



Dear Subscriber,

We are pleased to enclose the October 2022 Update for your 6-volume TSCA Compliance Guide and Online Service.™

- o **SNURs.** On July 2, 2022, EPA announced updates to the Hazard Communication Program and regulatory framework, as well as minor amendments to reporting requirements for premanufacture notices. These updates and amendments were first proposed in July 2016 and will apply only to significant new use rules (SNURs) issued after the rule is finalized and effective. With the exception of certain proposed language being moved to new paragraphs located at 40 CFR 721.63(a)(7) and (8), the updates are exactly as proposed in July 2016. Most of the changes relate to the standard significant new uses for new chemical SNURs identified in 40 CFR 721 subpart B, which EPA cross-references in individual SNURs in subpart E. Other changes are procedural in nature and effect subpart A. Minor changes to TSCA Section 5 notices can be found in 40 CFR parts 720.38, 720.45, and 723.50. EPA issued a correction to the July 2 final rule on August 2, 2022, correcting inadvertent errors in three of the amendatory instructions that appeared in the regulatory text portion of the final rule. The final rule was effective September 6, 2022. The updated language is found in Section II on pages A5-26, B6-9, C7-10, and E3-30.¹ See 87 FR 39756; 87 FR 47103.

Please also note these recent EPA activities:

- o **TSCA Section 12(b) Case Resolution.** On April 19, 2022, a final order was issued in an EPA initiated TSCA Section 12(b) action. EPA alleged that Vorbeck Materials exported, without prior notification to EPA as required under Section 12(b), a carbon nanomaterial substance subject to a TSCA Section 5(e) consent order. The material was exported a single time to a single country. EPA filed its complaint with the Environmental Appeals Board (EAB) in March of 2022. Based on factors considered under EPA's Civil Penalty Policies, EPA proposed a penalty of \$8,277 in the complaint. The EAB final order indicated that EPA received that full amount and the case was resolved.

¹ The TSCA Guide hard copy version does not contain certain provisions related to SNURs given their large volume and frequent amendment. As such, 40 CFR 721.225 is in the online only version and the updates to those regulations can be found in the online version.

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- o **TSCA New Chemicals Coalition.** On April 26, 2022, the TSCA New Chemicals Coalition (“NCC”) submitted comments to EPA on its draft document titled “Modernizing the Process and Bringing Innovative Science to Evaluate New Chemicals Under TSCA.” NCC’s comments were largely supportive of the document and its proposed updates to performing risk assessments. The comments can be viewed on docket EPA-HQ-OPPT-2022-0218.
- o **Section 4 Test Orders.** In April of 2022, EPA issued several amended TSCA Section 4 Test Orders. These orders sought to attain additional data on several of the next 20 chemicals undergoing risk assessments. Amendments were issued to the following test orders:
 - 1,1,2-Trichloroethane
 - 1,2-Dichloroethane
 - 1,2-Dichloropropane
 - 4,4’-(1-methylethylidene)bis[2,6-dibromophenol] (TBBPA)
 - o-Dichlorobenzene
 - Phosphoric acid, triphenyl ester (TPP)
 - Trans-1,2-dichloroethylene
- o **Proposed Asbestos Rule.** On May 5, 2022, EPA proposed a rule requiring one-time comprehensive asbestos reporting. The proposed rule, authorized under TSCA Section 8(a), would require manufacturers and processors to submit a one-time report on certain use and exposure information going back four years. Some of the information sought includes quantities and types of asbestos or asbestos-containing articles manufactured, imported, or processed. This reporting would extend to asbestos-containing articles, even if the asbestos is contained just as an impurity. EPA believes the data collected will inform future asbestos related actions, including its on-going “legacy uses” risk evaluation (part II). Comments can be viewed on Docket ID No. EPA-HQ-OPPT-2021-0357. See 87 FR 27060.
- o **Proposed CBI Rule.** On May 12, 2022, EPA issued a proposed rule regarding the asserting and management of confidential business information (CBI) under TSCA. The rule is intended to increase transparency, modernize reporting procedures, and ensure compliance with the 2016 Lautenberg Amendments. Key proposals include:
 - Clarifying the scope of CBI to ensure that only information the submitter believes is confidential is actually treated as such.
 - Creating a consistent and clear set of substantiation questions, the answers to which will support claimed CBI.
 - Requiring electronic CBI reporting.
 - Provisions to address overbroad and inappropriate CBI claims in public TSCA submissions, with special attention to public health and safety information.Comments can be viewed on docket EPA-HQ-OPPT-2021-0419. See 87 FR 29078.

