



Dear Subscriber,

We are pleased to enclose the Fall 2023 Update for your 6-volume TSCA Compliance Guide and Online Service.™

- 1) **Updated CBI Requirements.** On June 1, 2023, EPA announced that it issued a final rule updating the confidential business information (CBI) requirements under TSCA. The purpose of the updated rule is to increase transparency, modernize CBI reporting and review procedures, and align more closely with the 2016 Lautenberg Amendments. Of the changes to the regulations, some highlights are:
 - Narrowing of the type of information in health & safety studies that can be claimed as CBI;
 - Standardizing a set of questions for the substantiation of CBI claims;
 - Provisions that specify a process for the submitter to correct overbroad or inappropriate CBI claims in submissions early in the CBI review process;
 - And expanded requirements for electronic reporting of all CBI claims and uniform requirements to make publicly releasable copies of specific documents available more quickly;

The new rule was effective on August 7, 2023 and is reflected in 40 CFR Parts 702, 703, 704, 707, 716, 717, 720, 723, 725 and 790 within your TSCA Guide. See 88 FR 37155.

- 2) **Asbestos Reporting Rule.** On July 6, 2023, EPA announced a final rule requiring comprehensive reporting on all six fiber types of asbestos. The rule, issued under TSCA Section 8(a), requires asbestos manufacturers, importers, and processors, with annual sales of over \$500,000 in any year between 2019-2022, to submit a one-time report on specific use and exposure information for the past four years. EPA emphasizes that this rule applies not only to asbestos and asbestos-containing articles, but also asbestos that is a component of a mixture or present as an impurity. EPA intends to use the data collected from this rule to inform future asbestos-related regulatory actions, including its ongoing risk evaluation of asbestos legacy uses. EPA estimates that the industry burden of the rule will be approximately 4.5 million hours and cost between \$319 million to \$323 million for compliance. Affected parties have nine months from the rules effective date (August 24, 2023) to submit the required information: six months for collecting required information and then a three-month submission period beginning in February 2024. This new rule is reflected on pages J18-28 of your TSCA Guide. See 88 FR 47782.

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- 3) **PCB Extraction Methods.** On August 29, 2023, EPA published a final rule expanding approved extraction and determinative methods that can be used to characterize and verify the cleanup of polychlorinated biphenyls (PCBs) waste. The changes were first proposed on October 22, 2021, and EPA has evaluated the comments to the proposed rule in its notice of final rulemaking. EPA expects the final rule to reduce the amount of solvents used in PCB extraction and result in quicker, more efficient cleanups because of greater flexibility in the cleanup and disposal of PCB waste. Several additional amendments specifically identified by EPA, and as written by EPA, include:
- Amendment of the performance-based disposal option for PCB remediation waste;
 - The removal of the provision allowing PCB bulk product waste to be disposed of as roadbed material;
 - The addition of more flexible provisions for cleanup and disposal of waste generated by spills that occur during emergency situations;
 - The harmonization of the general disposal requirements for PCB remediation waste;
 - And other amendments to improve the implementation of the regulations, clarify ambiguity, and correct technical errors.

The final rule takes effect on February 26, 2024, and is reflected on pages B9-B90k of your TSCA Guide.¹ See 88 FR 59662.

Please also note these recent EPA activities:

- **Access to CBI.** On June 8, 2023, EPA announced that it authorized contractor Agile Decisions Sciences, LLC of Huntsville, AL, and subcontractor Abaco-Blackfish JV, LLC of Leesburg, VA, to access information submitted to EPA under all sections TSCA. Some of this information may have been claimed as confidential business information (CBI) by the submitting entity. Access to TSCA data will continue through at least April 2, 2028, when the initial contract expires. Access may continue for as long as the contract is renewed, if it is renewed, without Federal Register notice. Personnel with access to CBI will be required to sign nondisclosure agreements. See 88 FR 37535; 88 FR 37877.
- **Proposed PCE Rule.** On June 8, 2023, EPA announced a proposed rule to ban most uses of perchloroethylene (PCE). The proposed rule is written to address identified unreasonable risks of injury to human health identified in EPA's December 2020 Risk

¹ You will note that on Section III, page B3 of your TSCA Guide there is a chart published by EPA of the marking and recordkeeping requirements associated with 40 CFR Part 761. As of the date of publication, we are unaware of any updated chart or guidance from EPA on PCB marking and recordkeeping requirements. To the extent that such information becomes available subsequent to publication of this letter, we will amend that chart in later TSCA Guide updates.

