



# It's About Time: Reforming the Regulation of Chemical Substances Under TSCA

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The Toxic Substance Control Act ("TSCA") was enacted in 1976 to regulate the manufacture and use of potentially harmful chemicals. Although there are thousands of chemical substances manufactured in the United States each year, the United States Environmental Protection Agency ("USEPA"), under TSCA, has limited the manufacture or use of only a handful of these substances. This may change with the first amendments to TSCA in 30 years. The amendments provide the USEPA greater ability to control the manufacture and use of new chemicals and require it to conduct risk evaluations on existing chemicals. These amendments were signed into law by President Obama on June 22, 2016. The promise of the TSCA amendments is better management of the impacts of chemical substances on human health and the environment. Only time will tell whether the amendments meet this goal or simply result in an additional regulatory burden for the chemical industry.

Under the TSCA amendments, companies remain required to notify the USEPA when they are manufacturing a new chemical or they are proposing a significant new use for an existing chemical. Within 90 days of receiving such notification, which time period may be extended for an additional 90 days, the amendments require the USEPA to review the notice and determine whether the chemical presents an unreasonable risk to health or the environment. This evaluation cannot consider costs or other non-risk factors and must consider whether there is an unreasonable risk to a "potentially exposed or susceptible population" such as pregnant women or children. If the USEPA determines that there is a risk, or that there is not enough information to determine whether there is a risk, it shall issue an order prohibiting or limiting the manufacturing or use of such chemical. With respect to a chemical for which there is insufficient information to determine the risk, the USEPA can limit its manufacturing or use to the extent necessary to protect health and the environment while information is developed regarding its safety. As before, TSCA requires that if the USEPA determines a chemical poses a risk, the USEPA must

promulgate rules to regulate the manufacture, distribution or use of such chemical in order to address the risk.

In addition, the amendments require the USEPA to establish a risk-based screening process for existing chemicals that will prioritize chemicals based on, among other things, the chemical's toxicity, persistence in the environment, bioaccumulation and potential exposure to susceptible populations. The USEPA has 6 months from the enactment of the amendments to begin risk evaluations on at least 10 chemical substances identified in the 2014 update of the TSCA Work Plan for Chemical Assessments. The USEPA has 3 ½ years to begin risk evaluations on at least 20 chemical substances identified as "high priority" by the USEPA through its newly developed risk-based screening process. This evaluation of existing chemicals is designed to ensure that the USEPA is appropriately identifying and addressing potential risks from such chemicals.

Given the void of chemical regulation by the USEPA, states have promulgated their own laws addressing certain chemical substances, which has resulted in an inconsistent regulatory approach across the country. The TSCA amendments attempt to address this issue by pre-empting certain state regulation of chemical substances. Any state regulation in place prior to the enactment of the amendments is not pre-empted. Yet, states are prohibited from establishing or continuing to enforce laws or regulations that subject a chemical to the same notification requirements established in TSCA, require information from the manufacturer already required under TSCA, regulate a chemical that the USEPA determines does not present an unreasonable risk, or regulate a chemical that is addressed by the USEPA through a rule, order or consent agreement issued pursuant to TSCA.

The long wait for TSCA reform is over. Whether the reform will meet the goal of properly regulating the impact of chemicals on human health and the environment will come to light over the next several years during its implementation. Even in an era fraught with legislative and regulatory gridlock, there is a bi-partisan view and expectation that the amendments are a positive step forward.

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