

ALERT

Wiley Rein Previews High-Priority, Impactful, and Precedential EPA TSCA Activities for This Week

June 18, 2019

The week of June 17 will be a busy week for the Environmental Protection Agency (EPA). Several high-priority activities will have the potential to impact a wide range of industries and set precedent for future actions on chemicals. The scheduled activities are summarized below to help stakeholders prepare for the flurry of activity. Wiley Rein will provide our clients with observations and summaries of these actions in real time, so please look out for our emails.

First, this Tuesday through Friday, EPA will hold the first public meeting of the **Toxic Substances Control Act (TSCA) Science Advisory Committee on Chemicals (SACC)** to review the draft risk evaluation for Pigment Violet 29 (PV29). This meeting will commence with a general TSCA orientation for the SACC. The SACC will conduct a peer review of the draft risk evaluation and provide recommendations to EPA, which the agency will use to inform its final risk evaluation for PV29. You may attend the meeting in-person¹ or view it via webcast. The meeting will also give important insight into how EPA's SACC is likely to operate for future chemical reviews, and will be of critical interest to those stakeholders with chemicals selected for the "first 20" high-priority chemicals this December.

Second, by the end of this week, we expect EPA to issue **a significant TSCA Risk Management proposed rulemaking** under the updated TSCA statute to address five chemical substances that the agency has determined to be persistent, bioaccumulative, and toxic (PBT) pursuant to section 6(h) of the Act. The following list provides a preview of the five Work Plan chemicals that are subject to the PBT

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Environment & Product Regulation
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- Decabromodiphenyl ethers (DecaBDE): According to EPA's 2017 presentation on the types of data that would be useful to support the upcoming rulemaking, uses include as a flame retardant in high-impact polystyrene-based products, rubber and plastics, textiles, electronic equipment, and building and construction materials. Affected products may include carpet, upholstery fabric, back coatings, cushions, mattresses, tents, and electrical appliances and equipment (stereos, computers, televisions, circuit boards, casings, and cable insulation).
- Phenol, isopropylated, phosphate (3:1): This listing actually constitutes a family of structures in which each of the three aryl groups must contain at least one isopropyl group, and includes Tris(3-isopropylphenyl) phosphate, Tri(isopropylphenyl) phosphate, and Tri(4-isopropylphenyl) phosphate. Uses that EPA has previously identified cut across industries and include electronic device casings and circuit boards, electrical wires/cables, paints and coatings for building materials, foam upholstery, textile fibers, carpets, and curtains, automotive plastics, foams, and fabrics, and lubricants (grease, oil, hydraulic fluid).
- 2,4,6-Tris(tert-butyl) phenol: Industrial and commercial uses of this chemical include as a stabilizer and a fuel, oil, and lubricant additive, and it may also be present in commercial and consumer uses in fuel additives.
- Hexachlorobutadiene (HBCD): Industrial and commercial uses of this chemical include as an ingredient in heat transfer fluids, use as a solvent, and use in chlorine recovery. Among the commercial and consumer uses EPA has previously identified, HBCD is used as a fumigant/pesticide/algacide, in textile coatings, and as an ingredient in hydraulic fluid and gyroscope fluid. HBCD is a byproduct in the production of perchloroethylene, trichloroethylene, carbon tetrachloride, and possibly methylene chloride.
- Pentachlorothiophenol (PCTP): This chemical is known to the agency to have industrial and commercial uses as a rubber peptizer and commercial use in laboratory settings.

To comply with the deadline set forth in TSCA section 6(h)(1), EPA must issue its proposal by this Saturday, June 22. Unlike other TSCA section 6 regulatory actions to address any unreasonable risks, this unique statutory provision requires EPA to *reduce exposure* to these chemical substances to the extent practicable – even if there is no risk created by these chemicals. We will be keenly interested in how the agency implements this statutory authority.

Third, based on a court-ordered deadline, EPA is also required to complete its **dust-lead hazard standards** rulemaking by this Saturday. Last year, the agency proposed to change the dust-lead hazard standards from 40 µg/ft² and 250 µg/ft² to 10 µg/ft² and 100 µg/ft² on floors and window sills, respectively. These standards apply to most pre-1978 housing and child-occupied facilities. EPA also proposed not to make any changes to the definition of lead-based paint. Regardless of the final rule's contents, we anticipate additional legal and regulatory action on this issue given the broad range of interests.

Finally, TSCA deadlines will continue to emerge throughout the summer. Below, we highlight the upcoming TSCA deadlines for your awareness:

- Monday, July 1, 2019, is the deadline to comply with the **Mercury Inventory Reporting Rule**. Those subject to the rule must report their mercury activities for calendar year 2018 (and every three years thereafter). In general, TSCA section 8(b)(10)(D) requires reporting by “any person” who manufactures or imports mercury or mercury-added products, or otherwise intentionally uses mercury in a manufacturing process. If you have any questions about this rule, we are ready to advise you and ensure your company’s compliance with these new requirements.
- On Monday, August 5, 2019, **inactive designations become effective under the TSCA Inventory Notification (Active-Inactive) Requirements Rule**. Manufacturers and processors will be required to notify EPA before reintroducing into commerce a substance currently identified as inactive on the TSCA Inventory. Upon receipt of a properly filed form, EPA will change the designation of substances from inactive to active. Please let us know if you need any assistance in completing the requisite notification to EPA.

For questions or to discuss any of these developments, contact Martha Marrapese or Erik Baptist in Wiley Rein’s Environment and Product Regulation practice.

[1] The in-person meeting will be held at the Holiday Inn Rosslyn at Key Bridge, Rosslyn Ballroom, 1900 North Fort Myer Drive, Arlington, VA 22209. Seating at the meeting will be open and on a first-come basis.