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- o **CDR Data.** On May 12, 2022, EPA announced the availability of 2020 Chemical Data Reporting (CDR) information. The CDR Rule requires manufacturers and importers of specific chemicals on the TSCA Chemical Substance Inventory to report data to EPA every four years. 2020 data can be viewed and downloaded at <https://www.epa.gov/chemical-data-reporting/access-cdr-data>.
- o **SACC Meeting Minutes and Final Report.** On May 19, 2022, EPA announced the availability of meeting minutes from the March 15-17, 2022 Science Advisory Committee on Chemicals (SACC) meeting regarding EPA's proposed Screening Level Approach for Assessing Ambient Air and Water Exposures to Fenceline Communities Version 1.0. SACC is the scientific peer review mechanism for EPA's Office of Chemical Safety and Pollution Prevention. As it pertains to the proposed Screening Level Approach, SACC determined that the data used to develop the screening analysis was not properly supported in the document and that several data inputs were not transparent enough to allow proper review. The meeting minutes and final report are available on Docket ID No. EPA-HQ-OPPT-2021-0415.
- o **Section 4 Test Order Review.** On May 23, 2022, the Vinyl Institute (VI) filed suit in the United States District Court for the District of Columbia seeking review of EPA's March 2022 TSCA Section 4 test order for 1,1,2-trichloroethane. VI seeks a determination that, *inter alia*, the test order violates the APA, TSCA, and associated regulations; is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law; is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; is without observance of procedure required by law; is unsupported by substantial evidence; and is otherwise contrary to law.
- o **EPA Information Collection Activities.** On May 26, 2022, EPA announced it had submitted an information collection request (ICR) to the Office of Management and Budget (OMB) titled "Methylene Chloride; Regulation of Paint and Coating Removal Under Toxic Substances Control Act (TSCA) Section 6(a)." This is a proposed extension of a previously approved ICR, set to expire on May 31, 2022. EPA sought comment on this proposed ICR in August of 2021. This ICR covers the information collection activities associated with specific downstream notifications and recordkeeping requirements for manufacturers, processors, or distributors of methylene chloride under 40 CFR 751. See 87 FR 32016.
- o **PFAS Test Order.** On June 6, 2022, EPA issued the first test order for per- and polyfluoroalkyl substances (PFAS). EPA selected 6:2 fluorotelomer sulfonamide betaine (CASRN 34455-29-3) as the first test order issued pursuant to the National PFAS Testing Strategy. EPA believes that despite there being some exposure and hazard information already in its possession, there is presently insufficient data to determine the effects on

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human health from inhalation. The test order is specific to that data gap. Recipients of this test order include The Chemours Company, DuPont De Nemours Inc., National Foam Inc., and Johnson Controls Inc. Companies in receipt of test orders have 400 days to submit the required information. This test order describes the process future PFAS test orders will follow.