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Evaluation for PCE and its December 2022 Revised Risk Determination for PCE. The proposed rule would ban all consumer uses of PCE and most industrial/commercial uses, while limiting industrial/commercial uses to only when strict workplace controls are implemented. Some uses of PCE unaffected by the rule are the commercial use of PCE in petrochemical manufacturing, use in manufacturing of coatings for aircraft skins, and use in vapor degreasing to make aerospace parts and engines. The proposed rule would rapidly phase down prohibited uses, most within 24 months of the final rule. And for prohibited uses, EPA found that alternative products are available that are similar to the cost and efficiency of PCE. Specific to the dry cleaning industry, many businesses in which are small businesses, EPA proposed a 10-year phaseout of the use of PCE. EPA believes that this will give small businesses in that industry enough time to transition to alternative processes. See 88 FR 39652.

- **Plastic Waste SNURs.** On June 15, 2023, EPA announced it was issuing proposed Significant New Use Rules (SNURs) under TSCA for 18 chemicals made from plastic-waste derived feedstocks. The proposed SNURs would require notification to and review by EPA before any of these chemicals could be made using plastic-waste derived feedstocks that contain specific impurities, including heavy metals and dioxins. The chemicals subject to the SNURs are generally used to make transportation fuels and were approved by EPA between 2015-2019 for that purpose. However, EPA knew less about the chemical impurities when the chemicals were initially approved than it does today, and EPA believed that SNURs were necessary to address potential risks. EPA plans to issue a separate rulemaking for chemicals made from bio-based feedstocks. See 88 FR 39804.
- **Cumulative Risk Assessment Guidelines.** On June 16, 2023, EPA announced the availability of the draft Cumulative Risk Assessment (CRA) Guidelines for Planning and Problem Formulation. This document describes the steps for the planning and problem formulation of CRAs and determining when CRAs could be appropriate. The release of this document follows a contractor-led external panel peer review and subsequent revisions. See 88 FR 39424.
- **Flame Retardant SNURs.** On June 21, 2023, EPA announced it was issuing proposed SNURs under TSCA for three flame retardants currently undergoing risk evaluations under TSCA Section 6. The three chemicals are tris(2-chloroethyl) phosphate (TCEP), 4,4'-(1-methylethylidene)bis[2, 6-dibromophenol] (TBBPA), and triphenyl phosphate (TPP). The proposed SNURs are intended to complement the risk evaluation process by ensuring EPA is aware of any new uses of the chemicals. This will permit EPA to include in the risk evaluations any new or resumed uses not currently under consideration. EPA will consider, moving forward, issuing SNURs for other chemicals undergoing Section 6 risk evaluations. See 88 FR 40728.

