Obligations and Opportunities Under Reformed TSCA

ACC Environmental Committee

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Overview

- TSCA Reform in a Nutshell
- TSCA Inventory Reset
- New Chemicals
- Prioritization and Risk Evaluation
- Key Takeaways
TSCA Reform in a Nutshell

• TSCA is the primary federal chemicals law
  – Adopted in 1976
  – Perceived as partially ineffective
  – States have adopted their own restrictions on chemicals in the absence of TSCA restrictions

• June 22, 2016 – Congressional passage of TSCA reform was the first major environmental enactment in 25 years
  – Broad support from Democrats and Republicans

• Is implementation of TSCA reform going to be slowed down by the Trump Administration’s deregulatory efforts? **Not likely!**
Section 8: TSCA Inventory Reset

- TSCA Inventory established in 1976 (first inventory in 1979)
- “85,000 chemicals on the TSCA Inventory”
- TSCA reform requires EPA to “reset” the TSCA Inventory
TSCA Inventory Reset

- Final rule due June 22, 2017
- Proposed rule on Jan. 13, 2017
- EPA’s proposed approach:

  A. Year 1 Reset: Retrospective reporting as EPA conducts TSCA Inventory notification process
     i. Manufacturers and importers must notify EPA within 180 days (Approx. December 2017)
     ii. Processors may notify EPA within 360 days (Approx. June 2018)

  B. After Reset: Forward-looking notification requirements for manufacturers, importers, and processors of inactive substances
TSCA Inventory Reset

• What you need to report? (proposed)
  – Chemical identity
  – Type of commercial activity
  – Date range of manufacture for nonexempt commercial purpose during the 10-year reporting period (prior to adoption on June 22, 2016)
  – Must claim CBI

• Exemptions (proposed)
  – Chemicals imported in articles
  – Certain chemical substances formed by reactions during use
  – Impurities and byproducts
How to Prepare for the Reset

• Determine whether you qualify as a manufacturer (including importer), or processor subject to the notification obligations for any chemical substances
  – Chemical-by-chemical determination

• Consider whether any exemptions apply

• Look back at the 10-year period prior to June 22, 2016

• Contact suppliers of imported products, if necessary

• Look out for the final rule around June 22, 2017
Section 5: New Chemicals

New Chemical (PMN)

- “presents” unreasonable risk of injury to health or environment
  - EPA rule restricting substance

- “may present” unreasonable risk of injury to health or environment or substantial...
  - EPA order restricting substance (pending further information)

- “not likely to present” unreasonable risk of injury to health or environment
  - Manufacture or use may commence
New Chemicals: PMN Backlog

• PMN backlog peaked at 600 in late 2016
  – “90-day” review period taking 8+ months
  – Resulted in delays in innovation

• EPA recently announced steps to reduce backlog
  – Policy change: chemicals will be reviewed and approved for intended uses (limiting scope of PMN review). Then SNUR to follow to cover other unforeseeable uses.
  – Managers re-tasked to oversee PMN process for individual chemicals
  – OPPT tripled the amount of time scientists focus on PMNs

• Jeff Morris (Deputy Director of OPPT): backlog will be eliminated by late July
Don’t Get Mired in the Backlog

• Provide more information up front
  – Toxicity information
  – Anticipated exposure

• Have draft PMNs reviewed by experienced counsel or consultants

• Meet with EPA officials
  – Importance of the chemical in commerce
  – Low anticipated exposure/impact of the chemical
Section 6: Existing Chemicals

- EPA designates chemical as high-priority
- Manufacturer requests risk evaluation and EPA grants request
- 10 chemicals to be drawn from 2014 TSCA Work Plan list by EPA within 180 days of enactment

EPA conducts risk evaluation

- No regulation
- EPA promulgates rule regulating chemical
Section 6: Prepare to Defend Your Chemicals

- Identify potential EPA targets by reviewing 2014 TSCA Work Plan
- Look at what other agencies are doing: ECHA and Environment Canada
- Review existing available data and consider developing new data, particularly on exposure
- If EPA prioritizes your chemical, act early
  - Share information with EPA
  - Take advantage of opportunities for public comment
Thank you! Questions?

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