- o **PFAS LVEs.** On June 13, 2022, the Environmental Defense Fund (EDF) published an article highlighting the status of PFAS low volume exemption (LVE) withdrawals. In July of 2021, EPA requested companies voluntarily withdraw previously issued PFA LVEs as part of a new stewardship program. However, according to EDF, less than 3% of PFAS LVEs have been voluntarily withdrawn. EDF argues that EPA has authority to revoke previously issued LVEs and should do so to protect human health and the environment. To date, EPA has not attempted to assert any purported authority to unilaterally withdraw LVEs.
- o **GHG Pollution.** On June 16, 2022, EPA received a petition under TSCA Section 21 requesting EPA “phase out the anthropogenic manufacturing, processing, distribution, use, and disposal of greenhouse gas (GHG) emissions, fossil fuels, and fossil fuel emissions.” The petition, submitted by and on behalf of several climate scientists, aims to “establish a firm foundation for an effective U.S. decarbonization program.” The group cited to the 2016 Lautenberg Amendments, which directed EPA to consider potential health impacts and not economic impacts when evaluating regulation, as the basis for the latest GHG emission challenge. This marks the second time citizen groups have attempted to use TSCA to regulate GHG emissions, with the former attempt coming in 2015. EPA denied the petition on September 14, 2022. *See* 87 FR 57665.
- o **Spring 2022 Unified Agenda.** On June 21, 2022, EPA published its Spring 2022 Unified Agenda. The Agenda contains numerous proposed rulemakings under EPA’s TSCA authority. Some of the proposed rules include:
 - **New Chemicals Procedural Regulations.** In February of 2023, EPA intends to issue a notice of proposed rulemaking revising the new chemical review procedural regulations found in 40 CFR 720. EPA’s goal is to increase efficiency and permit the completion of the new chemical reviews within the mandated 90 days.
 - **Chemical Specific Rulemakings.** EPA has concluded and/or amended the risk evaluations for several chemicals in the past two years. EPA is drafting proposed rules to address the unreasonable risks of injury to health associated with such chemicals. The chemicals expected to have proposed rules between February and July 2023 are:
 - Methylene Chloride
 - 1-Bromopropane
 - Carbon Tetrachloride

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- Trichloroethylene (TCE)
- Perchloroethylene (PCE)
- N-Methylpyrrolidone (NMP)
- Asbestos (Part 1: Chrysotile Asbestos)
- Cyclic Aliphatic Bromide Cluster (HBCD)
- C.I. Pigment Violet 29
- **Non-Ongoing Use SNURs.** EPA is presently developing TSCA Section 5(a)(2) significant new use rules (SNURs) for conditions of use identified in risk evaluations as not currently ongoing. These new SNURs will require companies to notify EPA if they intend to begin manufacturing or using chemical substances and mixtures in new ways that may create concerns. Three specific chemicals are presently contemplated to be subject to such SNURs, which EPA anticipates will be published between November and December 2022:
 - Phthalates
 - Flame Retardants
 - Certain Solvents

We encourage you to review the Spring 2022 Unified Agenda to see whether any proposed or planned actions may impact your specific operations. We also encourage you to reach out if you have any questions, as we are also available to consult with your organization on potential impacts. *See* 87 FR 48332.

- o **New Chemical Reviews.** On June 24, 2022, EPA announced a broad outreach effort to discuss with stakeholders how the Agency evaluates submitted data and describe common reasons why EPA has to reconduct risk assessments. EPA’s goal is to educate stakeholders about what EPA looks for in submissions and reduce the amount of rework necessary during risk assessments. Reducing inefficiencies will streamline the process and reduce delays in the risk assessment process. The outreach effort includes a series of webinars aimed at stakeholder education.
- o **Superfund Excise Tax.** The Superfund excise tax, comprised of two separate taxes on either the sale or use of taxable chemicals manufactured, produced, or imported, and the sale or use of taxable imported chemical substances, was reinstated beginning on July 1, 2022, by the Infrastructure Investment and Jobs Act. The IRS published updated FAQs for the excise tax on June 24, 2022. Stakeholders can file a request under Section 4672(a)(2) of the Internal Revenue Code for a determination that a substance be added or removed from the list of taxable substances in Section 4672(a). The FAQ can be found at <https://www.irs.gov/newsroom/irs-issues-superfund-chemical-excise-taxes-faqs>.
- o **Asbestos Part 2 Risk Evaluation Scope.** On June 29, 2022, EPA announced the release of the final scope document for the TSCA risk evaluation for Asbestos Part 2: Supplemental Evaluation Including Legacy Uses and Associated Disposals of Asbestos. The Part 2

