

# Chapman Client Alert

August 9, 2016

Current Issues Relevant to Our Clients

## Congress Reforms TSCA

On June 22, 2016, President Obama signed into law the first major amendment to the Toxic Substances Control Act (“TSCA”) since its enactment forty years ago.<sup>1</sup> The amendment, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, is commonly referred to as “TSCA Reform.” TSCA Reform provides the United States Environmental Protection Agency (“EPA”) with authority to “evaluat[e] and determin[e] whether regulatory control of a chemical is warranted” under TSCA.<sup>2</sup> Until TSCA Reform was passed, TSCA was the only major environmental law that had not been significantly updated since its enactment.<sup>3</sup> TSCA Reform is expected to have a significant economic impact, primarily on manufacturers, given that chemical substances are used in 96 percent of all manufactured goods, including millions of consumer products such as automobiles, carpets, furniture and common household cleaners.<sup>4</sup>

Prior to TSCA Reform, EPA had limited authority to take necessary actions to protect the public from toxic chemicals.<sup>5</sup> Because TSCA did not require EPA to review the safety of chemicals already on the market when it was enacted in 1976, there are tens of thousands of chemicals in use today that have never been evaluated for safety.<sup>6</sup> TSCA’s structure also made it difficult for EPA to restrict and ban new chemicals coming onto the marketplace.<sup>7</sup>

TSCA Reform, however, is specifically designed to address these issues and to allow EPA to effectively identify, prevent and remove from the market chemicals that are hazardous to human health.<sup>8</sup> Four key changes aim to improve the chemical review process under TSCA. First, EPA is required to evaluate all new and existing chemicals in commerce. New chemicals cannot be introduced into the market without EPA review and existing chemicals can no longer be “grandfathered” in.<sup>9</sup> Second, TSCA Reform establishes aggressive deadlines that will allow EPA to review chemicals more quickly than before.<sup>10</sup> Third, EPA will prioritize its review of chemicals using a health-based risk evaluation process. EPA must create this process by December 2016 and, using it, must evaluate at least twenty “high priority” chemicals within the first three and a half years.<sup>11</sup> Fourth, EPA must develop regulations to either ban, restrict, phase-out or otherwise limit the use of any chemical that it finds poses an unreasonable risk to human health.<sup>12</sup> EPA will consider human health effects as well as costs and alternatives when developing chemical-specific regulations.

EPA is also expected to enact requirements with respect to the reporting and testing of, and record-keeping for, regulated chemical substances.<sup>13</sup> TSCA Reform will be funded with user fees from chemical manufacturers and processors and through Congressional budgets.<sup>14</sup> TSCA Reform also encourages increased transparency for chemical information and requires EPA to make its safety review work available to the public and to Congress.<sup>15</sup>

TSCA Reform received bipartisan support in both the House of Representatives and the Senate.<sup>16</sup> Nevertheless, some advocacy groups still do not think the law is strong enough to empower EPA to ban chemicals that are harmful to human health.<sup>17</sup> Several state officials have also criticized portions of TSCA Reform that allow states to restrict a chemical’s use only until or unless EPA analyzes the uses and concerns for the same chemical.<sup>18</sup> New York’s Attorney General, for instance, has stated that he is “disappointed that the [amendment to TSCA] expands federal preemption, creating new obstacles to the ability of New York and other states to protect their citizens from the hazards of toxic chemicals.”<sup>19</sup> That said, the law does not preempt state or local chemical restrictions that were in existence prior to April 22, 2016 and actions taken under laws in effect as of August 2003.<sup>20</sup>

No states or individual parties have thus far legally challenged TSCA Reform. However, this does not mean that the law is immune to legal challenges. Those are likely to come as EPA begins the rulemaking process to actually implement TSCA Reform and regulate individual chemicals.

### For More Information

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If you would like further information concerning the matters discussed in this article, please contact Kristin L. Parker or the Chapman attorney with whom you regularly work:

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- 1 See The Frank R. Lautenberg Chemical Safety for the 21st Century Act, US ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act> (last updated July 25, 2016).
  - 2 H.R.2576- Frank R. Lautenberg Chemical Safety for the 21st Century Act, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/house-bill/2576> (last visited August 5, 2016).
  - 3 See Reforming the Toxic Substances Control Act, U.S. SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, [http://www.epw.senate.gov/public/\\_cache/files/aa2ac4d1-15bb-4e71-9588-909d49bdcff2/tsca-reform-marketing-packet-5.19-final.pdf](http://www.epw.senate.gov/public/_cache/files/aa2ac4d1-15bb-4e71-9588-909d49bdcff2/tsca-reform-marketing-packet-5.19-final.pdf) (last visited August 5, 2016).
  - 4 See *id.*
  - 5 See TSCA Reform: A Bipartisan Milestone to Protect Our Health from Dangerous Chemicals, EPA CONNECT, <https://blog.epa.gov/blog/2016/06/tsca-reform-a-bipartisan-milestone-to-protect-our-health-from-dangerous-chemicals/> (June 22, 2016).
  - 6 See *id.*
  - 7 See Reforming the Toxic Substances Control Act, U.S. SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, [http://www.epw.senate.gov/public/\\_cache/files/aa2ac4d1-15bb-4e71-9588-909d49bdcff2/tsca-reform-marketing-packet-5.19-final.pdf](http://www.epw.senate.gov/public/_cache/files/aa2ac4d1-15bb-4e71-9588-909d49bdcff2/tsca-reform-marketing-packet-5.19-final.pdf) (last visited August 5, 2016).
  - 8 See *generally id.*
  - 9 See *id.*
  - 10 See *id.*
  - 11 See *id.*
  - 12 See *id.*
  - 13 See Summary of the Toxic Substances Control Act, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/laws-regulations/summary-toxic-substances-control-act> (last updated July 11, 2016).
  - 14 See TSCA Reform: A Bipartisan Milestone to Protect Our Health from Dangerous Chemicals, EPA CONNECT, <https://blog.epa.gov/blog/2016/06/tsca-reform-a-bipartisan-milestone-to-protect-our-health-from-dangerous-chemicals/> (June 22, 2016).
  - 15 See Reforming the Toxic Substances Control Act, U.S. SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE, [http://www.epw.senate.gov/public/\\_cache/files/aa2ac4d1-15bb-4e71-9588-909d49bdcff2/tsca-reform-marketing-packet-5.19-final.pdf](http://www.epw.senate.gov/public/_cache/files/aa2ac4d1-15bb-4e71-9588-909d49bdcff2/tsca-reform-marketing-packet-5.19-final.pdf) (last visited August 5, 2016).
  - 16 See The Frank R. Lautenberg Chemical Safety for the 21st Century Act, U.S. ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act> (last updated July 25, 2016).

- 17 See Strengthen Chemical Laws, NRDC, <https://www.nrdc.org/issues/strengthen-chemical-laws> (last visited August 5, 2016).
- 18 See States Can Regulate Chemicals Under TSCA-Reform Bill, Pat Rizzuto, <http://www.bna.com/states-regulate-chemicals-n57982074169/> (June 14, 2016).
- 19 *Id.*
- 20 See *Id.*

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