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- **PFAS Reporting.** On June 22, 2023, EPA announced a final rule to amend the Toxic Release Inventory (TRI) chemical list to include nine additional PFAS subject to reporting requirements. Four of those PFAS were previously claimed as CBI but in 2022 were declassified on the TSCA inventory because at least one manufacturer did not claim them as CBI. And, because they are no longer confidential, they were added to the TRI. The five other PFAS recently had their toxicity value finalized and, pursuant to statutory requirements, those five PFAS are now added to the TRI. Reporting for these nine PFAS will be due on July 1, 2024, for calendar year 2023 data. *See* 88 FR 41035.
- **PFAS Framework.** On June 29, 2023, EPA announced its framework for both old and new uses of PFAS. TSCA Section 5 requires EPA to review new chemicals prior to the chemical entering commerce. New PFAS presented challenges because many times there was not enough information about associated risks to make effective regulatory decisions. Specifically, the framework will be used to qualitatively address PFAS that are likely to be persistent, bioaccumulative, and toxic (PBT) chemicals. The new framework will categorize those chemicals based on the potential for exposure to receptor populations. Each of the three categories will have its own testing requirements, with EPA maintaining the authority for additional testing as needed. For example, those chemicals with an expected negligible exposure will require the least testing whereas those with expected exposures require the most testing prior to approval. More information on the framework can be found at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/framework-addressing-new-pfas-and>.
- **EPA Information Collection Activities.** On June 30, 2023, EPA announced it had submitted an information collection request (ICR) renewal to the Office of Management and Budget (OMB). The request is titled “Chemical Data Reporting Under the Toxic Substances Control Act.” This is a proposed renewal of an already existing ICR, scheduled to expire on June 30, 2023. This ICR covers the information collection activities associated with the TSCA Chemical Data Reporting Rule contained in TSCA Section 8(a). *See* 88 FR 42362.
- **TSCA Lawsuit.** On July 7, 2023, Earthjustice announced that it notified EPA of its intent to sue for missed statutory deadlines. Earthjustice alleged that EPA missed deadlines to evaluate the risks to public health from 22 different chemicals. On September 18, 2023, Earthjustice filed the suit, after waiting the required 60 days. Earthjustice seeks a court order binding EPA to new timelines for the missing risk evaluations. The lawsuit was filed in the District Court for the District of Columbia on behalf of the Sierra Club, Texas Environmental Justice Advocacy Services, the Community In-Power and Development Association, Learning Disabilities Association of America, and Louisiana Environmental Action Network.

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- **1,4-Dioxane Draft Risk Evaluation Supplement.** On July 7, 2023, EPA announced the availability of a draft supplement to the risk evaluation for 1,4-dioxane. The draft supplement considers air and water exposure pathways that were omitted from the initial risk evaluation, completed in 2020, as well as exposures to 1,4-dioxane generated as a byproduct. As with several other supplements to risk evaluations conducted under the Biden Administration, this supplement estimates aggregate exposures from multiple sources in the same area and potential exposures to fenceline communities. See 88 FR 43562.
- **Dust-Lead Standards.** On July 12, 2023, EPA announced a proposal to strengthen the removal of lead-based paint hazards in pre-1978 buildings and child care facilities. The proposed rule would strengthen current regulations under TSCA Section 402 by revising the dust-lead hazard standards, which, among other things, identify hazardous lead in dust on window sills and floors. The proposed rule would significantly reduce the hazard standards from their current levels to any reportable level greater than zero, primarily because there is no safe level of lead in dust for children. Further, this proposed rule would decouple the hazard standards and the dust lead clearance level, which is the amount of lead that can remain in dust on floors and window sills after lead removal activities are complete. The hazard standards and clearance level were previously the same number, but the proposed rule would, while lowering the clearance level, set slightly higher limits than the hazard standards. This is in response to a 2021 Ninth Circuit decision that set different criteria for establishing each of the clearance level and the hazard standards. The proposed rule is expected to reduce lead exposures to 250,000 to 500,000 children per year. See 88 FR 50444.
- **DNIP TRI.** On July 13, 2023, EPA announced a rule adding a diisononyl phthalate (DINP) to the list of chemicals subject to the Toxics Release Inventory (TRI) reporting requirements. At the same time, EPA updated its hazard assessment for DNIP, finding that it has moderately high to high human health toxicity. DINP is currently undergoing a TSCA Section 6(b) risk evaluation.
- **SACC Meeting Minutes.** On July 13, 2023, EPA announced the availability of meeting minutes and a final report from the May 2023 Science Advisory Committee on Chemicals (SACC) meeting regarding two draft TSCA cumulative risk assessment documents: (1) Draft Proposed Principles of Cumulative Risk Assessment Under the Toxic Substances Control Act; and (2) Draft Proposed Approach for Cumulative Risk Assessment of High-Priority Phthalates and a Manufacturer Requested Phthalate Under the Toxic Substance Control Act. The SACC meeting minutes and final report from the May 2023 meeting are available at docket EPA-HQ-OPPT-2021-0918.