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evaluation includes conditions of use that were excluded from Part 1 as legacy uses and associated disposals, and conditions of use for asbestos-containing talc. Legacy uses are defined as uses for which there is no ongoing manufacturing, processing, or distribution for use. EPA is considering several specific forms of asbestos in this Part 2 evaluation: chrysotile (serpentine), crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite, actinolite, and Libby Amphibole Asbestos (and its tremolite, winchite, and richerite constituents). Comments on the draft scope document and responses to such comments are available on Docket ID No. EPA-HQ-OPPT-2021-0254. *See* 87 FR 38746.

- o **Revised HBCD Risk Determination.** On June 29, 2022, EPA finalized a revision to the risk determination for cyclic aliphatic bromide cluster (HBCD). The revised risk determination found that HBCD, as a whole chemical substance, presents an unreasonable risk of injury to human health and the environment given its conditions of use. EPA originally finalized the HBCD risk determination under the Trump Administration in September 2020. The draft revision incorporates policy changes implemented by the Biden Administration, including making a risk determination for the whole chemical substance and not assuming the use of personal protective equipment (PPE) by workers. This revised risk determination removed that assumption and found that HBCD presents an unreasonable risk to workers from both short- and long-term exposures if PPE is not used. EPA also determined that an unreasonable risk was presented by HBCD use to aquatic and sediment-dwelling organisms. EPA will now move to risk management rulemaking to protect communities from the risks posed by HBCD. *See* 87 FR 38747.
- o **EPA Information Collection Activities.** On June 29, 2022, EPA announced it had submitted an information collection request (ICR) to the Office of Management and Budget (OMB) titled “TSCA Section 5 Premanufacture Review of New Chemical Substances and Significant New Use Rules for New and Existing Chemical Substances.” This is a proposed renaming and consolidation of two previously approved ICRs, and consolidates the reporting and recordkeeping requirements associated with the premanufacture review of new chemical substances and those associated with new and existing chemical substances subject to significant new use rules under TSCA Section 5. EPA previously sought comment on this proposed ICR in December of 2021. *See* 87 FR 38745.
- o **Draft Revision to PCE Risk Determination.** On June 30, 2022, EPA announced the availability of a draft revision to the risk determination for perchloroethylene (PCE). The revised risk determination found that PCE, as a whole chemical substance, presents an unreasonable risk of injury to human health and the environment given its conditions of use. EPA originally finalized the PCE risk determination under the Trump Administration in December 2020. The draft revision incorporates policy changes implemented by the

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Biden Administration, including making a risk determination for the whole chemical substance and not assuming the use of PPE by workers. *See* 87 FR 39085.

- o **Draft Revision to NMP Risk Determination.** On July 1, 2022, EPA announced the availability of a draft revision to the risk determination for the n-Methylpyrrolidone (NMP). The revised risk determination found that NMP, as a whole chemical substance, presents an unreasonable risk of injury to human health and the environment given its conditions of use. EPA originally finalized the NMP risk determination under the Trump Administration in December 2020. The draft revision incorporates policy changes implemented by the Biden Administration, including making a risk determination for the whole chemical substance and not assuming the use of PPE by workers. *See* 87 FR 39511.
- o **Draft Revision to Methylene Chloride Risk Determination.** On July 2, 2022, EPA announced the availability of a draft revision to the risk determination for the methylene chloride. The revised risk determination found that methylene chloride, as a whole chemical substance, presents an unreasonable risk of injury to human health given its conditions of use. EPA originally finalized the Methylene Chloride risk determination under the Trump Administration in June 2020. The draft revision incorporates policy changes implemented by the Biden Administration, including making a risk determination for the whole chemical substance and not assuming the use of PPE by workers. *See* 87 FR 39824.
- o **Development of Data Collection Rule.** On July 6, 2022, EPA invited small businesses to participate in a panel focused on EPA’s development of a proposed rule for the collection of data pertinent to risk evaluations and risk management processes. The rule would impose reporting requirements based on a chemical’s status in the TSCA Section 6 risk evaluation/risk management lifecycle. EPA seeks to collect information about potential hazards and exposure pathways directly relevant to each specific stage of the risk evaluation/risk management lifecycle, reducing the data collection burden while ensuring EPA has the data necessary to efficiently complete required steps.
- o **Draft Revision to TCE Risk Determination.** On July 7, 2022, EPA announced the availability of a draft revision to the risk determination for trichloroethylene (TCE). The revised risk determination found that TCE, as a whole chemical substance, presents an unreasonable risk of injury to human health given its conditions of use. EPA originally finalized the TCE risk determination under the Trump Administration in November 2020. The draft revision incorporates policy changes implemented by the Biden Administration, including making a risk determination for the whole chemical substance and not assuming the use of PPE by workers. *See* 87 FR 40520.

