



TSCA Reform: A Lost Opportunity and Where We Go from Here

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Herbert Estreicher, Ph.D.

- ◆ Herbert (Herb) Estreicher, Ph.D., has a broad practice in international environmental regulatory law, representing leading manufacturers of chemicals, pesticides, and consumer products. Clients in the chemical, nanotechnology, and biotechnology industries seek his in-depth legal and scientific knowledge of organic chemistry, risk assessment, and bioengineering stemming from his dual degrees – a Ph.D. in Chemistry and a J.D.
- ◆ Herb is recognized as a leading chemical regulations attorney with a particular emphasis on the Toxic Substances Control Act (TSCA), including EPA's implementation of the 2016 Lautenberg Amendments, and is one of the few United States (U.S.)-based lawyers with extensive knowledge of the European Union (EU) Registration, Evaluation and Authorization of Chemicals (REACH) regulation. In this capacity, he 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 counsels clients on product liability risk control and assists with crisis management for embattled products, including wood preservatives and persistent, bioaccumulative, and toxic (PBT) chemicals. He helps 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 REACH regulation, the Classification, Labelling and Packaging (CLP) regulation, and the Biocidal Products Regulation (BPR). He also represents clients in matters involving the Stockholm Convention on persistent organic pollutants (POPs) and has participated in the Canadian Strategic Options Process (SOP). In addition, he counsels clients on matters concerning sustainability and the circular economy.



David B. Fischer, M.P.H.

- ◆ 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). He is a registered lobbyist and advocates for clients before the U.S. Environmental Protection Agency (EPA) and Congress. Prior to joining Keller and Heckman, David served as the Deputy Assistant Administrator for the EPA's Office of Chemical Safety and Pollution Prevention and held senior-level positions at the American Chemistry Council (ACC).
- ◆ David's extensive experience at the EPA has enabled him to build strong, longstanding relationships that support clients in navigating the Agency's regulatory landscape. He also has significant relationships with other federal agencies. Leveraging these relationships, David efficiently facilitates communication between clients and the appropriate federal authorities, helping to streamline interactions and expedite the resolution of complex legal and regulatory matters.
- ◆ 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, 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 are collectively responsible for all aspects of TSCA and FIFRA.
- ◆ As Deputy Assistant Administrator (DAA) for the Office of Chemical Safety and Pollution Prevention (OCSPP) at EPA, David was deeply involved in TSCA implementation, with a particular focus on risk evaluation of existing chemicals, and all aspects of FIFRA implementation. In addition, he worked with the Assistant Administrator on the technical and administrative aspects of OCSPP, an office with over 1,000 staff. He also assisted in matters pertaining to the Agency's programs under multiple federal statutes including TSCA, FIFRA, the Federal Food, Drug, and Cosmetic Act (FFDCA), and the FQPA, and provided policy advice and recommendations to the EPA Administrator.



What Set the Stage?

- ◆ The TSCA fees, which help cover the costs associated with the implementation of the act, are up for renewal in September 2026.
- ◆ EPA collects roughly \$25 million annually from chemical manufacturers to fund TSCA review programs.
- ◆ Without reauthorization, the agency's ability to process new chemical submissions and complete risk evaluations could stall.
- ◆ In parallel, Republican members of the Congressional Committees with oversight of EPA's administration of TSCA have floated draft legislation designed to cure some of the defects in the law resulting from the 2016 Lautenberg amendments.
- ◆ KH's TSCA Improvement Coalition drafted numerous changes to key TSCA provisions that were reflected in the Senate and House bills.

What Ideas Were Floated to Fix New Chemical Review Failings: Senate Draft Bill

- ◆ Clarifying key definitions, such as conditions of use and unreasonable risk
- ◆ Creating tiered review timelines for new chemicals
- ◆ Expanding exemptions for low-risk substances
- ◆ Establishing a new “stewardship pathway”
- ◆ Authorizing third-party assessors
- ◆ Formalizing deadlines and procedural constraints on EPA

House Draft Bill

- ◆ "More likely than not" evidentiary standard for risk findings.
- ◆ Reforms to PMN review procedures and timelines.
- ◆ OECD-based new chemical exemptions.
- ◆ UVCB equivalency provisions.
- ◆ Restriction of risk evaluations to likely risks and limited aggregate exposure analyses.
- ◆ Mandatory consideration of OSHA and other federal controls.
- ◆ Conversion of §6 from risk elimination to risk minimization.
- ◆ Introduction of cost-effectiveness and feasibility as major risk-management criteria.

Other Legislation Was Floated

- ◆ Ricketts/Wicker (R-MS), introduced S. 4397 late April 27.
- ◆ Narrower bill not dealing w/ Section 5.
- ◆ Would require EPA to:
 - ◇ Focus on risks that are more likely than not to occur.
 - ◇ Give greater weight to existing OSHA and other federal regulatory controls.
 - ◇ Use a cost-effectiveness standard when selecting restrictions.
 - ◇ Coordinate more extensively with other federal agencies.
 - ◇ Subject EPA science and risk evaluations to greater peer review and litigation exposure

Where Do We Go From Here?

- ◆ Legislative Reform to TSCA appears increasingly uncertain before the mid-terms.
- ◆ How best to improve TSCA during the remainder of the Trump Administration?
- ◆ Much can be done by regulation and revision of EPA guidance documents.
- ◆ We are working with a coalition of companies to advance certain reforms.

Main Topics of Interest (1)

- ◆ Streamlining Section 5(e) Consent Orders
- ◆ Requiring EPA to rely on actual data rather than analog data
- ◆ Developing a regulatory definition of unreasonable risk
- ◆ Developing a strategy to bring back non-5(e) SNURS

Main Topics of Interest (2)

- ◆ Development of regulations to govern Risk Management Rules
- ◆ Triage where less complicated PMNs are reviewed first
- ◆ Requiring EPA to base risk evaluations on REACH data on the ECHA website where justified

Main Topics of Interest(3)

- ◆ Expanding the categories of polymers that qualify for the polymer exemption
- ◆ Limiting Section 8(e) to information that truly reasonably supports a substantial risk in the sense it is likely to trigger an EPA regulatory rather than 8(e) serving as a data dump
- ◆ Setting equivalency between Inventory-listed petroleum streams and comparable products produced from waste plastic and other non-petroleum streams
- ◆ Allowing 12(b) notices to be aggregated and reported on an annual basis rather than per export

Upcoming Webinars



Please join us at 1:00 PM Eastern U.S.
Wednesday, August 19, 2026
www.khlaw.com/OSHA3030



Please join us at 10:00 AM Eastern U.S.
Wednesday, 26 August 2026
www.khlaw.com/REACH-3030



Please join us at 1:00 PM Eastern U.S.
Wednesday, November 4, 2026
www.khlaw.com/TSCA-3030

Thank You

Any questions?

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