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- **CTC Risk Management Rule.** On July 17, 2023, EPA proposed a new risk management rule for carbon tetrachloride (CTC). The proposed rule is intended to minimize risks posed by CTC to workers and communities while also banning uses for CTC that have already ceased. If finalized, the proposed rule would require a workplace chemical protection program, including strict controls for inhalation exposure limits and dermal protections for essentially all uses of CTC. Downstream notification and recordkeeping requirements would also be established under the proposed rule. Further, according to EPA, the proposed rule will better protect communities near facilities using CTC by requiring those facilities to utilize engineering controls that do not increase the emissions of CTC to the ambient air outside the facility. *See* 88 FR 49180.
- **1,4-Dioxane Revised Risk Determination.** On July 23, 2023, EPA released the draft revised risk determination for 1,4-dioxane. This revised risk determination, as with many finalized under the Biden Administration, evaluates 1,4-dioxane as a whole chemical substance to make one overall risk determination instead of evaluating each condition of use separately. The revised risk determination also incorporates the information analyzed in the July 7, 2023 Draft Risk Evaluation Supplement for 1,4-dioxane, including the newly considered exposure pathways. The revised risk determination includes several additional conditions of use, all of which were discussed in the risk evaluation supplement, that would contribute to the unreasonable risk determination. *See* 88 FR 48249.
- **PFAS Risk Assessment.** On July 25, 2023, 12 members of the House of Representatives sent a letter to EPA urging EPA to assess the risks of PFAS in fluorinated containers. The signatory Representatives contend that EPA is mandated by TSCA to address the risks of new PFAS and significant new uses of existing PFAS. The letter appears, at least in part, motivated by Inhance Technologies submitting nine significant new use notices for their business of fluorinating plastic containers, which the Representatives contend results in the formation of at least 13 individual PFAS. Inhance Technologies' business is already the subject of a December 2022 lawsuit from the Department of Justice regarding the generation of PFAS in their plastic containers.
- **Semi-Annual Regulatory Agenda.** On July 27, 2023, EPA published in the Federal Register a portion of the Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions ("Agenda"). This document contains information about regulations under development, completed, or cancelled since the last agenda, as well as a review of regulations with small business impacts. As it relates to TSCA, and among other noted TSCA related actions, the Agenda lists six different risk management rules that EPA anticipates completing by 2025: methylene chloride, 1-bromopropane, trichloroethylene, perchloroethylene, n-methylpyrrolidone, and C.I. pigment violet 29. Additionally, the Agenda contains information on the soon-to-be proposed Tiered Data Reporting to Inform Prioritization, Risk Evaluation and Risk Management Under the Toxic Substances Control Act rule. This

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rule would establish reporting requirements based on a chemicals status in the risk evaluation/risk management lifecycle and update reporting requirements under the chemical data reporting rule. The information gathered would be used to inform the risk evaluation/risk management actions undertaken by EPA. EPA anticipates proposing this rule in February of 2024 and issuing a final rule in July of 2025. We encourage you to read the entire Agenda to more specifically see how any EPA actions may impact your business. See 88 FR 48598.