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- o **EPA OIG Report.** On July 7, 2022, EPA’s Office of Inspector General (OIG) issued a report titled “The EPA Was Not Transparent About Changes Made to a Long-Chain PFAS Rule After Administrator Signature.” On June 20, 2020, the EPA Administrator signed the long-chain perfluoroalkyl carboxylate and perfluoroalkyl sulfonate chemical substances (LPCFAC) significant new use rule (SNUR). The final rule was published in the Federal Register on July 27, 2020. EPA’s OIG investigated whether and the extent to which EPA followed its own policies, procedures, and guidance pertaining to changes between the Administrator signing the final rule and its publishing in the Federal Register. The OIG determined that EPA failed to follow proper docketing and transparency guidelines with respect to changes made during that time period. EPA has agreed to and implemented two of the three changes proposed by OIG. EPA disagreed with the third proposed change and it remains unresolved.

- o **Draft Revision to 1-BP Risk Determination.** On July 20, 2022, EPA announced the availability of a draft revision to the risk determination for 1-Bromopropane (1-BP). The revised risk determination found that 1-BP, as a whole chemical substance, presents an unreasonable risk of injury to human health given its conditions of use. EPA originally finalized the 1-BP risk determination under the Trump Administration in August 2020. The draft revision incorporates policy changes implemented by the Biden Administration, including making a risk determination for the whole chemical substance and not assuming the use of PPE by workers. See 87 FR 43265.

- o **April 2022 SACC Meeting Minutes.** On July 21, 2022, EPA announced the availability of meeting minutes and final report from the April 19-21, 2022 Science Advisory Committee on Chemicals (SACC) meeting regarding EPA’s proposed draft Systemic Review Protocol Supporting Toxic Substances Control Act (TSCA) Risk Evaluations of Chemical Substance Version 1.0. SACC functions as the scientific peer review mechanism for EPA’s Office of Chemical Safety and Pollution Prevention. EPA intends to respond to SACC’s recommendations and provide any revisions to the draft document in 2023. Meeting minutes and the final report can be found on Docket ID No. EPA-HQ-OPPT-2021-0414.

- o **TSCA Consent Decree.** On July 26, 2022, EPA announced that the Department of Justice had lodged a consent decree in a TSCA related action. In *United States v. CISNE NY Construction, Inc., et al.*, Civil Action No. 22-338, filed in the Southern District of New York, the United States sought injunctive relief in connection with unlawful work practices governed by TSCA and specifically the Renovation, Repair, and Painting Rule (RRP), 40 CFR 745. The settlement resolves claims against two of the five defendants, and requires the settling defendants to pay \$25,000 and comply with the RRP rule moving forward, including completion of an RRP checklist at all worksites. See 87 FR 44424.

