



FAQs: TSCA Reform Bill

On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act. Now that the President has signed the TSCA Reform Bill into law, it will take effect immediately. The TSCA Reform has new requirements with deadlines that will ensure risk evaluations begin by mid-December 2016 for at least 10 chemicals and that there are at minimum 20 ongoing chemical risk evaluations by mid-December 2019¹. The earliest deadline is scheduled for September 20, 2016. It is important to note that it will likely be decades before EPA can test all the currently unregulated chemicals on the market. This will depend largely on the efficiency of, and sufficient funding for, EPA. Future administrations will play a significant role in the execution of this new law.

What is TSCA?

The Toxic Substances Control Act (TSCA) is the nation's primary chemical safety law. This federal law was enacted in 1976. TSCA authorizes the U.S. Environmental Protection Agency (EPA) to regulate the chemicals found in consumer products such as: cleaning agents, furniture, paint, carpeting, clothing, and other consumer goods³. Regulation under TSCA does not apply to chemicals in food, drugs, cosmetics and pesticides.

Why did TSCA Require Updating?

TSCA is the only major environmental law that has not been updated since it was enacted—40 years ago⁴. It has long been apparent that TSCA has been failing to protect the public's health and the environment, and for the past decade, advocates

and politicians have worked together to propose changes to address the law's vast limitations.

Of the 84,000+ chemicals registered in the United States, 62,000 were already in production when TSCA was implemented. These "existing" chemical substances, as they were classified under TSCA, were grandfathered in—assumed to be safe unless EPA could demonstrate that they presented an unreasonable risk to human health or the environment.

For any new chemicals introduced under TSCA (approximately 22,000 since 1976), EPA was only afforded a 90-day window within which to show that a chemical posed a potential risk before the chemical entered the market. Furthermore, EPA was expected to provide sufficient evidence that a chemical posed a reasonable risk before requiring pre-market safety testing. Understandably, it is difficult to prove reasonable risk without first obtaining complete testing data.

In addition, if EPA was able to determine that a chemical posed a health risk, the agency had to weigh the human health risks of exposure against the economic costs of banning, limiting, or phasing out the chemical. As of 2005, EPA had performed internal reviews of only an estimated 2% of the 62,000 TSCA pre-1969 chemicals⁵, and only 5 of those chemicals have been restricted or banned.

Mounting scientific evidence shows that many chemicals still in use—readily available on the market today—are harmful to human health and development.

What is an example of a harmful chemical that went unregulated or under-regulated under TSCA?

In the 1970s, enough scientific evidence existed to prove that asbestos causes cancer. In fact, EPA established an emissions standard for asbestos under the Clean Air Act in 1973. In 1979 EPA issued a notice of intent to regulate asbestos under TSCA but faced much opposition from industry. After a decade of increasing scientific evidence, in 1989, EPA announced a rule to phase out and ban more than 90% of products containing the carcinogen. However, the federal court overturned the regulation, claiming that EPA had not sufficiently demonstrated that the ban was the “least burdensome alternative” or the most cost effective measure⁶. U.S. Court of Appeals for the Fifth Circuit returned parts of the asbestos rule to EPA for reconsideration⁷. Although EPA was able to ban the manufacture, importation, processing and distribution in commerce of *certain* asbestos-containing products, TSCA required EPA to consider the cost to industry, which severely limited EPA’s authority to place a comprehensive and effective ban on asbestos.

What is the TSCA Reform Bill?

The *Frank R. Lautenberg Chemical Safety for the 21st Century Act*, commonly referred to as the “TSCA Reform Bill,” is a significant step forward for chemical safety. This Bill updates TSCA by providing EPA with enhanced authority and improves the way chemicals are evaluated for use in consumer products⁸. Although a step in the right direction, the TSCA Reform Bill will not provide complete protection from all toxic chemical exposures.

How does the TSCA Reform Bill amend TSCA, and how do these changes further the protection of children’s environmental health?

The new safety assessments of chemicals will require a *health-based risk evaluation* and environmental safety standard, instead of a *cost-benefit standard*. In other words, EPA will be required to determine whether or not a chemical is safe for human use and exposure based solely on the health and environmental risks it may cause, without consideration of cost or other non-risk factors². Neither new chemicals, nor new uses of existing chemicals will be allowed to enter the market until the aforementioned assessments have been conducted by the EPA⁵. The new Bill will also incorporate consideration of potential exposures and the impact of these exposures to: children, pregnant women and other vulnerable populations; and an increase in enforceable deadlines for evaluating chemicals.

How does the TSCA Reform Bill affect states’ chemical policies and regulations?

Various state governments have adopted a total of 167 policies to regulate toxic chemicals in consumer products; these policies were developed to fill the voids and limitations of the 1976 TSCA. California, New York, Maine, Illinois, and Washington are some of those states at the forefront of more stringent chemical regulation⁹. The TSCA Reform Bill will grandfather in *previously implemented* state policies, but will create a nationalized regulatory system that will limit *future* state-by-state rules on chemical use.

Specifically, if the federal regulation of any toxic chemical takes longer than expected, individual states will be allowed to take action (i.e. more extensive testing, additional labeling, or disclosing product ingredients) on any chemical *only if EPA has not yet addressed it*.

Conversely, if EPA has found a chemical to be safe, or if EPA has initiated regulatory measures on the chemical, state action is halted. A temporary halt to state action also applies if EPA is *evaluating* a chemical. However, states may obtain a waiver of the temporary pause if they wish to pursue their own regulation⁵.

What can I do to ensure my family is protected from toxic chemicals?

The TSCA Reform Bill gives EPA the authority to proactively require a “finding of safety” as a condition of market entry for each new chemical. However, it will take a long time for EPA to retroactively evaluate chemicals already in use. In the meantime, individual actions are key. It is important for each of us to become knowledgeable consumers in order to safeguard our own health, as well as the health of our families and communities. Research the products most commonly used in your household by simply checking ingredients labels. Take time to ensure the products you purchase do not contain known toxic chemicals or substances. Follow manufacturer instructions for product use.

More information and resources on eco-healthy practices that can help your family reduce their environmental exposures can be found at the following links:

- Eco- Health Child Care® (EHCC) Household Chemicals Fact Sheet www.cehn.org/ehcc/factsheets
- EHCC Frequently Asked Questions www.cehn.org/ehcc/toxfaqs
- Project TENDR <http://projecttendr.com/what-you-can-do/>
- University of California at San Francisco <http://www.prhe.ucsf.edu/prhe/pdfs/ToxicMatters.pdf>

^[1] https://www.epa.gov/sites/production/files/2016-06/documents/june_30_webinar_ppt.pdf

^[2] <http://www.bdlaw.com/assets/htmldocuments/TSCA%20Reform%20Deadlines.pdf>

^[3] <https://www.fas.org/sgp/crs/misc/RL31905.pdf>

^[4] http://www.epw.senate.gov/public/_cache/files/aa2ac4d1-15bb-4e71-9588-909d49bdcff2/tsca-reform-marketing-packet-5.19-final.pdf

^[5] <http://www.gao.gov/new.items/d05458.pdf>

^[6] <https://www.nrdc.org/sites/default/files/asbestos.pdf>
^[7] Corrosion Proof Fittings v. EPA, 947 F.2d 1201 (5th Cir. 1991)

^[8] <https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/frank-r-lautenberg-chemical-safety-21st-century-act>

^[9] <http://www.saferstates.com/bill-tracker/>