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CONGRESS FINDS THE FORMULA TO REFORM CHEMICAL REGULATION

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The Toxic Substance Control Act (TSCA) is the primary federal law by which the manufacture, import and use of chemical substances are regulated in the United States. Since its inception in 1976, TSCA has not been updated significantly. Politics played a large part in what essentially became a reform stalemate. But negotiators on both sides of the aisle reached a deal in May, and Congress in early June passed the Frank R. Lautenberg Chemical Safety for the 21st Century Act (also known as the TSCA Modernization Act of 2015). President Obama has now signed it. The Act will change considerably the landscape of chemical regulation and is perhaps the most important amendment to a federal environmental statute since the Clean Air Act Amendments of 1990.

The Act significantly improves the process by which EPA evaluates and regulates chemicals. Among other things, EPA is required to identify substances that are high priorities for risk evaluation; determine the health and environmental risks of those substances; determine, without regard to cost, whether a substance presents an unreasonable risk; and, if so, regulate it under its specified conditions of use. The Act sets forth tight timelines in which EPA must accomplish these steps, something that industry desired.

For new chemicals, TSCA previously deemed a "pre-manufacture notice" (PMN) approved unless EPA concluded within 90 days of submission that the chemical presented an unreasonable risk. Under the Act, EPA must respond to a PMN by concluding: 1) the new chemical presents an unreasonable risk; 2) there is insufficient information to determine if an unreasonable risk exists, and in the absence of sufficient information, the chemical may present an unreasonable risk; or 3) the chemical does not present an unreasonable risk. For existing chemicals, the Act creates a two-step process for considering chemical risks, with the first step involving evaluation and prioritization of risks, and the second step involving management of those risks.

The Act also preempts state restriction of chemicals that EPA determines pose no unreasonable risk. It also preempts state restriction while EPA is considering whether to regulate a high priority chemical. However, preemption does not apply to state requirements that are identical to or adopted pursuant to a federal requirement, or that are adopted pursuant to state water quality, air quality, or waste treatment or disposal regulations. Finally, state action taken prior to April 22, 2016 – such as Prop 65 in California – is grandfathered and not subject to preemption.

These are only a few of the many changes the Act will bring to manufacturers, processors and importers of chemicals, as well as large industrial users. Rulemaking from EPA will follow enactment, so those affected by the Act will need to remain vigilant.

<https://www.congress.gov/bills/114th-congress/house-bills/2576/text>

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