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- o **2021 TRI Data.** On July 28, 2022, EPA announced the availability of preliminary Toxics Release Inventory (TRI) data from reporting year 2021. More information, including the data itself, can be found at <https://www.epa.gov/toxics-release-inventory-tri-program/2021-tri-preliminary-dataset>.
- o **Test Order Additional Resources.** On August 5, 2022, EPA published two new resources for recipients of TSCA Section 4 Test Orders.
 - The first is a policy document titled “Policies Regarding Manufacturers and Processors Subject to TSCA Section 4(a) Testing”, which contains two policies. Policy 1 details the companies that can expect to be included in the scope of an action under Section 4(a), which generally are those companies engaged, within five years of the Section 4(a) action, in manufacturing activities for a chemical substance, though that timeline can be adjusted based on factors enumerated in the Policy. Policy 2 states that recipients of or those subject to a Section 4 action cannot avoid their resultant obligations by ceasing manufacturing of the specific chemical substance. Policy 2 is change from the Test Orders issued in January of 2021, which permitted the cessation of manufacturing in response to and in satisfaction of the Test Orders.
 - The second is a policy document titled “Removal of Certain Companies from Seven TSCA Section 4(a)(2) Orders Issued in 2022”. If a company ceased manufacturing a chemical substance in reliance on 2021 Test Orders permitting cessation to satisfy the Order’s requirements, then that company will be removed from any 2022 Order. EPA specifically notes that this policy applies only to the 2022 Orders and not any future Orders.
- o **New Chemical Review Policy Change.** On August 22, 2022, EPA announced that it had updated its new chemicals program policy to “discontinue the use of exposure modeling thresholds when assessing the health and environmental risks of new chemicals under TSCA.” Instead, all exposures will be included in new chemical review. The policy change is intended to more accurately assess potential exposures and risks to overburdened and vulnerable communities.
- o **Draft Revision to Carbon Tetrachloride Risk Determination.** On August 27, 2022, EPA announced the availability of a draft revision to the risk determination for carbon tetrachloride. The revised risk determination found that carbon tetrachloride, as a whole chemical substance, presents an unreasonable risk of injury to human health given its conditions of use. EPA originally finalized the carbon tetrachloride risk determination under the Trump Administration in November 2020. The draft revision incorporates policy changes implemented by the Biden Administration, including making a risk determination

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for the whole chemical substance and not assuming the use of PPE by workers. See 87 FR 52766.

- o **EPA Information Collection Activities.** On August 30, 2022, EPA announced it had submitted an information collection request (ICR) to the Office of Management and Budget (OMB) titled “Section 8 of the Toxic Substances Control Act (TSCA).” This is a proposed consolidation of several previously approved ICRs. EPA previously sought comment on this ICR in March of 2022. This ICR covers reporting and recordkeeping requirements under TSCA Section 8 for persons who manufacture, import, or process chemical substances, mixtures, or categories, or distribute them in commerce. See 87 FR 52967.
- o **Revision to Colour Index Pigment Violet 29 Risk Determination.** On September 6, 2022, EPA announced the availability of the final revision to the risk determination for Colour Index Pigment Violet 29 (PV29). The revised risk determination found that PV29, as a whole chemical substance, presents an unreasonable risk of injury to human health given its conditions of use. EPA originally finalized the PV29 risk determination under the Trump Administration in January 2021. The draft revision incorporates policy changes implemented by the Biden Administration, including making a risk determination for the whole chemical substance and not assuming the use of PPE by workers. See 87 FR 54491.
- o **Composite Wood Products Voluntary Consensus Standards Update.** On September 20, 2022, EPA proposed to update the incorporation by reference of several voluntary consensus standards in 40 CFR 770. That section, entitled “Formaldehyde Standards for Composite Wood Products,” and specifically § 770.99, incorporates by reference certain approved reference materials. EPA proposes to update two previously incorporated materials with recently amended versions, each published after the public comment period for the proposed rule ended. The proposed updates deal with particleboard and medium density fiberboard for interior applications, and are found in 40 CFR 770.99(d)(5) & (6), respectively. See 87 FR 57435.

Best Regards,



Larry Silver

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