- **EDF Opposition to Section 5 Consent Order.** On August 2, 2023, the Environmental Defense Fund (EDF) asked EPA to withdraw its approval for chemicals derived from the pyrolysis of plastic wastes. The Consent Order permitted the use of those chemicals at over 100 different facilities but EDF contends that these chemicals present significant cancer risks to those exposed to it through various mediums, including inhalation and fish consumption.
- **TSCA Section 21 Petition.** On August 1, 2023, Earthjustice, on behalf of three Native American tribes, petitioned EPA to ban the manufacture, use, processing, or distribution of the chemical N-(1,3-Dimethylbutyl)-N'-phenyl-p-phenylenediamine ("6PPD"). 6PPD is widely used in the manufacture of tires to prevent the tires from breaking down. It has been in use since the middle of the 20th century. The petition states that 6PPD is highly reactive and transforms on the surface of tires or in the environment into various byproducts, including 6PPD-quinone. The petition argues that 6PPD-quinone is the second most toxic chemical to aquatic species ever evaluated by EPA and that exposure to 6PPD-quinone can kill a coho salmon or steelhead trout within hours.
- **Asbestos White Paper.** On August 2, 2023, EPA released a white paper as part of its ongoing risk evaluation for Asbestos Part 2 – Supplemental Evaluation including Legacy Uses and Associated Disposals of Asbestos. The white paper presents EPA's quantitative approach to the human health assessment for the forthcoming Part 2 risk evaluation. The Trump Administration had previously narrowed the scope of EPA's ongoing risk evaluation for asbestos, excluding legacy uses and disposals from consideration. This exclusion meant that only one type of asbestos fiber, chrysotile, the only type still in use, was evaluated in the part 1 risk evaluation. A court order ruled this narrowed scope unlawful and thus EPA needed to supplement its asbestos risk evaluation with a part 2. EPA anticipates finalizing the Part 2 risk evaluation by the end of 2024. See 88 FR 51309.
- **2022 TRI Data.** On August 4, 2023, EPA released preliminary data for the 2022 TRI reporting year. The data covers activities and incidents at more than 20,000 facilities across the country, and includes for the first time data from natural gas processing facilities and reporting of ethylene oxide from certain contract sterilization facilities previously

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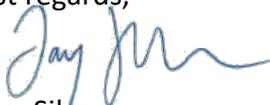
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exempt from reporting. More information can be found at <https://www.epa.gov/toxics-release-inventory-tri-program/2022-tri-preliminary-dataset>.

- **PFAS Testing Order.** On August 15, 2023, EPA issued its third TSCA PFAS testing order under the National PFAS Testing Strategy. The order requires Chemours Company FC LLC, E. I. du Pont de Nemours and Company, and 3M Company to conduct testing on 2,3,3,3,-Tetrafluoro-2-(heptafluoropropoxy)propanoyl fluoride (HFPO-DAF). HFPO-DAF is commonly used as a reactant in organic chemical manufacturing, as well as in the production of nonstick coatings and stain repellants, and was frequently used to replace PFOA. The companies subject to the test order have two choices for compliance: (1) conduct testing as described in the order, or (2) provide EPA with existing information which, though unidentified by EPA, the companies believe satisfies the order's requirements. The test order can be found at <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/list-chemicals-subject-section-4-test-orders>.
- **TSCA Inventory.** On August 16, 2023, EPA announced availability of the updated TSCA Inventory. New updates to the Inventory include new commercial activity data, unique identifier data, and regulatory flags, such as significant new use rules. Importantly, this update includes approximately 500 substances that are now listed with their unique chemical identities after having been removed from the confidential portion of the Inventory. EPA encourages all persons submitting information to the TSCA Inventory to regularly check the Central Data Exchange (CDX) for communications relating to submissions, as many of the communications are time-sensitive. More information and the Inventory can be found at <https://www.epa.gov/tsca-inventory>.
- **ChemExpo Beta.** On August 22, 2023, EPA announced the availability of the beta version of ChemExpo, a public search and visualization tool for exploring chemical use data relevant to exposure assessments. All the data contained in the ChemExpo database comes from publicly available sources. EPA's goal of the Beta release is to collect user feedback on functionality and usability. More information can be found at <https://www.epa.gov/sciencematters/chemexpo-knowledgebase-new-way-explore-chemical-use-information>.

If there are any questions about these or any other environmental compliance matters, please feel free to contact us. We are here to assist you as part of your subscription.

Best regards,



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