may have two hours before they are offered during this markup. Members may submit amendments by email to peter.kielty@mail.house.gov. Any information with respect to an amendment's parliamentary standing (e.g., its germaneness) should be submitted at this time as well.

Summaries of the legislations to be considered by the Committee are provided below

II. H.R. H.R. 2576, TSCA MODERNIZATION ACT OF 2015

Chemicals Already in Commerce: H.R. 2576 would repeal the requirement in subsection 6(a) of the Toxic Substances Control Act (TSCA) that rules restricting chemical substances use "the least burdensome requirements**."**

Risk Evaluations: H.R. 2576 creates a new TSCA subsection 6(b) that prohibits EPA from restricting a chemical substance before evaluating its risk of injury to human health or the environment. EPA would select chemical substances already in commerce for risk evaluation when it determines that the combination of potential hazard from and potential exposure to a chemical substance may present an unreasonable risk of injury to human health or the environment. A manufacturer who is willing to pay the EPA administrative cost of the evaluation also may have EPA designate a chemical for risk evaluation.

The legislation requires the Administrator, subject to the availability of appropriations, to initiate 10 or more risk evaluations in each fiscal year,

Risk Management Rules: If EPA determines, based on a risk evaluation, a chemical substance or mixture presents or will present an unreasonable risk of injury to health or the environment, or if EPA designates a persistent, bio-accumulative, and toxic (PBT)chemical substance or mixture for regulation, the legislation requires EPA to develop rules "so that the chemical substance or mixture no longer presents or will present an unreasonable risk, including an identified unreasonable risk to a potentially exposed subpopulation."

When developing a rule, EPA must:

- consider the effects of the substance or mixture on health and the environment, the benefits of the substance, and the economic consequences of the rule;
- impose requirements determined by the Administrator to be cost-effective, except where the Administrator determines that additional or different statutory requirements are necessary to protect against the identified unreasonable risk of injury;
- determine whether feasible substitutes will be available when deciding whether to prohibit or restrict the chemical or mixture and when setting a transition period; and
- exempt replacement parts designed before the rule is published in the Federal Register, unless such parts contribute significantly to the identified risk; and apply restrictions on articles only to the extent necessary to mitigate the risk.

Persistent, Bio-accumulative, and Toxic Chemicals (PBT): The legislation permits EPA to take faster action on PBTs. One year after EPA identifies a chemical as a PBT, the Agency is required to determine if the chemical (1) is likely to be exposed to the general population or a vulnerable subpopulation and (2) scores "high" for either persistence or bioaccumulation and "high" or "moderate" for persistence and bioaccumulation pursuant to EPA's February 2012 Methods Document. For those chemicals scoring high enough, the legislation requires EPA to apply, within two years of making the above determination, one or more of the requirements provided under subsection 6(a) to reduce the likely exposure to the chemical substance. However, if a risk evaluation under subsection 6(b) is initiated within ninety days of the chemical being listed as a PBT, the chemical is removed from the PBT list and undergoes the risk evaluation instead. Substances that do not score high enough would be regulated under the other requirements of section 6.

Deadlines for EPA Action: Under the legislation, risk evaluations for chemicals selected by EPA or manufacturers must be completed "as soon as reasonably possible subject to the availability of resources, but not later than 3 years." EPA may extend the deadline if more information needed by the shorter of (1) not more than ninety days after receiving such information, or (2) two years after initiating the risk evaluation. Any subsection (6)(a) risk management rule must follow completion of risk evaluations by ninety days.

Testing Authority for Risk Evaluations: The legislation would authorize EPA to obtain testing data on chemicals for the purpose of conducting a section 6 risk evaluation and authorizes EPA to collect such data by rule, consent agreement, or order.

Preemption of State Law: Once EPA makes a final decision on a chemical subject to a risk evaluation, such decision applies in all States. The preemption established in the legislation would

be as comprehensive as the risk evaluation or the risk management rule. However, State and local laws adopted under the authority of a Federal law, as well as state and local requirements protecting air and water quality or setting waste treatment and waste disposal standards, are protected from preemption (unless in conflict with Federal law).

Finally, the legislation preserves State interpretation of State tort and contract laws; laws regarding the admissibility of evidence; any State or local action taken before August 1, 2015, to prohibit or restrict a chemical substance (unless in conflict with Federal law); and any action taken pursuant to a State law that was in effect on August 31, 2003.

Protection of Confidential Business Information: The legislation would continue to protect confidential business information (CBI) submitted to EPA and allow access to certain State, local, and tribal government officials and health care professionals, subject to the same penalties for unauthorized disclosure that apply to U.S. government employees. The legislation would require confidentiality claims made after enactment to be designated, substantiated, and reasserted every ten years. The legislation also would clarify that current exemptions from CBI protections for health and safety studies do not include the release of data that would disclose formulas, including molecular structures, for chemical substances and mixtures whose protection as confidential has been justified to EPA.

Relationship to Other Federal Laws: The legislation would require EPA, in deciding whether to take action under TSCA or another law, to first compare the relevant risks, estimated costs, and efficiencies of taking action under the different laws.

Fees: The legislation would replace the cap on fees for data submission and would require that fees be: (1) "sufficient and not more than reasonably necessary" and (2) lower for small businesses. The cap in current law on fees under section 4 (new test data) and section 5 (data about a new chemical or new use) is $2,500 and $100 for small businesses. In addition, EPA would be required to publish (for notice and comment) policies and procedures for setting and charging fees.

The legislation also creates a "TSCA Service Fee Fund" funded by user fees collected for section 4 and section 5 data submissions and risk evaluations requested by the manufacturer of a chemical. Funds would be available to EPA only for use in administering the provisions of law for which they were collected. The bill also requires biannual EPA reports to Congress on fee income and disbursements, as well annual TSCA Service Fee Fund audits by the EPA Inspector General to examine fee reasonableness, Fund management, and the Fund's financial stability.

