

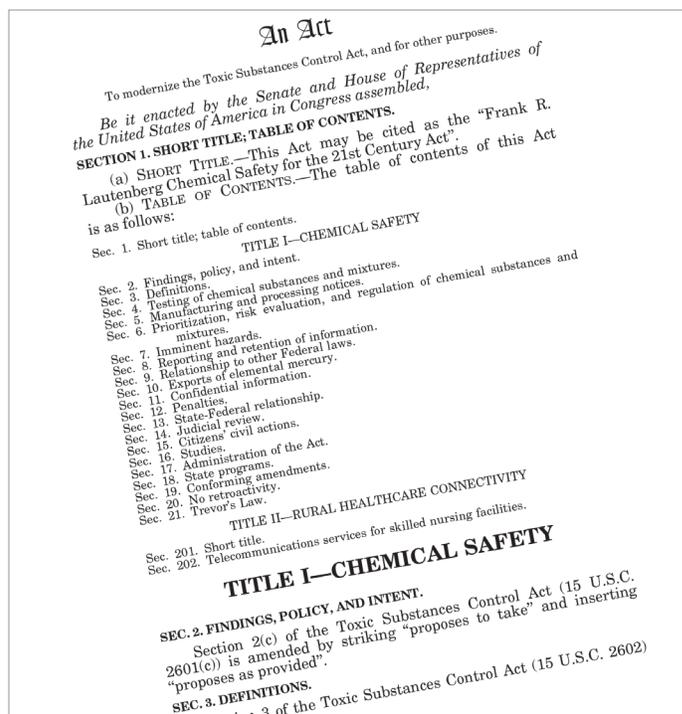


biggest environmental legislation in two decades

In June 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety Act for the 21st Century, which amended the primary chemical-management law in the U.S.: the Toxic Substances Control Act (TSCA, pronounced "TAH-ska"). The reformed act represents the most extensive changes to environmental legislation in more than 20 years. Named for the late New Jersey senator who had long championed TSCA reform, the resulting rules, which took immediate effect, are intended to reduce risk from chemical exposure and improve public health.

The act significantly expands the U.S. Environmental Protection Agency's authority. The agency is now mandated to review not only new chemicals prior to import or production, it is also required to evaluate the risk associated with chemicals already on the market. Under this new rule, if a chemical is determined by the EPA to present an unreasonable risk of injury to health or the environment, the agency is not only able but required to initiate rule-making—in the form of labeling, restricted use, limited concentrations, a ban of a specific chemical, or similar measures—to reduce that risk to a reasonable level.

The recent amendments resulted in changes to 10 sections of TSCA. Section 6 addressed chemicals already on the market. Under amended Section 6, the EPA is now mandated to establish a risk-based screening process to determine whether existing substances should have high or low priority for further risk evaluation. Based on the results of the evaluation, the agency must then propose measures to reduce risks associated with each substance.



In addition, the EPA must take expedited action on five chemicals already classified as persistent, bioaccumulative, and toxic (PBT), as well as identify others for inclusion in that group and take expedited action on those in the future. PBT chemicals, however, will not be subject to risk evaluation because their potential health and environmental threats are already well documented. Based on known potential health and environmental threats, the agency has already identified five PBT chemicals slated for expedited action and likely restriction:

- decabromodiphenyl ethers (decaBDE)
- hexachlorobutadiene (HCBD)
- pentachloro-thio-phenol (PCTP)
- tris(4-isopropylphenyl) phosphate
- 2,4,6-tri(tert-butyl)phenol

In addition, the EPA proposed a “significant new use rule” requiring manufacturers of consumer and industrial products to notify the agency before producing or processing two chemicals (N-ethylpyrrolidone [NEP]) and (N-isopropylpyrrolidone [NiPP]) in new ways. This will give the EPA the opportunity to review the new use and determine its potential risk.

More recently, the EPA released the list of the first 10 chemicals it will review (below). The agency is required to issue a scoping document within the next six months that includes a description of the hazards, exposures, conditions of use, and potentially exposed subpopulations (www.epa.gov/newsreleases/epa-names-first-chemicals-review-under-new-tsca-legislation). Many of the 10 are common industrial chemicals:

- 1,4-dioxane
- 1-bromopropane
- asbestos
- carbon tetrachloride
- cyclic aliphatic bromide cluster
- methylene chloride
- N-methylpyrrolidone
- pigment violet 29
- tetrachloroethylene, also known as perchloroethylene
- trichloroethylene

How could these rule changes affect you? The EPA may determine that some existing chemicals pose an unreasonable risk, and institute usage restrictions, additional

disposal requirements, or, in extreme cases, a total ban on the substance.

Given that possibility, you may want to consider:

- reviewing chemicals currently used in your operations to identify chemical substances that are critical to your business to determine if they may be on the most recent list of TSCA “work plan” chemicals targeted for use restrictions.
- reviewing the nomenclature used for all chemical substances in your products and comparing it that used by the EPA to identify existing chemicals.
- reviewing confidentiality claims made under TSCA if your company currently imports or manufactures chemicals; under the new rules the claims may need to be resubstantiated.
- submitting new-chemical and new-use notifications as soon as possible before higher fees apply.

In general, state action on a chemical is preempted only when the EPA has acted, either by finding that a chemical is safe or by regulating it to address risks identified by the agency. Therefore, monitoring chemical-specific state regulatory actions is important. State actions taken before April 22, 2016, or any action taken following a state law that was in effect on August 31, 2003, are grandfathered in and remain in effect.

Because of the act’s broad scope and the fact that implementation details are still pending, the reformed rule may have other implications for your facility’s operations. Additional information can be found at www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act-0#steps.

For more information on this legislation and its implications for your facility, contact Shiela Ugargol Keefe at 952-842-3650 or skeefe@barr.com or Kim Hand at 218-529-7145 or khand@barr.com.