

Opportunities Offered by the New Administration's Implementation of TSCA

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Herb Estreicher

- ♦ Herbert (Herb) Estreicher is a prominent environmental lawyer who is listed in Who's Who Legal: Environment and in Marquis Who's Who in America. Herb holds a PhD in Chemistry from Harvard University (1980) in addition to his US law degree (1988). He is also listed as a foreign lawyer (B List) with the Brussels legal bar. Herb is recognized as a leading expert on the Toxic Substances Control Act (TSCA) and is frequently quoted in Inside EPA, Chemical Watch, and BNA Environmental Law Reporter. He is one of the few US-based lawyers that is expert on the EU REACH regulation and has successfully argued a number of cases before the European Chemicals Agency (ECHA) Board of Appeal and has briefed cases before the EU General Court and the European Court of Justice.
- ♦ Herb represents leading manufacturers of chemicals, pesticides, and consumer products. His broad practice in international environmental regulatory law allows him to take an interdisciplinary approach with his clients and their needs. His extensive background in organic chemistry, risk assessment, and bioengineering is valued highly by his clients in the chemical, nanotechnology, and biotechnology industries.
- ♦ Herb provides advice on product liability risk control and assists his clients with crisis management for embattled products, including wood preservatives and persistent, bioaccumulative, and toxic (PBT) chemicals. He helps his clients secure and maintain chemical approvals and pesticide registrations in Canada and Europe, advises clients on matters involving the Canadian Environmental Protection Act and on European chemical directives such as the EU Registration, Evaluation and Authorization of Chemicals (REACH) regulation, the Classification, Labelling and Packaging (CLP) regulation, and the Biocidal Products Regulation. Herb also represents clients in matters involving the Stockholm Convention on persistent organic pollutants (POPs) and has participated in the Canadian Strategic Options Process (SOP). He counsels clients on matters concerning sustainability and the circular economy.



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David B. Fischer

- ◆ David Fischer counsels clients on environmental, policy, and health and safety matters, with a concentration on the Toxic Substances Control Act (TSCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Having served as the Deputy Assistant Administrator for EPA's Office of Chemical Safety and Pollution Prevention as well as having held senior level positions at the American Chemistry Council, David advocates for clients before the U.S. EPA and provides strategic advice to them regarding issues before Congress.
- ◆ In addition to TSCA and FIFRA, he has experience with numerous other statutes including the Clean Air Act (CAA), Clean Water Act (CWA), Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Safe Drinking Water Act (SDWA), Emergency Planning and Community Right-to-Know Act (EPCRA), and the Food Quality Protection Act (FQPA).
- ◆ David's clients include domestic and international industrial and specialty chemical manufacturers, and the trade associations which represent them. Clients seek his assistance on new chemical approvals, and chemical and pesticide risk evaluations and risk management rulemakings because of his deep understanding of EPA, its internal science policy apparatus, and its many organizational pieces that collectively are responsible for all aspects of TSCA and FIFRA.



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EPA Administrator Lee Zeldin Five Pillars



- ◆ Pillar 1: Clean Air, Land, and Water for Every American--EPA will fulfill its mission to protect human health and the environment.
- ◆ Pillar 2: Restore American Energy Dominance
- ◆ Pillar 3: Permitting Reform, Cooperative Federalism, and Cross-Agency Partnership
- ◆ "Any business that wants to invest in America should be able to do so without having to face years-long, uncertain, and costly permitting processes."

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Pillars Designed to Power the Great American Comeback



- ◆ Pillar 4: Make the United States the Artificial Intelligence Capital of the World
- ◆ Pillar 5: Protecting and Bringing Back American Auto Jobs

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TSCA Implementation Opportunities (1)



- ◆ EPA's FY 2026 Budget represents "a return to common sense environmental policy."
 - ◆ The administration is actively pursuing a deregulatory environment that facilitates all forms of domestic manufacturing, not just auto manufacturing.
 - ◆ The FY 2026 budget document notes EPA's commitment "to investing in improvements to the timeliness and quality of new chemical reviews and its related risk management actions."

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TSCA Implementation Opportunities (2)



- ◆ EPA's 2026 budget narrative underscores the goal of reducing the current backlog and providing regulatory certainty to industry.
- ◆ For new chemical submissions to EPA:
 - ◇ it will be important to stress the onshoring of manufacturing
 - ◇ especially if the submission entails new manufacturing opportunities within the US that might have gone off-shore
 - ◇ or that involve a business decision to manufacture in the US rather than importing the new chemical.

