

Toxic Substances Control Act: Landmark Amendments to Federal Chemical Safety Law Enacted

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On June 22, 2016, **President Obama** signed **H.R. 2576**, the Frank R. Lautenberg Chemical Safety for the 21st Century Act (the **Lautenberg Act** or the Act) into law. The legislation is the first comprehensive update to the **Toxic Substances Control Act (TSCA)** since Congress first enacted the law in 1976 and is expected to have far-reaching impacts on the U.S. industry.

TSCA is the federal law that gives the **Environmental Protection Agency (EPA)** authority to regulate a broadly defined class of chemicals. Because the Act requires EPA to evaluate chemicals currently used in commerce as well as new products, it significantly expands EPA's authority to regulate widely used industrial chemicals—including those that were grandfathered in by the 1976 law. Accordingly, any business that uses chemicals in its operation should brace for regulatory changes and supply chain impacts. As President Obama noted during the bill signing ceremony last week, "this is a big deal."

The Act caps off a ten-year effort to reform the TSCA, which was widely considered to be outdated and ineffective. Implementation will occur over the course of several years and will involve numerous rulemaking efforts. Industries impacted should plan now to stay engaged and provide feedback to EPA on how the law should be applied.

The legislation contains a number of key reforms that enhance EPA's regulatory powers and alter state authority to regulate chemical use. Listed below are several key areas to keep in mind.

Preemption of State Regulation

The Lautenberg Act grandfathers in existing state regulation of chemicals, but may limit future state efforts to regulate chemical manufacture and use. State laws and regulations which were in effect before April 2016 and that address a specific chemical will remain in force. Going forward, states will be permitted to restrict specific chemicals until EPA moves to define the scope of its risk evaluation, and then states would be precluded from regulating uses or exposures that are within the scope of EPA's review.

Risk Prioritization

Under the new law, EPA will be required to establish a process for evaluating and prioritizing chemicals for risk assessment within the next year.

One criticism of the original TSCA was that it grandfathered more than 62,000 chemicals into the regulatory framework, making it difficult for EPA to target these chemicals for additional safety measures. Now, EPA will be charged with prioritizing both new and existing chemicals for review and additional regulatory efforts. EPA's evaluation must consider the hazard and exposure potential for a chemical, including the chemical's environmental persistence and whether certain populations may be significantly exposed or are particularly vulnerable to exposure.

Confidential Business Information (CBI)

The Act makes several changes to when manufacturers of chemicals can keep certain business information confidential. Under the new law, certain proprietary business and production information can be kept confidential without substantiation, but many other classes of information (including chemical identity) and will require manufacturers to substantiate their CBI claims every ten years. Importantly, EPA will be required to review all chemical identity CBI claims (unless the chemical has not been offered for commercial distribution) and at least 25 percent of a representative subset of all other CBI claims, indicating that this review process will likely be a significant hurdle for manufacturers.

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