Science Standards: The legislation would require EPA, when making science-based decisions under sections 4, 5, and 6, to consider quality of the science it is using. These relate to the means used to generate information, the relevance of the information, the clarity and completeness with which data are documented, the extent of uncertainty, independent verification, and peer review. The legislation requires EPA decisions under sections 4, 5, and 6 to be based on the weight of the scientific evidence.

Publication of EPA Actions: The bill would require that, subject to section 14, the Administrator publish all notices and actions taken pursuant to the changes made by the bill.

Policies, Procedures, and Guidance Deadlines: Within two years of its enactment (and every five years thereafter), the bill would require EPA to develop procedures and guidance to carry out the newly enacted provisions. The legislation also requires EPA to submit reports to Congress on its capacity to conduct risk evaluations and issue rules on chemicals, resources needed for these efforts, and actual and anticipated plans to expand capacity in the future.

III. H.R. 2583, Federal Communications Commission Process Reform Act of 2015

Section 1. Short Title.

This section provides for the short title of the bill to be "The FCC Process Reform Act of 2015."

Section 2. FCC Process Reform.

Section 2(a) inserts after section 12 of the Communications Act of 1934 a new section, "Section 13. Transparency and Efficiency."

Section 13(a) Initial Rulemaking and Inquiry: This subsection requires the Federal Communications Commission (FCC) to conduct a notice and comment rulemaking and to adopt rules to (1) set minimum comment and reply comment periods for rulemaking proceedings; (2) establish policies concerning extensive comments toward the end of a comment period; (3) establish policies to ensure that the public has time to review material submitted in a proceeding after the comment cycle has closed; (4) publish the status of open rulemakings as well as list the draft items the commissioners are currently considering; (5) establish deadlines for action on certain filings to the Commission and its bureaus; (6) establish guidelines for the disposition of petitions for declaratory ruling; (7) establish procedures for including the specific text of proposed rules in Commission Notice of Proposed Rule Makings (NPRM); and (8) to require the development of performance measures for FCC program activities, defined as each FCC program listed in the Federal budget or each program through which the FCC annually collects or distributes $100 million or more.

Section 13(a) also requires the Commission to seek public comment on a notice of inquiry into whether and how the Commission should (1) allow a bipartisan majority of Commissioners to add an item to the Commission's agenda; (2) inform Commissioners of all options available on a given Commission item; (3) ensure that Commissioners have adequate time to review the text of Commission items; publish the text of items for Commission consideration prior to Commission vote; (4) establish deadlines for the processing of applications for licenses; (5) generate additional resources for the processing of applications; and (6) publish Commission decisions within thirty days of adoption.

Section 13(b) Periodic Review: This subsection requires the FCC to conduct a rulemaking to review the rules established in subsection 13(a) every five years.

Section 13(c) Nonpublic Collaborative Discussions: This subsection allows a bipartisan

majority of Commissioners to meet for collaborative discussions if they disclose such meetings within two business days and comply with Office of General Counsel oversight. This subsection also applies to meetings of Federal-State Joint Boards.

Section 13(d) Access to Certain Information on the Commission's Website: This subsection requires the FCC to provide links on the Commission's home page to the current budget, appropriations, number of full-time equivalent employees, and the Commission's performance plan.

Section 13(e) Federal Register Publication: This subsection requires the FCC to publish the documents specified in the Federal Register no later than forty-five days after release of the document or the day specified under any other provision of law.

Section 13(f) Consumer Complaint Database: This subsection requires the FCC to put consumer complaint information in a publicly available, searchable database on its website.

Section 13(g) Form of Publication: This subsection requires the FCC to publish documents specified in this section on its website.

Section 13(h) Transparency Relating to Performance in Meeting FOIA Requirements: This subsection requires the FCC to take additional steps to inform the public about its performance in meeting the disclosure requirements of the Freedom of Information Act.

Section 13(i) Prompt Release of Statistical Reports and Reports to Congress: This subsection requires the FCC to establish a schedule for the release of its required reports.

Section 13(j) Annual Scorecard: This subsection requires the FCC to report annually regarding its performance in meeting the deadlines and guidelines established in subsection (a), as well as how the Commission has used administrative law judges and independent studies.

Section 13(k) Definitions: This subsection defines several terms used in the Act, including "performance measure" and "program activity."

Section 2(b) requires the Commission to adopt rules implementing new section 13 no later than one year after the date of enactment and delays the implementation of the non-public collaborative discussion provisions until all rules required by section 13 have taken effect.

Section 3. Categorization of TPCA Inquiries and Complaints in Quarterly Report.

Section 3 prohibits the FCC from categorizing inquiries or complaints under the Telephone Consumer Protection Act as wireline or wireless inquiries or complaints unless the complaint or inquiry originated from the conduct of a wireline or wireless carrier.

Section 4. Effect on Other Laws.

Section 4 specifies that the Act does not alter the general framework established by the

Administrative Procedures Act and related laws, except where it does so explicitly (i.e., allowing deliberative collaboration among Commissioners and on the Federal-State Joint Boards).

Section 5. Application of Antideficiency Act to Universal Service Program.

Section 5 creates a waiver of the Antideficiency Act for the Federal Universal Service Fund through December 31, 2020. The Universal Service Fund has been subject to a series of temporary waivers since 2004.

IV. STAFF CONTACTS

If you have any questions regarding H.R. 2576, please contact Jerry Couri or Dave McCarty. If you have any questions regarding H.R. 2583, please contact David Redl or Grace Koh. All Committee staff can be reached at (202) 225-2927.