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TSCA Implementation Opportunities (3)



- ◆ For new chemical submissions to EPA:
 - ◇ Underscore job creations and other economic benefits
 - ◇ Is the new chemical safer than an existing chemical with similar conditions of use?
 - ◇ Stress whether the building of new facilities awaits EPA approval of a new chemical submission;
 - ◇ and the interconnectedness of your operations with other US-based operations that may ultimately rely on the approval of the new chemical submission.

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TSCA Implementation Opportunities (4)



- ◆ I am not suggesting that EPA will or should turn a blind eye to its statutory obligations, but underscoring the macro view of a submission may help facilitate EPA's review.

What about risk evaluation and risk management of existing chemicals?

- ◆ Ongoing litigation, especially on the methylene chloride risk management rule may significantly alter the method by which EPA determines unreasonable risk.
 - ◇ Recall that *Chevron* deference is out, and *Loper* is in,
 - ◇ Courts, not agencies, discern the best meaning of statutory provisions.

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TSCA Implementation Opportunities (5)



- ◆ Based on the recent 5th Circuit (TCE) oral argument, the Court could vacate the rule, which will have repercussions for other risk management rules, risk evaluations, and
- ◆ the risk evaluation procedural (framework) rule EPA has already indicated that it plans to revise.
- ◆ All of which will offer opportunities for stakeholders to seek revisions.

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Fixing the TSCA PFAS Reporting Rule



- ◆ On May 13, 2025, EPA published an interim final rule extending the TSCA Section 8(a)7 PFAS reporting rule submission period by 9 months (April 13-Oct. 13, 2026).
- ◆ In the rule, EPA announced that may, in a future separate action, reopen other aspects of this rule for public comment in light of Executive Order 14219: Unleashing Prosperity through Deregulations (90 FR 9065, January 31, 2025).
- ◆ Administrator Zeldin has announced upcoming action to “implement section 8(a)7 to smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers.”

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How is Industry Reacting to this Opportunity



- ◆ Coalition of companies provided EPA with a list of amendments to the 8(a)(7) reporting rule that it would like to see, notably,
- ◆ Narrowing the scope of required reporting by explicitly exempting from reporting:
 - ◇ Imported articles, R&D materials, impurities, byproducts, and non-isolated intermediates.
 - ◇ PFAS manufactured in quantities of less than 2,500 lbs.
- ◆ And doing away with the requirement to submit full studies where a IUCLID robust study summary is provided.

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Executive Order 14219: Unleashing Prosperity through Deregulations



- ◆ Agencies to identify rules/guidance that among other things imposed unnecessary burdens on industry and need to be repealed or modified.
- ◆ There was a follow-up request for “deregulation suggestions” from OMB.
- ◆ A lot of good suggestions were presented to EPA by Industry, including:
 - ◇ Revisions to the Biden-era amendments to the Part 720 PMN rules
 - ◇ Fixing the disconnect between PMN exemptions and SNUR exemptions
 - ◇ Increasing the utility of the TSCA Polymer Exemption
 - ◇ Fixing problems with EPA implementation of TSCA 8(d), 12(b), and 13.

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EO Directing the Repeal of Unlawful Regulations



- ◆ Directs Agency heads to identify unlawful and potentially unlawful regulations within 60 days and begin plans to repeal them.
- ◆ Prioritize regulations that are unlawful Supreme Court decisions, including:
 1. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024);
 2. *West Virginia v. EPA*, 597 U.S. 697 (2022);
 3. *SEC v. Jarkesy*, 603 U.S. 109 (2024);
- ◆ Repeal facially unlawful regulations without notice and comment, where doing so is consistent with the “good cause” exception in the Administrative Procedure Act.

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Upcoming Events



Please join us at 10:00 AM Eastern U.S.
Wednesday, August 27, 2025
www.khlaw.com/REACH-3030



Please join us at 1:00 PM Eastern U.S.
Wednesday, June 18, 2025
www.khlaw.com/OSHA3030



Please join us at 1:00 PM Eastern U.S.
Wednesday, August 13, 2025
www.khlaw.com/TSCA-3030

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Thank You

Any questions?

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